

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 893 OF 2016**

Ajay Kumar Biswas 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
14 19.09.2019	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Learned Advocates.</p> <p>For the Respondent : Mr. A.L. Basu, Learned Advocate.</p> <p>For the Pvt. Respondent : Mr. U. Majumder, Mr. M. Karim, Learned Advocates.</p> <p>The applicant has prayed for direction upon the respondents to grant him promotion to the post of Head Clerk, Grade-I w.e.f. February 1, 2016 by placing him in 24th reserved vacancy of 50 point roster and other consequential benefits of service.</p> <p>The applicant joined the post of Lower Division Clerk in the Directorate of Agriculture (Headquarters), West Bengal on the basis of the order issued by the Director of Agriculture, West Bengal on March 17, 1992. He was confirmed in the post of Lower Division Clerk of the Directorate in due course and got promotion to the post of Upper Division Clerk. The applicant got promotion to the post of Head Clerk, Basic Grade w.e.f. June 1, 2015 on the basis of the order issued by the Special Officer and Ex-Officio Director of Agriculture, Government of West Bengal on June 25, 2015. He got further promotion from the post of</p>	

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Head Clerk, Basic Grade to the post of Head Clerk, Grade-II w.e.f. January 1, 2016 on the basis of order dated January 21, 2016 issued by the Officer on Special Duty and Ex-Officio Director of Agriculture, Government of West Bengal. The contention of the applicant is that one vacancy arose in the post of Head Clerk, Grade-I on February 1, 2016, and the said vacancy being 24th vacancy of 50 point roster was reserved for Scheduled Tribe. The further contention of the applicant is that the private respondent no. 3 belonging to General Category and working in the post of Head Clerk, Grade-II was considered for promotion to the post of Head Clerk, Grade-I without considering the case of the applicant for the said promotion in spite of the fact that he belong to the category of Scheduled Caste. The private respondent no. 3 was granted promotion to the post of Head Clerk, Grade-I w.e.f. February 1, 2016 and thereby the applicant has challenged the order of promotion granted to the private respondent without considering the case of the applicant for the said promotion. However, the applicant got promotion to the post of Head Clerk, Grade-I w.e.f. January 15, 2017 on the basis of the order issued by the Additional Director of Agriculture (Administration), Government of West Bengal on April 19, 2017.

Mr. M.N. Roy, Learned Counsel for the applicant, contends that the probation period of one year in the promotional post is prescribed for further promotion of a Government employee to a higher post or grade, but the said period of

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probation of one year can be dispensed with on the ground of administrative difficulty or hardship of a Government employee as laid down in the Memorandum No. 919-F dated February 2, 2006 issued by the Finance Department, Audit Branch, Government of West Bengal. The specific contention of Mr. Roy is that the probation period of one year in the promotional post of Head Clerk, Grade-II should have been dispensed with for the purpose of consideration of the case of the applicant for grant of further promotion to the post of Head Clerk, Grade-I in terms of the said Memorandum dated February 2, 2006 as the applicant belongs to Scheduled Caste category and the vacancy to be filled up in the promotional post of Head Clerk, Grade-I is 24th vacancy in 50 point roster, which was reserved for Scheduled Tribe candidate, but the said post can be filled up by a candidate belonging to Scheduled Caste category. The gist of submission of Mr. Roy is that the probation period in the promotional post of Head Clerk, Grade-II should have been dispensed with for bringing the applicant in the zone of consideration for grant of further promotion to the post of Head Clerk, Grade-I, as it was done when the applicant was granted promotion from the post of Head Clerk, Basic Grade to the post of Head Clerk, Grade-II.

Mr. A.L. Basu, Learned Counsel representing the state respondents, contends that the applicant did not fulfil the eligibility criteria for promotion from the post of Head Clerk, Grade-II to the post of Head Clerk, Grade-I as he served only for

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a period of one month in the post of Head Clerk, Grade-II on the date on which promotion was granted to the private respondent no. 3 in the post of Head Clerk, Grade-I. He further contends that no hardship was caused to the applicant and no administrative difficulty arose for dispensing with the probation period of the applicant in the promotional post of Head Clerk, Grade-II for granting further promotion to the post of Head Clerk, Grade-I by invoking the provisions of Memorandum dated February 2, 2006 issued by the Finance Department, Audit Branch, Government of West Bengal. According to Mr. Basu, the applicant was not eligible for grant of promotion to the post of Head Clerk, Grade-I on February 1, 2016 when the private respondent no. 3 who was eligible and senior to the applicant was granted the said promotion.

Mr. U. Majumder, Learned Counsel representing the private respondent no. 3, submits that the applicant was not eligible for consideration of his promotion to the post of Head Clerk, Grade-I on February 1, 2016 when the private respondent no. 3 was granted promotion, as the applicant only served for one month in the post of Head Clerk, Grade-II and did not complete the probation period of one year as Head Clerk, Grade-II. He further submits that the applicant has been granted promotion to the post of Head Clerk, Grade-II w.e.f. January 15, 2017 during the period of pendency of the original application before this Tribunal.

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<p>Having heard Learned Counsel representing the respective parties and on consideration of the materials on record, we find that the applicant was granted promotion to the post of Head Clerk, Grade-II w.e.f. January 1, 2016. It is clearly laid down in Memorandum No. 4662-F dated June 1, 2005 issued by the Finance Department, Audit Branch, Government of West Bengal that a Government employee who got promotion will have to remain for one year on probation in the promotional post and during the said period of probation, the said Government employee cannot be considered for further promotion to the higher post or grade. The said period of probation of one year can be dispensed with for grant of further promotion to a Government employee from the promotional post, if there is administrative difficulty or hardship caused to the concerned Government employee viz, when his retirement is within a period of one year in terms of Memorandum dated February 2, 2006 issued by the Finance Department, Audit Branch, Government of West Bengal. In our view, the administrative difficulty may arise when the promotional post is required to be filled up, but no candidate in the feeder post is eligible to be considered for promotion or for any other such reasons. However, it is for the administration to decide whether administrative difficulty will arise in a particular situation for granting exemption of probation period for consideration of a particular employee for grant of further promotion. It is not the case of the applicant that he will retire within a period of one</p>	
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year from the date when the vacancy arose in the post of Head Clerk, Grade-I and as such there cannot be any hardship to the applicant for which probation period can be dispensed with for considering his case for grant of further promotion. Admittedly, the private respondent was found to be eligible for grant of promotion to the post of Head Clerk, Grade-I from the post of Head Clerk, Grade-II on February 1, 2016 and as such the probation period of one year of the applicant cannot be dispensed with on the ground of administrative difficulty. The applicant served in the post of Head Clerk, Grade-II only for a period of one month when the private respondent was granted promotion on February 1, 2016. In view of our above observation, we are constrained to hold that the applicant is not entitled to get any exemption in terms of Memorandum dated February 2, 2006 issued by the Finance Department, Audit Branch, Government of West Bengal for consideration of his case for further promotion to the post of Head Clerk, Grade-I w.e.f. February 1, 2016 as contended on behalf of the applicant.

Since the applicant was not found to be eligible for consideration for grant of promotion to the post of Head Clerk, Grade-I on February 1, 2016, the applicant did not come in the zone of consideration when the private respondent no. 3 was granted promotion in the post of Head Clerk, Grade-I on February 1, 2016. As a result, we do not find any merit in the original application. The original application is, thus, **dismissed**.

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Sanjib	<p>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.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
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