

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

The Hon'ble Mrs. Urmita Datta (Sen), Member (J)

The Hon'ble Mr. P. Ramesh Kumar, Member (A)

Case No – OA-971 of 2018.Dr. Ankur Ghosh. 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;">11</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">17-12-2019</p>	<p>For the Applicant : Mr. S. Ghosh, Mr. M. N. Roy, Mr. G. Halder, Advocates.</p> <p>For the State Respondents : Mr. A. L. Basu, Mr. S. Bhattacharjee, Advocates.</p> <p style="text-align: center;">The instant application has been filed praying for the following reliefs :-</p> <p style="text-align: center;"><b>(a) An order do issue thereby quashing/setting aside the Disciplinary Proceeding initiated against the applicant vide Memorandum No. HF/O/Vig/1250/9A-113/2017 dated, Kolkata, 05<sup>th</sup> December, 2017 under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, Inquiry Report, Proposed</b></p>	

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	<p><b>punishment of dismissal from Service against the applicant herein vide Order No. HF/O/Vig/770/9A-113/2017 Dated, Kolkata, the 30-10-2018 immediately.</b></p> <p><b>(b) An order do issue directing the concerned respondent authorities to forthwith issue release order in favour of the applicant consequent upon acceptance of his resignation letter, so tendered by him on 22-06-2015 with effect from 01-07-2015, before the Director of Medical Education &amp; Ex-Officio Secretary, Department of Health &amp; Family Welfare, Government of West Bengal within a stipulated time period.</b></p> <p><b>(c) An order do issue directing the concerned respondent authorities to forthwith issue "Release Order" by accepting his resignation letter dated 22-06-2015 without causing</b></p>	

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	<p><b>any further delay.</b></p> <p><b>(d) An order do issue directing the concerned respondent authorities to transmit all the records pertaining to the instant application so that conscionable justice can be administered.</b></p> <p><b>(e) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the interest of the applicant.</b></p> <p>As per the applicant, he was appointed provisionally by the Notification dated 27-02-2014 for a period of 6(six) months initially as Demonstrator (Forensic Medicine &amp; Toxicology), College of Medicine and Sagore Dutta Hospital, Kamarhati, Kolkata-700 058. He tender his resignation on 22-06-2015 w.e.f. 01-07-2015 with a request to forgo his one month salary (Annexure-b). As per the said resignation letter, the applicant did not continue since 01-07-2015. However after more than one year Joint</p>	

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	<p>Secretary, Health and Family Welfare Department vide his Memo dated 20-10-2016 (Annexure-C) had issued a Show Cause Notice as to why departmental proceeding shall not be initiated against him for unauthorised absence since 01-07-2015. He had clearly mentioned that he had tendered his resignation on 22-06-2015 w.e.f. 01-07-2015. Therefore there is no question of unauthorised absence. However he has served with a Memo dated 05-07-2017 (Annexure-G) whereby he was charged with unauthorised absent since 01-07-2015 and ultimately vide order dated 30-10-2018, he was issued with a second show cause notice proposing a penalty of dismissal from service under Rule 8 (VIII) of the CCA Rules, 1971. Against which, he made a representation before the Joint Secretary to the Govt. of West Bengal mentioning clearly that as he has already tendered his resignation with one week notice as well as after foregoing the salary of shortfall of one month period, no disciplinary action can be initiated. Being aggrieved with, he has filed the instant application.</p>	

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	<p>During the course of the hearing, the Counsel for the applicant has submitted that the applicant was still in probation at the time of tendering his resignation. Therefore West Bengal Services (Classification, Control and Appeal) Rules, 1971 is not applicable in his case. Therefore unless no show cause notice or rejection of resignation prayer would be communicated within a stipulated period of one month, it would be deemed that the authority accepted his resignation after the expiry of one month period. Even he has not been paid with the salary of one month thereof or any salary after the said period. Therefore the respondent cannot initiate any disciplinary proceeding after a period of more than one year from the date of his resignation. Accordingly he has prayed for quashing of the disciplinary proceeding.</p> <p>The Counsel for the respondent has submitted that the respondents have rightly initiated the disciplinary proceeding. It is an admitted fact that the applicant wherein</p>	

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	<p>submitted that mere filing of letter of resignation does not mean the relationship between the master and servant come into end unless resignation has been accepted by the employer. Therefore the letter of resignation did not come effective on the expiry of the notice period. Therefore, the respondent has rightly initiated the disciplinary proceeding.</p> <p>We have heard both the parties and perused the records. It is an admitted fact that the applicant is a probationar Doctor, who was appointed provisionally on 27-02-2014 and tendered his resignation on 22-06-2015 stating inter alia :-</p> <p><b>“Hence I have decided to discontinue my post as Demonstrator, Dept. of FMT. In these circumstances I am tendering my resignation with fervent hope that you will realize my difficulty and accept my resignation with effect from 1<sup>st</sup></b></p>	

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	<p><b>July, 2015 (01-07-2015).</b></p> <p><b>Sir, as per the norms I am ready to forgo my one month salary”.</b></p> <p>From the perusal of the said resignation letter, it is clear that the applicant had tendered his resignation w.e.f. 01-07-2015 with a stipulation that he is ready to forego one month salary in lieu of the shortage of time of notice period being a probationer. It is further noted that though the said resignation was received by the authority on 22-06-2015 itself, however without rejecting the prayer of resignation within a stipulated period of time of notice, they had issued the show cause notice long after more than one year on 20-10-2016 with an allegation that he is absent w.e.f. 01-07-2015 till the date of issuance of show cause notice. From the above, it is clear that though the applicant being a probationer had clearly mentioned in his resignation letter dated 22-06-2015 that his resignation may be treated from 01-07-2015 and was ready to forego one month salary in lieu of the shortage of time of</p>	

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	<p>notice period being a probationer, even then the respondents never rejected the prayer of the applicant within a stipulated period of time and issued the show cause notice subsequently after long lapse of time.</p> <p>It is a settle principle of law that being a probationer, both the employer and employee are having the right to discharge or resign with one month notice or in lieu of that one month salary even without showing any reasons for that. In the instant case, the applicant was already ready to forego one month salary for shortage of notice period and since his prayer was never rejected, therefore after one year the respondent cannot issue Show Cause Notices. Accordingly, we quashed and set aside the Memorandum dated 05-12-2017, Inquiry Report and Second show cause notice on 30-10-2018 as admittedly there is no rejection order on prayer of resignation within a stipulated period of time even thereafter also. Therefore the respondents are directed to accept his resignation letter dated 22-06-2015</p>	



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Mihir	<p>w.e.f. 01-07-2015 within a period of 4(four) weeks and issue release order.</p> <p>Accordingly, the OA is disposed of with the above observations and direction with no order as to cost. Interim order is vacated.</p> <p>Plain copy.</p> <p><b>P. RAMESH KUMAR MEMBER(A)</b>                      <b>URMITA DATTA (SEN) MEMBER(J)</b></p>	