

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 302 OF 2018

Asis Kumar Naskar 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
03 13.08.2018	<p>For the Applicant : Mr. A. Lahiri, Mr. S.K. Mondal, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Pvt. Respondent No. 6 : Mr. D. N. Roy, Mr. S. Ghosh, Mr. B. Nandy, Learned Advocates.</p> <p>The applicant has prayed for review of the judgment and order dated June 16, 2016 passed by this Tribunal in OA-526 of 2015 (Amit Kumar Sarkar v State of West Bengal & Others) and other ancillary reliefs in connection with seniority of the applicant.</p> <p>The private respondent no. 6, Amit Kumar Sarkar approached this Tribunal by filing OA-526 of 2015 praying for seniority by placing him in the gradation list above his immediate junior (Nityananda Khan) in the post of Assistant Engineer who was promoted to the post of Executive Engineer in terms of Notification dated December 18, 2007. The present applicant was not a party to the said OA-526 of 2015. On June 16, 2016, this Tribunal disposed of OA-526 of 2015 by directing the respondents of the said original application to give seniority to the present private respondent no. 6 as prayed for. The</p>	

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respondent State of West Bengal challenged the said judgment and order passed in OA-526 of 2015 before the Division Bench of the Hon'ble High Court by preferring WPST 184 of 2016. On July 27, 2017, the Division Bench of the Hon'ble High Court dismissed WPST 184 of 2016 by making following observation :

“The said order of the learned Tribunal stands supported with cogent reasons and there is also no jurisdictional error warranting interference of this Court”.

The respondent, State of West Bengal has filed one review application being RVW-212 of 2017 praying for modification of or setting aside the said order passed in WPST 184 of 2016 and the said review application is still pending for hearing.

With the above factual matrix, Mr. Lahiri, Learned Counsel for the applicant contends that the present application under section 19 of the Administrative Tribunals Act, 1985 at the instance of the applicant is maintainable as the applicant was not a party to the previous original application filed by the private respondent no. 6. Mr. Lahiri has also made submission on merit in connection with seniority of the present applicant in the post of both Assistant Engineer and in the post of Executive Engineer on the ground that the applicant cleared Departmental Examination long before clearance of Departmental Examination of the private respondent no. 6. He has relied on the case of “L.

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Chandra Kumar v. Union of India” reported in AIR 1997 SC 1125, “Shivdeo Singh v. State of Punjab” reported in AIR 1963 SC 1909 and “Rama Rao & Others v. M.G. Maheshwara Rao & Others” reported in (2007) 14 SCC 54 in support of the contention that the present application is maintainable in law.

Mr. D.N. Roy, Learned Counsel representing the private respondent no. 6, has placed on record copy of the order passed by the Division Bench of the Hon’ble High Court in WPST No. 184 of 2016 (State of West Bengal v Amit Kumar Sarkar & Others) and submitted that the Tribunal cannot review its own order, when the said order has already been affirmed by the Hon’ble High Court.

Mr. G.P. Banerjee, Learned Counsel representing the state respondents contends that State has already filed one Review Application being RVW 212 of 2017 against the order passed by the Hon’ble Division Bench of the Hon’ble High Court and the same is still pending for adjudication before the Hon’ble High Court.

Having heard the Learned Counsel representing the respective parties and on consideration of the background facts of filing the present application, we find that the judgment and order passed by this Tribunal on June 16, 2016 in OA-526 of 2015 was challenged by the State of West Bengal before the Hon’ble High Court by filing WPST 184 of 2016. We have

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already observed that the Division Bench of the Hon'ble High Court has affirmed the judgment and order passed by this Tribunal and dismissed the WPST 184 of 2016. The Review Application filed by the State of West Bengal is still pending for adjudication before the Hon'ble High Court. The question which calls for determination is whether the Tribunal can entertain the application filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 for review or modification of the judgment and order of the Tribunal which has already been affirmed by the Division Bench of the Hon'ble High Court.

We would like to refer to the decisions relied on by Mr. Lahiri before coming to any conclusion. In "L. Chandra Kumar v. Union of India" (supra) the Constitution Bench of the Hon'ble Supreme Court has categorically observed that the Tribunal will act as the Court of the first instance in respect of the areas of law for which the Tribunal has been constituted. It is relevant to quote some portions of paragraph 99 of the judgment, which is as follows :

"99. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

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By following the above dictum of the Apex Court, we would like to hold that the Tribunal will definitely act as the Court of the first instance in respect of areas of law for which the Tribunal has been constituted. The issue involved in the present application is not in connection with entertaining application of the applicant as the Court of the first instance, but the issue is whether the Tribunal can review an earlier judgment and order which has already been affirmed by the Division Bench of the Hon'ble High Court. Accordingly, we do not find any relevance of the decision of "L. Chandra Kumar v. Union of India" (supra) in the present case.

In "Shivdeo Singh v. State of Punjab" (supra), the ratio laid down by the Hon'ble Supreme Court is that the second writ application for review of order passed in the first writ application at the instance of a party who was not impleaded in the first writ application, is maintainable in law. The facts of the present case are clearly distinguishable from the facts of "Shivdeo Singh" (supra), as in the present case the applicant has prayed for review of the judgment and order of the Tribunal, which has already been affirmed by the Hon'ble High Court. So, the ratio of the said reported case has no relevance in the present case.

In "Rama Rao v. M.G. Maheshwara Rao" (supra), a group of employees challenged the rules prescribing qualification for promotion from two feeder posts by filing original application before the Tribunal. The Tribunal quashed the rules

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and modified the qualifications prescribed for promotion from two feeder posts. The said order of the Tribunal was challenged before the Hon'ble High Court which had partly set aside the order of the Tribunal and partly affirmed the order of promotion for a group of employees. The order of the Hon'ble High Court was challenged before the Hon'ble Supreme Court which had quashed the order of the Hon'ble High Court and directed for fresh consideration of the question of promotion by taking into account the candidates from both the feeder posts. The Apex Court had no opportunity in this decision to deal with the issue of review of the order of the Tribunal when the said order has already been affirmed by the Hon'ble High Court. So, the ratio of this decision has no application in the facts of the present case.

Since the judgment and order passed by this Tribunal in OA-526 of 2015 has already been affirmed by the Division Bench of the Hon'ble High Court in WPST 184 of 2016 and since Review Application being RVW 212 of 2017 for modification of the said order of the Hon'ble High Court at the instance of State of West Bengal is pending for adjudication, we are of the view that we cannot invoke provisions of section 19 of the Administrative Tribunals Act, 1985 for review of the judgment and order passed by this Tribunal on June 16, 2016 in OA-526 of 2015. In other words, the present application is not maintainable in law and the ancillary reliefs prayed by the

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Sanjib	<p>applicant cannot be decided without modification/ alteration/ setting aside of the order passed in OA-526 of 2015.</p> <p>Accordingly, the present original application is dismissed. The interim order stands vacated. Prayer for stay of operation of the order at the instance of the applicant is refused.</p> <p>Let urgent xerox certified copy of the order be supplied to the parties, if applied for, on priority basis after observance of all necessary formalities.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
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