

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 997 of 2019

Nishi Kanta Sil -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr S. Bhattacharjee, Ld. Advocate.

For the State respondent : Mrs. S. Agarwal, Ld. Advocate.

19
05.07.2023

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.

The prayer in this application is for setting aside the impugned order dated 11.11.2019 passed by the respondent No. 4. The impugned order was passed in terms of a direction by the Tribunal in OA-281 of 2018, in which, the prayer for enhancement of pay in terms of G.O. 9008-F(P) was considered and rejected. The rejection was made since the respondent realised that the appointment of the applicant was not against any sanctioned post, thus, he was not entitled to avail financial benefits under G.O. 9008-F(P).

Mr. S. Bhattacharjee, learned counsel for the applicant submits that the stipulation (ix) of the G.O. 9008 states that engagement can be made only against sanctioned post is relevant only for contractual workers and not for casual workers. Moreover, the respondent had granted the benefit of G.O. 9008-F(P) to the applicant from time to time. Moreover, as per the order of the respondent dated 28.09.2016, pay and allowances were fixed for the applicant as per the G.O. 9008-F(P) and subsequently, 4011-F(P) and 1107-F(P). By this, it is evident that the applicant is a casual worker and eligible for all benefits under G.O. 9008-F(P) and subsequent notifications.

Mrs. S. Agarwal, learned counsel for the State respondent refers to the introductory para of G.O. 9008-F(P) in which both the casual, daily rate workers and contractual workers had been defined together who are entitled for the benefits of 9008-F (P) under this memo.

After hearing and considering the submission, it is the observation of the Tribunal that the Memo No. 9008-F(P) dated 16.09.2011 is applicable only for those contractual/casual workers who had been appointed in such post

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against sanctioned vacancies. However, it is also observed that this applicant had been enjoying several financial and remunerative benefits as stipulated in different memorandums issued by the Government besides Memo No. 9008-F(P) dated 16.09.2011. In this particular case, this applicant had enjoyed such benefits under Memo No. 4011-F(P) dated 20.05.2013 and Memo No. 1107-F(P) dated 25.02.2016. It is also observed that by an order dated 28.09.2016, the respondent passed an order to the effect that overdrawn amount found during the month of September, 2016 will be summarily realised from the concerned person. Accordingly, by another order dated 26.10.2016 Rs.11,035/- was deducted from the applicant's pay as overdrawn. The same order also fixed Rs.8,835/- as his due, assuming it is the fixed remuneration after the overdrawn amount of Rs.11,035/- has been deducted. By issuing the above two orders, the Tribunal observes that, firstly, before such deduction is to be made no opportunity was given to the applicant against such deduction of overdrawn from his pay. Secondly, neither the order no. 466 dated 28.09.2016 nor order no. 501 dated 26.10.2016 state any reason why the applicant was being given excess amount erroneously. Thirdly, it is also observed that the respondent has not mentioned any reason as to why the applicant was not entitled to receive enhanced remuneration under memorandum nos. 9008-F(P), 4011-F(P) and 1107-F(P) issued by the Finance Department on different dates.

Therefore, the respondent has failed to give any opportunity to the applicant before such overdrawn amount was deducted and also for the fact that the impugned order no. 466 dated 28.09.2016 and order no. 501 dated 26.10.2016 failed to give any reason as to why the applicant was not entitled for any benefit under the G.Os 9008-F(P), 4011-F(P) and 1107-F(P).

In view of the above observations, the Tribunal sets aside the order no. 466 dated 28.09.2016 and order no. 501 dated 26.10.2016 with the direction to the Respondent No. 5, the Superintendent, Jalpaiguri Central Correctional Home to pass a fresh reasoned order giving specific reasons as to why under existing relevant memorandums this applicant was not entitled for any financial benefit. Such a reasoned order be passed only after a notice is issued

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to the applicant mentioning the reason why any excess amount paid by the respondent erroneously should not be deducted. The applicant should be given the opportunity to reply to such notice. The entire exercise of issuing a notice, receipt of the reply to the notice by the applicant and finally passing a fresh speaking and reasoned order by the respondent should be completed within a period of two months from the date of communication of this order.

Accordingly, the application is **disposed of**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS