

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 715 of 2019.

DR. DULAL KRISHNA KHARNA - VERSUS- THE STATE OF W.B. & 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>2 30.9.2019.</p>	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Advocates.</p> <p>For the State Respondents : Mr. S. Ghosh, Advocate.</p> <p>Affidavit of service filed be kept on record.</p> <p>In this application, the applicant, who had joined as Medical Officer in the West Bengal Health Services cadre under the Department of Health and Family Welfare, Government of West Bengal on 21st June, 1995 and now posted as senior Medical Officer at MJN Hospital, Coochbehar, has challenged the reasoned order passed by the Additional Chief Secretary, Department of Health & Family Welfare, Government of West Bengal, appearing at pages 30 and 31 of the application. It is submitted by Mr. M.N. Roy, learned advocate for the applicant that since the issue is covered by the order of the Tribunal passed in OA 346 of 2015 (Dr. A.K. Maiti & Another vs State of West Bengal & others) as well as the judgement of the High Court passed in WPST 26 of 2015 (State of West Bengal & Others Vs S.K. Ghosh) and as from the orders passed by the Tribunal</p>	

ORDER SHEET

Form No.

DR. DULAL KRISHNA KHARNA.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 715 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>no interim order has been granted by the High Court, appropriate order may be passed quashing the order under challenge and to direct the respondents to accept the application for voluntary retirement. On a query, Mr. Roy submits that the applicant has stopped attending duties from 12th December, 2016.</p> <p>Mr. S. Ghosh, learned advocate for the State respondents submits that the order under challenge passed by the respondent no. 1 is just and proper. According to him from the judgements delivered by the Tribunal, writ petitions have been filed before the High Court which are pending. However, on a query, it is submitted that no interim order has been passed.</p> <p>Heard Mr. Roy and Mr. Ghosh.</p> <p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>“ (a) An order do issue thereby setting aside/quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein communicated vide Memo No. ID-132-2016/Pt.II/A 2396/1(4) Dated, Kolkata 07.05.2019 henceforth.</i></p> <p><i>(b) An order do issue thereby setting</i></p>	

ORDER SHEET

Form No.

DR. DULAL KRISHNA KHARNA.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 715 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><i>aside/quashing the rejection of the prayer for Voluntary Retirement from Service pertaining to the applicant herein vide Memo No. ID-132-2016/Pt. II/A 2396/1(4) Dated, Kolkata 07.05.2019 and after setting aside direct the concerned respondent authorities to allow your applicant to retire voluntarily from service after issuance of specific order to that effect within a stipulated time period taking into consideration the letter and spirit of Judgment dated 03.01.2017 delivered in the matter of Dr. Ashok Kumar Maiti & Others-Versus- The State of West Bengal & Others within a stipulated time period.</i></p> <p><i>(c) An order do issue directing the concerned respondent authorities to forthwith issue "Release Order" in favour of your applicant without causing any further delay.</i></p> <p><i>(d) An order do issue directing the respondent authorities to accept the prayer dated 12.09.2016 for Voluntary Retirement under Rule 75(aaa) of West Bengal Service Rules, Part-I within a stipulated time period.</i></p> <p><i>(e) An order do issue thereby setting aside/quashing the rejection of the prayer for Voluntary Retirement from service pertaining to the applicant herein vide Memo No. ID-132-2016/Pt.II/A2396/1(4)</i></p>	

ORDER SHEET

Form No.

DR. DULAL KRISHNA KHARNA.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 715 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><i>Dated, Kolkata 07.05.2019 and after setting aside direct the concerned respondent authorities to forthwith disburse all retiral benefits in accordance with law after issuance of specific order allowing your applicant to retire voluntarily from service, within a stipulated time period....”.</i></p> <p>The relevant portion of the impugned order passed by the respondent no. 2 is as under :-</p> <p><i>“...And whereas, all the above mentioned three appeals are pending before the Hon’ble High Court at Calcutta and the same may be taken up for hearing anytime as and when the business of the Hon’ble High Court permits.</i></p> <p><i>Now, therefore, after giving the incumbent patient hearing and after considering the entire gamut of the situation, in light of the Finance Department notification No. 695-F(P) dated 07.02.2014, which has been upheld by the Hon’ble West Bengal Administrative Tribunal, the prayer for Voluntary Retirement cannot be accepted since the incumbent has applied for Voluntary Retirement after coming into effect of the said notification by which the Rule 75(aaaa) WBSR Part-I has been inserted.</i></p>	

ORDER SHEET

Form No.

DR. DULAL KRISHNA KHARNA.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 715 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 style="text-align: center;"><i>Thus the above mentioned prayer of the concerned incumbent is considered and rejected....”.</i></p> <p>It is clear from the impugned order that the respondent no. 1 had accepted the fact that on similar issue the State respondents did not succeed before the Tribunal and three writ petitions have been filed challenging the orders passed by the Tribunal and are pending. As evident from the submission of the learned advocates for the parties there is no stay with regard to the three judgements passed by the Tribunal. Hence the judgement passed in OA-346of 2015 covers the filed. It is an accepted position of law that a judgement passed by a judicial forum, not stayed by the higher forum, has to be accepted. Therefore, as the judgement passed by the Tribunal on similar issue has not been stayed by the High Court, the issue is covered by the said judgement in OA-346 of 2015 and therefore the impugned order dated 12th April, 2019, appearing at pages 30 and 31 of the application, is set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, Kolkata, the respondent no. 1, is directed to accept the application of the applicant for voluntary</p>	

ORDER SHEET

Form No.

DR. DULAL KRISHNA KHARNA.

Vs.

THE STATE OF W.B. & ORS.

Case No. **OA 715 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
Skg.	<p>retirement dated 12th September, 2016 with effect from 12th December, 2016 within twelve weeks from the date of presentation of a copy of the certified copy of this order and disburse the pensionary benefits and other allowances as admissible under the law which have accrued in favour of the applicant.</p> <p>(Subesh Kumar Das) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	