

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 141 of 2019

BISWAJIT MULLICK Vs **The State of West Bengal & Ors.**

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<p>10 17.12.2019</p>	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Haldar, Advocates</p> <p>For the Respondent No. 1 & 3: Mr. G.P. Banerjee, Advocate</p> <p>For the Respondent No.2 : Mr. A. Datta, Departmental Representative</p> <p>In this application Biswajit Mullick, the applicant, had joined service as Revenue Officer. Subsequently was promoted to the post of Special Revenue Officer – II. As per recommendation of the Public Service Commission, West Bengal, the State authorities appointed the applicant as WBCS (Executive) on probation as Deputy Magistrate and Deputy Collector against the promotion quota for the year 2015. Since 5th June, 2017 the applicant is the Deputy Magistrate and Deputy Collector. On 10th January, 2018 the applicant submitted a representation praying for reversal of service to his earlier lien post of Special Revenue Officer – II under the Land and Land Reforms Department on personal ground. The said representation was forwarded to the office of the Sub-Divisional Officer Khargram and</p>	

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	<p>thereafter was placed before the District Magistrate, Bankura, the respondent no.5. The matter was forwarded to the Principal Secretary, P&AR Department and Governance Department, Government of West Bengal, the respondent no.1. Since the said representation was not considered, the applicant moved an application, being O.A. 737 of 2018, praying for a direction upon the respondent authorities to issue reversion order to enable him to join his parent department, that is, the Land and Land Reforms Department, Government of West Bengal and also to allow the applicant to return back to the post of Special Revenue Officer – II and to fix his seniority.</p> <p>The said application came up for hearing on 19th November, 2018 and was disposed of by passing an order, the relevant portion of which is as under:</p> <p style="padding-left: 40px;">“Having heard the learned advocates for the parties and the departmental representative and considering the facts and circumstances of this case, the application is disposed of by directing the Principal Secretary to the Government of West Bengal, Personnel and Administrative Reforms & e-Governance Department, W.B.C.S. Cell, Howrah – the respondent no.1 to dispose of</p>	

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	<p>the application dated 10th January, 2018 with a prayer for reversion to the feeder post as Special Revenue Officer – II in the Land and Land Reforms Department by passing a reasoned order to be communicated to the parties within eight weeks from the date of presentation of a copy of this order after verifying the records.”</p> <p>Pursuant to the order passed by the Tribunal, the Principal Secretary to the Government of West Bengal, Personnel and Administrative Reforms & e-Governance Department, W.B.C.S. Cell, Howrah, – the respondent no.1, considered the matter and passed an order, the relevant portion of which is as under:</p> <p>“This is a prayer dated 10.01.2018 received from Shri Biswajit Mullick, W.B.C.S. (Exe.) through the District Magistrate, Bankura for reversion to his parent feeder post of SRO-II under Land and Land Reforms and R.R & R Department from its present WBCS (Exe) Cadre, due to family problems.</p> <p>The P & AR Department referred the matter to the Land and</p>	

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	<p>Land Reforms and R.R & R Department with the request to offer their considered views regarding intended reversion of Shri Biswajit Mullick, W.B.C.S. (Exe.) to the feeder post of SRO-II under administrative control of that Department.</p> <p>The Land and Land Reforms and R.R & R Department has offered their views on the line that: “as Shri Mullick joined the WBCS(Exe) Cadre on promotion from the feeder post, on submission of a declaration regarding his unconditional willingness for appointment to such promotional post and for various administrative inconvenience to be created in its past feeder services borne in the L&LR and R.R. & R Department, the prayer for further revision to its parent cadre may not be recommended.”</p> <p>I agree with the views of the L&LR & RR & R Department. Accordingly, in compliance to the order dated 19.11.2018 of Hon’ble WBAT and after going through the prayer and the views of Land and Land</p>	

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	<p>Reforms and R.R & R Department referred to above and other materials on record, I don't find any merit to consider the prayer of Shri Biswajit Mullick, W.B.C.S. (Exe.) for reversion to his parent feeder post of SRO-II under Land and Land Reforms and R.R & R Department from its present WBCS(Exe) Cadre.</p> <p style="text-align: center;">ORDER:</p> <p>Therefore, it is ordered that the prayer of Shri Biswajit Mullick, WBCS(Exe) for reversion to his parent Cadre in the L&LR & R.R & R Department is rejected and the application as above is disposed accordingly.”</p> <p>Aggrieved the applicant had filed this original application praying for certain reliefs, the relevant portion of which is as under:</p> <p style="padding-left: 40px;">“(a) An order do issue thereby setting side / quashing the reasoned order vide No. 1736-PAR (WBCS)/Law-59/2018 Dated 10.12.2018 issued by the Principal Secretary, P&AR and e-Governance</p>	

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	<p>Department, West Bengal being the respondent no.1 herein with immediate effect, and after setting aside allow your applicant for reversion to his parent department i.e. to Land and Land Reforms and R.R.&R Department, West Bengal within a stipulated time period to the post of SRO-II.</p> <p>(b) An order do issue directing the respondent authorities to issue reversion order in favour of the applicant herein enabling him to join his parent department i.e. Land & Land Reforms Department, Government of West Bengal in the post of Special Revenue Officer-II within a stipulated time period.</p> <p>(c) An order do issue directing the concerned respondent authorities, each of them, to allow your applicant to return back to the post of Special Revenue Officer-II and to fix his pay and allowances and seniority accordingly in the gradation list of Special Revenue Officer-II.</p> <p>(d) An order do issue commanding</p>	

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	<p>the respondents, each of them, to pass necessary orders fixing the scale as well as seniority of the applicant from the date he is allowed to join the post of Special Revenue Officer-II in the Land & Land Reforms Department, Government of West Bengal.</p> <p>After the matter was admitted directions were issued to file reply and rejoinder. Reply and rejoinder have been filed and are on record. Since the Tribunal found that the reply filed by the respondent no.1 was inadequate, by order dated 2nd December, 2019, directions were issued on the respondents to file supplementary reply on affidavit particularly with regard to paragraph 9 and 10 of the Original Application. The supplementary reply has been filed and is also on record.</p> <p>Mr. M.N. Ray, learned advocate for the applicant submits that though the applicant is continuing in the post of Deputy Magistrate and Deputy Collector which is W.B.C.S. (Executive) post and in probation since 6th June, 2017 and since persons similarly situated, as mentioned in paragraphs 4 (vii) and 4 (ix) of the application, have got reliefs, and as the applicant is similarly situated and cannot be discriminated, appropriate order may be passed giving relief to the applicant by directing the respondents to revert the applicant to the post of Special Revenue</p>	

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	<p>Officer – II. Submission is the statements in paragraph 4(x) and (xi) of the application have not been denied in the supplementary reply filed. Reliance has been placed on the judgement of the Supreme Court in the State of Rajasthan vs. S.N. Tiwari : (2009) 4 SCC 700 in support of his submission, particularly the law laid down in paragraph 17 thereof.</p> <p>Mr. G.P. Banerjee, learned advocate for the respondent nos. 1 and 3 submits that the respondent no.1 has no role to play in this matter and it is for the Land and Land Reforms and Refugee Relief and Rehabilitation Department to take a decision.</p> <p>Mr. A. Datta, the departmental representative for the Land and Land Reforms and Refugee Relief and Rehabilitation Department submits that since the applicant had joined on promotion from the feeder post on submission of a declaration regarding his unconditional willingness for appointment to his promotional post depriving his junior and as any order passed directing reversal may cause administrative inconvenience, no order may be passed.</p> <p>Heard parties. The issue which requires to be considered is whether the lien exists or not. In this regard it is pertinent to mention paragraphs 4(x) and 4 (ix) in the application which are as under:</p> <p style="text-align: center;">“4 (x) Your applicant submits that as the respondent authorities have</p>	

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	<p>not suspended the lien of the applicant on the permanent post of Special Revenue Officer – II under the Land and Land Reforms Department, West Bengal the respondent authorities ought to have issued reversion order in favour of your applicant herein as your applicant on his own seeking has prayed for reversion to his parent department owing to his personal reasons as canvassed in his representation dated 10.01.2018.</p> <p>(xi) Your applicant states that he was holding lien as per the provisions of the lien rules enshrined in West Bengal Service Rules and has asked for reversion to his parent department within the prescribed time period of the lien, therefore the respondent authorities are bound to revert the applicant to the parent department without keeping any shadow of doubt in their mind, but by not allowing your applicant to revert has blatantly violated the provisions of law in this regard.”</p>	

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	<p>The said statements have been dealt with in paragraphs 3(ii) and (iii) of the supplementary reply filed on behalf of the respondent no.1 which is as under:</p> <p style="padding-left: 40px;">“(ii) That with respect to paragraph no.4(x) it is respectfully stated that the Personnel and Administrative Reforms Department, Government of West Bengal is not the concerned Department to suspend any lien on the permanent post of Special Revenue Officer – II under the L&LR & R.R & R Department, Government of West Bengal.</p> <p style="padding-left: 40px;">(iii) That with respect to paragraph no.4(xi) it is furthermore submitted that the L&LR & R.R & R Department is the sole authority for appointment of officers in SRO-II Cadre. If the Parent Department denies reverting back any officer to its Cadre of SRO-II, the Personnel and Administrative Reforms Department, Government of West Bengal, has nothing to do.”</p> <p>Though the applicant in paragraph 4(x) of the application has stated that the respondent authorities have</p>	

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	<p>not suspended lien, it has not been denied in paragraph 3(ii) of the supplementary reply. Again though the applicant has stated in paragraph 4 (xi) that he is holding lien as per provisions of lien Rules enshrined in the West Bengal Service Rules, however, the same has not been denied in paragraph 3 (iii). Hence the statements of the applicant in the Original Application has to be accepted. Therefore, it is clear that the applicant is still holding the post in lien. In this regard it is appropriate to refer to the law laid down by the Supreme Court in State of Rajasthan vs. S.N. Tiwari (Supra) wherein it has been held as under :</p> <p style="text-align: center;">“17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the</p>	

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SCN.	<p style="text-align: center;">previous permanent post.”</p> <p>Since it has not been denied by the respondents that the applicant is holding the post of Deputy Magistrate and Deputy Collector since 5th June, 2017 on probation and it is clear that the lien of a government employee ends if he appointed in a permanent post on a permanent basis and as the present post of the applicant is not on permanent basis and lien exists, the contention of the applicant has to be accepted. Therefore, the impugned order dated 10th December, 2018 issued by the respondent no.1, appearing at page 38 of the Original Application, is set aside and quashed. The application is allowed. Consequently the respondent no.1 is directed to revert the applicant to the post on probation within ten weeks from the date of presentation of a copy of this order.</p> <p>(S.K. Das) MEMBER (A)</p> <p style="text-align: right;">(Soumitra Pal) CHAIRMAN</p>	