

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA-137 of 2022

Subir Kumar Chakraborty **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	:	Mr. M. Ganguly, Mr. S. Mukherjee, Learned Advocates.
<u>04</u> 06.05.2022	For the State Respondents	:	Mr. G.P. Banerjee, Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

On consent of counsel for both the parties, matter has been taken up.

The instant application has been filed basically challenging the appellate order dated 29.04.2021 whereby the Additional Chief Secretary to the Govt. of West Bengal, Home & Hill Affairs Department has rejected the appeal of the applicant under Rule 882 of P.R.B. 1943 as amended up to date. As per the applicant, final order was passed on 24.06.2013 and thereafter the applicant has filed appeal before the Home & Hill Affairs Deptt. on 02.08.2013. However, his appeal was rejected only on 20.04.2021 on the ground that the appeal was not preferred to the proper authority i.e. nor through the Hon'ble Governor as per Rule 883. As per the applicant, in one hand the appellate authority had referred the amended Notification dated 29.07.2019 whereby Rule 882 of P.R.B. of 1943 was amended in the case of the applicant, in place of Hon'ble Governor, however, as per the information of the P.S.C. dated 26.02.2021, the applicant had not preferred the appeal before the Hon'ble Governor, therefore, it is violative of Rule 883 of P.R.B. Therefore, the appeal is invalid.

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Moreover, as per the applicant, his appeal was pending before the authority since 2013 and they have passed the impugned appellate order on 20.04.2021, when in the meantime the Rule has been amended on 29.07.2019, therefore, when the appeal of the applicant was considered, the State Government is the competent authority, who has to consider the case of the applicant on merit.

Therefore, the applicant has preferred this application for quashing the appellate order dated 20.04.2021 and to direct the appropriate authority to consider the appeal of the applicant on merit within a stipulated period of time.

However, the counsel for the respondent has no objection to consider the appeal of the applicant on merit.

I have heard both the parties and perused the records. It is noted that the applicant initially filed appeal before the Home Secretary on 02.08.2013, however, his appeal was pending before the authority till the passing of the appellate order dated 20.04.2021. As per the then Rule 882 of P.R.B. the competent appellate authority of the applicant was the Hon'ble Governor, however, at that point of time his case was neither rejected nor considered by the respondent authority. In the meantime one amendment took place on 29. 07.2019 by way of amending the appellate authority from "Governor" to the "State" and subsequently the respondents had referred the appeal of the applicant to the P.S.C. who has opined on 26.02.2021, which is as follows :-

"The charged officer in the instant case had preferred his appeal against the final order within 37 days but it is not addressed to the "Hon'ble Governor" who is the competent authority to consider an appeal against such order. Hence, it is violative of Rule 883 of P.R.B. 1943

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and as such appeal is invalid in nature.”

In pursuance to , the A.C.S., Home & Hill Affairs Deptt. has passed the following order :-

”Whereas the State Government being the Appellate Authority in terms of Rule 882 of P.R.B., 1943, read with Notification No. 371-VIG/N/1E-32/2019 dated 29.07.2019 after going through the Appeal Petition of the said Shri Subir Chakraborty, and other relevant papers in the matter including the Final Order passed by the Disciplinary Authority and after due consideration of the opinion tendered by the Public Service Commission, West Bengal, has found that there is no scope to entertain the instant appeal petition filed by Shri Chakraborty as the same has not been addressed to the appropriate authority i.e. Hon’ble Governor as per Rule 883 of P.R.B., 1943.

NOW, THEREFORE, in exercise of the power conferred by the Rule 882 of P.R.B. 1943, as amended up to date the Appellate Authority has rejected the instant Appeal Petition of Shri Subir Chakraborty, DSP, EB, West Bengal.”

Subsequently, the applicant had filed one representation before the appellate authority on 23.07.2021, which was also rejected by the appellate authority vide order dated 28.09.2021.

It is noted that the appeal was considered by the appellate authority on 20.04.2021 and the P.S.C. had forwarded their opinion on 26.02.2021, when the amendment had already taken place on 29.07.2019, therefore, the rejection of the appeal of erstwhile Rule of 882 has no relevancy at the time of passing the appellate order. Therefore, I quash and set aside the appellate order dated 20.04.2022 and remand back the appellate authority to take final decision and communicate

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the same by way of speaking and reasoned order within a period of eight weeks from the date of receipt of the order. Accordingly, OA is disposed of.

URMITA DATTA (SEN)
MEMBER (J)

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