

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)  
& The Hon'ble Mr. P. Ramesh Kumar (Administrative Member)

Case No – OA 1088 OF 2017

**KOUSHIK CHATTERJEE & ORS. Vs 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
<p>10</p> <hr/> <p>26.09.2019</p>	<p>For the Applicant : Mrs. S. Mitra, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Advocate</p> <p>For the P.S.C., W.B.: Mr. A.L. Basu, Mr. S. Bhattacharya, Advocates</p> <p>In this application the applicants, who had participated for the post of Junior Engineer (Civil) in West Bengal Sub-Ordinate Service of Engineers, have prayed for certain reliefs, the relevant portion of which is as under:</p> <p>(a) An order directing the respondents, their agents, subordinates and successors particularly the respondent no.2 and 3 to include the vacancies of all the department which were reported to the PSC and to fill the posts in question of Junior Engineer Civil Branch;"</p> <p>The matter was admitted. Reply and rejoinder have been filed and are on record. It is submitted by Mrs.</p>	

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	<p>S. Mitra, learned advocate for the applicant since beyond the reported vacancies appointments have been given, entire panel may be set aside and appropriate order may be passed directing appointment to the applicants.</p> <p>Mr. A.L. Basu, learned advocate on behalf of the Public Service Commission, West Bengal, relying on the reply, submits that the entire selection process was in accordance with law and the total number of vacancies declared were filled up after the results of the Junior Engineers (Civil/Mechanical/Electrical) Recruitment Examination, 2016 were declared. Moreover, there was no tentative future vacancy. In this regard reliance has been placed on paragraph 9 of the reply.</p> <p>Mr. G.P. Banerjee, learned advocate on behalf of the State respondent, referring to the judgement passed by the Hon'ble Supreme Court in Harjinder Singh Sodhi Versus State of Punjab and Others : (1996) 6 SCC 322, supports the stand of the Commission. Moreover, it is submitted that the submission on behalf of the applicant is not reflected in the statement of facts and prayers in the application and it is beyond the scope of this application.</p> <p>Heard learned advocates for the parties.</p> <p>Since reply has been filed by the Public Service Commission, West Bengal and rejoinder has also been on record, it is appropriate to refer to paragraph 9 of the reply filed by the Commission, which is as under :</p> <p style="text-align: center;">“Statements made in paragraph</p>	

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	<p>6(h) and 6(i) of the said application are matters of record. I deny and dispute the same save and except what would appear from the record. I say that the list of 1082 finally recommended candidates to the post of Jr. Engineer (Civil) on the results of the Juniors Engineers (Civil / Mechanical / Electrical) Recruitment Examination, 2016 – Civil Br. Was circulated through the website of the Commission on 20.01.2017 vide memo No. A-P-1-P.S.C.(A). The letter mentioned in the para i.e., i) a letter from Department of Planning, Statistics &amp; Programme Monitoring bearing letter No. 599-DP/O/DP-1E-06 / 2014 dated 22.03.2017 &amp; ii) a letter from Sundarban Development Board bearing letter No.616 / SDB / 2E-2 / 2008 dated 04.04.2017 both were reported beyond the date of publication of the final list i.e., 20.01.2017. As per usual practice of the Commission the letters or requisition of vacancies from various departments were entertained if reported before the personality test</p>	

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	<p style="text-align: center;">of the examination.”</p> <p>The statements made in paragraph 9 have been dealt with in paragraph 5 of the rejoinder filed by the applicant, which is as under :</p> <p style="text-align: center;">“With reference to statements made in paragraph 5 to 10 of the said reply I deny the statements which are contrary to records and dispute the submissions and reiterate those made above. I further say that the respondent Nos. 2 and 3 in their said reply admitted that there was no such future vacancies for consideration as such it can be safely be said that the respondents authorities should take into consideration the vacancies reported later of the examination held and personality test held.”</p> <p>It is clear that the statements made in paragraph 9 of the reply have not been dealt with at all in paragraph 5 of the rejoinder. Therefore, statements made in paragraph 9 of the reply is deemed to be correct. Moreover, the subsequent vacancies in 2017 cannot be part of the original vacancies which were declared in the year 2016.</p>	

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	<p>In this regard it is appropriate to refer to the order of the Supreme Court, which is as under :</p> <p style="padding-left: 40px;">“This special leave petition is filed against the order of the Division Bench of the Punjab and Haryana High Court made on 29-1-1996 in the WP No. 4882 of 1995. No doubt, pursuant to the direction issued by this Court on the earlier occasion on 25-11-1994, the case of the petitioner was considered but he was not selected by the Punjab Public Service Commission to Punjab Civil Services Executive Branch. Three contentions have been raised by the learned counsel for the petitioner; firstly, that when this Court had directed to consider the case of the petitioner vis-a-vis others, the Public Service Commission should have evaluated the respective merit and found out whether the petitioner is more meritorious over those persons but that was not done. We find no force in the contention. A counter-affidavit has been filed by the Public Service Commission in the High Court in which it was pointed out that the</p>	

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	<p>relevant merit of the 12<sup>th</sup> respondent vis-a-vis the petitioner was considered and she was found to be more meritorious. The second contention was that the Public Service Commission having found him eligible, called on the Government to find whether there is an additional vacant post which would show that the petitioner was more meritorious. There was an additional post vacant but the Government had given false statement that the post was not available. We find no force in the contention. Admittedly, having been sought for nomination to the posts available in 1991, merit has to be considered only among the candidates for appointment to nine posts which arose in 1991. Therefore, the Government rightly did not consider the case for selection for subsequent vacancies which would affect the candidates who became qualified later. It is then contended that 50% of the marks were allotted to the interview and 50% marks were allotted for the record. Allotment of 50% for</p>	

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SCN.	<p>interview is arbitrary in view of the law laid down by this Court. We find no force in the contention. It is not the case that any written examination was conducted for consideration of the claims of the parties. Accordingly, the Public Service Commission and the Government have applied the principle of keeping 50% marks for the record and 50% for the interview. Under those circumstances, we do not find any illegality in the order passed by the High Court.”</p> <p>Hence, in view of the settled principles of law since we find that the statements made in the reply have not been controverted in the rejoinder and as we find the subsequent vacancies in March, 2017 cannot be the subject matter in this application, there is no merit in this application. The application is dismissed.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	