

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – OA 191 OF 2020

Jiban Krishna Baisnab 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
5 <hr/> 02.09.2020	<p><i>For the Applicant : Mr. S. Ghosh, Mr. R.K. Mondal, Learned Advocates.</i></p> <p><i>For the State Respondents : Ms. R. Sarkar, Departmental Representative.</i></p> <p><i>Leave is granted to the advocate on record for the applicant to expunge interim relief by way of amendment of paragraph 8 (e) of the original application in course of this day.</i></p> <p><i>Affidavit of Service filed on behalf of applicant is kept on record.</i></p> <p><i>The applicant joined in the post of Lower Division Clerk on April 02, 1990 and got promotion to the post of Upper Division Clerk on January 01, 2003 and he also got promotion to the post of Head Clerk on May 28, 2015. It is submitted on behalf of the applicant that he was absent from duty during the period from August 21, 2009 to October 11, 2018. Previously the applicant approached the Tribunal by filing OA-1103/2015, which was disposed of on February 23, 2016. On February 23, 2016 this Tribunal gave direction to the state respondent to ascertain the medical fitness of the applicant and to take a decision in connection with his long unauthorized absence from duty. The Tribunal specifically observed that the respondents are at liberty to initiate disciplinary</i></p>	

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proceeding and other punitive action against the applicant in accordance with law. However, the applicant could not resume duty inspite of being declared medically fit. Again, the applicant approached this Tribunal by filing OA-220/2018 which was disposed of on September 11, 2018. On September 11, 2018 this Tribunal gave direction to the Sub-Divisional Land and Land Reforms Officer, Durgapur City Centre, District Paschim Bardhaman to allow the applicant to resume duty and to pass a reasoned order in connection with his arrears of salary to which the applicant is entitled.

It is further submitted on behalf of the applicant that he resumed duty as Upper Division Clerk on October 12, 2018. The grievance of the applicant is that no reasoned order has been passed by the state respondent in connection with arrears of salary of the applicant. Mr. Sankha Ghosh, Learned Counsel representing the applicant submits that the applicant has not been paid any salary after resuming duty on October 12, 2018 except payment of ₹ 15,002/- only on March 02, 2019. He further submits that the salary of the applicant must be disbursed without further delay by the state respondent.

Ms. Ruma Sarkar, the Departmental Representative of the state respondent has placed on record copy of the proceeding initiated by the respondent no. 3, the Sub-

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Divisional Land and Land Reforms Officer, Durgapur City Centre, District Paschim Bardhaman in connection with determination of arrears of salary of the applicant in compliance with the order dated September 11, 2018 passed by the Tribunal in OA No. 220/2018. It appears from the copy of the order passed in the said proceeding by the respondent no. 3 that the applicant was given the opportunity to clarify the periods to which he is entitled to get arrears of salary, but the applicant abstained himself from the said proceeding from March 08, 2019 without submitting his claim for arrears of salary. According to Mrs. Sarkar, the respondent no. 3 was not in a position to pass any reasoned order in connection with arrears of salary of the applicant in compliance with the direction given by the Tribunal in OA No. 220/2018 for non-cooperation of the applicant.

By placing on record copy of various show-cause notices issued to the applicant by the respondent no. 3. Ms. Sarkar further submits that the applicant was absent from duty during the period from December 14, 2018 to December 19, 2018, from January 03, 2019 to January 04, 2019, from January 14, 2019 to February 04, 2019, from February 21, 2019 to March 08, 2019. The specific submission of the departmental representative of the state respondents is that the applicant was absent from duty continuously from the month of February 19 till date and as such the salary

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cannot be disbursed in favour of the applicant unless and until unauthorised absence of the applicant is regularised by grant of leave.

Having heard Learned Counsel for the applicant and the Departmental Representative of the State respondents and on consideration of the materials on record, we find that the arrears of salary of the applicant before resuming duty on October 12, 2018 cannot be decided unless and until decision is taken by the Disciplinary Authority of the applicant with regard to unauthorised absence from August 21, 2009 to October 11, 2018. Admittedly, a departmental enquiry has been initiated against the applicant by issuance of articles of charge on June 18, 2018 in connection with his unauthorised absence from August 21, 2009 to October 11, 2018. The arrears of salary of the applicant cannot be ascertained unless and until the departmental enquiry is concluded and appropriate order is passed by the Disciplinary Authority in connection with unauthorised absence of the applicant before resuming duty on October 12, 2018 in terms of the direction given by the Tribunal in OA 220 of 2018. On close scrutiny of the order passed by this Tribunal in OA 220 of 2018, we do not find that the Tribunal gave any direction to the respondents for granting permission to the applicant to resume duty in the post of Head Clerk. What transpires from the order of the Tribunal in OA 220 of 2018 is that the applicant must be permitted to resume duty. The applicant has already resumed duty as UDC on October 12, 2018. Naturally, the applicant is not entitled to get any order in connection with arrears of salary and resuming duty afresh in the post of Head Clerk and as such we cannot persuade ourselves to

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give any relief to the applicant in terms of the prayer 8(a).

Now, we have to consider whether the applicant is entitled to get current salary and arrears of salary after resuming duty on October 12, 2018 in the post of UDC. We have already observed that the applicant was absent from duty on three different spells for which show cause notice was given to the applicant asking him to explain why disciplinary action will not be taken against him for unauthorised absence. While the submission is made on behalf of the applicant that he has not been permitted to resume duty after month of February, 2019, the Departmental Representative has specifically submitted that the applicant is absent from duty continuously from the month of February, 2019 till date. Without going into the disputed fact as to whether the applicant is continuously absent from duty from the month of February, 2019 till date, we can safely hold that the applicant was absent from duty during the period from December 14, 2018 to December 19, 2018, from January 3, 2019 to January 4, 2019, from January 14, 2019 to February 4, 2019 and from February 21, 2019 to March 8, 2019. Nothing is on record to indicate that the applicant has submitted any application for grant of leave for regularisation of his above absence from duty. What transpires from the record is that the applicant has repeatedly submitted applications tendering apology for his absence from duty without submitting any application for regularisation of his absence by grant of leave. The salary of the applicant cannot be ascertained and disbursed unless and until his unauthorised absence from duty is regularised by grant of leave. Nor can the applicant be permitted to resume duty unless and until he submits application for regularisation of his unauthorised

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absence by grant of leave. Accordingly, we cannot give any blanket direction to the State respondents for payment of current salary or arrears of salary unless and until his unauthorised absence from duty is regularised by grant of leave. Nor can we persuade ourselves to direct the State respondents to permit the applicant to resume duty unless and until the applicant submits application for grant of leave by way of regularisation of his unauthorised absence from duty.

Under the above circumstances, we give liberty the applicant to file appropriate application before the respondent No. 3 for regularisation of his unauthorised absence after resuming duty from October 12, 2018 by grant of leave within a period of four weeks from the date of the order. If such application is submitted by the applicant within stipulated period of time, the respondent No. 3 will consider the said application in accordance with law and pass a reasoned order for regularisation of his absence from duty by grant of leave, if the leave is in the credit of the applicant, within a period of four weeks from the date of submission of the application by the applicant. The respondent No. 3 may seek approval of the higher authority, if necessary, in connection with regularisation of unauthorised absence of the applicant by grant of leave. The respondent No. 2 will take a decision for granting permission to the applicant to resume duty and to decide on the issue of disbursement of current salary of the applicant as well as arrears of salary of the applicant after resuming duty on October 12, 2018 within a period of four weeks from the date of deciding the issue of regularisation of unauthorised absence of the applicant by passing a reasoned order and intimate the same to the applicant and take necessary follow-up

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action within a period of two weeks thereafter.

With the above direction, the original application stands disposed of.

Let a plain copy of the order be supplied to both parties.

**(S.K.DAS)
Member (A)**

**(R.K.BAG)
Member (J)**

Rajib