

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

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das**

Case No –OA 174 OF 2017

Dr. Nirmalendu Purkayastha 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>6</p> <hr/> <p>03.07.2018</p>	<p>For the Applicant : Mr. A.K. Das Sinha, Learned Advocate.</p> <p>For the State Respondent : Mr. S.N. Ray, Learned Advocate.</p> <p>The applicant worked as Medical Officer at Gandhi Memorial Hospital, Kalyani in the year 1999. He was transferred from Kalyani to Jalpaiguri by order dated April 7, 1999 and the said transfer order was challenged by the applicant before the Tribunal by filing OA No. 4003 of 1999. The order of transfer was set aside by the Tribunal on September 1, 2000 while disposing of OA No. 4003 of 1999. However, the transfer order was modified by the Hon'ble High Court on February 12, 2001, when the State of West Bengal challenged the order of Tribunal before the Hon'ble High Court by filing WPST 752 of 2000. The applicant submitted representation before the authority concerned in connection with his transfer in compliance with the direction given by the Hon'ble High Court and the said representation was rejected on April 24, 2001. Ultimately, the applicant joined in his new assignment at Jalpaiguri on May 18, 2001. The contention of the applicant is that he was not allowed to join in his post as Medical Officer at Kalyani in spite of cancellation of order of transfer by the Tribunal during the period</p>	

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	<p>from September 1, 2000 to April 24, 2001. The further contention of the applicant is that the authority concerned treated his absence from duty from September 7, 1999 to May 27, 2001 as unauthorised though the applicant was not allowed to report for duty after cancellation of transfer order during the aforesaid period. Ultimately, leave was sanctioned in favour of the applicant by order dated August 3, 2016 issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare (MA Branch), whereby period of absence of the applicant for 235 days i.e. from February 19, 2000 to September 7, 2000 and from April 25, 2001 to May 27, 2001 was treated as "dies non for all purpose". The applicant has prayed for setting the said impugned order dated August 3, 2016 and for direction upon the respondents to grant leave in accordance with the provisions of the rules.</p> <p>Mr. A.K. Das Sinha, Learned Counsel for the applicant contends that 205 days' Earned Leave (EL) and 160 days' of Half Pay Leave (HPL) were to the credit of the applicant at the time of passing the impugned order, but without exhausting the said leave the concerned respondent has granted Extra Ordinary Leave (EOL) in violation of the provisions of Rule 175 of WBSR Pt. I. On the other hand, Mr. S.N. Ray, Learned Counsel representing the State respondents has failed to satisfy the Bench about the period of EL and HPL to the credit of the applicant at the time of passing the impugned order.</p>	

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	<p>Having heard Learned Counsel representing both parties and on consideration of the impugned order, we find that the applicant was granted 165 days' of EL, whereas the contention of the applicant is that 205 days' EL were to the credit of the applicant at the time of passing of the impugned order. Moreover, the contention of the applicant is that 160 days' of HPL were to the credit of the applicant at the time of passing the impugned order, though the impugned order has not disclosed how many days' EL and HPL were to the credit of the applicant. On consideration of provisions of Rule 34 read with Rule 175 of WBST Pt. I, we find that EOL can be granted in favour of any permanent Government employee for the maximum period of 5 years in order to prevent break of service and to regularise absence from duty. It is clearly laid down in Rule 175 of WBSR Pt. I that EOL can be granted to any permanent Government employee when no other leave is to the credit of the said employee. On perusal of the impugned order, we do not find that the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare has disclosed the number of days' of EL and HPL to the credit of the applicant till the date of passing of the impugned order, though the authority has invoked provisions of Rule 175 of WBSR Pt. I by granting EOL for limited period of 180 days and treated the absence of the applicant for 235 days as "dies non for all purpose". Since the respondent no. 2 has granted EOL for limited period without exhausting EL and HPL to the credit of the applicant till the date of passing of the impugned order and since the absence of the applicant from duty for 235 days has been treated as "dies non for all purpose" without</p>	

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Rajib	<p>regularising the said absence by grant of maximum period of EOL, we are constrained to hold that the impugned order is arbitrary, illegal and not justified under the law.</p> <p>In view of our above findings, the said impugned order dated August 3, 2016 issued by the respondent no. 2 is set aside. The respondent no. 1, Principal Secretary to the Government of West Bengal, Department of Health and Family Welfare is directed to pass a reasoned order for regularisation of absence of the applicant from duty by grant of various kinds of leave in accordance with the provisions of WBSR Pt. I and in light of the observations made by us hereinabove within a period of 8 weeks from the date of communication of the order and to communicate the same to the applicant within a period of two weeks thereafter.</p> <p>With the above direction, the original application is disposed of.</p> <p>Let a plain copy of the order be supplied to both the parties.</p> <p style="text-align: center;">(Dr. S.K. Das) Member (A)</p> <p style="text-align: center;">(R.K. Bag) Member (J)</p>	

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