

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

The Hon'ble Justice Soumitra Pal, Hon'ble Chairman

& The Hon'ble Dr. Subesh Kumar Das, Administrative Member.

Case No –OA-393 of 2019.**Dr. Arunangshu Bhattacharya. –Vs- The State of West Bengal & 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 style="text-align: center;"><u>4</u> 20.08.2019.</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>Though direction was issued to file reply, no reply has been filed on behalf of the State respondents.</p> <p>In this application, Dr. Arunangshu Bhattacharya, the applicant, who had joined West Bengal Health Services on 22nd February, 1988 has prayed for the certain reliefs, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“(a) An order do issue thereby setting aside/quashing the reasoned order dated 04.10.2018, 14.12.2018, 19.03.2019 passed by the respondent no. 2 and after setting aside direct the concerned respondent authorities, specially the respondent no. 2 to allow your applicant to retire voluntarily from service after issuance of specific order within a stipulated time period.</i></p>	

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	<p><i>(b) An order do issue thereby directing the respondent no. 2 herein to relax Rule 75 (aaa) W.B.S.R., Part-I, 1971 as per Rule 3A of the W.B.S.R., Part-I, 1971 and after relaxation allow your applicant to retire from service voluntarily by issuing specific order 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>It appears that the applicant, on 9th January, 2017 through proper channel had filed an application for voluntary retirement along with the format as evident from pages-17 and 18 of the application. Since no decision was taken, the applicant had filed an application being OA-316 of 2017 which was disposed of on 18th May, 2017 by directing the Principal Secretary, Department of Health and Family Welfare,</p>	

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	<p>Government of West Bengal to take a decision. It appears from record that since the order was not carried out, a contempt application being CCP-55 of 2017 was filed and the Tribunal by order dated 28th August, 2018 directed the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal to file a compliance report on consideration of the prayer of the applicant for voluntary retirement. It appears that the application was rejected by order dated 4th October, 2018. Thereafter, during the pendency of the contempt application, a second order was passed, as evident from page-37 of the application, rejecting again the prayer for voluntary retirement on the ground that the applicant did not fulfil the statutory mandate as notice was issued on 11th January, 2017 with a prayer for voluntary retirement with effect from 9th April, 2017 by which there was a shortfall of four days required for the notice period. The contempt application came up for hearing and the Tribunal by order dated 19th March, 2019 passed an order, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“In the present reasoned</i></p>	

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	<p><i>order though the respondents has rejected the prayer of the applicant on the ground of non fulfilment of Rule 75 (aaa) WBSR, Part-I as there was a direction to the authority with regard to the voluntary retirement of the applicant and they have rightly or wrongly had passed an order on a given ground, therefore, in our considered view, substantial compliance of the order has been made. However, apart from the above, we constraint to observe that the authority had taken two <u>different stands on different dates on the same issue and in this regard, we have to make clear that the earlier order was not accepted as the respondent authority had asked the applicant to make an application for <u>voluntary retirement afresh</u></u></i></p>	

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	<p><i><u>instead of considering his earlier application for voluntary retirement which has no relation with the two different findings of the contemnor/respondents with regard to Rule 75 (aaa).</u></i></p> <p><i>Accordingly, CCPA is dropped with the above observation with no order as to costs. Notices are discharged. However, if the applicant is still aggrieved, he is at liberty to take appropriate steps."</i></p> <p><i>(Emphasis supplied)</i></p> <p>It is submitted by Mr. M. N. Roy, learned advocate for the applicant that as the notice was served on 9th January, 2017 and the applicant had stopped attending the duties from 9th April, 2017 and has fulfilled the notice period under Rule 75 (aaa), the order passed by the respondent authorities rejecting the application due to shortfall of notice period is incorrect and illegal. Moreover, it is apparent that the State authorities had taken two stands as evident from the orders appearing at pages-30 and 35 of the</p>	

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	<p>application.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents submits that as there is a shortfall of four days of notice period, the applicant is not entitled for voluntary retirement.</p> <p>In reply, Mr. Roy submits that since Rule 75 (aaa) prescribes for “giving notice of not less than three months in writing to the appointing authority “as soon as the notice was served on the respondent authorities on 9th January, 2017 though through proper channel, calculation has to be on the basis of months and not days.</p> <p>Having heard the learned advocates for the parties and since it is evident that from the order dated 4th October, 2018 that the respondent authorities had considered the matter on humanitarian ground and had advised the applicant to submit a fresh prayer for voluntary retirement and subsequently, as evident from the order at page 37 that the respondents have found that there was a shortfall of four days which shows the respondent authorities had taken two different stands, the impugned order cannot be sustained and therefore is set aside and quashed.</p>	

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Sourav	<p>Accordingly, the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, - the respondent no. 1, is directed to accept the application for voluntary retirement along with the proforma appearing at pages-17 and 18 of the Original Application within twelve weeks from the date of presentation of a copy of this order and shall disburse the admissible dues on compliance of formalities in accordance with law. The application is disposed of.</p> <p>(DR. SUBESH KUMAR DAS) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	