

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 628 OF 2017

Chitra Nayek & 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
11 22.08.2019	<p>For the Applicants : Mr. D.N. Ray, Mr. S.N. Ray, Mrs. P. Sasmal, Learned Advocates.</p> <p>For the Respondent : Mr. S. Ghosh, Learned Advocate.</p> <p>For the Pvt. Respondent : Mrs. S. Mtra, Learned Advocate.</p> <p>The applicants have prayed for direction upon the respondents for fixing their seniority above the Clinical Instructors recruited directly through Public Service Commission, West Bengal (in short, PSC) after setting aside the seniority list published by the Director of Health Services, Government of West Bengal on July 5, 2017.</p> <p>The applicants were working permanently in West Bengal Nursing Service under Department of Health & Family Welfare, Government of West Bengal before their selection for appointment to the post of Clinical Instructor in West Bengal State General Service. The applicants were selected for appointment to the post of Clinical Instructor by way of lateral induction into the service on August 8, 2015 and joined in the said post on different dates in the year 2015. They have been placed below the Clinical Instructors directly recruited through PSC from the year 2005 to the year 2010 in the seniority list</p>	

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published on July 5, 2017. The Clinical Instructors who have been directly recruited through PSC were placed in the seniority list from serial no. 1 to 57, while the Clinical Instructors appointed by way of lateral induction into the cadre including the applicants were placed in the seniority list from serial no. 58 to 109. The grievance of the applicants is that the experience acquired by them by rendering service in the nursing cadre before induction into the present service was not taken into consideration in determination of seniority in spite of objection raised by them in this regard at the time of publication of draft seniority list.

Mr. D.N. Ray, Learned Counsel for the applicants, contends that the applicants have rendered service for considerable period of time as nursing personnel, but the said service has not been taken into consideration in determination of seniority of the applicants. He further contends that the applicants will be deprived of the opportunity for being considered for further promotion in the higher cadre for not consideration of their past experience in the nursing cadre for determination of seniority. The gist of argument of Mr. Ray is that the weightage should have been given for the service rendered by the applicants in the nursing cadre for fixation of their seniority in the cadre of Clinical Instructor of West Bengal State General Service. Relying on a judgment of "Scientific Advosor to Raksha Mantri v. V.M. Joseph" reported in (1998) 5

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SCC 305, Mr. Ray has put forward his argument that the service rendered by an employee cannot be given go by at the time of his consideration for promotion, even if the seniority of the said employee is fixed at the bottom of the seniority list. The specific submission of Mr. Ray is that the experience of the applicants should be taken into consideration at the time of their consideration for further promotion to the post of Senior Lecturer.

Mr. Ghosh, Learned Counsel representing the state respondents, submits that the service rendered by the applicants in a separate cadre before their lateral induction in the cadre of Clinical Instructor can never be considered for the purpose of fixation of seniority, though the past service may be counted for retirement benefit of the applicants.

Mrs. Mitra, Learned Counsel representing the private respondents, submits that the private respondents joined in the cadre of Clinical Instructor by way of direct recruitment through PSC during the period from 2005 to 2010 and joined in the service long before joining of the present applicants as Clinical Instructor and as such they have been rightly placed above the applicants in the seniority list published on July 5, 2017.

The issue for consideration of the Tribunal is whether the seniority list of the Clinical Instructor has been published in

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accordance with the provisions of the seniority rules by which both the applicants and the private respondents are governed. There is nothing on record to indicate that the applicants and the private respondents are governed by any seniority rules other than West Bengal Services (Determination of Seniority) Rules, 1981 (in short, the Seniority Rules, 1981). Admittedly, the West Bengal State General Service consisting of Clinical Instructor, Senior Lecturer, Reader, Professor and Principal in West Bengal Government Colleges of Nursing under Department of Health & Family Welfare, Government of West Bengal was created by Notification dated December 30, 2013 issued by the Principal Secretary to the Government of West Bengal, Department of Health & Family Welfare. It is relevant to quote the provisions of method of recruitment for filling up the posts of Clinical Instructor in terms of West Bengal State General Service (Recruitment and promotion to teaching posts in Government Colleges of Nursing) Rules, 2013 (in short, WB Teaching Service of Nursing Rules, 2013), which is as follows :

“2. (1) Name of the post – Clinical Instructor

A. Method of recruitment :-

- (1) By selection (direct recruitment) through the West Bengal Health Recruitment Board, West Bengal and**
- (2) By Lateral Induction from among the nursing personnel employed under this State Government in the cadre of West Bengal**

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Nursing Service and West Bengal General Service, in health facilities and institutions other than Government Colleges of Nursing, through the West Bengal Health Recruitment Board:

Provided that 80% of total posts of Clinical Instructor (both permanent and temporary taken together) shall be filled up by lateral induction and remaining 20% by selection (direct recruitment)."

We have already observed that the private respondents joined in the service of Clinical Instructor from 2005 to 2010 on the basis of direct recruitment through PSC before framing of the W.B. Teaching Service of Nursing Rules, 2013. The present applicants joined in the service of Clinical Instructor by way of lateral induction from the cadre of West Bengal Nursing Service in the year 2015. Since the cadre from which the applicants were selected for lateral entry into the cadre of Clinical Instructor is not feeder post for promotion to the post of Clinical Instructor in terms of the rules by which the applicants are governed, we are of the view that the determination of seniority of the applicants will be fixed in terms of Rule 4 of the Seniority Rules, 1981. Similarly, the seniority of the private respondents also will be fixed as direct recruits to the cadre of Clinical Instructor in terms of provisions of Rule 4 of the Seniority Rules, 1981. It is pertinent to quote the relevant portion of the provisions of Rule 4

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of the Seniority Rules, 1981, which is as follows :

“R.4 Determination of seniority of direct recruits – The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Commission or other selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on the result of a subsequent selection :

Provided that where appointment of persons initially made otherwise than in accordance with the relevant recruitment rules is subsequently regularised in consultation with the Commission, where necessary, seniority of such persons shall be determined from the date of regularisation and not from the date of appointment. The inter-se-seniority amongst such persons shall, however, depend on the date of appointment of each such person in the department or office concerned :

Provided further that if any person selected for appointment to any post does not join within two months of the offer of appointment, his seniority shall count from the date on which he joins the post unless the appointing authority for reasons to be recorded in writing condones the delay.”

The provisions of Rule 4 the Seniority Rules, 1981 lay

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down that the relative seniority of all persons appointed directly through competitive examination or otherwise shall be determined by order of merit in which they are selected for such appointment and the persons appointed on the result of an earlier selection will be senior to the person appointed on the result of the subsequent selection. It is true that inter-se seniority among such persons will be decided on the order of merit in which they have been selected. The private respondents have been selected directly through PSC during the period from 2005 to 2010, whereas the applicants have been selected for appointment in the year 2015. In view of the provisions of the Rule 4 of the Seniority Rules, 1981, the private respondents have been rightly placed above the applicants in the seniority list published on July 5, 2017. We do not find any merit in the submission made on behalf of the applicants that the length of service rendered by the applicants in the nursing cadre before their joining in the post of Clinical Instructor should have been taken into consideration for determination of seniority. The concept of giving weightage for the service rendered by an employee in the feeder post at the time of fixation of seniority after promotion cannot be invoked by the applicants as the provisions in this regard are conspicuously absent from the Seniority Rules, 1981 by which the applicants and the private respondents are governed.

In "Scientific Advosor to Raksha Mantri v. V.M. Joseph"

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<p>(Supra), the Hon'ble Supreme Court considered the case of promotion of an employee from the post of Storekeeper to the post of Senior Storekeeper in the Ministry of Defence, Government of India. The said employee was transferred from one organisation to another organisation on his own seeking and was placed at the bottom of the seniority list of the transferee organisation where he rendered service for about five years as Storekeeper. This experience of working in the post of Storekeeper was not taken into consideration by the Departmental Promotion Committee and thereby the employee was denied promotion on the ground of non-fulfilment of experience of three years in the post of Storekeeper for promotion to the post of Senior Storekeeper. The fact of non-consideration of experience of the said employee for rendering service as Storekeeper for about five years was not justified under the law and as such the Hon'ble Supreme Court directed for granting promotion to the said employee to the post of Senior Storekeeper from the date when the promotion was due to him. The facts of this reported case are clearly distinguishable from the facts of the present case where the applicants have claimed for counting of their experience in a different service before their lateral entry (by way of direct recruitment through process of selection) in the cadre of Clinical Instructor in a separate service for the purpose of determination of seniority for which no provisions have been made in the seniority rules by which the applicants are governed. In our view, the ratio of the reported</p>	
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case cannot be made applicable in the facts of the present case.

In view of our above findings, we do not find any illegality or irregularity or arbitrariness in preparation and publication of the seniority list dated July 5, 2017 whereby the private respondents have been placed above the applicants. It is true that the applicants are not entitled to get any benefit in fixation of seniority above the directly recruited Clinical Instructors during the period from 2005 to 2010 in terms of the Seniority Rules, 1981, but the experience of the applicants as nursing personnel in West Bengal Nursing Service before their lateral induction into the cadre of Clinical Instructor may be taken into consideration for their further promotion to the post of Senior Lecturer in terms of the provisions of the W.B. Teaching Service of Nursing Rules, 2013.

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

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

Sanjib & Himangsu

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)