

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 187 OF 2016**

Arun Kumar Das 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
11 22.11.2018	<p>For the Applicant : Mr. G.P. Banerjee, Mrs. S. Agarwal, Learned Advocates.</p> <p>For the Respondents : Mr. M.N. Roy, Learned Advocate.</p> <p>For the Respondent No.5 : None.</p> <p>The applicant has prayed for direction upon the respondents to grant him promotion to the post of Upper Division Clerk with effect from the date on which the private respondent no. 6 got the promotion on cancellation of impugned order dated December 4, 2015 passed by the respondent no. 4 whereby the said respondent turned down the claim of the applicant for promotion to the post of Upper Division Clerk.</p> <p>The contention of the applicant is that he joined in the post of Lower Division Clerk on April 6, 1989, but he did not get the benefit of service due to pendency of the criminal cases against him. The further contention of the applicant is that he was ultimately acquitted of the charge in the criminal cases by the competent court of law and the said fact was duly communicated to the controlling officer of the applicant. It is also contended on behalf of the applicant that his service in the post of Lower Division Clerk was confirmed w.e.f. April 6, 1992 after</p>	

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acquittal of the applicant of the criminal charge by the competent court of law.

Mr. G.P. Banerjee, Learned Counsel for the applicant submits that the applicant got two benefits of Career Advancement Scheme before his retirement from service on January 31, 2011, though the benefit of promotion was not given to the applicant. Mr. Banerjee further submits that the respondent no. 6 being junior to the applicant in service got the benefit of promotion to the post of Upper Division Clerk and as such the applicant also should have been given benefit of promotion to the post of Upper Division Clerk with effect from the date on which the respondent no. 6 got the said benefit. He also submits that the question of serving in the promotional post by the applicant does not arise after his superannuation on January 31, 2011 and as such the provision of Rule 26 of WBSR Part-I has no manner of application in the case of the applicant.

Mr. M.N. Roy, Learned Counsel representing the state respondents, submits that the criminal case was pending against the applicant when his junior, the respondent No. 6 got promotion to the post of Upper Division Clerk and thereby the question of consideration of case of the applicant for promotion with effect from the date when his junior – respondent no. 6 got the promotion does not arise.

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Having heard Learned Counsel representing both parties and on consideration of the impugned order under challenge in the present application, we find that the benefit of promotion was not given to the applicant as the applicant had no opportunity to serve in the promotional post of Upper Division Clerk in terms of Rule 26 of WBSR Part-I. Since the applicant was given all the benefits of service including the benefits of Career Advancement Scheme after his acquittal of the criminal charge by the competent court of law, we are of the view that the respondents should consider the entitlement of the applicant to get promotion with effect from the date on which his junior namely respondent no. 6 got promotion to the post of Upper Division Clerk. We would like to point out that the applicant is entitled to get notional benefit of promotion as the applicant has already retired without discharging the duty of the promotional post, if the applicant is otherwise found suitable for promotion to the post of Upper Division Clerk.

In view of our above findings, the impugned order dated December 4, 2015 passed by the respondent no. 4 is hereby quashed. The respondent no. 1, Principal Secretary to the Government of West Bengal, Water Resources Investigation Development Department is directed to consider entitlement of the applicant to get promotion to the post of Upper Division Clerk with effect from the date on which the respondent no. 6 got promotion to the post of Upper Division Clerk. If the applicant is

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found to be suitable for promotion to the post of Upper Division Clerk, he will get the benefit of promotion notionally with effect from the date on which the respondent no. 6 got the said promotion and the actual financial benefit of the promotion will be given by way of retirement benefits of the applicant. The respondent no. 1 is directed to complete the entire exercise within a period of 12 (twelve) weeks from the date of communication of the order, and to communicate the same to the applicant within a period of 2 (two) weeks thereafter.

With the above direction, the original application stands **disposed of.**

Let a plain copy of this order be supplied to both parties.

( S.K. DAS )  
MEMBER(A)

( R. K. BAG )  
MEMBER (J)

Sanjib