

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. **OA-1499 of 2013**

Snehasis Bagchi

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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14/02/2019

For the Applicant : *Mr. M.N. Roy,*
Ld. Advocate.

For the State Respondent : *Mr. B.P. Roy,*
Ld. Advocate.

The applicant has prayed for direction upon the respondents for granting him promotion to the post of Caretaker for Salt Lake building under Directorate of Commercial Taxes, Government of West Bengal.

It appears from the materials on record that the applicant has been working as Assistant Caretaker in the Salt Lake building of Directorate of Commercial Taxes, Government of West Bengal. The applicant previously approached the Tribunal unsuccessfully and thereafter challenged the order of the Tribunal before the Hon'ble High Court by filing W.P.S.T. No. 616 of 2004 on March 23, 2007. The Division Bench of the Hon'ble High Court disposed of W.P.S.T. No. 616 of 2004 by observing that the candidature of the applicant should be considered for promotion to the post of Caretaker as and when there is a vacancy in accordance with law. The contention of the applicant is that one Arindam Guha who was promoted to the post of Caretaker on adhoc basis retired from service on June 30, 2013 and the post of Caretaker is lying

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	<p><i>vacant.</i></p> <p><i>The issue for determination of the Tribunal is whether the applicant should be considered for promotion to the post of Caretaker in the Salt Lake building of Directorate of Commercial Taxes. There is no dispute that the post of Caretaker of Salt Lake building, Directorate of Commercial Taxes was created on permanent basis by G.O. No. 1016-F(P) dated April 18, 1994 issued by the Finance Department, Taxation, Government of West Bengal. The affidavit submitted by the respondent no. 2, Commissioner of Commercial Taxes, Government of West Bengal indicates that the Government of West Bengal has framed rules under Article 309 of the Constitution of India on July 09, 1977 for recruitment to the post of Caretaker, Sales Tax building under Directorate of Commercial Taxes, Government of West Bengal. It is relevant to quote the provisions of said notification no. 3169-F(P) dated July 9, 1977 issued in the name of the Governor by the Special Secretary to the Government of West Bengal, Department of Finance, Taxation, which is as follows:</i></p> <p style="text-align: center;"><u>“NOTIFICATION</u></p> <p><i>In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor is pleased hereby to make the following rule regulating the recruitment to the post of Caretaker, Sales Tax</i></p>	

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	<p><i>Buildings under the Commercial Taxes Directorate of the Finance (Taxation) Department, Government of West Bengal namely:-</i></p> <p style="text-align: center;"><u>R u l e</u></p> <p><i>The method of recruitment to the post of Caretaker, Sales Tax Buildings under the Commercial Taxes Directorate of the Finance (Taxation) Department, Government of West Bengal, shall be detailed below:-</i></p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: center;"><u>Name of the post</u></td> <td style="text-align: center;"><u>Method of recruitment</u></td> </tr> <tr> <td style="text-align: center;">Caretaker</td> <td style="text-align: center;">By transfer of an Inspector of Commercial Taxes on tenure basis for three years”.</td> </tr> </table> <p style="text-align: center;"><i>By order of the Governor K.G. Kutty Spl. Secy. To the Govt. of West Bengal”</i></p> <p><i>On close scrutiny of the above notification dated July 09, 1977 we find that the post of Caretaker of Sales Tax Buildings, Directorate of Commercial can be filled up only by way of transfer of an Inspector of Commercial Taxes on tenure basis for a period of three years. The affidavit of the respondent no. 2 further indicates that the post of Inspector of Commercial Taxes has been abolished and the existing Inspectors of Commercial Taxes have been observed in the newly</i></p>	<u>Name of the post</u>	<u>Method of recruitment</u>	Caretaker	By transfer of an Inspector of Commercial Taxes on tenure basis for three years”.	
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	<p><i>created cadre of Assistant Commercial Tax Officer under G.O. No. 759-F(P) dated February 27, 2001 issued by the OSD & Deputy Secretary to the Government of West Bengal, Department of Finance, Taxation, Government of West Bengal. The post of Caretaker of Salt Lake Buildings under Directorate of Commercial Taxes could have been filled up by way of transfer of an Inspector of Commercial Taxes before February 27, 2001 and now can be filled up by way of transfer of an Assistant Commercial Tax Officer on or after February 27, 2001 on tenure basis for a period of three years. Admittedly, the applicant is neither holding the post of Inspector of Commercial Taxes, nor the post of Assistant Commercial Tax Officer and as such the applicant is not eligible to be considered for promotion to the post of Caretaker, Salt Lake Buildings under Directorate of Commercial Taxes, Government of West Bengal in terms of the provisions of the Recruitment Rules. So, the applicant cannot be considered for promotion to the post of Caretaker of Salt Lake Building under Directorate of Commercial Taxes. It is pertinent to point out that the provisions of recruitment rules have not been properly placed and pointed out before the Division Bench and the Hon'ble High Court at the time of passing of the order on March 23, 2007 in W.P.S.T. No. 616/2004.</i></p>	

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Csm	<p><i>In view of our above observation, the original application is dismissed.</i></p> <p><i>Let an urgent Xerox Certified Copy of the order be supplied to both parties on priority basis, subject to fulfillment of the legal formalities.</i></p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	