

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-651 OF 2019

DR SATYAJIT CHAKRABORTY Vs. 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
<p style="text-align: center;"><u>03</u> 24.09.19</p>	<p>For the Applicant : Mr.G.P.Banerjee Advocate</p> <p>“ For the Respondents : Mr.S.Ghosh Advocate</p> <p style="text-align: center;">Affidavit of service filed today be kept on record.</p> <p>In this application, the applicant, who had joined as Medical Officer in the West Bengal Health Service cadre under the Department of Health and Family Welfare, Government of West Bengal on 13th October, 1983 on ad hoc basis and subsequently regularised on 26th February, 1987 and now posted as Zonal Officer (Malaria), Burdwan Division, Paschim Medinipore, has challenged the order dated 15th January, 2019 passed in compliance with the directions contained in the order dated 16th November, 2018 in OA-833 of 2018 appearing at page 65 of the application. Mr.G.P.Banerjee, learned advocate for the applicant submits that since the issue is covered by the judgement of the Tribunal passed in OA 346 of 2015 (Dr.Ashok Kumar Maiti & Ors. Vs. The State of West</p>	

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	<p>Bengal & Ors.) as well as the judgement of the High Court passed in WPST-26 of 2015 (The State of West Bengal & Ors. Vs. Dr.Sraban Kumar Ghosh) and as from the judgement passed by the Tribunal, no order has been passed in favour of the State by the High Court, appropriate order may be passed quashing the order under challenge and to direct the respondents to accept the prayer for voluntary retirement. It appears from the judgement of the High Court passed in WPST-26 of 2015, SLP was filed which was dismissed by the Supreme Court on 26th October, 2015.</p> <p>Mr.S.Ghosh, learned advocate for the State submits that the order dated 15th January, 2019 passed by the Respondent no. 1 is just and proper. According to him from the judgement delivered by the Tribunal writ petitions have been filed before the High Court which are pending. However, on a query, it is submitted that no interim order has been passed by the High Court.</p> <p>Heard Mr.Banerjee and Mr.Ghosh.</p>	

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	<p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“ a) A mandatory direction do issue upon the concerned respondent authorities, particularly upon the Additional Chief Secretary, Health & Family Welfare Department, Government of West Bengal, the respondent No. 1 herein, to forthwith grant sanction of the prayer of the applicant dated 17.04.2018 for voluntary retirement from service with effect from 31.07.2018 A N having been fulfilled all preconditions thereof under the strength and force of Sub-Rule (aaa) of Rule 75 of WBSR, Part-I and also so announced and pronounced in different judicial interventions after setting aside the impugned order of rejection dated 15.01.2019 of the authority concerned so issued in empty compliance of the solemn Order of this Hon’ble Tribunal dated 16.11.2018 passed in OA No. 833 of 2018, all being Annexure-‘A’, ‘B’, ‘C’, ‘D’ and ‘E’ herein as well as to disburse all</i></p>	

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	<p><i>permissible retiring benefits in favour of the applicant and to command them to act strictly in accordance with law;"</i></p> <p>The relevant portion of the order impugned passed by the respondent no. 1 is as under:</p> <p>"And, whereas, it appears that by notification no. 695-F(P) dated. 07.02.2014, issued by the Finance Department (Audit Br.), Govt. of West Bengal, the Governor was pleased to cause an amendment in W.B.S.R. Part-I amending the provision of rule 75, sub-rule (aaaa) which inter alia reads ".....<i>Notwithstanding anything contained in this rule, the provisions contained in sub-rule (aa) and (aaa) of rule 75, shall not be admissible to holder of the West Bengal Health Services, The West Bengal Medical Education Services, the West Bengal Public Health-cum-Administrative Services, The West Bengal Dental Services and the West Bengal</i></p>	

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	<p data-bbox="568 510 1023 546"><i>Dental Education Services....."</i></p> <p data-bbox="568 645 1203 1482">Now, therefore, after careful consideration of the entire gamut of the case, it is ordered that, the prayer of Dr.Satyajit Chakraborty for voluntary retirement from Government service in the light of aforesaid Finance Department (Audit Br.) notification is rejected and he may be allowed to resume his duty at the previous place of posting and the Joint Secretary (MA) DHFW is directed to proceed for taking necessary action as per law".</p> <p data-bbox="568 1581 1203 1886">Thus, the case is disposed of with the aforesaid order. Let the copies of the Reasoned Order be communicated to all concerned accordingly."</p> <p data-bbox="443 1984 1203 2020">It is an admitted position that the applicant</p>	

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	<p>who had completed 50 years of age on 1st January, 2008 and who had also completed 20 years service on 13th October, 2003 is covered under rule 75, sub-rule (aaa) and not under rule 75, sub-rule (aaaa) of WBSR Part-I. It is to be borne in mind that a right which has already accrued in favour of the applicant under rule 75 (aaa) cannot be divested. Hence, the judgement passed in OA-346 of 2015 covers the field. It is an accepted position of law that the judgement passed by the judicial forum, not stayed by the higher forum, has to be accepted. Therefore, as the judgement passed by the Tribunal on similar issue has not been stayed by the High Court and the issue is covered by the said judgement in OA-346 of 2015, the impugned order dated 15th January, 2019, appearing at page 65 of the application, is therefore set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, Health and Family Welfare Department, Government of West Bengal, the respondent no. 1, is directed to accept the application of the applicant for voluntary retirement dated 17th April, 2018 with effect from 31st July, 2018 within ten weeks from the date of presentation of a copy of the</p>	

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BLR	<p>certified copy of this order and shall disburse pensionary benefits and other allowances as admissible under the law which have accrued in favour of the applicant.</p> <p style="text-align: center;"> (S.K.DAS) MEMBER (A) </p> <p style="text-align: center;"> (SOUMITRA PAL) CHAIRMAN </p>	