ORDER SHEET WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble Urmita Datta (Sen) Member (J) & Hon'ble Dr. Anup Kumar Chanda, Member (A)

OA-482 of 2018

Asis Kumar Naskar	Vs	The State of West Bengal & Others.
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	Asis Kumar Naskar <u>Vs</u> The State of West Be	engal & Others.
Serial No. and	Order of the Tribunal with signature	Office action with date
Date of order. 1	2	and dated signature
		of parties when
		necessary
		3
02	For the applicant : Mr. Anindya Lahiri,	!
05.07.2018	Mr. Subit Kumar Mor	ndal.
	Learned Advocates.	,
		!
	For the respondent : Mr. Goutam Pathak E	Banerjee,
	Learned Advocate.	
	For the Private Respondent : Mr. Dibyendu Naraya	an Pov
	Mr. Sankha Ghosh,	in Noy,
	Mr. Biswarup Nandy	, <u> </u>
	Learned Advocates.	<i>'</i>
		!
	_, , , , , , , , ,	
	The instant original applica	tion has
	been listed today on mentioning made by the	e learned
	counsel for the applicant as well as orde	er dated
	29.06.2018 passed by the Bench consisting of	Hon'ble
	Justice Mr. Ranjit Kumar Bag and Hon'ble Dr	. Subesh
	Kumar Das. As per the counsel for the applican	it in one
	original application being no. OA-526 of 20)15, this
	Tribunal had passed order dated 06.06.2016	whereby
	following order has been passed :-	
	"Having regard to the findings	s made in
	Foregoing paragraph, we fi	nd merit
	in the application and accord	dingly we
	direct that the seniority	of the
Page /1	applicant be restored by pla	cing him

Form No. Asis Kumar Naskar

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
02 05.07.2018	above his immediate junior in the post of Assistant Engineer who was promoted to the post of Executive Engineer in terms of Notification dated 18.12.2007. The direction has to be complied with by issuing appropriate order within a period of 8 (eight) weeks from the date of communication of this order. The application is accordingly disposed of. "	
Page /2	The abovementioned order was subsequently affirmed by the Hon'ble High Court by their judgement dated 27.07.2017 passed in WPST No. 184 of 2016 (State of West Bengal & Ors. Vs. Amit Kumar Sarkar & Anr.). However, as per the counsel for the present applicant, the applicant was adversely affected by the subsequent gradation list and was not made party in the earlier OA, therefore, he preferred an OA being No. OA-302 of 2018 which was heard on 05.06.2018 and this Tribunal passed the following order:-	

Form No. Asis Kumar Naskar

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
02 05.07.2018	"In view of the above, the respondents are directed to maintain Status Quo, which will	
	be abided by the outcome of the review	
	petition being RVW 212 of 2017. In the	
	meantime, both the respondents the Official	
	Respondents and Private Respondent are	
	directed to file reply by four weeks and	
	rejoinder, if any, by two weeks thereafter."	
	In the meantime the applicant in the OA No.	
	OA-526 of 2015, Mr. Amit Kumar Sarkar has filed one	
	contempt application being No. CCP-78 of 2017, which	
	was heard on 07.06.2018 observing inter alia :-	
	"The counsel for the	
	contempt petitioner has submitted	
	that the order has not been fully	
	complied with though the respondent	
	by their compliance report has tried to	
	show that the said Shri Nityananda	
	Khan who was immediate junior to the	
Page /3	applicant has been lowered down to	
	the seniority list of Assistant Engineer,	

Form No. Asis Kumar Naskar

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
02 05.07.2018	but the issue of consideration of the case of the applicant for the purpose of promotion to the post of Executive Engineer with regard to the notification dated 18.12.2007 has not been complied. Therefore, there is not full compliance of the order."	
	However, as per the present applicant, since he feels aggrieved against the order, he has filed the instant original application for review of the order passed in the CCP-78 of 2017.	
	The original application was initially listed before the Court No. 2 consisting of Hon'ble Justice Ranjit Kumar Bag and Hon'ble Dr. Subesh Kumar Das having determination of gradation list under code 5 and was taken up for admission hearing on 29.06.2018 and on the prayer of the applicant, the matter was released from the said Bench and the matter has been listed before this Bench.	
Page / 4	During the course of hearing, on the query made by the Bench, counsel for the applicant has	

Form No. Asis Kumar Naskar

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
02	referred two judgements. In Rama Rao & Others Vs.	
05.07.2018	M.G. Maheshwara Rao & Others reported in (2007) 14	
	SCC page 54 Paragraph 8, stated inter alia that :-	
	"The High Court referred to the	
	decision in K. Ajit Babu V. Union of India	
	to find that the proper procedure to be	
	adopted by persons situated like the	
	assistants in this case and who were not	
	made parties to a prior decision which	
	had effect on their career, was to move	
	an application under Section 19 of the	
	Act. In that decision, this Court noticed	
	that even though the judgement of an	
	Administrative Tribunal may only be a	
	judgment in personam, occasionally, it	
	could also operate as a judgment in rem	
	and those affected by it had the right to	
	approach the Tribunal againwith an	
	application under Section 19 of the Act	
	when they are affected as a consequence	
Page / 5	of the earlier decision and are entitled to	

Form No. Asis Kumar Naskar

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
02	seek reconsideration of the view taken in	
	the earlier decision. The High Court,	
05.07.2018	following, held that the assistants had	
	the locus standi to move the application	
	under Section 19 of the Act before the	
	Tribunal and seek reconsideration of the	
	earlier decision passed by it without	
	notice to them and to show that the said	
	order required reconsideration or that it	
	was not a legal or a proper one. We see	
	no reason not to accept the reasoning	
	adopted by the High Court. "	
	In Shivdeo Singh and Others Vs State of Punjab	
	and Others reported in AIR 1963 Supreme Court 1909	
	paragraph stated interalia that :-	
	"The other contention of	
	Mr. Gopal Singh pertains to the second	
	order of Khosla, J., which, in effect,	
	reviews his prior order. Learned counsel	
Page / 6	contends that Art. 226 of the Constitution	

Form No. Asis Kumar Naskar

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
02 	does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already	
J .		

Form No. Asis Kumar Naskar

Vs.The State of West Bengal & Others.

pointed out, it is precisely because they were not made	
because they were not made	T.
parties to the previous proceedings,	
though their interests were sought to	
be affected by the decision of the High	
Court, that the second application	
was entertained by Khosla, J. "	
The counsel for the applicant has submitted that	
since the affected party cannot file any review, he has to	
challenge the said order by which he was affected but	
was not made party to that case, can file original	
application and hence he has filed the instant original	
application.	
However, the counsel for the private respondents	
(the applicant in the original application OA-526 of	
2015) has vehemently opposed the admission of the	
instant original application. As per the counsel for the	
private respondent, the applicant cannot challenge the	
order passed in CCP as the concerned order has already	
been affirmed by the Hon'ble High Court and the review	
	though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J. " The counsel for the applicant has submitted that since the affected party cannot file any review, he has to challenge the said order by which he was affected but was not made party to that case, can file original application and hence he has filed the instant original application. However, the counsel for the private respondents (the applicant in the original application OA-526 of 2015) has vehemently opposed the admission of the instant original application. As per the counsel for the private respondent, the applicant cannot challenge the order passed in CCP as the concerned order has already

Form No. Asis Kumar Naskar

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
02	application is pending. The counsel for the respondent	
05.07.2018	has nothing to say on the point of determination.	
	Heard the parties and perused the	
	judgements. From the perusal of the judgements, it is	
	noted that as per the applicant, as he has no remedy for	
	filing review against any order by which he has been	
	adversely affected, he can only file original application	
	before the Tribunal with proper determination. Since	
	the OA has been filed and this Bench consisting of	
	Hon'ble Mrs. Urmita Datta (Sen), Member (J) and	
	Hon'ble Dr. Anup Kumar Chanda, Member (A) does not	
	have any determination over the said issue thus we	
	cannot hear the OA as it is not a review application.	
	Therefore, we are unable to entertain the original	
	application for want of determination. Let the matter is	
	released from this Bench and be listed before the Bench	
	having determination under Code 5. Both the parties are	
	at liberty to mention before the appropriate Bench.	
	DR. A.K. CHANDA URMITA DATTA (SEN)	
sc	MEMBER (A) MEMBER (J)	

Form No. Asis Kumar Naskar

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

Form No. Asis Kumar Naskar

Vs.
The State of West Bengal & Others.

Serial No. and Date of order.	Order of the Tribunal with signature 2	Office action with date and dated signature
1		of parties when necessary 3

Form No. Asis Kumar Naskar

Vs.The State of West Bengal & Others.

Serial No. and	Order of the Tribunal with signature	Office action with date
Date of order.	2	and dated signature
1	2	of parties when necessary
1		3