

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 485 of 2022.

SUBHAS MONDAL AND SIX OTHERS-Versus- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicants	: Mr. M.N. Roy, Mr. G. Halder, Advocates.
<u>4</u> 18.8.2022	For the State Respondents	: Mrs. S. Agarwal, 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.

In this application Subhas Mondal, Niren Malakar, Rudra Narayan Dolai, Pradip Kumar Samanta, Samerendra Hazra, Pinaki Saha And Amitabha Giri, the applicants have prayed for certain reliefs, the relevant portion of which is as under :-

“...a) An order do issue thereby setting aside/quashing the impugned transfer order passed vide Memo No. 898-Sc/Apt/1A/3P/2022 date 22.07.2022 by the respondent no. 3 herein i.e. The Commissioner of School Education with immediate effect as the Commissioner of School Education, West Bengal is not the appointing authority nor the disciplinary authority of your applicants.

b) An order do issue upon the concerned respondent authorities specially the respondent no. 2 i.e. the Principal Secretary to the Government of West Bengal, Department of School Education to forthwith consider and dispose of the representation of the applicants dated 28th July, 2022 herein in its correct prospectiv by giving an opportunity of hearing and to pass a reasoned and speaking order...”.

ORDER SHEET

Form No.

SUBHAS MONDAL AND SIX OTHERS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 485 of 2022.

The matter was taken up on 10th August, 2022 when an interim order was passed directing the respondents not to give effect to the order of transfer dated 22nd July, 2022 in respect of the applicants till 22nd August, 2022 or until further orders whichever is earlier. It was also recorded that since the issue involved is a question of law, the matter was directed to appear today under the heading "Admission Hearing" and opportunity was given to the respondents to file reply.

It is submitted by Mr. M.N. Roy, learned advocate for the applicants that the applicants belonged to West Bengal State Service (Group A) in view of the notification dated 22nd February, 2008 and all appointments to the West Bengal State Services and posts belonging to Group 'A' shall be made by the Governor. However, Governor may, by a general or special order, and subject to such conditions as he may specify in the order, delegate to any authority subordinate to him, the power to make such appointments. Submission is as transfer to any post is an appointment to the post and as the memo dated 22nd July, 2022 issued by the Commissioner of School Education, West Bengal, the respondent no. 3 does not show that he was delegated by the Governor to issue such memorandum, the order may be set aside and quashed.

Submission is since the Governor of West Bengal is the appointing/disciplinary authority of the applicants and his power has been delegated to the Principal Secretary, School Education Department, Government of West Bengal, the respondent no. 2, further relegation of the said power bestowed upon him or on the Commissioner of School Education Department is illegal and unjustified.

It is submitted by Mrs. S. Agarwal, learned advocagte appearing on behalf of the State respondents that the order of transfer dated 22nd July, 2022 is just and proper.

It is evident from the memo dated 22nd July, 2022 issued by the Commissioner of School Education, West Bengal, the respondent no. 3, that he has not spelt out in what manner he has exercised his power. Since the

ORDER SHEET

Form No.

SUBHAS MONDAL AND SIX OTHERS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 485 of 2022.

applicants belonged to West Bengal State Service, Group A and all appointments to West Bengal State Service and posts belonging to Group A shall be made on the Governor and the Governor may by general or special order, subject to such condition delegate to any authority subordinate to him, make such appointment and as the Governor has delegated his power regarding transfer on the Principal Secretary, as evident from the submission on behalf of the applicants, the question is whether a delegatee has the power to further delegate his power on the Commissioner. Since it is a settled principle of law that a delegatee cannot delegate his power, the answer has to be in the negative. Moreover, as the Commissioner in the memo containing the order of transfer dated 22nd July, 2022 has not spelt out how he has exercised his power, the memo is bad in law and illegal. Accordingly, the memo dated 22nd July, 2022 relating to the applicants is set aside and quashed. The application is allowed.

(SOUMITRA PAL)
CHAIRMAN.

Sk.

ORDER SHEET

Form No.

SUBHAS MONDAL AND SIX OTHERS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 485 of 2022.

WEST BENGAL ADMINISTRATIVE TRIBUNAL