

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 224 of 2019

Shri Sukanta Paul & Another - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicants : Mr. A. Ray Mukherjee,
and Mrs. S. Agarwal,
Date of order Advocates
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12.09.2024 For the Respondents : Mr. G.P. Banerjee,
Mr. M.N. Roy,
Advocates

For the Pvt. Respondent : Mr. B. Bose,
Nos. 8, 9 & 12 Mr. R.K. Singh,
Advocates

For the P.S.C,
West Bengal : Mr. S. Bhattacharjee,
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Mr. Ray Mukherjee, learned counsel appearing on behalf of the applicants submit the following points:

- (i) The applicants belonged to the 1999 batch for the reason that their selection process began in that year, whereas, the private respondents were participants of a selection process, which was of 2000 year.
- (ii) On 17th October, 2007, 8 Assistant Engineers were promoted to the rank of Executive Engineer, out of which 6 belonged to 1999 batch and 2 belonged to the 2000 batch.
- (iii) Mr. Ray Mukherjee questions the very propriety of the order of the Deputy Secretary, which had cancelled the final gradation list published on 05.12.2018, which had the approval of the Additional Chief Secretary of the Department as evident from the Memo 585 dated 22nd March, 2018.
- (iv) Mr. Ray Mukherjee has drawn attention to page 138 of the application which is Memo 127 dated 18th January, 2018. By this Notification signed by OSD Ex-officio Special Secretary, the seniority positions of the applicants were restored and accordingly, a revised gradation list was published and communicated to different authorities.
- (v) Mr. Ray Mukherjee submits that though the final gradation list published on 18th January, 2018 and widely circulated placing the applicants in serial nos. 10 & 11 was neither questioned nor objected to by any of the officers whose names

appeared in this list, including the private respondents, either in the form of written objections before the respondent authorities or assailing the same in any court of law.

- (vi) Finally, Mr. Ray Mukherjee questions the very action taken by the officer of the Department in negating the opinion of learned Legal Remembrance as well the approval of the Finance Department. He is of the view that, though it may be a well settled law that seniority should be based on the dates of appointment but in presence of a Rule which declares seniority on the basis of the selection year, unless said Rule has been assailed, the Rule is binding on all. Therefore, Rule 4 for determination seniority does very much exist and is the relevant Rule to be followed so far seniority is to be determined.

Mr. Bose, learned counsel on behalf of the private respondents has expressed the following views:

- (i) On 18th December, 2007, 12th May, 2008 and 3rd December, 2008, when the private respondents were promoted to the rank of Executive Engineer after having fulfilled the requirements for such promotion, the applicants did not object to these promotions.
- (ii) The applicants' claim of belonging to the 1999 batch has no basis on record, mere participation in a selection process will not entitle them to such claim, rather the final result of such recruitment test is the only yardstick to determine. In this case, the applicants may have participated in the selection process of 1999 but the fact is their results were declared in later years.
- (iii) Mr. Bose emphasises the point that when the result of 1999 selection process was announced by the Commission, it did not contain the names of the applicants.
- (iv) Mr. Bose has referred to Memo 730 dated 16th November, 2000, which is a list of successful candidates recommended by the Commission to the Department. The list contains 8 names which do not include the names of the applicants. Attention is also drawn to the third para of the second page, in which the Commission informs that it has "also drawn up the reserved list for General, SC and BC candidates which will remain valid up to 28th February, 2002".

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Submission is that from these records, it is evident that the applicants were not part of the recommendations made by the Commission after completion of the 1999 selection process.

- (v) Attention has also be drawn to page 7 of the application, in which appearing at para 6 – Facts of the Case, the applicants have themselves admitted that their names did not feature in the list recommended by the Commission to the Department on 16th November, 2000. As stated in above paragraph, the Commission had indicated that it has drawn up a reserved list of candidates for recommendations in the future. The applicant in his application at the same page assumes that his name was recommended from such reserved list.
- (vi) From the above statement of the Commission in the letter, it is amply clear that the applicant was recommended from such a reserved list, which had validity up to 28th February, 2002 and the applicant was recommended on 6th March, 2002 against such panel.

The gist of submissions made by Mr. Bose is as following – that the applicants did not belong to the 1999 selection process since the result of such process was communicated by way of recommendation by the Commission in its Memo 730 dated 16th November, 2000. It can also be safely surmised that since the Commission had indicated a reserved list, their names have been recommended from such reserved list but it is also to be reckoned and considered that such list as stated by the Commission itself was valid only till 28th February, 2002. The names of the applicants were recommended on 6th March, 2002, after the expiry of such list.

Exception to counter Rejoinder filed on behalf of the State respondents be kept in record. Copy served to the other side.

Let the matter appear under the heading ‘Specially Fixed Matter’ on 21.11.2024.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P/S.M.