

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. – OA 678 OF 2022

DEBASISH SARKAR - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and

Date of order

6

21.03.2023

For the Applicant : Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay,
Advocates

For the Respondent Nos.1 and 2 : Mr. Saurav Deb Ray,
Ms. Anjana Bhattacharya,
Mr. Raja Bag,
Departmental Representatives

For the Respondent Nos. 3 and 4 : Mr. Gautam Pathak Banerjee,
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.

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

Mr. Tanmoy Chattopadhyay, learned counsel for the applicant submits a copy of memo No.3741-F dated 18th July, 1964, which was earlier quoted by the respondent. Reference in particular is made to paragraph (e) which implies that the District Magistrate, being the appointing authority, was not the competent authority to pass such an impugned order, the competent authority would be the next higher authority to the District Magistrate, either the Divisional Commissioner of the concerned Division or the Department.

Mr. Chattopadhyay, relying on paragraph 18 of (2015) 4 SCC 334 : State of Punjab and Others Versus Rafiq Masih (White Washer) and Others, further submits that in the instant case the applicant will be covered by this judgement of the Hon'ble Apex Court in paragraph (i), (iii) and (iv).

Supplementary affidavit, bringing some subsequent facts, filed by the learned counsel for the applicant be kept on record. A copy has been served upon

ORDER SHEET

Form No.

DEBASISH SARKAR

Case No. : **OA 678 OF 2022**

Vs.

THE STATE OF WEST BENGAL & ORS.

the respondents.

Appearing on behalf of the State respondents, Mr. Gautam Pathak Banerjee, learned counsel brought to our notice memo No.3741-F dated 18th July, 1964 in which the relevant paragraph 2(c) is relied and it is quoted hereunder:

“2.

(c) The orders or notification of promotion or appointment of a Government servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the Government servant concerned should, immediately on such cancellation be brought to the position which he would have held but for the incorrect order of promotion or appointment.”

Mr. Banerjee, responding to the reference made by the applicant's side to the Apex Court judgement *Rafiq Masih (supra)* submits that the judgement covers for those government employees who have retired and does not cover serving government employees. Further Mr. Banerjee, responding to the mention of the applicant's side the memo No.3741-F dated 18th July, 1964, submits that reliance should be made to paragraph (c) of the same memorandum as well.

Let the matter be listed under the heading “Further Hearing” on 13.09.2023.
Reply / rejoinder, if any, in the meantime.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.