

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 85 of 2022.  
DEB NARAYAN SETH – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G. Halder, Advocate.
<u>4</u> 14.3.2022	For the State Respondents	: Mr. M.N. Roy, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

In this application Deb Narayan Seth, the applicant, District Inspector of School (PE), Darjeeling under the Department of School Education. has prayed for several reliefs, the relevant portion of which is as under :-

*“(a) ....Pending disposal of the instant original application the respondent authorities be directed to not to give effect or further effect to the reasoned order passed vide Memo No. 174-SE-(Law) (A/SE) 5S-11/2021 dated 10.02.2022 and impugned order of transfer of the applicant issued under Memo No. 662-Sc/Apt/1A/19P/2020 dated 26<sup>th</sup> July, 2021 herein, pending disposal of the instant Original Application.*

*(b) Pending disposal of this instant Original Application the respondent authorities be restrained to give effect to any release order if any issued in the name of the applicant pertaining to the Memo No. 662-Sc/Apt/1A/19P/2020 dated 26<sup>th</sup> July, 2021, whereby the applicant has been transferred to Contai Sub Divisional, Purba Medinipur. ....”.*

I find parties have filed reply and rejoinder which are on record.

It appears from the impugned order dated 26<sup>th</sup> July, 2020 that the applicant, who is a District Inspector of Schools (Primary Education)

**ORDER SHEET**

Form No.

DEB NARAYAN SETH.

Case No. **OA 85 of 2022.**

-Vs-  
THE STATE OF WEST BENGAL & ORS.

Darjeeling has been transferred to Contai Sub Division, Purba Medinipur as ADI/S(SE).

Referring to memo dated 4<sup>th</sup> January, 2022, Mr. G. Halder, learned advocate for the applicant, submits since the applicant, the DI of School has been transferred as ADI, Schools (Secondary Education), a lower post, he would be under the control of the District Inspector of Schools. Further, referring to the annexure at page 21 of the application, it is submitted that the District Inspector of Schools functions as the Head Office and is assisted by ADI of Schools and therefore, the order of transfer dated 26<sup>th</sup> July, 2021 is an order of demotion.

Moreover, the order of transfer dated 26<sup>th</sup> July, 2021 issued by the Commissioner is bad in law as the Governor to the State of West Bengal is the appointing/disciplinary authority of the applicant and thus under the law he has delegated his power upon the Principal Secretary, School Education Department, Government of West Bengal. However, it appears from the impugned order dated 26<sup>th</sup> July, 2021 that further delegation of power has been made upon the Commissioner of School Education by the Principal Secretary, which is illegal and unjustified. Therefore the order contained in the memo dated 26<sup>th</sup> July, 2021 and consequent orders be set aside and quashed.

Mr. M.N. Roy, learned advocate appearing on behalf of the State respondents, relying on the reply submits that ADIs are also posted in the office of DIs in both primary and secondary education departments where both officers work in tandem for smooth functioning of the DI/s.

With regard to the further delegation of power upon the Commissioner of School Education, it is submitted that the Commissioner is the cadre controlling authority of the applicant and it is clear from the order of transfer that the same was issued with the approval of the higher authority in the School Education Department.

**ORDER SHEET**

Form No.

DEB NARAYAN SETH.

Case No. **OA 85 of 2022.**

-Vs-

THE STATE OF WEST BENGAL & ORS.

There is no dispute that the applicant, DI/S(PE), Darjeeling has been transferred as ADI/S(SE) Contai Sub Division Purba Medinipur. The question is whether the post of ADI/S(SE) is under the control of DI. Though in the reply it has been stated that the office of DI/s and ADI/s work in tandem for smooth functioning of the office of the DI of School, however the issue has not been dealt with or answered in the reply. In this regard, it is appropriate to refer to the relevant portion of the memo dated 4<sup>th</sup> January, 2022 issued by the Secretary to the Government of West Bengal, the relevant portion of which is as under :-

*“...DIs shall similarly supervise so that ADIs/AIs/Sis and District /Sub District level education officers under the control of DI shall not remain away from head quarter without specific leave...”*. Thus it is apparent that the ADI/S are *“under the control of DIs.”* Therefore, the transfer of the applicant, a DI, as ADIs is a demotion and therefore, order of transfer order cannot be sustained.

With regard to the issue whether the Commissioner of School Education, West Bengal, - the respondent no. 3 has the jurisdiction to issue the order of transfer of the applicant, it is appropriate to set out the relevant portion of the reply, which is as under :-

*“.....I state that, the Commissioner of School Education is the Cadre Controlling Authority of the applicant and also of the fact the it is clear from the transfer order that the same was issued with the approval of the higher authority in the School Education Department as would be evident from page 18 of the Original Application...”*

Since the Governor has delegated his power regarding transfer on the Principal Secretary, the question is whether a delegatee has the power to further delegate his power on the Commissioner. Since it is a

**ORDER SHEET**

Form No.

DEB NARAYAN SETH.

Case No. **OA 85 of 2022.**

-Vs-  
THE STATE OF WEST BENGAL & ORS.

settled principle of law that a delegatee cannot delegate his power, the answer has to be in the negative. This borne out by the fact that the Deputy Secretary to the Government of West Bengal by the order of the Governor on 15<sup>th</sup> June, 2018 had issued a notification regarding promotion of thirty-two Assistant Inspector of Schools as evident from annexure 'A' to the application.

Accordingly, the memo dated 26<sup>th</sup> July, 2021 relating to serial no. 9, that is the applicant, is set aside and quashed. Consequently, the reasoned order dated 10<sup>th</sup> February, 2022 issued by the Principal Secretary, School Education Department, being annexure 'E' to the application is also set aside and quashed. The application is allowed.

(SOUMITRA PAL)  
CHAIRMAN.

Sk.

**ORDER SHEET**

Form No.

DEB NARAYAN SETH.

-Vs-

Case No. **OA 85 of 2022.**

THE STATE OF WEST BENGAL & ORS.

WEST BENGAL ADMINISTRATIVE TRIBUNAL