

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal, Hon'ble Chairman.
& Hon'ble Dr. Subesh Kumar Das, Administrative Member.

Case No. OA 443 of 2016.

DR. PRANAB KUMAR CHAUDHURI – VS- THE STATE OF W.B. ORS.

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 style="text-align: center;">6</p> <hr/> <p>10.9.2018.</p>	<p>For the Applicant : Mr. M. Karim, Advocate.</p> <p>For the State Respondents : Mr. S. Ghosh, Advocate.</p> <p>For the A.G. (A & E) W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>In this application, the applicant who had served as a Medical Officer in the West Bengal Health Service from 1st June, 1969 to 31st January, 2003 has prayed for:-</p> <p style="padding-left: 40px;"><i>“.....a) An order directing the respondents their agents, subordinates and successors to grant interest on delayed of Arrear Gratuity and Arrear Pension @ Rs. 12% per annum from 1st November, 2009 to till the actual date of full payment i.e. on 23rd February, 2015 forthwith;</i></p> <p style="padding-left: 40px;"><i>b) An order directing the respondents, their agents, subordinates and successors to produce all records and proceeding so that conscionable justice may be administered by granting the relief for hereinabove;</i></p> <p style="padding-left: 40px;"><i>c) To pass such other or further orders or orders as to the Hon'ble Tribunal may deem fit and proper....;”</i></p>	

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	<p>It appears from records that earlier the applicant had moved an application being OA 890 of 2011 Dr. Pranab Kumar Chaudhuri –Vs- The State of West Bengal & Ors which was disposed of on 28th September, 2012 . The said application as evident from the judgement dated 28th September, 2012 was for “<i>payment of interest due to delayed payment of retirement benefits</i>”. Ultimately, the said application was allowed by the Tribunal by directing as under :-</p> <p style="text-align: center;"><i>“.....We after careful consideration of all aspects and keeping in mind the anxiety faced by the pensioner, we allow payment of interest on gratuity and other pensionary benefits as follows :-</i></p> <p style="text-align: center;"><i>1.Arrear of pension – rate of interest being calculated at 12% instead of 18%.</i></p> <p style="text-align: center;"><i>2.Arrear of gratuity be allowed @ 12%. The calculation furnished by Ld. Advocate Mr. M. Karim is accepted in toto except the commutation value the old rate of computation cannot be accepted.</i></p> <p style="text-align: center;"><i>To make it clear all items claimed by Mr. Karim, Ld. Counsel interest payment will be allowed at the rate of 12% and not 18% as demanded. But, we have not</i></p>	

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	<p><i>agreed for any arrear for commutation value due to computation on new rate instead of old rate. This is because the fundamental financial norms and other reasons behind computation theories have not been made clear to us. We do not also have any guideline, any existing available information and decision of court of law in this subject. Therefore, we have to accept the specialist opinion of the Accountant General in this case and we cannot deviate from the opinion of the Accountant General.</i></p> <p><i>Petition is allowed with modification as ordered.</i></p> <p><i>Accordingly, the matter is disposed of.....”.</i></p> <p>Though the matter was disposed of, the matter came up before the Tribunal on 4th January, 2013 when the following order was passed :-</p> <p><i>“.....The record is taken up this day as per mentioning. Ld. Adv. On behalf of the petitioner has submitted affidavit of service. Let it be kept on record. No one appears on behalf of the State Respondents. Ld. Adv. On behalf of the petitioner has pointed out that the order in respect the present application was passed on</i></p>	

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	<p><i>28.09.2012. But, no time is framed by the Tribunal in respect of completion of the matter as stated in the said order. After going through the submission of the Ld. Adv. on behalf of the applicant as well as Mr. B. Mitra, departmental representative of the office of the A.G.W.B. we fix the time of six (06) months for completion of the matter as per order dated 28.09.2012....”.</i></p> <p>Being aggrieved with the said order, the State preferred a Writ petition before the High Court, being WPST No. 217 of 2013, which was dismissed on 2nd July, 2013 by passing an order, the relevant portion of which is as under :-</p> <p><i>“.....The writ petition has been filed on behalf of the State authorities challenging the judgement and order dated 28th September, 2012 passed by the West Bengal Administrative Tribunal in O.A. 890 of 2011 and also the subsequent order dated 4th January, 2013 passed in connection with the aforesaid case by the learned Tribunal.</i></p> <p><i>The learned Tribunal upon considering the submissions of the learned counsel of the respective parties and going through the records and also</i></p>	

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	<p><i>considering the specialist opinion expressed on behalf of the Accountant General, West Bengal passed an order allowing payment of interests on gratuity and other pensionary benefits of the respondent. Furthermore, the learned Tribunal by the subsequent order dated 4th January, 2013 specified six months time for making necessary payment in terms of the order dated 28th September, 2012.</i></p> <p><i>In our opinion, the State authorities have been granted sufficient time for making payment in terms of the aforesaid order passed by the learned Tribunal.</i></p> <p><i>For the aforementioned reasons, we do not find any scope to interfere with the impugned orders passed by the learned Tribunal as we do not find any error and/or infirmity in the aforesaid orders....”.</i></p> <p>It is submitted by Mr. Karim, learned advocate for the applicant that the prayers in the earlier application that is OA 890 of 2011 and the prayers in the instant writ petition are different since interest of arrear Gratuity and arrear pension from 1st November, 2009 till the actual date of full payment have not been granted.</p> <p>In our view, the matter is hit by principles of</p>	

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Skg.	<p>resjudiceta as it is evident from the order dated 28th September, 2012 passed in OA 890 of 2011 that the subject matter of the said application was payment of interest due to delayed payment of retirement benefits which encompasses entire issue of payment of superannuation benefit. The State being aggrieved by the said order preferred a writ petition which was dismissed on 2nd July, 2013. It is to be mentioned that the period in this petition includes a period when the same issue was pending before the Tribunal as well as before the High Court. If aggrieved the applicant should have brought it to the notice of the Court and Tribunal. It cannot be reopened at this stage. Hence the application is dismissed.</p> <p style="text-align: center;">Urgent Photostat certified copy of this order, if applied for, be furnished on priority basis.</p> <p>(Subesh Kumar Das) Member(A).</p> <p style="text-align: right;">(Soumitra Pal) Chairman.</p>	

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