

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal****&****The Hon'ble P. Ramesh Kumar.****Case No –OA-830 of 2018.****Hari Madhab Chakraborty. –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>3</u> 09.01.2019.</p>	<p>For the Applicant : Mr. Manujendra Narayan Roy, Advocate.</p> <p>For the Respondents : Mr. Sankha Ghosh, Advocate.</p> <p>In this application the applicant has prayed for a direction upon the respondents to modify and clarify the order contained in the memo dated 10th January, 2018 passed by the Director of Fisheries & Ex-Officio Secretary, Government of West Bengal - the respondent no.-3, by giving appointment "like Trinanjan Das" in terms of the judgment dated 28th January, 2014 passed in W.P.S.T. No. 262 of 2013 (Sri Hari Madhab Chakraborty-Vs- The State of West Bengal & Others). It appears that the applicant had earlier filed a writ petition challenging the order passed by the Tribunal, being W.P.S.T. No. 262 of 2013, which was allowed by the High Court by an order dated 28th January, 2014, the relevant portion of which is as under:</p> <p style="text-align: center;"><i>".....We, therefore, quash the impugned decision of the Director of Fisheries issued under Memo No. GA(Law)-2A/01/2010 dated</i></p>	

ORDER SHEET**Hari Madhab Chakraborty.**

Form No.

Vs.**The State of West Bengal & Ors.**Case No. OA-830 of 2018.

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><i>28.06.2012 and set aside the aforesaid order passed by the learned Tribunal on 1st April, 2013 in O.A. 1401 of 2012 and further direct the respondent authorities to appoint the petitioner herein like Trinanjan Das to the post of Fisheries Development Assistant without any further delay but positively within a period of three weeks from the date of communication of this order subject to completion of necessary formalities, if there be any, since the police verification and the medical examination of health in respect of the petitioner herein have already been done."</i></p> <p>Against the said judgment, the State had filed a Special Leave Petition before the Supreme Court which was dismissed and the state authorities were given two months time to comply with the directions passed by the High Court. A contempt application being CPAN 627 of 2014 in WPST 262 of 2013 was filed for implementing the order dated 28th January, 2014 which was ultimately disposed of on 22nd June, 2018</p>	

ORDER SHEET**Hari Madhab Chakraborty.**
.....**Vs.****The State of West Bengal & Ors.**
.....

Form No.

Case No. OA-830 of 2018.

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>by passing an order, the relevant portion of which is as under:</p> <p><i>“.....The grievance of the petitioner herein is that the petitioner has not been given the notional benefit from the date of appointment of Trinanjan Das though the order clearly required the petitioner herein to be treated “like Trinanjan Das.” The petitioner seeks the petitioner’s seniority to be counted from the same date as Trinanjan Das was appointed for the purpose of ascertainment of the petitioner’s retiral benefits and dues. The petitioner does not insist on actual payment on such basis.</i></p> <p><i>It is submitted on behalf of the alleged contemnors that such notional benefit has been given to the petitioner. The petitioner disputes on such position.</i></p> <p><i>In the light of the petitioner denying that the petitioner has been given the benefit that is due to the</i></p>	

ORDER SHEET**Hari Madhab Chakraborty.**
.....**Vs.****The State of West Bengal & Ors.**
.....

Form No.

Case No. OA-830 of 2018.

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><i>petitioner in terms of the order dated January 28, 2014, what falls for immediate consideration is whether the alleged contemnors have deliberately or wilfully acted in derogation of the relevant order.</i></p> <p><i>On a plain reading of the order it is not clear that the order required the petitioner's seniority in service or the petitioner's notional date of appointment to be the same as Trinanjan Das. All that is necessary to be seen for the present purpose is whether the operative part of the order dated January 28, 2014 could reasonably have been interpreted by the alleged contemnors to imply that the petitioner would have to be given appointment like Trinanjan Das, but the other benefits that the petitioner is claiming may not have been included therein. In this quasi-criminal jurisdiction, when a possible interpretation of the order is made, the</i></p>	

ORDER SHEET**Hari Madhab Chakraborty.**
.....**Vs.****The State of West Bengal & Ors.**
.....

Form No.

Case No. OA-830 of 2018.

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><i>alleged contemnors can no longer be said to have deliberately or wilfully acted in derogation of the relevant order.</i></p> <p><i>It is possible, as the petitioner maintains, that the petitioner is entitled to the benefits as claimed by virtue of the expression "like Trinanjan Das" as used in the operative part of the order dated January 28, 2014. It is equally possible that if the court intended to confer such benefits on the petitioner, the court would have expressly recorded the same.</i></p> <p><i>In the light of the aforesaid position, the petitioner is left free to pursue the petitioner's rights in terms of the order dated January 28, 2014; but it cannot be conclusively said in this strict contempt jurisdiction that the alleged contemnors have deliberately or wilfully violated the relevant order.</i></p>	

ORDER SHEET**Hari Madhab Chakraborty.**

Form No.

Vs.**The State of West Bengal & Ors.**Case No. OA-830 of 2018.

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;"><i>Accordingly, CPAN 627 of 2014 is disposed of with the liberty as recorded above being granted to the petitioner."</i></p> <p>Thereafter, by order dated 21st November, 2017, the applicant was appointed temporarily to the post of Fisheries Development Assistant. The applicant joined and subsequently was confirmed. It also appears that by order dated 5th January, 2018, the State had granted administrative approval towards extending notional benefits in favour of the applicant for the purpose of counting his incremental, promotional and retirement benefits with effect from 28th January, 2014. Be it noted the applicant during the pendency of this application had superannuated on 30th November, 2018.</p> <p>Mr. Manujendra Narayan Roy, learned advocate appearing on behalf of the applicant submits that since the High Court by order dated 28th January, 2014 passed in WPST 262 of 2013 had directed the respondent authorities to appoint the applicant herein "like Trinanjan Das" and as Trinanjan Das was appointed in the year 1997, respondent authorities may be directed to treat him appointed notionally in</p>	

ORDER SHEETHari Madhab Chakraborty.
.....

Form No.

Vs.The State of West Bengal & Ors.
.....Case No. OA-830 of 2018.

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>1997 so that he is eligible for pension.</p> <p>Mr. Sankha Ghosh, learned advocate for the State submits that in view of the order dated 22nd June, 2018 passed in CPAN 627 of 2014 in WPST 262 of 2013, no order may be passed.</p> <p>Heard learned advocates for the parties. The issue is whether the applicant can be treated "like Trinanjan Das", who was appointed in the year 1997.</p> <p>According to us the issue has been set at rest by the High Court as in the order dated 22nd June, 2018 it was held as under:</p> <p><i>".....It is possible, as the petitioner maintains, that the petitioner is entitled to the benefits as claimed by virtue of the expression "like Trinanjan Das" as used in the operative part of the order dated January 28, 2014. <u>It is equally possible that if the court intended to confer such benefits on the petitioner, the court would have expressly recorded the same.</u>"(Emphasis supplied).</i></p> <p>In view of clear observation of the High Court,</p>	

ORDER SHEET**Hari Madhab Chakraborty.**
.....**Vs.****The State of West Bengal & Ors.**
.....

Form No.

Case No. OA-830 of 2018.

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
<i>Sourav.</i>	<p>we are of the view no order can be passed. The application is disposed of.</p> <p>(P. RAMESH KUMAR) (SOUMITRA PAL) MEMBER (A) CHAIRMAN</p>	