

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag
&
The Hon'ble Dr. Subesh Kumar Das

Case No. OA 157 of 2019

Sandeep Kumar De

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

1

2

3

11
12/07/2019

For the Applicants : Mrs. J. De,
Ld. Advocate.

For the State Respondent : Mr. G.P. Banerjee,
Ld. Advocate.

The applicant has prayed for direction upon the respondents for grant of additional Earned Leave for 46 days and additional Commuted Leave for 120 days which are already to the credit of the applicant, for the purpose of regularisation of the absence of the applicant from duty and other ancillary reliefs.

The applicant was posted as Dental Surgeon in the establishment of the Block Medical Officer of Health, Sonamukhi Block Primary Health Centre, Bankura. The applicant was absent from duty for prolonged period intermittently during the period from 2015 to 2017 due to illness. The applicant previously approached the Tribunal by filing OA-627 of 2018 praying for regularisation of absence of the applicant from duty by grant of leave. On September 17, 2018 this Tribunal disposed of OA-627 of 2018 by directing the Director of Health Services, West Bengal to regularise the absence of the applicant from duty in different spells during the period from 2015 to 2018

ORDER SHEET – (Continuation)

Form No.

Sandeep Kumar De
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 157 of 2019**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>by grant of leave to the credit of the applicant and by grant of Extra-ordinary Leave without pay, if necessary, in accordance with the provisions of rules by which the applicant is governed.</p> <p>It appears from order dated February 22, 2019 that the respondent no. 2, Director of Health Services, West Bengal granted leave of various kinds in favour of the applicant for a total period of 469 days, though the said number of days for grant of leave have been wrongly recorded in the said order as 479. By issuing another order on February 22, 2019, the respondent no. 2 has clarified that the absence of the applicant for a period of 99 days cannot be regularised on the allegation of tampering of the Attendance Register by the applicant during the period from January 22, 2015 to December 31, 2018. The said order of the respondent no. 2 further indicates that the absence of the applicant for a further period of 7 days also cannot be regularised on the ground that the applicant violated the specific administrative orders issued for compulsory attendance of the employees in the office on those 7 days, when strike was called for Bangla Bandh on April 30, 2015, September 02, 2015, September 02, 2016, November 28, 2016, April 13, 2018, September 10, 2018 and September 26, 2018</p>	

ORDER SHEET – (Continuation)

Form No.

Sandeep Kumar De
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 157 of 2019**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>respectively. By the said order the respondent no. 2 has decided for initiating disciplinary proceeding against the applicant on the allegation that the absence of the applicant during the aforesaid period of 106 days amounts to mis-conduct. We are informed that no disciplinary proceeding has yet been initiated against the applicant till date.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we are of the view that the disciplinary proceeding can be initiated against the applicant only by the disciplinary authority, who cannot be an Officer below the rank of the appointing authority. We, therefore, direct the respondent no. 2, Director of Health Services, West Bengal to place the entire matter before the Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare to take a decision for taking disciplinary action against the applicant. If the disciplinary authority decides to start disciplinary proceeding against the applicant, the entire proceeding must be completed within a period of 6 (six) months from this date. If the departmental enquiry is started against the applicant by framing of charge, the final order of the disciplinary authority</p>	

ORDER SHEET – (Continuation)

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Sandeep Kumar De
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Csm	<p>must be passed within a period of 6 (six) months from this date. If disciplinary proceeding is not started and concluded within a period of 6 (six) months from this date or if the applicant is not found to be guilty of the charge in the departmental enquiry proposed to be initiated against the applicant, the respondent no. 1, Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare will take steps to regularise the absence of the applicant for the period of 106 days by grant of Extra-ordinary Leave without pay within a period of 2 (two) weeks either from the date of final order of the disciplinary proceeding or from the date of lapse of 6 (six) months from the date of this order. If the order of punishment is imposed on the applicant by the disciplinary authority, the applicant will abide by the said order of the disciplinary authority. With the above direction the original application stands disposed of.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	