

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-

The Hon'ble Justice Ranjit Kumar Bag

&

The Hon'ble Dr. Subesh Kumar Das

Case No. **OA – 302 of 2016**

*Sankar Singha Roy & Ors.*

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.

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22/11/2018

**For the Applicant** : Mrs. S. Mitra,  
Ld. Advocate.

**For the State Respondent :** Mr. A.L. Basu,  
Ld. Advocate.

**For the A.G., W.B.** : Mr. B. Mitra,  
Depttl. Representative.

*The applicants have prayed for direction upon the respondents to disburse Non-Practising Allowance to the applicants from the month of December, 2015.*

*It appears from the materials on record that the applicants were appointed as Health Officer under the Department of Municipal Affairs, Government of West Bengal on the basis of Notification issued by the said Department on May 13, 1994 on consolidated monthly remuneration of Rs. 4000/-. The service of the applicants was regularised in the post of Health Officers under various Municipalities in the pay-scale of Rs. 8000-13,500/- with admissible Dearness Allowance, House Rent Allowance and Medical Allowance w.e.f. August 01, 2007 on the basis of Notification dated September 21, 2007 issued by the Joint Secretary to the Government of West Bengal, Department of Municipal Affairs. The past contractual*

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	<p><i>service of the applicants as Health Officer under Urban Local Bodies was counted for retirement benefits on the basis of Memorandum dated June 16, 2008 issued by the Joint Secretary to the Government of West Bengal, Department of Municipal Affairs. The pay slips issued by the Sub-Divisional Officer, Barrackpore for drawing salary by one of the applicants for the month of July, 2009 and November, 2015 indicate that the said applicant had drawn Non-Practising Allowance in terms of Rule 9 of West Bengal Services (Revision of Pay and Allowances) Rule, 2009. However, the said Non-Practising Allowance was not paid to the applicants from the month of December, 2015. The grievance of the applicants is that the state respondents have denied them the benefit of Non-Practising Allowance from the month of December, 2015 after making payment of the same to the applicants for continuous period of about 6 (six) years.</i></p> <p><i>Mrs. Sonali Mitra, Learned Counsel representing the applicants contends that some of the Health Officers working under Urban Local Body have got retirement benefits by taking into consideration Non-Practising Allowance admissible to them, while they were in service. She further submits that the state respondents are estopped from denying the benefit of</i></p>	

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	<p><i>Non-Practising Allowance already enjoyed by the applicants for more than 6 (six) years from the date of their regularisation in the post of Health Officers. The specific submission of Mrs. Mitra is that the action on the part of the state respondents by denying the applicants the benefit of Non-Practising Allowance is illegal and arbitrary.</i></p> <p><i>Mr. A.L. Basu, Learned Counsel representing the state respondents contends that the difficulty faced by the Respondent No. 4 in drawing Non-Practising Allowance of the applicants through HRM System introduced from the month of December, 2015 was brought to the notice of the Finance Department which decided to refer this issue of payment of Non-Practising Allowance to the Health Officers working under Local Body to the Sixth Pay Commission set up by the Government of West Bengal. He further submits that the payment of Non-Practising Allowance by the Drawing and Disbursing Officer cannot be construed as the right of the applicant to draw the Non-Practising Allowance as Health Officers under Local Body.</i></p> <p><i>Having heard Learned Counsel representing both parties and on consideration of the materials on record we would like to hold that the issue of payment of Non-</i></p>	

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	<p><i>Practising Allowance to the applicants as Health Officers working under Local Body need to be considered by the Departmental Secretary in consultation with the Finance Department of the Government of West Bengal. We would like to observe that since the applicants have received Non-Practising Allowance for a considerable period of time after their regularisation in the post of Health Officer, the State Respondents are estopped from denying the applicants the benefit of Non-Practising Allowance suddenly after introduction of HRM System from the month of December, 2015. Moreover, the Sixth Pay Commission constituted by the Government of West Bengal cannot take into consideration whether the applicants will get the benefit of Non-Practising Allowance from the month of December, 2015 as prayed for by the applicants. However, Learned Counsel representing the applicants has failed to produce copy of Government Order on the basis of which the applicants had drawn Non-Practising Allowance after their regularisation in the post of Health Officers under Urban Local Body. In view of our above observation, we are of the view that the issue of payment of Non-Practising Allowance to the applicants as Health Officer under the Department of Municipal Affairs, Government of West Bengal need to be decided by the Departmental Secretary in</i></p>	

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Csm	<p><i>accordance with rules.</i></p> <p><i>Accordingly, the Respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Municipal Affairs is directed to consider whether the applicants are entitled to get Non-Practising Allowance in terms of Rule 9 of West Bengal Services (Revision of Pay and Allowances) Rules 2009 as Health Officers under Urban Local Body w.e.f. the month of December, 2015 within a period of 12 (twelve) weeks from the date of communication of the order and communicate the result of the same to the applicants within a period of 1 (one) week thereafter and to take necessary follow-up action.</i></p> <p><i>With the above direction the original application stands <b>disposed of</b>.</i></p> <p><i>Let a <b>Plain Copy</b> of the order be supplied to both parties.</i></p> <p><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	

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