

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

**Present-****The Hon'ble Justice Soumitra Pal (Chairman)****& The Hon'ble Dr. Subesh Kumar Das (Administrative Member).****Case No –OA-942 of 2018.****Madhab Sarkar. –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>11</u> 25.11.2019.</p>	<p><b>For the Applicant : Mr. A. Hati, Mrs. P. Roy Mishra, Advocates.</b></p> <p><b>For the Respondents : Mr. S. Ghosh, Advocate.</b></p> <p>Though directions were issued upon the State to file reply which was subsequently extended, no reply has been filed on behalf of the State authorities.</p> <p>In this application, Madhab Sarkar, the applicant, has prayed for the several reliefs, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“.....(i) To set aside/quash/rescind the impugned order passed by Additional Chief Secretary Dept of Health Family Welfare, West Bengal at page 62.</i></p> <p style="text-align: center;"><i>(ii) An order do issue by directing the respondent authorities to grant voluntary retirement in favour of the applicant as per the observation made in</i></p>	

**ORDER SHEET****Madhab Sarkar.**

Form No. ....

**Vs.****The State of West Bengal & Ors.**Case No. OA-942 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>judgement dated 03.01.2017 w.e.f. 31.3.2018.-</i></p> <p><i>(iii) An order do issue by directing the Superintendent Uttarpara S. G. Hospital, Hooghly to handover the charge and delete the name of applicant from the duty roster; . ...."</i></p> <p>The subject matter of challenge is an order passed by the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, rejecting the prayer of the applicant for voluntary retirement which was passed pursuant to the order of the Tribunal in OA-268 of 2018 : (Madhab Sarkar-Vs-The State of West Bengal &amp; Ors.) dated 30<sup>th</sup> July, 2018.</p> <p>It appears that the applicant had filed an application for voluntary retirement on 1<sup>st</sup> December, 2017 along with a proforma. He was born on 21<sup>st</sup> August, 1959 and had joined service on 2<sup>nd</sup> June, 1988. As on 31<sup>st</sup> March, 2018 the total length of service of the applicant is 29 years 9 months 29 days.</p> <p>Mr. A. Hati, learned advocate for the applicant</p>	

**ORDER SHEET****Madhab Sarkar.**

Form No. ....

**Vs.****The State of West Bengal & Ors.**Case No. OA-942 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>submits that as the applicant had completed 20 years of service in 2008 and had attained the age of 50 years in the year 2009, his client is not covered by the notification dated 7<sup>th</sup> February, 2014 on which reliance has been placed in the impugned order and accordingly order may be passed.</p> <p>Mr. S. Ghosh, learned advocate for the State respondents submits that the action of the respondents is just and proper.</p> <p>Since, we find that on the date of notification dated 7<sup>th</sup> February, 2014 issued by the Finance Department (Audit Br.), Government of West Bengal, that the applicant had already attained the age of 50 years and performed more than 20 years of service and as a right has accrued in his favour under Rule 75 (aaa), the amended Rule 75(aaaa) is not applicable. Be it mentioned that an accrued right cannot be divested in the manner it has been done. Therefore, the impugned order appearing at page 62, being annexure R of this application, is set aside and quashed. The application is allowed.</p> <p>Accordingly, the Director of Health Services, Department of Health and Family Welfare,</p>	

**ORDER SHEET****Madhab Sarkar.**

Form No. ....

**Vs.****The State of West Bengal & Ors.**Case No. OA-942 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>Government of West Bengal, - the respondent no. 2 is directed to pass necessary order granting voluntary retirement in favour of the applicant by passing a reasoned order within 15 weeks from the date of presentation of a copy of this order and consequently all retiral benefits be disbursed in accordance with law within the said period.</p> <p>(DR. SUBESH KUMAR DAS) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	