

**ORDER SHEET**  
**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 784 OF 2019**

Sunit Moyra v/s 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
3 15.01.2020	<p>For the Applicant : Mr. T.K. Halder, Mr. A.K. Das Sinha, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>Affidavit of service filed by the applicant today is kept on record. Similarly, supplementary application filed by the applicant today is also kept on record.</p> <p>The applicant has prayed for direction upon the respondents to permit the applicant to join his office and to release his salary after setting aside order dated August 13, 2019 issued by the respondent No. 3, Chief Medical Officer of Health, Diamond Harbour Health District, by which salary of the applicant has been withheld with immediate effect until further order.</p> <p>It appears from the materials on record that the applicant joined as GDA (General Duty Attendant) in the establishment of Chief Medical Officer of Health, Diamond Harbour Health District in terms of the order issued by the respondent No. 3 on February 4, 2019. The order of appointment of the applicant indicates that the applicant was appointed temporarily in the post of GDA, subject to verification of antecedents (PVR). The said order of appointment of the applicant further points out that the</p>	

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appointment will be terminated forthwith in case of any adverse report from the police authority. The impugned order dated August 13, 2019 issued by the respondent No. 3 indicates that a criminal case was started against the applicant on September 2, 2016 being Raidighi Police Case No. 422 of 2016 under Section 448/323/345A/345B/506/34 of Indian Penal Code and charge sheet was already submitted against the applicant in connection with the said criminal case. What transpires from the materials on record is that the criminal case (subsequently renumbered as GR No. 3244 of 2016) is pending for adjudication before the Court of Learned Additional Chief Judicial Magistrate, Diamond Harbour in the district of South 24 Parganas. In view of pendency of the criminal case against the applicant, the Intelligence Branch of Police has not yet cleared the case of the applicant by giving a favourable report and as such salary of the applicant was withheld by the impugned order dated August 13, 2019.

Mr. Halder, Learned Counsel for the applicant contends that the criminal case was started against the applicant in a malafide way and the applicant has already approached the Hon'ble High Court at Calcutta for quashing of the criminal proceeding, but the said revisional application for quashing of the criminal proceeding is still pending before the Hon'ble High Court. He further contends that the Intelligence Department of Police has not given any opinion on the antecedents of the applicant and

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the service of the applicant has not been terminated and thereby the applicant is entitled to receive salary by discharging his duty as GDA. The gist of submission of Mr. Halder is that the applicant should be permitted to attend the office and to receive the salary as the service of the applicant has not been terminated till date.

Mr. Banerjee, Learned Counsel representing the State respondents submits that the appointment of the applicant has become infructuous due to pendency of the criminal case against him and as such withholding of salary of the applicant is justified under the law, though the service of the applicant has not been terminated by issuing any specific order by the respondent No.3.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the order of appointment was issued in favour of the applicant by the respondent No. 4, subject to the report of verification of antecedents (PVR). The order of appointment issued in favour of the applicant on February 4, 2019 clearly indicates that the appointment will be terminated forthwith on receiving adverse report from the police authority. On perusal of the impugned order dated August 13, 2019, it appears that the Deputy Inspector General of Police, Intelligence Branch has not expressed any specific opinion in the PVR of the applicant as

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the applicant is involved in a criminal case being Raidighi Police Case No. 422 of 2016 under Section 448/323/345A/345B/506/34 of Indian Penal Code, which is now pending for adjudication before the competent Court of Law. The fact of pendency of the criminal case against the applicant would have been construed as adverse police report for the purpose of termination of service of the applicant by the respondent No. 3, but the respondent No. 3 has withheld salary of the applicant and has not permitted him to join the office for discharging the duty. In our view, the respondent No. 3, Chief Medical Officer of Health, Diamond Harbour Health District should have passed appropriate order in terms of the conditions incorporated in the order of appointment issued in favour of the applicant, without issuing the order of withholding the salary. Admittedly, the salary of the applicant has been withheld with effect from the month of August, 2019, though the applicant is still in service.

Under the above circumstances, we are of the view that the respondent No. 2 should take a decision about release of salary of the applicant and permission to attend office for discharging of duty on verification of office record.

In view of our above findings, we direct respondent No. 2, Director of Health Services, Government of West Bengal to consider whether the applicant is entitled to receive salary from the month of August, 2019 and whether the applicant should be

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permitted to attend office for discharge of duty in terms of order of appointment dated February 4, 2019, inspite of pendency of the criminal case against him by passing a reasoned order within a period of eight weeks from the date of communication of the order and take necessary follow-up action within a period of four weeks thereafter.

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

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

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

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

Rajib

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