

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 800 OF 2015**

Sankar Banerjee 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 style="text-align: center;">17 <hr/>12.07.2018</p>	<p>For the Applicant : Mr. A.N. Ghosh, Learned Advocate.</p> <p>For the Respondents : Mrs. S. Agarwal, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents to give the applicant promotion w.e.f. December 28, 2011 instead of May 5, 2015 and to modify order of promotion dated May 5, 2015 issued by Joint Secretary to the Government of West Bengal, Department of Health & Family Welfare.</p> <p>The applicant was working in the post of Ward Master in the cadre of West Bengal Subordinate Health Services (Non-Medical). By virtue of rules regarding recruitment to the post of Assistant Superintendent (Non-Medical) notified on June 4, 2009, 10% of the posts of Assistant Superintendent (Non-Medical) are to be filled up by way of promotion from the post of Ward Master who have fulfilled criteria of educational qualification applicable to direct recruitment and who have not exceeded 54 years of age. The contention of the applicant is that the case of the applicant was forwarded by the department to Public Service Commission, West Bengal (in short PSC, WB) along with his juniors for recommendation and for promotion from the post of Assistant Superintendent (Non-Medical) in the year 2011. The further contention of</p>	

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the applicant is that due to administrative lapses, the PSC, WB did not recommend the name of the applicant for promotion to the post of Assistant Superintendent (Non-Medical) along with his juniors on the ground that the applicant has crossed 54 years of age on the date of consideration for promotion. The applicant moved the Tribunal by filing OA-290 of 2013 which was disposed of on September 24, 2014. By Judgment and Order dated September 25, 2014, the Tribunal gave direction to PSC, WB for consideration of suitability of the applicant for promotion to the post of Assistant Superintendent (Non-Medical) by treating the age of the applicant as on January 1, 2011. Accordingly, the name of the applicant was recommended by PSC, WB for promotion and Department of Health & Family Welfare, Government of West Bengal issued Notification on May 5, 2015 by giving promotion to the applicant to the post of Assistant Superintendent (Non-Medical) with effect from the date the applicant will join in the post.

The grievance of the applicant is that he should have been given promotion along with his juniors on the date of Notification dated December 28, 2011 as the delay in consideration of the case of the applicant for promotion cannot be attributed to the conduct of the applicant. Admittedly, there was lapse on the part of the administration for the delay in consideration of the case of the applicant for promotion and thereby the applicant could not be promoted along with his juniors

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by Notification dated December 28, 2011. We accept the contention made on behalf of the applicant that the applicant could not be promoted along with his juniors by Notification dated December 28, 2011 due to lapse on the part of PSC, WB. However, the applicant did not work in the promotional post along with his juniors during the period from December 28, 2011 to May 5, 2015. The applicant is, thus, entitled to get notional promotion along with his juniors on the basis of Notification dated December 28, 2011 and as such fixation of pay of the applicant will be done along with his juniors on the basis of Notification dated December 28, 2011, but the applicant will get actual financial benefit of promotion from the date he joined in the promotional post on the basis of Notification dated May 5, 2015. Since the applicant has already retired from service on February 28, 2017, the applicant is entitled to get arrears of pay and revised retirement benefits.

In view of our above findings, we direct the Principal Secretary, Department of Health & Family Welfare, Government of West Bengal to modify Notification dated May 5, 2015 for giving notional promotion to the applicant on the basis of Notification dated December 28, 2011 and for giving actual financial benefit of promotion to the applicant from the date of his actual joining in the post of Assistant Superintendent (Non-Medical) at Burdwan Dental College, Burdwan within a period of 12 (twelve) weeks

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from the date of communication of the order. The said respondent no. 1 is further directed to pass necessary order for giving revised retirement benefits to the applicant within a period of twelve (12) weeks from the date of communication of the order.

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

The urgent xerox certified copy of this order be supplied to the parties on priority basis, if applied for, on completion of all legal formalities.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib