

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 1270 OF 2015

Raisul Azam v/s The State of West Bengal & Ors.

| 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 |
|------------------------------------|---|--|
| 14 10.06.2019 | <p>For the Applicant : Mrs. C. Mukherjee, Learned Advocate.</p> <p>For the Respondent : Mr. G.P. Banerjee, Mr. B.P. Roy, Learned Advocates.</p> <p>The applicant has prayed for direction upon the respondents for cancellation of order dated December 2, 2015 issued by the Director of Industries, West Bengal, by which the applicant was reverted from the post of Upper Division Assistant (UDA) to the post of Bearer.</p> <p>The applicant joined in the post of Bearer in the Government Industrial and Commercial Museum under Directorate of Industries, West Bengal on June 2, 1982. He was confirmed in the said post on June 2, 1985. The applicant got promotion to the post of Store Keeper in the Directorate of Industries (Headquarters), West Bengal on adhoc basis on August 1, 1991. The adhoc promotion of the applicant in the post of Store Keeper was regularised w.e.f. August 7, 2002 and he was declared as confirmed in the post of Store Keeper w.e.f. August 7, 2003. On April 10, 2012, the applicant got promotion to the post of UDA in the Directorate of Industries w.e.f. July 1, 2011. The applicant was reverted from the post UDA to the post of Bearer on the ground that the promotion of the applicant was erroneous.</p> <p>With the above factual matrix, Learned Counsel for the applicant contends that the applicant was qualified in all respects for promotion</p> | |

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to the post of Store Keeper under Directorate of Industries, Government of West Bengal. She further submits that there was no violation of any statutory rule or administrative direction in giving promotion to the applicant from the post of Bearer in the Government Industrial and Commercial Museum under Directorate of Industries to the post of Store Keeper under Directorate of Industries (Headquarters), Government of West Bengal. On the other hand, Learned Counsel representing the State respondents relied on the observations made by the Finance Department, Government of West Bengal on September 9, 2015 and submitted that the promotion of the applicant was erroneous in terms of Memorandum No. 3741-F dated July 18, 1964 issued by the Finance Department, Government of West Bengal. He further contends that the applicant was not eligible for promotion from the post of Bearer to the post of Store Keeper on the basis of separate gradation lists of Group D employees prepared for subordinate establishment of Directorate of Industries and gradation list of Group D employees of the Directorate of employees (Headquarters), Government of West Bengal.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the combined gradation list of Group D employees working under Directorate of Industries and its subordinate establishments was in existence in the year 2002, when the applicant was considered for promotion from the post of Bearer to the post of Store Keeper by the Director of Industries, West Bengal. The Director of Industries, Government of West Bengal gave a proposal to the Finance Department,

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Government of West Bengal for preparation of separate gradation list of Group D employees working in subordinate establishments and in the establishment of Directorate of Industries (Headquarters), which was approved by the Finance Department on September 9, 2015. While giving approval of the proposal of the Directorate of Industries, Government of West Bengal, the Finance Department made observation that the employees who have got promotion erroneously would be reverted in terms of Finance Department Memo No. 3741-F dated July 18, 1964. In view of such observation of the Finance Department, the applicant was reverted from the post of UDA to the post of Bearer on the ground that the appointment of applicant on promotion to the post of Store Keeper was erroneous.

On perusal of Memorandum No. 3741-F dated July 18, 1964 quoted in the observation of the Finance Department, we find that the order of erroneous promotion can be struck down or cancelled, when the employee who got promotion was not qualified in all respects for such promotion or the promotion was given in violation of the provisions of the statutory rules or the administrative directions issued from time to time by the Government of West Bengal. Nothing is on record to indicate that the applicant was not qualified in all respects for promotion from the post of Bearer to the post of Store Keeper under Directorate of Industries, Government of West Bengal. Nor do we find any violation of the statutory rules or administrative direction in granting promotion to the applicant from the post of Bearer to the post of Store Keeper in the year 2002. Perhaps, the only reason to brand the promotion of the applicant as erroneous by the respondent

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No. 2, Director of Industries, West Bengal is that the applicant was not eligible for promotion to the post of Store Keeper on the basis of separate gradation lists prepared for Group D employees working under Directorate of Industries and its subordinate establishments. The separate gradation list for Group D employees proposed by the respondent No. 2 and approved by the Finance Department of Government of West Bengal would come into existence only in the year 2015 and the same cannot have any retrospective effect in the year 2002 when the applicant got promotion to the post of Store Keeper on the basis of combined gradation list of Group D employees prepared for the Directorate of Industries and its subordinate establishments. The respondent No. 2 acted illegally and without proper application of mind by issuing the order of reversion of the applicant from the post of UDA to the post of Bearer by holding the promotion of the applicant to the post of Store Keeper as erroneous. In our view, the promotion of the applicant to the post of Store Keeper on the basis of combined gradation list of Group D employees prepared for Directorate of Industries (Headquarters) and its subordinate establishments in the year 2002 is not at all erroneous in terms of Finance Department Memo No. 3741-F dated July 18, 1964, as the said gradation list was in force at the relevant period of time.

In view of our above observation, we are constrained to quash the order dated December 2, 2015 issued by the respondent No. 2, Director of Industries, West Bengal for reversion of the applicant from the post of UDA to the post of Bearer under the Directorate of Industries, West Bengal. Accordingly, the said order dated

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| Rajib | <p>December 2, 2015 issued by the respondent No. 2, Director of Industries, West Bengal is quashed.</p> <p>The original application is, thus, disposed of.</p> <p>Let a plain copy of the order be supplied to both the parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p> | |
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