

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 659 OF 2018**

Bidyut Kumar Nandi 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
07 19.06.2019	<p>For the Applicant : Mr. A. Lahiri, Mr. S.K. Mondal, Learned Advocates.</p> <p>For the State Respondents : Mrs. S. Agarwal, Learned Advocate.</p> <p>For the Pvt. Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Respondent Nos. 1&amp;2 : Mr. M.N. Roy, Learned Advocate.</p> <p><i>The applicant has prayed for direction upon the respondents to grant him promotion to the post of Executive Engineer (Civil) in the Directorate of Public Health Engineering, Government of West Bengal after cancellation of order dated July 13, 2018 (Annexure-A12), by which increment of the applicant was stopped w.e.f. July 1, 2018.</i></p> <p><i>The applicant joined the post of Sub-Assistant Engineer in the Directorate of Public Health Engineering, Government of West Bengal on November 23, 1983. He was confirmed in the said post on November 23, 1986. The applicant along with others approached this Tribunal by filing OA-300, 317 and 564 of 2012 claiming seniority and promotion to the post of Assistant Engineer in the Directorate of Public Health Engineering, Government of West Bengal. On January 28, 2014, the Tribunal disposed of OA-300, 317 and 564 of 2012 by delivery of common judgment, whereby the effect of promotion of the applicant to the post of Assistant Engineer was given from November 21, 1994. The said</i></p>	

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*judgment of the Tribunal was challenged by the State of West Bengal before the Hon'ble High Court by filing WPST No. 254 of 2014, WPST No. 181 of 2014 and WPST No. 253 of 2014. On September 14, 2017, the Division Bench of the Hon'ble High Court disposed of the said writ petitions by affirming the judgment passed by the Tribunal and by giving specific direction to the state respondents to give effect to the order passed by the Tribunal on January 28, 2014. As a result, by issuing revised gradation list of the Assistant Engineer (Civil) in the Directorate of Public Health Engineering, Government of West Bengal on June 11, 2018, the Department of Public Health Engineering gave effect of promotion of the applicant to the post of Assistant Engineer (Civil) from November 21, 1994. The increment of the applicant was stopped w.e.f. July 1, 2018 by issuing letter dated July 13, 2018 (Annexure-A12) on the ground that the applicant did not pass the departmental examination and he was not exempted from appearing in the departmental examination as prayed by him before the Additional Chief Secretary to the Government of West Bengal, Department of Public Health Engineering.*

*With the above factual matrix, Mr. A. Lahiri, Learned Counsel for the applicant, contends that the applicant virtually got the order of promotion to the post of Assistant Engineer in the year 2013 and joined in the post of Assistant Engineer only on August 26, 2013, when he crossed the age of 52. He further submits that the applicant is entitled to be exempted from appearing in the departmental examination for joining the post of Assistant Engineer after crossing the age of 52 years in terms of Notification*

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*published on August 25, 2004. He categorically argued that the applicant has had no opportunity to appear in the departmental examination on the date (November 21, 1994) on which effect of his promotion to the post of Executive Engineer is given retrospectively by virtue of the order passed by the Tribunal and affirmed by the Hon'ble High Court. According to Mr. Lahiri, it was not practically possible for the applicant to appear in the departmental examination in the year 1994 as he got the effect of promotion to the post of Assistant Engineer retrospectively from the year 1994 and he got notional benefit of the said promotion in spite of joining the post of Assistant Engineer only in the year 2013. The gist of submission of Mr. Lahiri is that the applicant is entitled to get exemption from appearing in the departmental examination, as he crossed 52 years of age on the date of his actual joining the post of Assistant Engineer.*

*Mr. G.P. Banerjee, Learned Counsel representing the private respondents, submits that the private respondents have been highly prejudiced for giving effect of promotion of the applicant from November 21, 1994. Mrs. S. Agarwal, Learned Counsel representing the state respondents, submits that the applicant cannot be allowed to get the benefit of retrospective promotion to the post of Assistant Engineer w.e.f. November 21, 1994 when he was not entitled to be exempted from appearing in the departmental examination and at the same time benefit of further promotion to the post of Executive Engineer by getting exemption from appearing in the departmental examination for crossing the age of 52 years by taking into consideration the date of his actual*

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*promotion to the post of Assistant Engineer on August 26, 2013.*

*Having heard Learned Counsel representing both parties, we find that the applicant joined the post of Assistant Engineer by way of promotion from the post of Sub-Assistant Engineer on August 26, 2013. It is true that on the date of joining the post of Assistant Engineer, the applicant crossed 52 years of age and thereby he might have been exempted from appearing in the departmental examination in terms of the Notification dated August 25, 2004. However, the applicant has already got the benefit of promotion in the post of Assistant Engineer with retrospective from November 21, 1994 by virtue of the order of the Tribunal being affirmed by the Hon'ble High Court. The applicant will get notional benefit of promotion to the post of Assistant Engineer w.e.f. November 21, 1994, when he was liable to pass the departmental examination for not crossing the age of 52 years. When he has received financial benefit and benefit of seniority in the post of Assistant Engineer w.e.f. November 21, 1994 he cannot be permitted to take a stand of claiming exemption from appearing in the departmental examination for crossing the age of 52 years on the date of his actual joining the post of Assistant Engineer on promotion on August 26, 2013. The applicant is granted notional benefit of almost 19 years of service without passing departmental examination, though he was liable to appear in the departmental examination at the relevant time for not crossing the age of 52 years. We gave option to the applicant in course of hearing to choose whether he wants to get the benefit of*

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*promotion to the post of Assistant Engineer from November 21, 1994 or from August 26, 2013. He did not exercise any option, and left it to be decided by the Bench. We cannot persuade ourselves to hold that the applicant is entitled to be exempted from appearing in the departmental examination on the date of his promotion to the post of Assistant Engineer with retrospective effect from November 21, 1994, as he was liable to pass the departmental examination at that relevant period of time for not crossing 52 years of age.*

*In view of our above findings, the applicant is not entitled to get further increment w.e.f. July 1, 2018 as communicated under letter dated July 13, 2018 (Annexure A12 to the original application) and that he is not entitled to be considered for further promotion to the post of Executive Engineer in the Directorate of Public Health Engineering, Government of West Bengal on the plea of exemption from appearing in the departmental examination for crossing the age of 52 years on the actual date of joining the post of Assistant Engineer in terms of Notification dated August 25, 2004. As a result, the applicant is not entitled to get any relief in the present application. The original application is, thus, dismissed.*

*The urgent Xerox certified copy of the order, if applied for, may be supplied to the parties on priority basis, subject to compliance of all necessary formalities.*

Sanjib

**( S.K. DAS )**  
MEMBER(A)

**( R. K. BAG )**  
MEMBER (J)

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