

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-  
The Hon'ble Justice Ranjit Kumar Bag  
&  
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA-1269 of 2015**

*Goutam Bhuiya*

Versus

*The State of West Bengal & Ors.*

Serial No. and  
date of order

Order of the Tribunal  
with signature

Office action with date  
and dated signature of  
parties when necessary.

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16/01/2019

**For the Applicant** : *Mr. D.N. Chatterjee,  
Mrs. C. Mukherjee,  
Ld. Advocates.*

**For the State Respondent :** *Mr. G.P. Banerjee,  
Mr. B.P. Roy,  
Ld. Advocates.*

*The applicant has prayed for quashing of the order dated December 02, 2015 issued by the Director of Industries, West Bengal, by which the applicant has been reverted from the post of Lower Division Assistant to the post of Group 'D'.*

*It appears from the materials on record that the applicant joined in the post of Darwan in the Government Industrial and Commercial Museum under the Directorate of Industries, Government of West Bengal on November 16, 1995. The applicant was confirmed in the service on June 28, 1998. The applicant was promoted from the post of Darwan to the post of Peon, Grade I on April 01, 1999. Subsequently, on December 02, 2015 the applicant was promoted from the post of Peon, Grade I to the post of Lower Division Assistant in the Directorate of Industries with retrospective effect from October 01, 2011 and fixation of pay was done as per option of the applicant in terms of Rule 11 of West Bengal Services (Revision of Pay and Allowances) Rules, 2009 (in short ROPA, 2009). The Director of Industries, West Bengal passed an order on December 02, 2015 (annexure 'A6' to the original*

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	<p><i>application) by which the applicant was reverted from the post of Lower Division Assistant to the post of Peon, Grade I and the amount of salary overdrawn by the applicant due to promotion was directed to be recovered in suitable installments. This impugned order dated December 02, 2015 is under challenge in the present application.</i></p> <p><i>Mrs. Mukherjee, Learned Counsel for the applicant contends that the order of reversion of the applicant from the post of Lower Division Assistant to the post of Peon, Grade I was passed to the disadvantage of the applicant without giving the applicant an opportunity of hearing. She further submits that the order of refund of overdrawal amount will be hardship to the applicant. She also submits that the applicant should be permitted to enjoy the salary drawn by him for working in the post of Lower Division Assistant for prolonged period of time as he had no role to play in granting him promotion by the Director of Industries.</i></p> <p><i>Mr. Banerjee, Learned Counsel for the state respondents submits that the applicant belongs to separate establishment of Government Industrial and Commercial Museum where separate Gradation List of Group 'D' employees is maintained. He further submits that promotion was erroneously granted in favour of the applicant on the basis of the combined Gradation List prepared by clubbing together Gradation List of the</i></p>	

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	<p><i>Directorate Headquarters and of the subordinate establishments of Government Industrial and Commercial Museum without obtaining prior approval of the Finance Department, Government of West Bengal. The gist of submission of Mr. Banerjee is that the erroneous promotion granted to the applicant can always be rectified in terms of Finance Department Memorandum No. 3741-F dated July 18, 1964.</i></p> <p><i>Having heard Learned Counsel representing both parties and on consideration of the background of passing the impugned order dated December 02, 2015, we find that the applicant was granted promotion from the post of Peon, Grade I to the post of Lower Division Assistant on the basis of the combined Gradation List prepared by clubbing together Gradation List of the Headquarters of the Directorate and the Gradation List of the subordinate establishment of the Government Industrial and Commercial Museum without obtaining prior approval of the Finance Department, Government of West Bengal. Since separate Gradation List was in existence in the subordinate establishment of Government Industrial and Commercial Museum which was taken into consideration by the Director of Industries, West Bengal at the time of granting promotion to the applicant, the said order of promotion was definitely erroneous and not justified under the Law. However, the applicant has been working in the post of Lower Division Assistant and getting salary</i></p>	

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Csm	<p><i>of the promotional post w.e.f. October 01, 2011 till date by virtue of the interim order passed by the Tribunal on December 18, 2015. Since the applicant has drawn the salary of the promotional post in discharge of duty of the said promotional post, the amount of salary overdrawn by the applicant for discharge of duty of the promotional post should not be recovered from the salary of the applicant, particularly when the applicant had no role in granting him promotion to the post of Lower Division Assistant.</i></p> <p><i>In view of our above findings, the impugned order dated December 02, 2015 passed by the Director of Industries, West Bengal (Annexure 'A6' to the original application) is set aside to the extent that "overdrawal shall be recovered from the salary of the applicant in suitable instalments as may be suitably determined subsequently." The respondent no. 2, Director of Industries, West Bengal is directed to grant salary of the applicant for the promotional post of Lower Division Assistant w.e.f. October 01, 2011 till this date of passing of the order by the Tribunal. With the above direction the original application stands <b>disposed of</b>.</i></p> <p><i>Let a <b>Plain Copy</b> of the order be supplied to both parties.</i></p> <p><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	

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