

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal (Chairman)****& The Hon'ble Mr. P. Ramesh Kumar (Administrative Member)**

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;">8</p> <hr/> <p>25.07.2019</p>	<p><b>Case No – OA 472 OF 2018 : TILOK CHAND MONDAL &amp; ORS. Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mr. Subrato Mukhopadhyay, Mrs. B. Roy Chowdhury, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya Advocate</p> <p><b>Case No – OA 473 OF 2018 : SANJIB DOLUI &amp; ORS. Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mr. Subrato Mukhopadhyay, Mr. Asim Hati, Ms. Daisy Basu, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya, Advocate</p> <p><b>Case No – OA 37 OF 2019 : PRIYAM UPADHYAY Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mr. Subrato Mukhopadhyay, Mr. S.K. Mitra, Mrs. B. Roy Chowdhury, Advocate</p>	

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	<p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya, Advocate</p> <p><b>Case No – OA 728 OF 2018 : APURBA LAL BARMAN &amp; ANR. Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mr. Subrato Mukhopadhyay, Mr. Asim Hati, Mrs. B. Roy Chowdhury, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya, Advocate</p> <p><b>Case No – OA 784 OF 2019 : KOUSHIK MARJIT Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mr. Subrato Mukhopadhyay, Mr. Iran Ray, Mrs. B. Roy Chowdhury, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya, Advocate</p> <p><b>Case No – OA 1001 OF 2018 : BIPLAB ROY Vs The State of West Bengal &amp; Ors.</b></p> <p>For the Applicant : Mrs. Sunita Agarwal, Advocate</p>	

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	<p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C, West Bengal : Mr. A.L. Basu, Mr. S. Bhattacharya, Advocate</p> <p>As issues are similar, yesterday O.A. 37 of 2019, OA 472 of 2018, OA 473 of 2018, OA 728 of 2018 and OA 784 of 2018 were taken up for hearing analogously and it was directed that the matters would appear today under the respective headings. The application being O.A. 1001 of 2018, wherein identical issue is involved, has come up in the list today under the heading “Order” and is also heard.</p> <p>In these applications, the applicants have prayed for a direction upon the respondents to give appointment to the post of Sub-Inspector in the Subordinate Food and Supply Service (Grade - III) under the Department of Food and Supply, Government of West Bengal on the basis of recommendation letter forthwith. Prayer has also been made to rescind the impugned order dated 15<sup>th</sup> May, 2018, issued by the Principal Secretary, Department of Food and Supplies, Government of West Bengal, Kolkata, the respondent no.2, contained in the Memo No. 1610-FS/0/Sectt/ CSS / 75-03 / 18 dated 24<sup>th</sup> May, 2018. The matters were admitted. Directions were issued to file</p>	

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	<p>reply and rejoinder. Though the State has filed reply in O.A. 472 of 2018 : Tilok Chand Mondal &amp; Ors. vs. The State of West Bengal and Others, it covers the issues raised in all other matters. For the sake of clarity and brevity we refer to the application of Tilok Chand Mondal.</p> <p>The applicants, in the applications, had participated in the selection process for the post of Sub-Inspector in the Subordinate Food and Supply Service (Grade - III) under the Department of Food and Supply, Government of West Bengal. Out of 1131 posts, in the first batch 892 candidates were issued letters of appointment and have been appointed. Subsequently 230 candidates who were also successful were nominated for appointment and were intimated that “the offer of appointment shall be issued on completion of pre appointment formalities by the appointing authority...”. As after nominations appointments have been kept in abeyance, applications have been filed praying for appointment.</p> <p>It appears that after nominations were made, Tilok Chand Mondal one of the applicants filed an application, being O.A. 1126 of 2017 (Tilok Chand Mondal &amp; Ors. Vs. The State of West Bengal &amp; Ors.) which was disposed of on 19<sup>th</sup> February, 2018 by passing</p>	

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	<p>an order, the relevant portion of which is as under :</p> <p style="text-align: center;">“In view of our above findings, we direct the respondent no. 2 to consider recommendation of the names of the applicants for appointment to the post of Sub-Inspector in the Subordinate Food &amp; Supplies Service (Grade-III) and to take a decision in this regard within a period of 12 (twelve) weeks from the date of communication of this order.</p> <p style="text-align: center;">The applicants are directed to communicate the order of the Tribunal along with copy of the application and all its annexures to the respondent no. 2 within a period of 2 (two) weeks from the date of this order.”</p> <p style="text-align: center;">Pursuant to the said order the Principal Secretary, Department of Food and Supplies, Government of West Bengal, respondent no. 2 had passed an order on 15<sup>th</sup> May, 2018, being annexure ‘P10’ to the application, wherein it has been stated that the West Bengal Staff Selection</p>	

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	<p>Commission had received a complaint regarding the genuineness of a candidate as well as the quality of evaluation and it has been recorded therein that the D.I.G. (Operations) and C.I.D., West Bengal have submitted a report to the Deputy Secretary, Department of Food and Supplies, Government of West Bengal under memo dated 12<sup>th</sup> March, 2018 wherein it has been stated that an enquiry had been conducted by them and “5.....discrepancy that have cropped up in course of selection of candidate in the exempted category as alleged by the Food and Supplies Department may require a thorough investigation regarding the selection procedure and for taking such action, the appropriate authority from the Food and Supplies Department may take necessary measures by initiating complaint from their end if any by lodging in their local police station.” (page 158 of the application)</p> <p>It appears from the said order dated 15<sup>th</sup> May, 2018 that F.I.R. was lodged in the New Market Police Station for proper investigation and in paragraphs 8 and 9 of the said order it has been recorded by the Principal Secretary, Department of Food and Supplies, Government of West Bengal that:</p> <p style="text-align: center;">“8. Now I am to decide on the rights and privilege of the 230 recommended candidates vis a vis the</p>	

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	<p>larger public interest more so when glaring inconsistencies have been observed by the department prior to the stage of issuance of appointment letters. On sifting through the documents and records and application of mind I have no doubt that the balance of convenience shifts in favour of the larger public interest and demands an open and time bound investigation to unearth the truth.</p> <p>9. Hence, it is decided that the issuance of appointment letters to the remaining nominated candidates in Phase I &amp; Phase II alongwith the 230 candidates from EC Category nominated in Phase III (which also comprises the names of the petitioners in instant cases, which are under disposal in compliance of the order of the Hon'ble WBAT) shall be kept in abeyance pending investigation of the case by the Police. Needless to state this Department will pursue with the police authorities for an early finalisation of the investigation and appropriate recommendation in public</p>	

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	<p style="text-align: center;">interest.....” (Page 159 of the application)</p> <p>It is submitted by Mr. Subrata Mukhopadhyay, Mrs. S. Agarwal and Mr. Asim Hati, learned advocates for the applicants, that as similarly situated candidates have been nominated and appointed, and as the applicants, who had appeared in the said selection process are successful and nominated, are on equal footing with the first batch of 892 candidates, the State authorities cannot deny employment. Though it is evident complaint was filed and on 15<sup>th</sup> May, 2018 F.I.R. was lodged in the New Market Police Station for investigation of the matter vide New Market P.S. case No. 181 dated 15<sup>th</sup> May, 2018 under section 120B / 420 / 465 / 468 I.P.C. &amp; 13 (2) read with Section 13 (1)(d) P.C. Act. 1988, however, as till date there is nothing on record to show that applicants are involved in the alleged illegal activities, appropriate order may be passed. Submission is against an interim order passed on 29<sup>th</sup> November, 2018 in O.A. 472 of 2018 directing appointment to the applicants subject to certain conditions, the State had filed a writ petition, being W.P.S.T. No. 23 of 2019. On 10<sup>th</sup> June, 2019 it was disposed of by an order, the relevant portion of which is as under :-</p> <p style="text-align: center;">“.....to consider the desirability of hearing the original</p>	

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	<p>application finally on the next date that it has fixed and disposing it of soon thereafter, without granting any unnecessary adjournment to any of the parties.</p> <p>We express no opinion on the merits of the claim set up in the original application and dispose of the writ petition with the observation as aforesaid.”</p> <p>Submission is that the report filed on behalf of the State respondents on 24<sup>th</sup> July, 2019 may not be accepted and relied on as it is undated and unsigned.</p> <p>Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents submits that the applicants had moved the original application being OA 1126 of 2017 which was disposed of by an order dated 19<sup>th</sup> February, 2018. Thereafter the matter was enquired into. As it is evident from the order dated 15<sup>th</sup> May, 2018 issued by the Principal Secretary, Department of Food and Supplies, Government of West Bengal, respondent No. 2 as there are anomalies in the recruitment process, accordingly the appointments have been kept in abeyance as evident from paragraph (e) sub-paragraph (i) to (v) of the said order which is just and proper.</p>	

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	<p>It appears that pursuant to the order dated 19<sup>th</sup> February, 2018 passed in O.A. 1126 of 2017, the Principal Secretary, Department of Food and Supplies, Government of West Bengal, respondent no. 2 had passed an order dated 15<sup>th</sup> May, 2018 which is under challenge. It is evident that the State authorities had lodged FIR being New Market P.S. case No. 181 dated 15<sup>th</sup> May, 2018 under section 120B / 420 / 465 / 468 I.P.C. &amp; 13 (2) read with Section 13 (1)(d) P.C. Act. 1988. The matter was taken up from time to time since 25<sup>th</sup> July, 2018. We find from 15<sup>th</sup> May, 2018, when FIR was filed till date, the investigation has not progressed at all. The written reply filed by the State respondents on 11<sup>th</sup> September, 2018 is silent in this regard. The unsigned and undated report furnished on behalf of the State respondent on 24<sup>th</sup> July, 2019 cannot be accepted.</p> <p>It is surprising that from 15<sup>th</sup> May, 2018 till date there is no progress in the investigation pursuant to the FIR lodged. The Tribunal had heard and adjourned the matter from time to time to enable the State respondents to go ahead with the investigation. Instead of making a positive effort to investigate, an undated and unsigned status report has been furnished which shows that nobody among the State respondents are prepared to accept authenticity of the said document which is surprising and</p>	

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	<p>it shows the respondent authorities are not interested in pursuing the FIR though more than one year has passed after it was lodged.</p> <p>It is nobody's case that if irregularities and malpractices as alleged with regard to the selection process are established and any of the applicants are found to be involved, steps cannot be taken against them. Hence, though more than one year has passed after FIR was lodged and as the investigation has made no progress and as the unsigned and undated report filed on 24<sup>th</sup> July, 2019 cannot be accepted as nobody on behalf of the administration accepts its authenticity and as it is admitted in the report dated 15<sup>th</sup> May, 2018 that in the same selection process "appointment orders for 700 candidates have been issued and 698 amongst them so far joined in the service" (page 155 of the application) and as the applicants are similarly situated and as the West Bengal Staff Selection Commission had issued intimation to the applicants nominating them for the said post and it has been mentioned therein the offer of appointment shall be issued on completion of pre-appointment formalities by the appointing authority and as till date there is nothing on record to show that the applicants herein have indulged in malpractices, that part of the report dated 15<sup>th</sup> May, 2018 keeping the appointments in abeyance cannot be sustained and is set aside and quashed. The applications are</p>	

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SCN.	<p>allowed. Accordingly, Principal Secretary, Department of Food and Supplies, Government of West Bengal, the respondent no.2 shall appoint the applicants within ten weeks from the date of completion of pre-appointment formalities such as medical examination and police verification. The said respondent no.2 is directed to furnish necessary papers regarding police verification and medical examination to each of the applicants within eight weeks from the date of presentation of a copy of this order. It is, however, made clear that this order will not prevent the law enforcing authorities to carry out the investigation pursuant to the FIR lodged so that the law may take its own course. It is made clear that the applicants for being appointed will have to clear police verification apart from medical examination. It is also made clear that the appointments made shall depend on the outcome of the investigation pursuant to the FIR lodged by the State authorities.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	