

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 678 of 2022

Debasish Sarkar -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. Gangadhar Das, Ld. Advocate.
	For the Respondent Nos. 1 & 2	: Mr. A. De, Depttl. Rep. Ms. R. Sarkar, Depttl. Rep.
<u>04</u> 12.12.2022	For the Respondent Nos. 3 & 4	: Mr. G.P. Banerjee, 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.

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

In this application, the prayer is for setting aside the impugned order No. 843/(7)/Estt. dated 31.08.2022 appearing at page 82. From the submissions and documents, it appears that the applicant was promoted from the post of Group-D to the post of Lower Division Clerk w.e.f. 06.10.2010 issued in a written order No. III/959/Estt. dated 06.10.2010 by the Office of the District Magistrate & Collector, Uttar Dinajpur. After a lapse of almost 12 years, the respondent realised that the promotion awarded to the applicant in the year 2010 was a mistake and before issuing a fresh order, the respondent asked the applicant to submit his written reply on the anomaly so detected. The applicant duly submitted a detailed reply appearing at page 83 highlighting the fact that he has been discharging his duties as Lower Division Clerk and UDC past 12 years with all sincerity. The applicant has also been receiving the salary fixed by the office. However, after examination of the applicant's reply, the respondent issued the final order which fixed the promotion from Group-D to Lower Division Clerk w.e.f. 01.02.2012 instead of 06.10.2010 as well refixing his pay and allowances.

Submission of learned counsel for the applicant is that this order is illegal and be set aside and the respondent barred from recovery of dues from him in future. His further submission is that during this period of 12 years, he was again promoted to the post of Upper Division Clerk on 10.07.2016.

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Learned counsel also states that having submitted his reply, the respondent did not consider the facts mentioned in the reply.

Mr. G.P. Banerjee, learned counsel for the State respondents submits that State has the authority under the law to cancel/modify any such transfer/promotion orders whenever any mistake is detected. He cites in particular the Memorandum of Finance Department No. 3741-F dated 18.07.1964, the relevant portion of which is as under :

“.....(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.”

Learned counsel for the applicant prays for time so that on the next date he will submit copies of Tribunals' order in similar cases. The applicant being not satisfied with the revised order of his promotion issued on 20.09.2022, has submitted a representation before the Additional District Magistrate (General), Uttar Dinajpur ventilating his grievances and requesting withdrawal of the impugned order dated 20.09.2022. A copy of one such representation submitted by the applicant, Debasish Sarkar is in record.

The matter is admitted.

Let the matter appear under the heading **“Hearing”** on **08.02.2023**.

Learned counsel for the applicant prays for an interim order restraining the respondents to recover dues, if any, from the applicant.

Prayer is not allowed at this stage since the learned counsel for the applicant has prayed for accommodation to submit relevant orders from the Hon'ble Apex Court.

The Departmental Representatives for the State respondents also adopted the submissions made by Mr. G.P. Banerjee.

CSM/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)