

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 470 of 2022.

WEST BENGAL AUDIT AND ACCOUNTS SERVICE OFFICERS ASSOCIATION -Versus- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Advocates.
<u>3</u> 17.8.2022	For the State Respondents	: Mr. G.P. Banerjee, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4th August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

It appears from the order dated 5th August, 2022 passed by the learned Registrar that since despite service of notice none had appeared on behalf of the State respondents, Mr. G.P. Banerjee, learned advocate, who normally appears on behalf of the State authorities was requested to appear on behalf of the State respondents and he appeared. Today, also he appears on behalf of the State respondents. The learned Legal Remembrancer, West Bengal is directed to regularise the appointment of Mr. Banerjee.

At the very outset, Mr. M.N. Roy, learned advocate appearing on behalf of the applicant submits that leave may be granted to correct the typographical error in the penultimate line of the reliefs that is prayer 8(a) of the application.

Leave granted.

In the application West Bengal Audit and Accounts Service Officers Association, the applicant, has prayed for certain reliefs, the relevant portion of which is as under :-

"...a) An order do issue directing the concerned respondent authorities to forthwith determine the inter-se-seniority of the officers belonging to "West Bengal Audit and Accounts Service" with effect from

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01.03.2001 as per Notification No. 3317-F Dated Kolkata, the 22nd March, 2001 as well as the Notification No. 9099-F Dated, Kolkata, the 23rd September, 2009 keeping in mind the inter-se-seniority of the officers belonging to the unified West Bengal Audit & Accounts Service as on 01.03.2001 shall remain undisturbed as indicated in the Notification No. 9099-F dated Kolkata, the 23rd September, 2009 and to publish the gradation list of them within a stipulated time period.

b) A further order to issue directing the concerned respondent authorities to consider and dispose of the representation dated 25-04-2022 by passing a reasoned and speaking order in accordance with law and rules prevailing in this regard after giving an opportunity of personal hearing and to communicate the decision thereto within a stipulated time period...”.

It appears that by Notification dated 22nd March, 2001 issued by the Joint Secretary to the Government of West Bengal, being annexure ‘A’ to the application, sanction was granted to the merger of West Bengal Junior Audit and Accounts Service with West Bengal Audit and Accounts Service with effect from 1st March, 2001 and West Bengal Junior Audit and Accounts Service stood abolished with effect from 1st March, 2001. Thereafter, the Joint Secretary had issued a notification dated 23rd September, 2009, which is as under :-

“In terms of notification No. 3317-F dt. 22.03.2001 the West Bengal Junior Audit & Accounts Service was unified with the West Bengal Audit & Accounts Service w.e.f. 1st March, 2001.

2. The question of antedating the said merger to 1981 was under consideration of the Government for quite some time past. After careful consideration of the matter the Governor has now been pleased to give effect on the said unification from 1.4.1981. The unification will have notional effect from 1.4.1981 and actual benefits will be given from 1.3.2001. The Governor has further been pleased to order that inter-se-seniority of the officers

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belonging to the unified West Bengal Audit & Accounts Service as on 1.3.2001 shall remain undisturbed....”.

It appears the said notification dated 23rd September, 2009 was the subject matter of challenge in OA 1435 of 2009 (Jadab Chandra Banerjee & 12 others – vs- The State of West Bengal & Others) and in OA 1538 of 2009 (Higher & State Audit Accounts Service – vs- The State of West Bengal & Others) which were disposed of on 16th January, 2012 by a judgement, the relevant portion of which is as under :-

“....26. It is seen that though the State Government has finalized the Recruitment Rules of the merged service vide Notification dated 24.6.04 and revised the cadre schedule vide Notification dated 19.1.04, the interse seniority has not yet been finalized. We direct the State Government to finalize this matter, including the question raised regarding the position of 1999 batch WBAAS officers within a reasonable period of time – one year. The status of the officers of unified cadre of 1.3.01 is protected under Notification dated 23.9.09 and in view of the averment on behalf of the State respondents that the matter is under their consideration, we consider it inappropriate at this stage to express any view regarding the position of 1999 batch in the seniority list.

27. In view of the discussion above, there being no merit in the application, all the three applications are dismissed....”.

Aggrieved, one of the applicants therein filed a writ petition before the High Court, being COST 2 of 2012 with CAN 3 of 2017 (old No. CAN 11241 of 2017) CAN 4 of 2018 (Old No. CAN 1323 of 2018) (The Higher and State Audit Accounts Services Association, West Bengal & Ors – vs- The State of West Bengal & Ors. which was disposed of as evident from the order dated 2nd February, 2022 by an order, which is as under :-

“....Learned Advocate on record of the petitioners submits, on instruction, that his clients do not intend to proceed with instant writ petition. Though the written instruction has not been filed but he has shouldered the

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responsibility of such statement, as according to him, the same has been communicated by his clients.

In view of the above, the writ petitions dismissed as not pressed.

Consequently the connected applications are also dismissed...”.

It is submitted by Mr. Roy that since by memo dated 23rd September, 2009 it was stipulated that inter-se-seniority of the panels belonging to the unified West Bengal Audit and Accounts Service as on 1st March, 2001 shall remain undisturbed, direction may be issued upon the respondents to frame seniority rules being WBA & AS cadre and/or gradation list following the memo number 9099-F dated 23rd September, 2009.

Submission is though representation dated 25th April, 2022, mistakenly typed 25th April, 2021, being annexed ‘C’ to the application was furnished before the Principal Secretary to the Government of West Bengal, Finance Department, Howrah, the respondent no. 2 now re-designated as Additional Chief Secretary to the Government of West Bengal, Finance Department, it has not been considered. Aggrieved the original application has been filed. Submission is the respondents may be directed to consider the said representation, being annexure C to the application, at the earliest.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents submits, if directed, the State respondents shall consider the said representation, being annexure ‘C’ to the application, in accordance with law.

Having heard the learned advocates for the parties and as prayed for on behalf of the applicant, the application is disposed of by directing the Additional Chief Secretary to the Government of West Bengal, Finance Department, - the respondent no.2, to dispose of the representation dated 25th April, 2022, being annexure C to the application by passing a reasoned order to be communicated to the parties within fifteen weeks from the date of presentation of a copy of this order downloaded from the website of the

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Tribunal after giving an opportunity of hearing to the general secretary of the Executive Committee of the applicant and also other employees similarly situated after due notice, in the light of the Notification No. 9099-F dated 23rd September, 2009 and keeping in view the circulars and notifications which were in force at the relevant point of time.

(SOUMITRA PAL)
CHAIRMAN.

Skg.