

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

The Hon'ble Smt. Urmita Datta (Sen)
Officiating Chairperson & Member (J)

J U D G M E N T

-of-

Case No. : O.A. 927 of 2015

Sukumar Debnath & Another Applicants.

-Versus-

The State of West Bengal & Others. Respondents.

**For the Applicants : Mrs. S. Agarwal,
Ld. Advocate.**

**For the State Respondent : Mr. A. Roy Mukherjee,
Mr. S. N. Ray,
Ld. Advocates.**

**For the PSC, WB : Mr. S. Bhattacharjee,
Ld. Advocate.**

Judgment delivered on : 21st November, 2022.

**The Judgment of the Tribunal was delivered by :
The Hon'ble Smt. Urmita Datta (Sen), Officiating Chairperson & Member (J)**

J U D G M E N T

The instant application has been filed praying for following reliefs :

“ The Hon’ble Tribunal may be pleased to pass an order restraining the respondents from giving any effect or further effect to the impugned Modified list of candidates of ASI Excise-13 (2nd. List) and further restraining the respondents from making changed and/or delete the names of the applicants from the list of nominated candidates ASI Excise-13 (2nd. List) where the names of the applicants are the-re and further directing the respondents to treat the List of nominated candidates of ASI Excise-13 (2nd. List) as valid and genuine and thereby issue appointment in favour of the applicants as ASI, Excise Department, Government of West Bengal at the earliest and thereby do justice to the applicants.”

2. As per the applicants, they belonged to Backward Classes i.e. OBC, who came from land looser family. Thus, they are BC-B Exempted Category (EC) candidates. It is submitted that an advertisement was published in Karmakshetra on 27.12.2013 (Annexure-C) inviting applications from the eligible candidates for selection of 246 nos. of Assistant Sub-Inspectors in Excise Department, Government of West Bengal under the following break-up of vacancies :

Sl. No.	Category	Total vacancy	EC
1.	UR	135	39
2.	ST	54	16
3.	SC	15	5
4.	BC-A	25	8
5.	BC-B	17	5

3. Though, two applicants viz. Sukumar Debnath and Pratap Ghosh filed this instant application, however, presently the applicant No. 2 i.e. Pratap Ghosh is not interested to pursue the instant application, therefore, the case of the first applicant i.e. Sukumar Debnath has to be considered.

4. In response to the aforesaid Notification, the applicant had applied and appeared in the Written Examination held on 06.04.2014. In the said Written Examination, the applicant became successful. The Respondent No. 3 vide letter dated 22.05.2015 asked the applicant to

appear in the office of the West Bengal Staff Selection Commission i.e. WBSSC with relevant documents for verification of testimonials (Annexure-E). Thereafter, being successful for the verification of the testimonials, the applicant was called to appear for Physical Measurement Test (PMT) vide letter dated 24.06.2015 to be held on 23.07.2015 (Annexure-F).

5. In the meantime, WBSSC had uploaded the first list of nominated candidates followed by the second list of nominated candidates, wherein two BC-B (EC) candidates against Sl. Nos. 5 and 6 i.e. Sri Sukdeb Basak and Sri Dipak Biswas, being BC-B (EC) were allotted UR-EC category and Sri Arup Chandra Pramanick and the two applicants being BC-B (EC) candidates were allotted BC-B (EC) category.

6. However, again, one modified list of nominated candidates of ASI Excise-13 (2nd list) was uploaded, wherein the said Sukdeb Basak and Dipak Biswas was again allotted the BC-B (EC) category along with Sri Arup Chandra Pramanick. However, the names of the applicants were not reflecting. Being aggrieved with the applicants have filed the instant application as their names were deleted without any reason against the BC-B (EC) category vacancies though they were selected and allotted against the BC-B (EC) category earlier. Subsequently, the applicant has filed one Supplementary Affidavit and bring on record the third list of nominated candidates.

7. The Respondent Nos. 2 and 3 i.e. West Bengal Staff Selection Commission has filed their reply, wherein it has been stated that in the selection process, the interview has to be taken in difference phases and nomination has to be made in phase-wise as some candidates often have misconception regarding exempted category. For example, SC/ST candidates do not have to pay examination fees and as a result, some of them wrongfully declared themselves as EC category. While some candidates, who are members of land looser families and yet to be enrolled as registered EC category candidates, declared them as EC candidates. As a result, candidates short listed as per data in their application forms but while attending documents verification before interview, became ineligible as they do not have EC certificate from the appropriate authority. As such, the Commission has to repeat the process some time in many phases to fill up the available vacancies. In this background, the second list was again modified with regard to BC-B (EC) category.

8. The result of the examination for filling up of 246 numbers of vacancies was declared basically in three phases. In first phase, 192 eligible candidates were nominated including two BC-B (EC) category candidates. After filling up of two numbers of vacancies of BC-B (EC) category candidates in the first phase, there remain only three numbers of BC-B (EC) category vacancies against five numbers of candidates according to their rankings i.e. Sukdeb Basak, Dipak Biswas, Arup Chandra Pramanick, Pratap Ghosh and Sukumar Debnath.

9. At this stage, there were some posts in the UR-(EC) category also and the Commission decided to accommodate all the five candidates belonging to the BC-B (EC) category, but as there were only three vacancies in this category, at this point, two of the better performers namely Sukdeb Basak and Dipak Biswas were allotted to the UR-(EC) category. In the second list, when the Commission went for filling up the remaining UR-(EC) category vacancies, it was found that there were many candidates in UR-(EC) category, who scored more marks than Sukdeb Basak and Dipak Biswas. As a result, both the candidates were reverted back to their original category of BC-B (EC) candidates. It may be recalled further that as out of five vacancies, two BC-B (EC) category vacancies were already filled up in the first phase, therefore, only three vacancies were left and number of candidates available in this category were five. So, top three names as per their marks from the list of BC-B (EC) category candidates were considered for nomination and, thus, second modified list was published and the petitioners were left out due to the non-availability of the vacancies.

10. The applicant has filed rejoinder enclosing three lists of nominated candidates under exempted category reiterating his earlier submission.

11. Subsequently, the matter was finally heard by the erstwhile Bench and was disposed of vide order dated 14.03.2019 with a direction to the Principal Secretary, Excise Department, Government of West Bengal to appoint Sri Sukumar Debnath as ASI, Excise.

12. Being aggrieved with, the State respondents filed WPST No. 103 of 2020 before the High Court, Calcutta, which was finally dismissed vide judgment dated 12.07.2021. Being further aggrieved with, the State Respondents preferred Civil Appeal No. 5872 of 2022, which was finally disposed of vide order dated 29.08.2022 by remanding back the matter to this Tribunal to hear the matter afresh. Hence, the present hearing.

13. The matter was heard on 28.09.2022 as per the direction of the Hon'ble Apex Court and upon hearing, the respondents were granted further chance to file a comprehensive reply specifically indicating the comparative marks obtained by all the candidates from first list to third list. In pursuance to that order, the State respondents i.e. Excise Department under Finance Department, Revenue Branch has filed one reply as well as one supplementary affidavit in support of their contention in the reply. The PSC, WB i.e. the Respondent Nos. 3 and 4 (the then WBSSC) has also filed one supplementary affidavit enclosing the documents in support of their contention.

14. In their reply, the State respondents has given the list-wise break-up, which is as follows :

1st List of Nominated Candidates.

Category : OBC-B(EC)

Sl. No.	Name of Candidate	Candidate's Category	Marks obtained
1.	Biswajit Mandal	OBC-B(EC)	53.75
2.	Suman Nandi	OBC-B(EC)	52.75

1st List of Nominated Candidates.

Category : UR(EC)

Sl. No.	Name of Candidate	Candidate's Category	Marks obtained
1.	Supriya Banerjee	UR (EC)	95
2.	Abutaher Sk	BC-A(EC)	89.5
3.	Tushar Kanti Sarkar	SC (EC)	88
4.	Ankur Kumar Roy	SC (EC)	87.75
5.	Mintu Barman	SC (EC)	86.75
6.	Ram Awadh Kishore Kr. Shaw		
7.	Pabitra Das	SC (EC)	81.5
8.	Md. Jakir Hussain	BC-A(EC)	79
9.	Mony Shankar Mondal	UR (EC)	76.75
10.	Suman Kalyan Jana	UR (EC)	74.75

[Name of Ram Awadh Kishore Kr. Shaw in sl. No. 6 was not recommended finally for recruitment. Thereby in this list nine (09) UR (EC) vacancies were filled up]

2nd List of Nominated Candidates.Category : OBC-B(EC)(modified 2nd list)

Sl. No.	Name of Candidate	Candidate's Category	Marks obtained
1.	Sukdeb Basak	OBC-B(EC)	48.75
2.	Dipak Biswas	OBC-B(EC)	46
3.	Arup Chandra Pramanik	OBC-B(EC)	42.50

2nd List of Nominated Candidates.

Category : UR (EC)

Sl. No.	Name of Candidate	Candidate's Category	Marks obtained
1.	Nayan Saha	UR (EC)	75
2.	Animesh Chakraborty	UR (EC)	72.5
3.	Sourav Das	UR (EC)	72.25
4.	Anal Mitra	UR (EC)	70.50

3rd List of Nominated Candidates.

Category : UR (EC)

Sl. No.	Name of Candidate	Candidate's Category	Marks obtained
1.	Koushik Banerjee	GEN (EC)	46.25
2.	Rana Biswas	SC (EC)	52
3.	Ashok Adhikari	SC (EC)	42.25
4.	Gobinda Bhowmik	GEN (EC)	56.25
5.	Pinaki Ranjan Ray	SC (EC)	48
6.	Fatik Roy	SC (EC)	42.25
7.	Md. Masidur Rahaman	BC-A (EC)	42.5
8.	Raja Mandal	SC (EC)	48
9.	Meetahul Islam	BC-A(EC)	46.25
10.	Saddam Hossain	BC-A(EC)	44.75
11.	Md. Mamun Ali	BC-A(EC)	58.75
12.	Sukalyan Upadhaya	GEN (EC)	45.5
13.	Md. Nazrul Islam	BC-A (EC)	55.5
14.	Benjir Alam	BC-A (EC)	57.5
15.	Golam Hakkani Alam	BC-A (EC)	56
16.	Supriya Ganguly	GEN (EC)	49.75
17.	Rajesh Mandal	SC (EC)	58
18.	Jit Sarkar	GEN (EC)	52.25

19.	Hriday Kr. Roy Dakua	SC (EC)	46.75
20.	Md. Sohel Akhter	BC-A(EC)	48
21.	Sohidul Islam	BC-A(EC)	45
22.	Tajimul Md.	BC-A(EC)	57.5
23.	Md. Najmul Hussain	BC-A(EC)	54.75
24.	Supen Chandra Roy	SC (EC)	45.75
25.	Subodh Singha	SC (EC)	53
26.	Md. Tahajote Alam	BC-A(EC)	54

15. In their supplementary affidavit, the State respondents has submitted inter alia :

The West Bengal Staff Selection Commission (hereinafter referred to as 'the said Commission'), in September, 2014, apart from other candidates, uploaded the first list containing 10 names of selected candidates from UR (EC) category and names of 2 candidates from OBC-B (EC) category viz. Shri Biswajit Mandal and Shri Suman Nandi. Subsequently, the said Commission vide Memo. bearing no. 621/WBSSC/ASI/2013 PMT & DV dated 16.12.2014 recommended names of 192 candidates including the names of 9 candidates out of 10 and 2 candidates from UR (EC) category and OBC-B (EC) category respectively.

It has been submitted that the instant original application was filed in August'2015 and by letters dated 12.03.2015 and 03.02.2015, Shri Biswajit Mandal and Shri Suman Nandi, who belonged to OBC-B(EC) category, were appointed respectively to the posts of Assistant Sub-Inspector of Excise.

Subsequently, on 13.08.2015 the said Commission uploaded the second list, wherein Shri Sukdeb Basak and Shri Dipak Biswas although belonged to OBC – B(EC) category, were nominated against the vacancies reserved for UR (EC) category. However, such list was immediately withdrawn from the website for the reasons stated in the said reply and the said Commission in this regard uploaded a modified second list of nominated candidates whereby Shri Sukdeb Basak and Shri Dipak Biswas were reverted back to their original category i.e. OBC-B(EC). Apart from Shri Basak and Shri Biswas, one Shri Arup Chandra Pramanick was also nominated against the three (3) vacancies of OBC-B(EC) category and in the process all the five vacancies in OBC-B (EC) category were filled up.

The said Commission during 2nd phase, apart from the above candidates from OBC-B(EC) category and candidates from other categories, also uploaded names of 4 candidates from UR (EC) category.

Thereafter, the said Commission in the 3rd phase, apart from other lists, uploaded a list of UR (EC) candidates containing names of 26 candidates.

The said Commission thereafter by a Memo. No. 144-WBSSC/NOM/ASI/NOM-2/2016 dated 13.04.2016 recommended names of 49 candidates including the names of the candidates referred to hereinabove. In the process, the said Commission in two phases recommended (192+49) names of total 241 candidates. Apart from that 2 (two) candidates from OBC-A(EC) category viz. Md. Ebrahim and Md. Sekendar Ali were recommended vide Memo No. 224-WBSSC/EXAM/DV-03/2015 dated 24.06.2016 against vacancies arising out of non-joining/left out candidates of already recommended 8 (eight) OBC-A (EC) category.

It is further submitted that the said Commission also uploaded a list of non-nominated candidates and in serial no. 43, the particulars of the applicant i.e. Sukumar Debnath was also furnished. Thus, in any way by two phases of recommendations, all the five posts under BC-B(EC) categories were filled up by the candidates namely Biswajit Mondal, Suman Nandi, Sukdeb Basak, Dipak Biswas and Arup Chandra Pramanick as per their merit in the respective category. In support of the above contention, the State respondents has also enclosed the photo copy of all the relevant documents.

16. I have heard the parties and perused the records. It is noted that admittedly, there were five vacancies earmarked for the BC-B(EC) categories out of 246 total vacancies. The Secretary-cum-Controller of Examinations, WBSSC vide his Memo. No. 621/WBSSC/ASI/2013/PMT&DV dated 16.12.2014 forwarded the drossiers containing the copy of the original applications and other relevant documents pertaining to the successful candidates nominated for appointment to the post of ASI with a list of 192 candidates against the 246 vacancies in first phase. In the said first list, name of Sri Biswajit Mondal and Sri Suman Nandi has been found against serial nos. 191 and 192, (who secured 53.75 & 52.75 marks) respectively against the BC-B(EC) category. Sri Biswajit Mondal was subsequently appointed vide Memo. No. 3309-E dated 12.03.2015 and Sri Suman

Nandi was appointed vide Memo. No. 2796-E dated 03.02.2015. However, the instant application was filed in the month of August, 2015.

17. Subsequently, the Secretary-cum-Controller of Examinations, WBSSC had forwarded the dossiers containing the copy of the original applications and other relevant documents pertaining to the successful candidates nominated in the modified list of second phase for appointment to the post of ASI along with a list of 49 candidates [Total : 49, UR(EC)-30, BC-B(EC)-3, SC(EC)-16 as Annexure-A/1] vide Memo. No. 144-WBSSC/NOM/ASI/NOM-2/2016 dated 13.04.2016 to the Excise Commissioner, Excise Directorate, Government of West Bengal, wherein the names of Sri Sukdeb Basak, Sri Dipak Biswas and Sri Arup Chandra Pramanick were reflected against serial nos. 19, 26 and 31 respectively as BC-B(EC) candidates being allotted BC-B(EC) categories.

18. It is noted that earlier the Commission uploaded list of second phase of nominated candidates, wherein Sukdeb Basak and Dipak Biswas being BC-B(EC) candidates were allotted UR(EC) category and the name of the applicant along with Arup Chandra Pramanick and Pratap Ghosh were reflected against the BC-B(EC) categories. Therefore, when the modified list was uploaded by the Commission, the confusion arose with regard to the filling up of vacancies against the BC-B(EC) candidates.

19. From the perusal of the records, it is further noted that out of five vacancies, the marks obtained by the nominated candidates are as follows :

First phase :

Sl. No.	Name of candidate	Candidate's category	Marks obtained
1.	Biswajit Mandal	OBC-B(EC)	53.75
2.	Suman Nandi	OBC-B(EC)	52.75

For rest of three vacancies, following candidates remained with their respective marks, which is as follows :

Sl. No.	Name of candidate	Marks obtained
1.	Sukdeb Basak	48.75
2.	Dipak Biswas	46.00
3.	Arup Chandra Pramanick	42.50
4.	Pratap Ghosh	42.00
5.	Sukummar Debnath	41.00

20. From the perusal of the final score sheet of ASI (second phase of nomination) with regard to the exempted category, it is noted that the last nominated person for UR-(EC) category got 70.5 marks, whereas all the BC-B(EC) candidates specially Sukdeb Basak, Dipak Biswas, who were initially allotted against the UR (EC) category got much less number than the last selected UR (EC) candidate. Therefore, there was a valid reason to revert back them from the UR (EC) category to BC-B (EC) category and as there was only three vacancies remain (as out of five, two vacancies were already filled up in first phase by Biswajit Mandal and Suman Nandi). Thus, as per merit, first three candidates were nominated for BC-B (EC) candidate as no vacancy remain thereafter and as the applicant has got lesser marks than the first three candidates, therefore, his name was not recommended in the modified list.

21. In view of the above facts and circumstances, I do not find anything adverse with regard to modification of the second list. Further, as all the five vacancies were filled up by second phase, the third phase list, which relates to other categories has no relation with the filling up of the vacancies of BC-B(EC) categories. Further, it is not the case of the applicant that any of the BC-B(EC) candidates, who secured lesser marks than the applicant was granted appointment against the five declared vacancies of BC-B(EC) categories.

Accordingly, the instant original application is **dismissed** being devoid of merit with no order as to costs.

Urmita Datta (Sen)
Officiating Chairperson & Member (J)