

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 303 of 2024

Himadri De & Others -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicants	: Ms. D. Pramanik, Mr. S. Hossain, Ld. Advocates.
<u>03</u> 28.02.2025	For the State Respondent Nos. 1,2 & 4 (Finance Department)	: Mrs. S. Agarwal, Ld. Advocate.
	For the Added Respondent No. 6	: Mr. M.N. Roy, Mr. G. Halder, Mrs. P. Sasmal, Ld. Advocates.
	For the Respondent Nos. 7,9,10, 11 & 12	: Mr. Sourav Bhattacharjee, Ld. Advocate.
	For the Respondent Nos. 8 & 13	: Mr. Subarna Das, 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 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Mr. M.N. Roy, learned counsel appearing on behalf of the added respondent no. 6 has filed reply. Let the same be kept on record.

Vakalatnama filed by Mrs. Subarna Das, learned counsel appearing on behalf of the respondent no. 13 be kept on record.

Ms. D. Pramanik, learned counsel appearing on behalf of the applicants files a memo no. 837-PAR dated 03.05.2024 be kept on record. Copy of the memo has also been served upon the other side.

Mr. Roy has opposed this application on the following two grounds :

- (i) Constructive res judicata; and
- (ii) Limitation.

Submission is that the applicants have prayed in this application before this Tribunal for setting aside the Notification No. 9099-F dated 23.09.2009. Submission is that the same prayers were part of the application by which these applicants had

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approached this Tribunal in OA 1435 of 2009, OA 1538 of 2009 and OA 1609 of 2009. Attention has been drawn to the several remarks and observations of the Tribunal while hearing these three applications. The following observation of the Tribunal while hearing the above mentioned matters are of our interest today :

(i) “In all the three applications, Notification dated 22.03.2001 and 23.09.2009 ante-dating date marginal of WBJAAS with WBAAS w.e.f. 01.04.1989 has been challenged.” The above observation was recorded in para 2 of the Tribunal’s order in OA 1609 of 2009 passed on 16.01.2012. Submission is that being unsuccessful in challenging the Notification No. 9099-F dated 23.09.2009 in the earlier OA 1435 of 2009, OA 1538 of 2009 and OA 1609 of 2009, the applicants cannot challenge this Notification again before this Tribunal in this application. The Hon’ble High Court while hearing the WPST did not give any liberty to the applicants’ side to file fresh application before this Tribunal praying for setting aside the impugned memo no. 9099-F. The application in COST 2 of 2012 with CAN 3 of 2017 (Old No. CAN 11241 of 2017) and CAN 4 of 2018 (Old No. CAN 1323 of 2018) in the case of “The Higher and State Audit Accounts Services Association, West Bengal & Ors. v. The State of West Bengal & Ors.” was withdrawn by the applicants.

(ii) This application has also been opposed by the respondent no. 6 on the ground of limitation. The applicants have challenged the Notification No. 9099-F dated 23.09.2009 by filing this application before this Tribunal on 26.06.2024. Submission of Mr. Roy is that such application praying for setting aside the

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Notification published way back in 2009 cannot be assailed before this Tribunal after lapse of more than nearly 15 years.

- (iii) Presenting by not present their appointment letters, the applicants have suppressed an important fact before this Tribunal that the applicants were born in the cadre by getting their appointment letters on and after 07.05.2001. The Notification No. 3317-F dated 22.03.2001 with regard to merger of West Bengal Junior Audit and Accounts Services with the West Bengal Audit and Accounts Services giving effect from 01.03.2001 was prior to their appointment in the service.

Concluding his response today, Mr. Roy has cited the operative part of the judgment in OA 1435 of 2009, OA 1538 of 2009 and OA 1609 of 2009 is an obiter dicta and nothing more.

Ms. Pramanik responds to the point of res judicata by submitting that the new cause of action arose only after the respondent authorities started giving promotions to some of the mergerist officers without regard to the seniority of the applicants. It became obvious that without challenging the Notification No. 9099-F dated 23.09.2009, such an application could not have been admissible before this Tribunal. In this application, ante-dating and merger are not the subject matters of challenge. The applicants primarily had made a prayer in this application against the respondent authorities for non-publication of seniority list. Therefore, it is not barred by res judicata since this issue was not an issue before this Tribunal in the earlier three applications. Regarding the point of limitation raised by Mr. Roy, the above clarification is applicable and therefore, point of limitation does not arise in this application.

Responding to the earlier plea that the petitioners were born

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in service after the cut off date of 01.03.2001, Ms. Pramanik disagrees and points out that the West Bengal Public Service Commission had communicated their recommendation to the Finance Department for appointment on 04.12.2000, earlier than the cut off date. Therefore, it cannot be agreed that the applicants were borne in the cadre after the cut off date, irrespective of the fact that their appointment letters were eventually issued at a later date.

The Tribunal while hearing this matter on 02.09.2024 had recorded that reply on behalf of the State's side in particular the Finance Department is very necessary to proceed further. Despite a direction to the Finance Department, no such reply has been filed before this Tribunal. Such direction is repeated today to the Finance Department for filing a reply in this matter, positively by the next date. The Tribunal in its earlier order had directed the State respondents, particularly the Finance Department to clarify the following points :

- (i) Has the Memo. No. 9099-F dated 23.09.2009 been implemented in totality or not ?
- (ii) Whether a unified Gradation List was published or not?
- (iii) Compliance/non-compliance of the directions of this Tribunal in OA 1435 of 2009, OA-1538 of 2009 and OA 1609 of 2009.

The reply to be filed by the Finance Department shall cover the above areas. Rejoinder, if any may be filed in the meantime.

It has also been informed by the learned counsels that one WPA No. 4378 of 2025 is pending before the Hon'ble High Court.

Let the matter appear under the heading **"Hearing"** on **10.06.2025.**

SS/HS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)