

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA – 111 of 2022

Sukanta Paul & Others - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicants : Mr. A. Ray Mukherjee,
and Mrs. S. Agarwal,
Date of order Advocates
6
17.11.2022

For the State : Mr. G.P. Banerjee,
Respondents Mr. M.N. Roy,
Advocates

For the Respondent No. : Mr. R. Kr. Singh,
8, 9 & 12 Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following reliefs:

“a) An order be passed directing the respondents to produce all records pertaining to the instant case so that conscionable justice may therein be administered by quashing the impugned gradation list dated 08.10.2021.

b) An order be passed directing the respondents to produce all records pertaining to the instant case so that conscionable justice may therein be administered by quashing the impugned gradation list dated 08.10.2021;

c) Pass a direction upon the respondents to restore the seniority of the applicants over and above the

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private respondents with notional seniority along with all service, financial and consequential benefits with interest and to act in accordance with law as stated hereinabove;

d) Pass such other or further order or orders as Your Lordships may deem fit and proper.”

As per the applicant, though he had filed another O.A. being No. 224 of 2019 challenging the Memo dated 5th December, 2018, which is still pending and this Tribunal in the said O.A. had granted an order of status quo with regard to the draft gradation list dated 19th December 2019, however, subsequently the respondent again published the impugned gradation list dated 08.10.2021. Being aggrieved with, he has filed the instant application.

However, the counsel for the private respondent has submitted that there is no need of filing the instant application as the State Respondents against the interim order dated 20.01.2020 passed in earlier O.A. No. 224 of 2019 filed writ petition, whereby an order of status quo was granted with regard to draft gradation list dated 19.12.2019. The Hon'ble High Court vide order dated 719 of 2021 passed in WPST No. 66 of 2021 against the interim order of this Tribunal passed in erstwhile O.A. No. 224 of 2019 had observed, inter alia:

“At this juncture, Mr. Roy Mukherjee submits that Amit Kumar Sarkar has been appointed de hors the finalisation of draft gradation list for the year 2018. Mr. Bandyopadhyay, learned advocate appearing on behalf of the petitioners submits that the said draft gradation list published in the year 2018 has been cancelled and the said document has

been produced before the tribunal. Mr. Roy Mukherjee contended that final gradation list as mentioned in the memo dated March 22, 2018 is still in operation and the respondents no. 1 and 2 are entitled to be placed in the seniority list in terms of finalised gradation list dated March 22, 2018. Mr. Bandhopadhyay representing the State/petitioners has vehemently denied such submission as it is clearly stated that the said gradation list was obtained by practising fraud.

However, we are not deciding the said issue in this proceeding. Needless to mention, in the event the applicants succeed and the final gradation list as published on March 22, 2018 is upheld, the tribunal would require to pass consequential orders and the State would be obliged to carry out rectification in the draft gradation list for the year 2019.

In view of the aforesaid, nothing remains to be decided in Miscellaneous Application No. 13 of 2020 and the said application stands disposed of.

As observed earlier, the final gradation list, if it affects the respondents no. 1 and 2, can be challenged in Original Application No. 224 of 2019 by amending the grounds in the original application.

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The final gradation list is to be published within two weeks from date without prejudice to the rights and contentions of the respondents no. 1 and 2 as also the respondents no. 3 to 8 in this proceeding, after considering the objections, if any, raised by the respondents no. 1 and 2. The tribunal is requested to dispose of Original Application No. 224 of 2019 within a period of six months after reopening of the court after puja vacation. In disposing of the original application, the tribunal shall permit the respondents 1 and 2 to challenge such gradation list if it affects their legal right.

The writ petition is, thus, disposed of without, however, any order as to costs.”

As per the counsel for the private respondent, as the Hon'ble High Court, Calcutta had already granted liberty to the applicant of O.A. No. 224 of 2019 (the present applicants are all applicants in the said O.A. No. of 224 of 2019) to challenge the final gradation list, if they would be affected by remanding back the matter to this Tribunal to hear the O.A. – 224 of 2019 afresh and as the issues are analogous, this O.A. may not be filed and or entertained as the applicants have been granted liberty to make appropriate submission in the said O.A., which they can avail.

In view of the above, the counsel for the applicant has submitted that liberty to make appropriate application on the self-same ground and prayer by challenging the order dated 05.12.2018.

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Heard the parties and perused the records, specially order dated 07.09.2021 passed by the Hon'ble High Court in WPST No. 66 of 2021. From the perusal of the High Court's order, it is noted that Hon'ble High Court had granted liberty to the State Respondents to finalise the gradation list and publish it within two weeks without prejudice to the rights and contentions of the respondent no. 1 and 2 i.e. applicants of the Original Application No. 224 of 2019 as well as the instant application (applicants in both O.A. 224 of 2019 and the instant application) as also the respondent no. 3 to 8 (private respondents both in O.A. 224 of 2019 as well as in the instant application) and after considering such objection, if any, raised by the respondent no. 1 and 2 i.e. the present applicants. In pursuance to that, the State Respondent has published the final gradation list dated 08.10.2021, which has been challenged in the instant application by the applicants. It has been further observed that the Hon'ble High Court, Calcutta, while disposing of the Original Application had ordered that the Tribunal shall permit the respondent no. 1 and 2 to challenge such gradation list if it affects their legal right. As they are aggrieved by the final gradation list dated 08.10.2021, therefore, they have filed the instant O.A.

Let the matter be listed on **20th December, 2022 as analogues matter with the O.A. No. 224 of 2019 under the heading 'Hearing'**.

Reply, rejoinder in the mean time.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.