

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 864 of 2016

Amit Kumar Mukhopadhyay & Others - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicants : Mr. B. Bhushan,
and Advocate

Date of order
6
05.02.2024 For the Respondents : Mr. S.N. Ray,
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels, the case is taken up for consideration sitting singly.

The applicants in this application have prayed for implementation of Government of India's Staffing Pattern issued in a Memo. dated 22nd August, 2003. By filing a supplementary application, the applicants have also prayed for setting aside the impugned order No. 103/CD & WDSW/17 dated 8th March, 2017 and 1049/ICDM-Dte dated 22nd July, 2020. With a further prayer for directing the respondent authorities to permanently re-designated the applicants as CDPO. The applicants were appointed as Assistant Child Development Project Officer. Later, they were asked to perform the duties of Child Development Project Officer and were treated as officiating CDPOs. Their demand for equal pay scale of a CDPO was finally heard and disposed of by an order of the Apex Court in Civil Appeal No. 2521 of 2013 dated March, 2013 in favour of the petitioners. By a Notification dated 22nd August, 2003, Govt. of India, the Ministry of Human Resource Development (Department of Women and Child Development) in para 3 stipulated that in the new blocks, there would be a CDPO or an Additional CDPO. By such recommendation, the State was advised to suitably review the Staffing Pattern of ICDS Project. The order had also advised that the number of Programming staff should be reduced to at least 20%. In line with the above target of reducing the manpower strength to 20%, the Notification also advised manning these projects with only one officer, either CDPO or ACDPO. The relevant part of this Notification is as under:

"5. The States are, therefore, requested to ensure that the following with immediate

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effect:

- (i) *In Projects where both CPDO and ACDPO are in position, one of these two posts, as and when it falls vacant, may not be filled up, so as to ensure that there is either one CDPO or one ACDPO in one Project. The resultant vacant post(s) will stand abolished.*

7. The staffing pattern for all Projects (both old and new) will, in due course, become uniform, as below:-

<i>No.</i>	<i>Name & No. of the Post</i>
<i>1</i>	<i>CPDO /ACDPO (One)</i>

Finally, at para (vii) as quoted above the Notification re-emphasised the Staffing Pattern that only either a CDPO or an ACDPO will be in-charge of a block. Submission is that, instead of implementing the new Staffing Pattern as stipulated in the above Notification of Govt. of India, the State was on the contrary, contemplating placing the ACDPOs in-charge of project blocks back to the post of ACPDO. Apprehending such a move by the State authorities, the applicants collectively submitted several representations during 2010 to 2016. Such apprehensions of the applicants came true by the order of the Department vide order no. 3524-SW/O/3E-43/2018 dated 06.07.2018 and order no. 1049/ICDM-Dte dated 22nd July, 2020. By this impugned order no. 3524-SW/O/3E-43/2018 dated 06.07.2018, 48 ACDPOs, so far acting as CDPOs, were transferred to other blocks as an ACDPO and the other impugned order no. 1049/ICDM-Dte dated 22nd July, 2020, transferred 83 ACDPOs so far acting as CDPOs, to other blocks as ACDPOs. Submission of Mr. Bhushan is that by these impugned orders, the applicants, so far discharging their duties in respective blocks as the officiating or acting CDPOs have been reverted back to the post of ACDPO.

So far the question of the State Government's obligation to comply with the order of the Government of India as stipulated in page 52 and 54 is concerned, Mr. Bhushan relies on the Constitution of India, by which the State Government after having received 100% funding for the project is legally bound to comply the directions of Government of India. Attention is also drawn by the counsel to page 37 and 38 of this application.

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These papers appear to be the reply of the State authorities to these Officers' Association. One of the primary and relevant questions asked in the RTI Act was whether the post of ACDPO has been abolished or not. In reply to this query, the Department has shared copy of letter dated 22.08.2003. This letter was earlier referred to in the foregoing paragraphs in which the Ministry of Human Resource Development (Department of Women and Child Development) at para (iii) and (v) had advised the State Governments to gradually reduce the number of programme staff to at least 20%. Further this policy letter also emphasises manning of a CDPO block by either a CDPO or an ACDPO. By referring to this RTI reply and Ministry's letter regarding the man power policy, Mr. Bhushan emphasises that, as is evident from this reference, the post of ACDPO has not been abolished, rather ACDPOs have been treated at par with CDPOs. However, since the State Government has not fully complied with this direction of the Ministry, many blocks in the State continue to have both CDPOs and ACDPOs at the same time. The policy of the Government of India to have either a CDPO or an ACDPO in a block has not been adhered to. By passing impugned orders of transfer of ACDPOs dated 06.07.2018 and 22.07.2020, the State respondents have placed the ACDPOs as ACDPOs in the blocks where there is already a CDPO posted. In effect, by such an order, many of the ACDPOs are obligated to work under a CDPO which was not the spirit of the policy as enunciated in the Ministry's letters. Concluding his submissions, Mr. Bhushan prays for a direction to the State respondents to implement the policy of the Ministry of Human Resource Development communicated vide Memo. No. 1-3/2002-CD-I(Vol.II) dated 22nd August, 2003. This specific advisory reflecting at page 50 & 51 of OA is as follows:

"5. The States are, therefore, requested to ensure that the following with immediate effect:

- (i) In Projects where both CPDO and ACDPO are in position, one of these two posts, as and when it falls vacant, may not be filled up, so as to ensure that there is either one CDPO or one ACDPO in one Project. The resultant vacant post(s) will stand abolished*

7. The staffing pattern for all Projects (both old and new) will, in due course, become uniform, as below:-

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<i>No.</i>	<i>Name & No. of the Post</i>
<i>1</i>	<i>CPDO /ACDPO (One)</i>

Let submissions of Mr. Ray, learned counsel for the State Respondents be heard on 24.04.2024 as a 'Specially Fixed Matter' at 10.30 a.m.

**SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)**

A.K.P