

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 563 of 2022

Apurba Sarkar & Ors. -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicants : Mr. G. Halder, Ld. Advocate.

For the State Respondents : Mrs. S. Agarwal, Ld. Advocate.

13
15.05.2025

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The applicants have filed this application praying for setting aside the impugned transfer order passed vide memo no. 898 dated 22.07.2022. By filing this application, the applicants have prayed for setting aside the another transfer order passed vide memo. no. 1687 dated 28.11.2022, which is also being assailed in this application.

Presenting his views on behalf of the applicants, Mr. Roy, learned counsel has submitted the following points :

Mr. Roy, learned counsel appearing for the applicants invites the attention of the Tribunal that Rule 6 of the West Bengal Service (Classification, Control and Appeal) Rules, 1971 as amended upto date has not been complied with, wherein, the power has been vested to the delegated authority of the Governor of West Bengal. According to him, such delegation empowers the Secretary, Education Department to act in compliance of the provision of Rule 6 supra.

Refuting the contention of Mr. Roy, learned counsel, Mrs. Agarwal, learned counsel for the State respondents relies on the e-office note appearing at page 27 of the Reply filed by the State which indicates the Secretary *prima facie* agree with the proposed transfer subject to some condition.

The Tribunal after hearing both the sides and being satisfied with the prayer of the applicants for staying of the transfer order, passed a direction on 13.09.2022 staying the operation of the transfer order.

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The primary argument on behalf of the applicants is that in terms of Rule 6(1) of West Bengal Services (Classification, Conduct & Appeal) Rules, 1971, all appointments to the West Bengal State Services Group A, shall be made by his Excellency the Governor. These applicants hold Group A post in terms of Notification No. 1440 dated 20.02.2008. By this Notification, services and posts carrying a pay or scale of pay with the maximum above Rs.10,175/- are to be classified as Group A post and services. The applicants holding the post of Assistant Inspectors having the pay above Rs.10,175/- are to be considered as holding the post of Group A. Therefore, such transfer order issued by the Commissioner of School Education is in violation of the existing rules. Further, the Commissioner of School Education neither being the appointing authority nor the Disciplinary Authority was not the competent person to issue such transfer orders for the applicants, who are Assistant Inspector of Schools and belong to Group A Services. Under Rules of Business, the powers of the Governor in such matters have been delegated to the Principal Secretary of the Department. Although, the Principal Secretary has been delegated such powers but then he is not competent to re-delegate such delegated powers upon his subordinates, like the Commissioner of School Education in this matter.

Mrs. Agarwal, learned counsel for the State relying on the reply draws attention to para g of the reply and submits that such transfer orders had the approval of the competent authority, which is the Principal Secretary obtained in e-file [File No. DSE-11013(12)/1/2022-ADMN-SEC-DSE] on 19.07.2022. Only after such approval of the competent authority, the Commissioner of School Education issued the transfer order of 196 Assistant Inspector of Schools. Copy of the e-office enclosed with the reply shows at note no. 15, the remarks of the Principal Secretary and at note no. 16, approval of the MIC (SED) dated 19.07.2022. Mrs.

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Agarwal further submits that after such approval of the competent authority on 19.07.2022, the transfer order was issued on 22.07.2022 by memo. no. 898 dated 22.07.2022.

After hearing the submissions of the learned counsels and after proper examination of the records, the Tribunal observes that, although the Principal Secretary himself did not put his signature in the transfer order, but had approved the proposal, as evident in the e-file. It is only the technicality that the signature of the Principal Secretary in the order was not appended. As is the prevalent norm in the administrative sphere, such approval of the competent authority is first taken and the signature in the order is given by the concerned officer, who deals with the matter. The Tribunal does not accept the plea of the applicants that the Principal Secretary to whom the power of the Governor has been delegated did not sign the transfer order. It is not the signature of the competent authority that matters; what is to be examined is, whether such transfer order had the approval of the competent authority or not. In this case, it has been amply proved that the Principal Secretary exercised his delegation of power by approving the proposal for such transfer in e-file. Therefore, the Tribunal is not satisfied that such transfer order no. 898 dated 22.07.2022 is in violation of Rule 6 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. It satisfies the Tribunal that the transfer order was signed by the Commissioner of School Education with prior approval of the Principal Secretary.

In view of the above observations, the Tribunal, not agreeing with the contentions of the applicants and not finding any merit in the prayers, **disposes of** this application without passing any order.

The interim relief passed on 13.09.2022 is vacated.

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SAYEED AHMED BABA
Officiating Chairperson & Member (A)