

ORDER SHEET

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-686 of 2023

Sri Basudev Dolui. -- **VERSUS** – The State of West Bengal & Others.

Serial No. and
Date of order

For the Applicant

: Mr. Goutam Pathak Banerjee,
Learned counsel.

07
04.04.2025

For the State Respondents

: Mr. Manujendra Narayan Roy,
Learned counsel.

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.

The prayer in this application is for setting aside the impugned orders no. 442 dated 19.12.2018 and 305 dated 11.07.2023. Though appointed as a Medical Technologist, Grade-III but subsequently the services of the applicant was terminated due to his involvement in a criminal case. A prayer was made before the competent authority but the same was not considered and his termination from service remained in force.

The applicant was appointed as a Medical Technologist (ECG), Grade-III on temporary basis by the order of Director of Health Services on 18.01.2017. This appointment was provisional and subject to medical fitness and police verification report clearance. The appointment letter also made it clear that such services will be terminated if their medical fitness and police verification report are adverse. While filling up the PVR Form, the applicant mentioned his involvement in a criminal case No. 244/08 dated 11.09.2008 pending before the court of Ld. Judicial Magistrate at Uluberia, Howrah. This was confirmed by a report of the Deputy Inspector General of Police, Intelligence Branch in its report dated 22.05.2018. Since a criminal case was pending, his PVR was returned without any comment. Later, by a correspondence dated 04.01.2024, it was informed that the applicant was acquitted from the criminal case by the Ld. Court of Judicial

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Magistrate, 1st Court, Uluberia. By enclosing the order dated 31.05.2023 of such acquittal, the applicant furnished a prayer before the Director of Health Services on 05.06.2023 praying for reinstatement in the post of Medical Technologist.

The Director of Health Services considered the acquittal order and the representation of the applicant praying for his reinstatement and passed a reasoned order which was also communicated to the applicant on 30.09.2024. The reasoned order rejected his request for re-instatement and is being assailed in a supplementary application.

In the reasoned order, the Director of Health Services, after mentioning the important land marks of this case in chronological order came to the conclusion that such termination was justified and the question of reinstatement does not arise. The primary reason for such rejection appears to be the observation that the applicant had “suppressed material facts before the appropriate authority”. Although, no details of such “concealment of facts” has been shown but the Tribunal would like to assume that it is details in the PVR which was submitted by the applicant at the time of his appointment. The Tribunal does not find any fact which was possibly suppressed by the applicant. In the PVR appearing at Column -13, the following question was to be answered by the candidate :-

“Have you ever been convicted by a Court of any offence or charge-sheeted by the Police in connection with any criminal proceedings? If so, the full particulars of the case should be given.”

Given this question the applicant in his hand written reply recorded the following :-

“Not convicted by a Court but Bagnan P.S. case no. 244/08 dated 11.09.2008(G.R.No.-1136/08) which ended with charge-sheet and still pending before the Court of Ld. J.M. at Uluberia, Howrah.”

From the above reply to the question at para 13, it cannot be and is

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not in dispute that the applicant ever suppressed any fact relating to any criminal proceedings. Further, the question relates to whether he was convicted by a Court or not and also charge-sheeted by Police or not. As regards the first question of offence, the applicant was not convicted by any Court of Law. Therefore, the Tribunal does not accept the ground given by the Director of Health Services that there was “concealment of facts”. On the contrary, the applicant was candid enough to state that a particular criminal case is pending against him. At the point of submitting this PVR, such case was pending but he was not convicted. The respondent authority has also made known that such criminal case was closed and the applicant was acquitted on 31.05.2023 by the 1st Court of Ld. Judicial Magistrate, Uluberia, Howrah.

From the above facts, it can well be established that the applicant has come out clean and unscathed from such charges. The presumption of innocence lies in his favour. Therefore, the Tribunal does not find any impediment before the respondent authorities to consider his representation and reinstate him in the post of Medical Technologist (ECG), Grade-III. In a more or less similar case, the Hon’ble Supreme Court in Civil Appeal No. 8510/2011 in the matter of State of West Bengal and others. –Vs.- Mitul Kumar Jana passed a direction directing the State side to consider the case of appointment to the post of Constable in West Bengal Police. Interestingly, in the cited case, Mitul Kumar Jana had allegedly suppressed material information by answering No against the said Column No. 13 in which it was asked whether he was ever convicted by any Court of Law or charge-sheeted by the Police.

To conclude, this Tribunal after perusing the documents carefully has come to find that the applicant had not suppressed any fact while filling the PVR. Therefore, it was incorrect on part of the Director of Health Services to observe “concealment of facts” in his reasoned order dated 27.09.2024.

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In view of above facts, his termination of his service does not have the force of any Law and it is not sustainable now. The very validity of such termination order passed in Memo. C/442 dated 19.12.2018 is not sustainable anymore in the face of his acquittal by the competent Court of Law from all the charges against him. With this acquittal from the Court of Law, the applicant's unblemished record is restored and his candidature does not face any impediment for being re-appointed to the post of Medical Technologist (ECG), Group-III.

With the above observation, this Tribunal quashes and sets aside the reasoned order of the Director of Health Services, Govt. of West Bengal communicated to the applicant in Memo. 525-P dated 30.09.2024 with further direction to reinstate the applicant within eight weeks from the date of communication of this order.

The application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.