

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present- \*

**The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)**

**Case No. – OA-421 of 2022**

Dr. Pushpendu Bikash Mandal -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. Sourav Bhattacharjee, Ld. Advocate.
	For the State Respondents	: Mrs. Subarna Das, Ld. Advocate.
<u>09</u> 02.05.2024	For the Pr.AG (A&E), West Bengal	: Mr. B. Mitra, Ld. Depttl. Rep.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

In this application, the applicant has prayed for setting aside the pension payment order dated 03.07.2021 by which his retirement date was fixed as 01.04.2012 instead of June 2, 2016. The application also prays for a direction to the respondent treating June 2, 2016 as the last date of his regular service.

In short, the applicant as a Medical Doctor had submitted an application for acceptance of his voluntary retirement from service under the Health & Family Welfare Department with effect from 31.03.2012. On 20.02.2013, the respondent authority considered his application but regretted the same on the ground of “*greater interest of public service*”. Being aggrieved by such rejection, the applicant filed an application – OA 1164 of 2015 before this Tribunal which passed a direction on 02.02.2016 directing the respondent authorities to accept the application for voluntary retirement. In terms of such direction, the respondent authority accepted his prayer for voluntary retirement on 16.05.2016 giving the effect from 31.03.2012. During the period the case was being adjudicated in the Tribunal, the applicant continued to work. In order to confirm such continuation of service, the respondent authority issued a re-employment order on 25.04.2019 treating the period from 01.04.2012 to 02.06.2016 as service on re-employment. Later, on 30.07.2021, his pension payment order was issued to make him eligible to receive pension for his service till 31.03.2012.

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Submitting on behalf of the applicant, Mr. Sourav Bhattacharjee, learned counsel submits that without any fault of the applicant and for having worked till 02.06.2016, the pension has been fixed for his service only till 01.04.2012. Thus, such pension order has deprived the applicant for pensionary benefits for the service he rendered during 01.04.2012 till 02.06.2016.

Appearing on behalf of the respondent authority, Mr. S. Ghosh, learned counsel however, disagrees and submit that the issue of his voluntary retirement reached its finality and culminated by a direction of the Tribunal directing us for acceptance of his voluntary retirement. If the applicant felt aggrieved by acceptance of his voluntary retirement in terms of this Tribunal's direction, he could have challenged the same in the appropriate forum within the prescribed time. Being aggrieved by the rejection of his voluntary retirement and challenging the same in the Tribunal, now the applicant cannot make a U-turn and question the validity of the date from which his voluntary retirement was given effect.

Having heard the submissions of the learned counsels, the Tribunal has observed that :

That the applicant had specifically mentioned the date 31.03.2012 for giving effect to his application for voluntary retirement. This date 31.03.2012 became the primary date while agitating acceptance of his voluntary retirement. Since litigation took time and the matter was finally disposed of later, the date remained same. Neither during the adjudication nor at any point of time, the applicant felt the necessity of amending his prayer with regard to the date of effect to his application for voluntary retirement. Now, at a later stage, he cannot feel aggrieved and agitate for pension counting his service till 02.06.2016. Further, such realisation could have been realised when an order was issued for his re-employment on 25.04.2019 and represented. The fact that such order of re-appointment was accepted but not challenged by the applicant cannot be ignored. By acceptance of this re-employment offer, the applicant also accepted the fact that his regular service had ended on 31.03.2012. In

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view of these facts, this Tribunal is not satisfied that the period of re-employment during 01.04.2012 till 02.06.2016 can be treated as in regular service and pension revised accordingly. The fact that this period was under re-employment is neither doubted nor disputed by the applicant. It was due to his conscious and voluntary action that the impugned order rejecting his application for voluntary retirement was ultimately set aside by the Tribunal. Had such litigation not been initiated by the applicant and had he accepted the rejection of his voluntary retirement, he would have continued in his regular service till his normal superannuation on June 2, 2016.

Thus, in view of the above observations, the Tribunal finds the prayer in this application devoid of any merit and is **disposed of without passing any orders.**

**SAYEED AHMED BABA**  
**Officiating Chairperson & Member (A)**

CSM