

**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 159 of 2023**

*Sandip Das* -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and  
Date of order

02  
20.07.2023

For the Applicant : Mr. M.N. Roy,  
Mr. G. Halder,  
Ld. Advocates.  
For the State respondent : Mr. G.P. Banerjee, Ld. Advocate.  
For the Pvt. Respondent No. 4 : Mr. D. Banerjee, Ld. Advocate.  
For the PSC, WB : Mr. S. Bhattacharjee, Ld. Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> 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 for the contesting parties, the case is taken up for consideration sitting singly.

Liberty is granted to the learned counsel for the applicant to serve the notice upon the Learned Advocate General before the next date.

Submission of Mr. Roy, learned counsel for the applicant, is that the Recruitment Rule in question 590 dated 19.12.2003 is void in law since it was issued by one Commissioner of the Department who is not the authorised official to issue such Recruitment Rule on behalf of the Government. Further, such Recruitment Rule was not published in the Official Gazette. It only appears to be a Departmental Order. Thus, this purported Recruitment Rule is bad in law and thus not enforceable. Mr. Roy also points out that the respondent department, Department of Health & Family Welfare is not the competent authority to issue such Recruitment Rule. As per the Rules of Business, such Recruitment Rules are to be published and notified only by the Department of Finance.

As submitted earlier by Mr. D. Banerjee, learned counsel for the Private Respondent No. 4, Mr. G.P. Banerjee, learned counsel for the State respondents also emphasises on the point that this application filed in 2023 challenging a promotion order issued in the year 2007 and 2013 is completely barred by limitation. Thus, this application is not admissible due to limitation. Before concluding his submission, Mr. Banerjee draws my attention to para 8(c) of page 12 in the application and submits that the Tribunal does not have

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the required jurisdiction to consider such prayer regarding how the respondent should fill up the posts of Senior Editor, Out Door Publicity Officer and Audio Visual Officer. It is the domain and responsibility of the respondent authorities to consider and decide how any particular post/posts are to be filled up by which cadre or through which process.

Appearing on behalf of the Public Service Commission, West Bengal, Mr. Sourav Bhattacharjee, learned counsel submits that the Commission also adopts the submissions made by Mr. G.P. Banerjee on behalf of the State respondents. Mr. D. Banerjee, learned counsel for the Private Respondent No. 4, submits again that this application is not admissible in this Tribunal since it is barred by limitation. Any impugned order passed by the respondent in the year 2009 and 2013 do not have any ground to be challenged in this Tribunal after a lapse of 20 years. The Notification No. 590 was issued by the respondent department on 19.12.2003.

Responding to the submissions regarding admissibility of this application under limitation ground, Mr. Roy files a copy of the judgment of the Hon'ble Apex Court (2015) 9 SCC 252. Relying on the judgment of this matter in the Apex Court, Mr. Roy submits that challenging any vires is not barred by any limitation.

Concluding the submissions, all the learned counsels are of the view that since this matter relates to challenging of the Recruitment Rule and since it will involve various points of law for consideration of the Tribunal, this matter may be placed to be heard by a Bench comprising two members (Judicial and Administrative).

In view of the above submissions, let this matter be placed before a Bench comprising two members (Judicial and Administrative) under the heading "**Admission Hearing**" on **27.03.2024**.

CSM/SS

**SAYEED AHMED BABA**  
**Officiating Chairperson & Member (A)**