

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

The Hon'ble Urmita Datta (Sen) Member (J) &
Hon'ble P. Ramesh Kumar, Member (A)

OA-813 of 2016

Dr. Aditya Prasad Kar

Vs

The State of West Bengal & 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><u>10</u> 14.09.2018</p>	<p>For the applicant : Mr. M.N. Roy, Mr. Gourav Halder, Learned Advocates.</p> <p>For the respondent : Mr. Sankha Ghosh, Learned Advocate.</p> <p>The instant application has been filed praying for following relief :-</p> <ol style="list-style-type: none"> 1. An order do issue directing the concerned respondent authorities to forthwith set aside/cancel/quash/revoke/rescind the final order of penalty of withholding of 50 % pension for a period of ten years issued and imposed vide No. HF/O/GA (Vig.)/278/ OA- 88/09 dated 21.03.2012, as the final order of penalty has been enhanced from the proposed punishment of pension cut of 30 % for a period of five years, without issuance of any show cause notice. 2. An order do issue directing the concerned authorities to forthwith modify the final order of penalty of withholding of 50% 	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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;">10 ----- 14.09.2018</p>	<p>pension for a period of ten years issued and imposed vide No. HF/O/GA (Vig)/278/9A-88/09 dated 21.03.2012, as the final order of penalty has been enhanced from the proposed punishment of pension cut of 30 % for a period of five years, without issuance of any show cause notice.</p> <p>3. An order do issue directing the respondent authorities to produce records pertaining to the instant application before this Hon'ble Tribunal, so that conscionable justice can be delivered.</p> <p>4. Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice.</p> <p>According to the applicant, the applicant was served with a memorandum of charge sheet dated 07.07.2010 on the ground of unauthorised absence from 16.11.1993 to 14.05.2010 (Annexure-A). He participated in the</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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;">10 ----- 14.09.2018</p> <p>Page /3</p>	<p>disciplinary proceedings and thereafter he was served with second show cause notice disclosing the proposed punishment vide order dated 06.06.2011 proposing 30 % cut in pension for a period of five years. Subsequently, the applicant submitted representation with regard to the proposed punishment. However, surprisingly he was served with a final punishment order dated 21. 03.2012 whereby the punishment of cut of pension was enhanced from 30 % to 50 % and from 5 (five) years to 10 (ten) years without following any due course of procedure i.e. without any show cause or without giving opportunity to him. Being aggrieved with he has filed this instant application.</p> <p style="text-align: center;">According to the applicant, the impugned punishment order has been passed in an arbitrary way and totally in violation of natural justice. Therefore, it is liable to be quashed.</p> <p style="text-align: center;">The counsel for the respondent had submitted that they will not file any reply. However, he has submitted that there is no bar to enhance the</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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;">10</p> <hr/> <p>14.09.2018</p> <p style="text-align: right;">P/4</p>	<p>punishment.</p> <p style="text-align: center;">Heard the parties and perused the records. It is noted that vide memo dated 06.06.2011, the applicant was served with second show cause notice proposing inter alia :-</p> <p style="text-align: center;">“AND WHEREAS on consideration of the written statement of defence submitted by the said Dr. Aditya Prasad Kar, M.O., the report submitted by the Inquiring Authority and the records of the case, the Governor is of the opinion that the following penalties i.e. 1) his entire period of absence minus Earned :Leave as was due to him shall be treated as Dies-non and shall not count to any service or terminal benefit, 2) there shall be a pension cut of 30 (thirty) per cent for a period of five years be imposed upon the Charged Officer under Rule 10 (1) of W.B. Services (Death-cum-Retirement Benefit)</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

Vs.

The State of West Bengal & Ors.

Case No. OA-813 of 2016

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>10</p> <hr/> <p>14.09.2018</p> <p>P/5</p>	<p>Rules, 1971.</p> <p>NOW, THEREFORE, in pursuance of Rule 10 (12) of W.B.S. (C.C.A) Rules, 1971, the Governor is pleased hereby call upon the said Dr. Aditya Prasad Kar, M.O. to submit within 10 (ten) days from the date of receipt of this order by him such representation as he may wish to make on the penalty proposed but only on the basis of evidence adduced during the enquiry.</p> <p>A copy of the report of Inquiring Authority is enclosed. “</p> <p>In reply to the above, he made a prayer on 26.03.2011 praying for reconsideration of his punishment for the purpose of reduce the same. However, the disciplinary authority vide their order dated 21.03.2012 has passed the following order:-</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

Vs.

The State of West Bengal & Ors.

Case No. OA-813 of 2016

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;">10</p> <hr/> <p>14.09.2018</p> <p style="text-align: center;">P/6</p>	<p>“WHEREAS Departmental Proceedings were drawn up against Dr. Aditya Prasad Kar, Ex-Medical Officer, Deben Mahato Sadar Hospital, Purulia (since retired) under this Deptt. Memo No. HF/O/GA (Vig)/1039/9A-88/09 dated 07.07.2010 under rule 10 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971;</p> <p>AND WHEREAS Dr. Sunil Kumar Sil, Joint Director of Health Services (Leprosy), West Bengal was appointed as Inquiring Authority to enquire into the charges framed against Dr. Aditya Prasad Kar, under this Department Order No. HF/O/GA (Vig)/1049/9A-88/09 dated 07.07.2010;</p> <p>AND WHEREAS the Inquiring Authority has submitted the enquiry report to the Disciplinary authority.</p> <p>AND WHEREAS on consideration of the written statement of defence</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

Vs.

The State of West Bengal & Ors.

Case No. OA-813 of 2016

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;">10</p> <hr/> <p style="text-align: center;">14.09.2018</p> <p style="text-align: center;">P/7</p>	<p>submitted by Dr. Aditya Prasad Kar, the report submitted by the Inquiring Authority and the records of the case, the Governor found the said Dr. Aditya Prasad Kar, guilty of the charges framed against him and proposed to impose the penalty of 30 % of pension cut for a period of five (5) years and treating his entire period of absence minus earned leave as was due to him as Dies-non and that not to be counted to any service or terminal benefit.</p> <p>AND WHEREAS the Government consulted the Public Service Commission, West Bengal on the punishment proposed to be imposed on the charged officer;</p> <p>AND WHEREAS the Public Service Commission, West Bengal agreed with regard to issue of guilt and advised to impose penalty of withholding of 50 % pension for a period of 10 (ten) years</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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;">10</p> <hr/> <p>14.09.2018</p> <p style="text-align: left;">P/8</p>	<p>to the charged officer;</p> <p>AND WHEREAS the Governor being the Disciplinary Authority has agreed with the said advice of the Public Service Commission, West Bengal;</p> <p>NOW, THEREFORE, the Governor has been pleased to order that the penalty of withholding of 50 % pension for a period of 10 (ten) years be imposed upon Dr. Aditya Prasad Kar, Ex.Medical Officer, Deben Mahato Sadar Hospital, Purulia (since retired) in terms of Rule 10(i) of W.B.S. (D.C.R.B) Rules, 1971. “</p> <p>However, during the course of hearing, counsel for the respondent never denied that no opportunity was granted to the applicant while enhancing the punishment and from perusal of the above order also, it transpires that after his representation, after consultation with the Public Service Commission, W.B. the Disciplinary authority straightway imposed the punishment without granting any opportunity to him to make any</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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;">10</p> <hr/> <p>14.09.2018</p> <p style="text-align: center;">sc</p>	<p>representation or rejecting his earlier representation dated 23.06.2011.</p> <p style="text-align: center;">In view of the above, we are constrained to hold that the impugned order has been passed totally in an arbitrary manner without following the principles of natural justice as well as without considering his representation dated 23.06.2011 straightway by way of enhancing the quantum of punishment. Accordingly, we quash the impugned punishment order dated 21.03.2012 and the disciplinary authority is directed to reconsider his representation on the basis of second show cause notice and pass a reasoned and speaking order after granting him proper opportunity as per law within a period of eight weeks from the date of receipt of this order. Accordingly OA is allowed with the above observation and direction.</p> <p style="text-align: center;">P. RAMESH KUMAR MEMBER(A)</p> <p style="text-align: center;">URMITA DATTA (SEN) MEMBER (J)</p>	

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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

ORDER SHEET

Form No.

Dr. Aditya Prasad Kar

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

Case No. OA-813 of 2016

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