

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

The Hon'ble Urmita Datta (Sen) &  
The Hon'ble Dr. A.K. Chanda.

Case No – OA- 487 of 2017

Mir Samser Zaman

Vs

The State of West Bengal & Others.

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><u>07</u> 10.05.2018</p>	<p>For the applicant : Mr. Goutam Pathak Banerjee, Learned Advocate.</p> <p>For the respondent : Mr. Sankha Ghosh, Learned Advocate.</p> <p>The instant application has been filed praying for following relief challenging the rejection order dated 06.04.2017. According to the applicant, he had joined as Medical Officer on 17<sup>th</sup> July, 1992. However, due to some difficulties, he decided to take voluntary retirement and, accordingly, made an application for voluntary retirement in prescribed format on 16.12.2016 before the Director of Health Services, West Bengal (Annexure-C). However, his application was rejected by order dated 06.04. 2017 on the following grounds :-</p> <p>“The undersigned is hereby directed to Inform you that your prayer for voluntary retirement is not tenable as per Sub-Rule (aa) &amp; (aaa) of Rules 75 of W.B.S.R.,Pt.-I. You are hereby directed to resume your duties immediately.”</p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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>07 10.05.2018</p> <p>Page /2</p>	<p>According to the applicant, the rejection order is bad as Sub Rule (aa) deals with compulsory retirement whereas the applicant has made application for voluntary retirement as per Sub Rule (aaa) of Rule 75 of WBSR, Part – I. On this ground it is totally contrary to the rules. With regard to Sub Rule (aaa) of Rule 75 of WBSR Part – I, it has been vehemently submitted by the counsel for the applicant that this issue has already been dealt with by this Tribunal vide their judgement dated 22.08.2013 in OA -724 of 2013 (Dr. Sraban Kumar Ghosh) which was further affirmed by Hon’ble High Court, Calcutta vide their judgement dated 02.02.2015 holding inter alia :-</p> <p><i>“Let us now consider whether the authorities concerned are really entitled to refuse voluntary retirement of an employee in terms of the aforesaid provisions of the West Bengal Service Rules, Part-I.</i></p> <p><i>Rule 75 (aaa) of the West Bengal Service Rules, Part-I as well as Note 3 appended below the aforesaid sub-rule are set out hereunder :</i></p> <p><i>Rule 75.       ***                               ***       **</i></p> <p><i>(aaa) any Government employee may, by giving notice of net less than 3 months in writing to the appointing authority, retire from Government service after he has</i></p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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>07 10.05.2018</p> <p>Page / 3</p>	<p><i>attained the age of 50 years, if he is in Group A or Group B (erstwhile gazetted) service or post, and had entered Government service before attaining the age of 35 years; and in all other cases, after he has attained the age of 55 years, provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this sub-rule.</i></p> <p><i>Note 3 - The appointing authority should invariably keep on record that in his opinion it is necessary to retire the Government employee in pursuance of aforesaid rule in public interest."</i></p> <p><i>In terms of the aforesaid provisions, it is undisputedly, open to the appointing authority to withhold permission to a government employee under suspension who seeks to retire under the aforesaid sub-rule.</i></p> <p><i>In the present case, the respondent employee concerned is not under suspension. Note 3 appended to the aforesaid sub-rule, however, casts obligation on the appointing authority to keep on record that it is necessary to retire the government employee in public interest which is also not applicable in the instant case.</i></p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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>07 ----- 10.05.2018</p> <p>Page / 4</p>	<p><i>The appointing authority is, however, not authorised and/or entitled to withhold permission to a government employee to retire in public interest in terms of Note 3. The said Note 3 only empowers the appointing authority to keep on record its opinion that it is necessary to retire the government employee in public interest and not withholding permission to a government employee who voluntarily wants to retire before attaining the age of superannuation. The appointing authority can only withhold permission to a government employee to retire under the aforesaid sub-rule when the said government employee is under suspension.....</i></p> <p><i>In the present case, the authorities concerned namely, the petitioners herein are not entitled to refuse permission or withhold permission to the respondent-employee to retire in terms of the aforesaid Rule 75 (aaa) or even under Note 3 to the said sub-rule.</i></p> <p><i>For the aforementioned reasons, we are not inclined to interfere with the impugned order passed by the learned Tribunal and dismiss this writ petition as we do not find any merit in the same.</i></p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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;">7</p> <hr/> <p>10.05.2018</p> <p style="text-align: right;">Page /5</p>	<p style="text-align: center;"><i>The authorities concerned namely, the petitioners herein are directed to implement the directions passed by the learned Tribunal without any further delay and positively on or before 23<sup>rd</sup> February, 2015."</i></p> <p>The respondent authorities against this order of Hon'ble High Court, Calcutta had preferred SLP being No. 15667 of 2015 before the Hon'ble Apex Court and the said SLP was rejected by order dated 26.10.2015.</p> <p>According to the applicant, he is fulfilling the criteria laid down in Sub Rule (aaa) of Rule 75 and has also drawn our attention to the letter dated 16.12.2016 (Annexure-C), wherefrom it would be evident that he had joined as Medical Officer on 17th July, 1992 and his date of birth is 07.11.1964 and he applied for voluntary retirement on 16.12.2016 i.e. well after 50 years of age. However, he has served the department for 24 years 8 months i.e. well beyond 20 years of service. He was not under suspension also. Therefore, he is fully covered under Sub Rule (aaa) of Rule 75 of WBSR Part – I and which was affirmed by the Hon'ble Apex Court. Therefore, he has prayed for quashing of rejection order</p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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;">07</p> <p>-----</p> <p>10.05.2018</p> <p style="text-align: left; margin-top: 20px;">Page /6</p>	<p>of voluntary retirement. However, the counsel for the respondent has submitted that case is covered by the order dated 03.01.2017 passed in OA-346 of 2015 which has been appealed against before the Hon'ble High Court and is still pending. Perused the judgement and Sub-Rule (aaa) of Rule 75 of W.B.S.R., Part -I. However, from perusal of the above, it is clear that since the facts stated by the applicant are not been disputed by the respondents, the applicant is fully covered by the Sub-Rule (aaa) of Rule 75 of WBSR, Part – I. Since the order has already been considered and affirmed by the Hon'ble Apex Court, there is no scope to deviate from the same. Moreover, from the perusal of the judgement placed by learned counsel for the respondent, it is noted that the aforesaid judgement has held inter alia :-</p> <p style="padding-left: 40px;">“ It is crystal clear that the case of the applicant was rejected on the ground of Sub Rule (aaa) of Rules, 75 of WBSR, Part -I which is fully covered by the said rule, therefore, this judgement is not adversely relevant with the case of the applicant”.</p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

**Vs.****The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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;">07 ----- 10.05.2018</p> <p style="text-align: center;">sc</p>	<p style="text-align: center;">Accordingly, we quash and set aside the rejection order dated 06.04.2017.</p> <p style="text-align: center;">The respondents are directed to accept the voluntary retirement and release the dues and admissible retirement benefits from the date as mentioned in his voluntary retirement application dated 16.12.2016 within a period of four weeks from the date of receipt of this order.</p> <p style="text-align: center;"><b>DR. A.K. CHANDA</b> <b>MEMBER (A)</b></p> <p style="text-align: center;"><b>URMITA DATTA (SEN)</b> <b>MEMBER (J)</b></p>	

**ORDER SHEET**

Form No.

Mir Samser Zaman

.....

**Vs.**

**The State of West Bengal & Others**

Case No. OA- 487 of 2017.....

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