

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

The Hon'ble Justice Ranjit Kumar Bag (Judicial Member)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No –OA 435 OF 2018

DR. BASUDEB CHANDRA MONDAL 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 style="text-align: center;">1</p> <hr/> <p>29.01.2019</p>	<p>For the Applicant : Mr. M.N. Ray, Mr. A.K. Biswas, Advocate</p> <p>For the Respondent : Mr. G.P. Banerjee, Advocate</p> <p>For the Principal Accountant : Mr. B. Mitra, General(A&E), West Bengal Departmental Representative</p> <p>The applicant has prayed for direction upon the respondents for release of pension and other retiral benefits of the applicant in terms of application submitted before the respondent No.2 through proper channel on September 26, 2015 (Annexure 'C' to the Original Application).</p> <p>The applicant claims to have joined as Medical Officer of Nabadwip State General Hospital on December 17, 1976. Subsequently he joined as Medical Officer of the Sadar Hospital of the District of Nadia on June 19, 1978. The regular annual increment was allowed to the applicant upto April 1, 1987 and thereafter he was transferred to Sub-Divisional Hospital at Durgapur in the</p>	

ORDER SHEET

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>District of Burdwan on November 2, 1987. He was released from the District Hospital on November 7, 1987 in order to join his new assignment in the Sub-Divisional Hospital at Durgapur. Ultimately, the salary of the applicant was stopped from November, 1987 to December, 1989 probably for not joining new assignment at Durgapur. The applicant challenged the order of transfer before the Hon'ble High Court and an interim order was issued by the Hon'ble High Court on December 24, 1987. However, the said writ application (WP 12060(W) / 1987) was ultimately dismissed on February 15, 2002 as reflected from the application submitted by the applicant on September 26, 2015. The information collected by the applicant under RTI Act of 2005 on January 9, 2017 indicates that the date of retirement of the applicant was December 31, 1997. The applicant submitted a representation before the respondent No.2 through proper channel for the first time on September 26, 2015 and approached this Tribunal after long 30 years from the date of his release from the District Hospital, Krishnanagar and stoppage of salary. The grievance of the applicant is that he has not been paid pension, gratuity and the amount of General Provident Fund.</p> <p>Mr. M.N. Ray, Learned Counsel representing the applicant has relied on "Union of India & Ors. vs. Tarsem Singh" (Civil Appeal No. 5151 – 5152 of 2008 arising out</p>	

ORDER SHEET

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>of SLP [C] Nos. 3820 – 3821 of 2008) and submitted that the applicant is entitled to get retiral benefits at least for the period from December 17, 1976 till the date of his release from the District Hospital on November 7, 1987 after regularisation of his absence by grant of leave to the credit of the applicant. On the other hand, Mr. G.P. Banerjee, Learned Counsel representing the State respondents submits that in the absence of production of necessary information by the applicant it is not possible to decide whether the applicant is entitled to get retirement benefits. Mr. B. Mitra, Departmental Representative of the respondent A.G., West Bengal submits that the applicant has not furnished account number of G.P.F. and the information has not yet been received by the A.G., West Bengal for release of pension and other retirement benefits of the applicant.</p> <p>On consideration of the decision of the Supreme Court in “Union of India & Ors. vs. Tarsem Singh” reported in (2008) 8 SCC 648, we find that in the said case one Officer of Indian Army approached the High Court for grant of disability pension along with arrears and interest after almost 16 years from the date of attaining disability. Learned Single Judge of the High Court directed for grant of disability pension at the rate permissible under the Rules and with regard to relief of arrears it was restricted to 38 months prior to the filing of</p>	

ORDER SHEET

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>the writ petition. The Division Bench of the Hon'ble High Court modified the said order of Learned Single Judge and granted relief with regard to arrears and interest @ 6% per annum. The Hon'ble Supreme Court had set aside the order of the Division Bench of the Hon'ble High Court and restored the order passed by the Learned Single Judge by making observation that delay in approaching the court for grant of pension cannot affect the other employees and as such, the court can entertain the writ application in spite of delay. However, the clear dictum of the Apex Court is that the Hon'ble High Court will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition and the question of payment of interest does not arise.</p> <p>By following the above decision of "Union of India & Ors. vs. Tarsem Singh" (Supra) we are inclined to entertain the Original Application in spite of the fact that the applicant had approached the Tribunal almost after 30 years from the date of stoppage of his salary and his release from the District Hospital on November 2, 1987. In the instant case, we are totally in the dark whether the applicant was dismissed from service or resigned from service for not joining his new assignment in the Sub-Divisional Hospital at Durgapur after his release from the District Hospital, Krishnanagar on November 2, 1987. We also do not know what is the actual age of</p>	

ORDER SHEET

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>superannuation of the applicant. We are also not aware whether the amount of G.P.F. has already been released in favour of the applicant and whether the applicant took proper steps by furnishing information before the authority concerned for release of the amount of G.P.F. No document is forthcoming before the Bench for formation of opinion about release of gratuity of the applicant by the authority concerned. However, the information collected by the applicant under RTI Act of 2005 on January 9, 2017 points out that retiral benefits were not allowed to the applicant till the date of furnishing such information.</p> <p>Under the above circumstances, we are of the view that the respondent No.2 should consider the entitlement of the applicant to get pension, gratuity and the amount of G.P.F. for the period of service rendered by the applicant in accordance with Rules after granting leave, if any, to the credit of the applicant for the purpose of regularisation of his long absence from duty, provided the applicant was not dismissed from service or did not resign from service in the meantime.</p> <p>Accordingly, the applicant is directed to submit fresh representation before the respondent No.2 by furnishing all particulars and by enclosing all relevant documents for the purpose of retiral benefits and release</p>	

ORDER SHEET

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
SCN.	<p>of the amount of the G.P.F. within a period of eight weeks from this date. The respondent No.2, Director of Health Services, West Bengal is directed to consider the entitlement of the applicant to get pension, gratuity and the amount of G.P.F. within a period of 16 weeks from the date of submission of the representation by the applicant in terms of West Bengal Services (Death-cum-Retiral Benefits) Rules, 1971 by passing the reasoned order and take necessary follow up action, if any, after giving an intimation in this regard to the applicant within a period of eight weeks thereafter.</p> <p style="text-align: center;">With the above direction the Original Application stands disposed of.</p> <p style="text-align: center;">Let a plain copy of the order be supplied to both parties.</p> <p>(S.K. Das) MEMBER (A)</p> <p style="text-align: right;">(R.K. Bag) MEMBER (J)</p>	