

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Present- The Hon'ble Justice Soumitra Pal (Chairman) &
The Hon'ble Dr.Subesh Kumar Das (Administrative Member)

Case No. OA - 135 OF 2020

MD. SHAMIM Vs. THE STATE OF WEST BENGAL & OTHERS.

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
<p style="text-align: center;"><u>03</u> 14.12.2020</p>	<p>For the Applicant : Mr.S.K.Nandi Advocate</p> <p>For the Respondent No. 1 and 2 : Mr.G.P.Banerjee Advocate</p> <p>For the Respondent No. 3 and 4 : Mr.M.N.Roy Advocate</p> <p style="text-align: center;">Affidavit of service filed today be kept on record.</p> <p style="text-align: center;">In this application, Md.Shamim, the applicant, has prayed for several reliefs, the relevant portion of which is as under:-</p> <p style="text-align: center;"><i>(a) An order directing the respondent no. 2 that is the Director General, West Bengal Fire and Emergency Services to withdraw, cancel and rescind in his impugned order dated 06.05.2019 issued under Memo No. WBFES/3455/L/10/2014 and issue an appointment letter in favour of the applicant to the post of Fire Engine Operator cum driver under the respondent authorities.</i></p>	

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	<p>(b) <i>An order to quash and set aside the impugned order dated 06.05.2019 passed by the Director General, West Bengal Fire and Emergency Services and further direct the respondent no. 2 to issue an appointment letter in respect of the post of Fire Engine Operator – cum- Driver under West Bengal Fire and emergency Services by setting aside and sticking of the purported report of the Deputy Inspector General of Police, Intelligence Branch vide Memo No. 741/S-61-2011/SA-II/VR dated 31.03.2013 communicated that the applicant is found to be unsuitable on the alleged ground of error except in police verification roll as regards the period of study in the schools of the applicant.</i></p> <p>(c) <i>An order directing the respondent authorities and specially the respondent no. 2 to issue forthwith a letter of appointment in favour of the applicant to the post of Fire Engine Operator cum Driver under the respondent authorities and to afford all</i></p>	

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	<p style="text-align: center;"><i>consequential benefits including seniority in terms of the merit list.</i></p> <p>It appears that earlier the applicant had moved an application being OA-340 of 2014 (Md.Shamim Vs. The State of West Bengal and Others) which was disposed of on 27th February, 2019 by passing an order.....</p> <p style="text-align: center;"><i>“.....directing the Director General of Fire and Emergency Services, Government of West Bengal - the respondent no. 2 to consider the matter regarding appointing the applicant by passing a reasoned order to be communicated to the parties within sixteen weeks from the date of obtaining a copy of this order after giving an opportunity of hearing and after verifying the records and after considering the documents which may be furnished by the applicant. It is made clear that we have not gone to the merits of the matter and all points are kept open to be dealt with by the respondent no. 2.....”</i></p> <p>Pursuant to the said order, we find the</p>	

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	<p>Director General, West Bengal, Fire and Emergency Services, the respondent no. 2 has passed an order, the relevant portion of which is as under:-</p> <p style="text-align: center;"><i>“ Hence, after careful consideration of the representation as well as the submissions of the petitioner and after application of my judicious mind, I am convinced that being the appointing authority of the post in question, at present I am not in a position to issue an appointment letter in favour of the applicant. The matter has already been referred to the Competent Authority for re-consideration and taking appropriate decision.</i></p> <p style="text-align: center;"><i>Thus, the representation of the applicant has been considered and disposed of accordingly.....”</i></p> <p>Mr.S.K.Nandi, learned advocate appearing on behalf of the applicant submits that since the matter is pending before the authority for reconsideration for taking appropriate decision, necessary order may be passed.</p>	

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	<p>Mr.G.P.Banerjee, learned advocate appearing on behalf of the respondent no. 1 and 2 submits since the applicant had given wrong information regarding his enrolment in the school, which has been admitted in paragraph 6 (h) of the application, the applicant was found unsuitable. It is also evident from the memo. dated 31st January, 2013, which was also the subject matter in the earlier original application filed by the applicant, no order may be passed.</p> <p>Mr.M.N.Roy, learned advocate appearing on behalf of the respondent no. 3 and 4 referring to the reply filed by the state respondent in earlier original application submits as the memo. dated 31st January, 2013, which shows that he was found unsuitable, and of which the original applicant was aware of and cannot be now reopened, as it would amount to review of the earlier order passed in OA-340 of 2014, no order be passed.</p> <p>In reply, Mr.Nandi referring to the rejoinder, particularly paragraph 4 thereof filed by the applicant</p>	

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	<p>in the original application, being OA-340 of 2019, submits that since it was stated therein that no specific reason was recorded for rendering him unsuitable appropriate order may be passed.</p> <p>Heard learned advocates for the parties. That the applicant was found "unsuitable" is evident from the copies of the reply and rejoinder filed in original application being no. OA-340 of 2014 annexed to this application. Therein the applicant did not challenge the intimation dated 1st January, 2013 issued by the Assistant Secretary to the Government of West Bengal to the Additional Director General of Police, Intelligence Branch, West Bengal, appearing at page 50 of the application which was part of the reply filed by the respondents intimating the petitioner was "unsuitable". Though the memo. dated 31st January, 2013 was part of the record it was not questioned. It is also evident from the present application that the petitioner in paragraph 6 (h) of the application has admitted that due to error wrong information was given by the applicant in the verification roll. Therefore there is no dispute that the order passed in</p>	

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BLR	<p>OA-340 of 2014 on 27th February, 2019 has become final. Any order passed on the present application now would amount to reopening the entire issue already settled by order dated 27th February, 2019 passed in Oa-340 of 2014. Therefore, no order is passed on the application. The application is disposed of.</p> <p>Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p style="text-align: center;">(S.K.DAS) MEMBER (A)</p> <p style="text-align: center;">(SOUMITRA PAL) CHAIRMAN</p>	