

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS

Case No – CCP 78 OF 2017

**AMIT KUMAR SARKAR Vs Mr. Sourav Das, IAS, Principal Secretary, Department of Public Health Engineering,
Government of West Bengal.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
05 <hr/> 11.07.2018	<p><i>For the Contempt Petitioner : Mr. D.N. Ray, Mr. S. Ghosh, Mr. B. Nandi, Learned Advocates.</i></p> <p><i>For the Contemnor O.P. : Mr. G.P. Banerjee , Learned Advocate.</i></p> <p style="text-align: center;"><i>The applicant has prayed for issuance of contempt rule for wilful violation of judgment and order dated June 16, 2016 passed by this Tribunal in OA No. 526 of 2015. The operative portion of the order in paragraph 10 of the judgment is as follows :</i></p> <p style="text-align: center;"><i>“Having regard to the findings made in the foregoing paragraph, we find merit in the Application and accordingly we direct that the seniority of the applicant be restored by placing him above his immediate junior in the post of Assistant Engineer who was promoted to the post of Executing Engineer in terms of Notification dated 18.12.2007. This direction has to be complied with by issuing appropriate order within a period of 8 (eight) weeks from the date of</i></p>	

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communication of this order.”

The contemnor has filed an affidavit of compliance of the order and judgment passed by the Tribunal which is considered by us.

Having heard Learned Counsel representing both parties, we find that the Tribunal gave direction for restoration of seniority of the applicant Amit Kumar Sarkar by placing him above his immediate junior in the post of Assistant Engineer who was promoted to the post of Executive Engineer in terms of Notification dated December 18, 2007. It appears from Notification dated December 18, 2007 issued by Joint Secretary to the Government of West Bengal, Department of Public Health Engineering that one Nityananda Khan was placed in serial no. 5 in the said Notification. The draft gradation list of the Engineer Officers under the Directorate of Public Health Engineering published on April 05, 2012 indicates that the applicant Amit Kumar Sarkar was placed in serial no. 18, whereas Nityananda Khan was placed in serial no. 14. The said draft gradation list was finalised and published by the Department of Public Health Engineering on March 22, 2018, wherefrom it appears that the applicant Amit Kumar Sarkar is placed in serial no. 7, while Nityananda Khan was placed in serial no. 8.

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The purport of the judgment and order passed by the Tribunal on June 16, 2016 in OA No. 526 of 2015 is that the applicant must be placed in the seniority list just above his junior Nityananda Khan in the post of Assistant Engineer, so that the names can be recommended for appointment to the post of Executive Engineer in such a way that the applicant is placed just above Nityananda Khan for promotion to the cadre of Executive Engineer under the Department of Public Health Engineering. The compliance report submitted by the contemnor does not indicate that the applicant has been placed just above Nityananda Khan in the seniority list in compliance with the direction given by the Tribunal.

In view of our above findings, the compliance report submitted by the contemnor is not accepted by us. Under above circumstances, it was quite natural for us to give fresh direction to the contemnor to comply with the direction of the Tribunal or to face the contempt proceedings. However, it appears from compliance report of the contemnor that one Asis Kumar Naskar has filed one fresh application being OA No. 302 of 2018 before this Tribunal praying for reconsideration and modification of judgment and order passed by this Tribunal on June 16, 2016 in OA No. 526 of 2015. That apart, one review application being RVW 212/2017 filed

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by the State of West Bengal praying for review of the earlier order and judgment passed by the Hon'ble High Court on July 27, 2017 in WPST No. 184 of 2016, by which the order of the Tribunal for whose wilful violation the contempt application was filed was affirmed. It is relevant to point out that this Tribunal has given direction to the respondents/contemnor in OA No. 302 of 2018 to maintain status-quo on the issue of seniority and the said order will abide by the outcome of the review petition pending before the Hon'ble High Court. Consequently, we are not in a position to give direction to the contemnor to comply with the order of the Tribunal, until and unless OA 302 of 2018 is decided on merit and review application being RVW 212/2017 pending before the Hon'ble High Court is heard and disposed of.

In view of our above findings, let the contempt application go out of list with liberty to mention when both review application being RVW 212/2017 pending before the Hon'ble High Court will be heard and disposed of and OA 302 of 2015 will be decided on merit.

Let a plain copy of the order be supplied to both parties.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S

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