

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 68 OF 2018**

Madhurima Guha Roy 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
12 <hr/> 19.02.2020	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Learned Advocates.</p> <p>For the Respondent : Mr. S. Ghosh, Mr. R.A. Chowdhury, Learned Advocates.</p> <p>For the Pvt. Respondent : None.</p> <p>The applicant has prayed for direction upon the respondents for granting her promotion from the post of Assistant Superintendent (Non-Medical) Grade-II to the post Assistant Superintendent (Non-Medical) Grade-I w.e.f. December 27, 2017 and other consequential benefits of service including consideration of the representation submitted by the applicant on January 6, 2018.</p> <p>The applicant was appointed to the post Assistant Superintendent (Non-Medical) in the cadre of West Bengal General Services in terms of Notification dated April 28, 2011 issued in the name of the Governor by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare on the basis of merit list prepared by Public Service Commission, West Bengal (in short, PSC, WB). She was initially posted as Assistant Superintendent of Rampurhat Sub-Divisional Hospital wherefrom she was transferred to Walsh Hospital at Serampore in the district of Hooghly by Notification dated February 21, 2014. Her service in the post of Assistant Superintendent (Non-Medical) under West</p>	

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 68 OF 2018**

Bengal General Services was confirmed w.e.f. May 10, 2014 by Notification dated June 10, 2015 issued in the name of the Governor by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare. The contention of the applicant is that she was placed at serial no. 27 in the merit list prepared by the PSC, WB, whereas the private respondent was placed in serial no. 39 of the said merit list for appointment to the post of Assistant Superintendent. Owing to creation of 100 new posts in the cadre of Assistant Superintendent (Non-Medical) by the State of West Bengal, the State Government issued one letter dated November 21, 2014 (Annexure-E to the original application), whereby 170 posts of Assistant Superintendent (Non-Medical) were earmarked as Grade-II with grade pay of Rs.4700/-, while 85 posts of Assistant Superintendent (Non-Medical) were earmarked as Grade-I with grade pay of Rs.5400/-. The Assistant Superintendents working in Grade-II posts for a period of continuous 5 years will be eligible for consideration of promotion to the post of Assistant Superintendent (Non-Medical) Grade-I in terms of the said letter dated November 21, 2014 issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare. The grievance of the applicant is that her junior Kallol Khan impleaded as private respondent in the present original application got promotion to the post of Assistant Superintendent (Non-Medical) Grade-I w.e.f. September 1, 2016 in terms of Notification dated December 27, 2017 issued by the Joint Secretary to the Government of West Bengal, Department of

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 68 OF 2018**

Health and Family Welfare, whereas the applicant was denied promotion to the post of Assistant Superintendent (Non-Medical), Grade-I.

With the above factual matrix, Mr. M.N. Roy, Learned Counsel for the applicant, contends that the applicant has been superseded by her junior in the service without any fault on her part. He further contends that no disciplinary proceeding is pending against the applicant who rendered continuous satisfactory service for 5 years and thereby acquired eligibility to be considered for promotion to the post of Assistant Superintendent (Non-Medical) Grade-I. With regard to the adverse ACR of the applicant for 3 years prior to her consideration for promotion to the post of Assistant Superintendent (Non-Medical) Grade-I, Mr. Roy has urged us to consider that the entries made in the ACR of the applicant for 3 years prior to the date of her consideration for promotion, were not communicated to her and thereby she is prejudiced for consideration of the said ACR of 3 years for denial of promotion to the applicant. Mr. Roy has relied on the Three Judge Bench decision of the Hon'ble Supreme Court in "Abhijit Ghosh Dastidar v. Union of India & Others" reported in (2009) 16 SCC 146 in support of his contention that even entries of grading "good" in ACR should be communicated to the concerned officer when the said grading of "good" is not considered as the benchmark for grant of promotion. With regard to the absence of the applicant from duty for a period of 8 (eight) days from July 19, 2016 to July 26, 2016, Mr. Roy has argued that the applicant has already

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 68 OF 2018**

submitted appropriate application for regularisation of her absence by grant of leave to her credit, but the said application has not been disposed of by the authority concerned till date.

Mr. S. Ghosh, Learned Counsel representing the state respondents, has referred to paragraph 4 and 5 of the reply of the state respondents and submitted that the applicant is habitual absentee and her unauthorised absence from July 19, 2016 to July 26, 2016 has not been regularised by grant of leave. He further contends that the applicant is not at all sincere in discharge of her duty which is reflected in her ACR of consecutive 3 (three) years before the date of her consideration for promotion. Mr. Ghosh also argues that the entries in the ACR of 3 years were not communicated to the applicant as the applicant never asked for the entries in the ACR of 3 years prior to the date of her consideration for promotion to the post of Assistant Superintendent (Non-Medical) Grade-I.

None appears on behalf of the private respondent, though reply filed by the private respondent indicates that the private respondent has only raised objection of moving the present application by the applicant without waiting for a period of 6 (six) months from the date of submission of the representation before the authority concerned.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant was absent from duty for a period of 8 (eight) days from July 19, 2016 to July 26, 2016. Admittedly, the applicant submitted

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 68 OF 2018**

application before the concerned respondent for regularisation of her absence by grant of leave to her credit. The further admitted position is that the state respondents have neither granted prayer of the applicant for regularisation of absence by grant of leave to her credit, nor rejected the said application by treating the period of unauthorised absence as "*dies-non*". No departmental proceeding has been initiated against the applicant for any kind of misconduct or even for her unauthorised absence for 8(eight) days for which prayer for grant of leave is still pending for consideration before the authority concerned. In our view, this period of unauthorised absence of the applicant from July 19, 2016 to July 26, 2016 cannot be taken into consideration for denial of promotion to the applicant to the post of Assistant Superintendent (Non-Medical) Grade-I.

There is no dispute that promotion was denied to the applicant for adverse entries in her ACR for 3 (three) years i.e. from April 1, 2013 to March 31, 2014, from April 1, 2014 to March 31, 2015 and from April 1, 2015 to March 31, 2016. On perusal of the entries in the ACR of the applicant for the period from April 1, 2013 to March 31, 2014, we find that out of 12 (twelve) parameters of assessment of performance of the applicant for awarding the grading in the ACR, seven (7) parameters were found to be "very good" and four (4) parameters were found to be "good" with specific comment that nothing adverse has come to the notice about the integrity of the applicant. The attendance of the applicant for the said period is found to be 100%. With regard to

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 68 OF 2018**

other 2 (two) ACR for the period from April 1, 2014 to March 31, 2015 and from April 1, 2015 to March 31, 2016, we find that the applicant was absent for 52 (fifty two) days out of total working days of 281 (two hundred eighty one) days in one year and she took leave for further 37 (thirty seven) days out of total working days of 280 (two hundred eighty) days in another year, but most of the performance of the applicant recorded in 12 (twelve) parameters for assessment during these two years were found to be "average". Admittedly, the entries in the ACR were not communicated to the applicant and thereby she is prejudiced for not getting opportunity to submit her views by way of representation before the concerned authority.

In "Abhijit Ghosh Dastidar v. Union of India & Others" (supra), the Hon'ble Supreme Court dealt with the issue of denial of promotion to one Post Master General. The promotion to higher Administrative Grade Group-A of Indian Postal Service for posting as the Chief Post Master General was denied to the appellant before the Hon'ble Supreme Court on the ground of entries in the ACR, which were found to be "good", but the benchmark for consideration of promotion the grading in the ACR should have been "very good". By following the previous decision of the Hon'ble Supreme Court in "Dev Dutt v. Union of India & Others" reported in (2008) 8 SCC 725, the Hon'ble Supreme Court observed that the entries in the ACR even if graded as "good" must be communicated to the concerned employee, when the benchmark for consideration of grading in the ACR for promotion is "very

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. OA 68 OF 2018

good". In the reported case, Hon'ble Supreme Court directed for grant of retrospective promotion in favour of the appellant of the said reported case, who already retired from service, as the entries in the ACR were not communicated to the said appellant, but the said entries in the ACR were considered for denial of promotion to him. It is relevant to quote paragraph 8 of the judgment of "Abhijit Ghosh Dastidar v. Union of India & Others" (supra), which is as follows :

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of 'good' was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (Dev Dutt case, SCC p.738, para 41) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had even been informed of the nature of the grading given to him."

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 68 OF 2018**

By following the proposition of law laid down by the Hon'ble Supreme Court in "Abhijit Ghosh Dastidar v. Union of India & Others" (supra), we find that the entries in the ACR whether "good" or "average" should be communicated to the concerned officer when the benchmark for promotion to the next grade or post of the said officer is the grading/ratings of "very good" or "excellent" or "outstanding" in the ACR. In the instant case, the ratings in the ACR of the applicant at least for 2 (two) years are found to be "average" and some parameters of the ratings in the ACR of another year are found to be "good" whereas the benchmark for consideration of grading in the ACR is "higher" than the grading of "average" or "good" for promotion. Since the entries in the ACR of the applicant were not communicated to her and since those entries in the ACR were considered by the state respondents for denial of promotion to the applicant, we would like to hold that the denial of promotion to the applicant is not justified under the law. However, in the case of "Abhijit Ghosh Dastidar" (supra), the Hon'ble Supreme Court gave direction for giving retrospective promotion to the appellant, as he retired from service and his pension was required to be enhanced and refixed. In the instant case the applicant has joined in the Government service only in the year 2011 and as such the adverse entries in the ACR may be reconsidered by the concerned authority on the basis of representation to be submitted by the applicant.

We would like to reiterate that the state respondents should have communicated the adverse entries in the ACR of the

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 68 OF 2018**

applicant for 3 (three) years which were considered for denial of promotion to her. Now, the applicant has received the copy of those entries in the ACR through the reply submitted by the state respondents, as the copy of the reply is served on the advocate on record for the applicant. The applicant is now at liberty to submit written representations against the adverse entries made in the ACR of 3 (three) years within a period of 4 (four) weeks and one senior officer not below the rank of Joint Secretary in the Department of Health and Family Welfare will consider the said representations of the applicant after giving an opportunity of hearing and pass a reasoned order for deciding whether the ratings in the ACR can be upgraded within a specific period of time. If the ratings in the ACR of the applicant are upgraded on consideration of her representation, the state respondents will reconsider the case of the applicant for grant of promotion to the post of Assistant Superintendent (Non-Medical) Grade-I, if she is otherwise eligible with effect from the date when the private respondent no. 6 got promotion to the said promotional post and grant all consequential benefits of service.

In view of our above observations, we direct the applicant to submit her representations before the respondent no. 1, Principal Secretary to the Government of West Bengal, Department of Health and Family Welfare against the adverse entries in the ACR of 3 (three) years within a period of 4 (four) weeks from this date. If such representations are submitted by the applicant within the stipulated period of time, the respondent no. 1

ORDER SHEET

Madhurima Guha Roy

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 68 OF 2018**

will authorise any officer of the department not below the rank of Joint Secretary to consider the representations of the applicant after giving her an opportunity of hearing by passing a reasoned order for deciding whether the ratings of the applicant in the ACR can be upgraded within a period of 8 (eight) weeks from the date of receiving the representation of the applicant. If the ratings in the ACR of the applicant are upgraded, the respondent no. 1 will reconsider the case of the applicant for grant of promotion to the post of Assistant Superintendent (Non-Medical) Grade-I, if she is otherwise eligible, with effect from the date of promotion of the private respondent no. 6 along with all consequential benefits of service.

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

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

The **urgent xerox certified copy** of this order, if applied for by either of the parties, may be supplied on priority basis on compliance of all necessary formalities.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib