

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Officiating Chairperson and Member (J).

Case No. OA – 376 of 2022

Tapan Kumar Das-Gupta - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. A.K. Das Sinha,
and Advocate

Date of order

4

09.09.2022

For the State : Mr. G.P. Banerjee,
Respondents Mr. M.N. Roy,
Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following reliefs:

“(i) To quash and set aside the order dated 21.01.2022 passed by Respondent No. 2 which is annexure “E” to this application.

(ii) To grant the applicant his 1st promotion w.e.f. 2003 and grant his next promotion / promotions as and when same is becoming available and if it is found not becoming available in the alternative the grant same w.e.f. 22.12.2012 at the least in terms of the order in O.A. 565/2015.

(iii) To allow all consequential financial service benefits with arrears by taking into account the date of promotion for the first instance and fixation of pay with retrospective effect as may be found available from time to time.

(iv) To revise the amount of pension and all other

Form No.

Tapan Kumar Das-Gupta

Vs.

Case No. **OA – 376 of 2022**

THE STATE OF WEST BENGAL & ORS.

**retiral benefits as may stand available on the
consequence of the Promotion/Promotions.”**

As per the applicant, one disciplinary proceeding was initiated vide Charge Memo dated 20.05.1999. However, after long twelve and half years the disciplinary authority passed his final order dated 22.12.2011, wherein the disciplinary authority himself had observed that due to the long pendency of the disciplinary proceedings the applicant had financially and mentally suffered and did not get any promotion during that period. Therefore, he has imposed the punishment of “Censure”. Being aggrieved with, he has filed two O.A.s being No. 552 of 2015 and 565 of 2015. The said O.A. No. 565 of 2015 was filed praying for promotion of the applicant, which was disposed of vide order dated 03.12.2021 directing the appellate authority to consider his representation. Subsequently, the O.A. No. 552 of 2015, which was filed challenging the final order dated 22.12.2011 was disposed of by judgement dated 08.09.2022, wherein it has been held that even punishment of “Censure” is not a bar for granting any promotion and further observed that the applicant would be entitled for promotion, if any, during this period. Therefore, the counsel for the applicant has submitted that the O.A. may be disposed in the light of the judgement passed by this Tribunal in O.A. No. 552 of 2015. The counsel for the applicant has further has drawn my attention to the Memorandum No. 224-P & AR (Vig.) dated 12th June, 1980, wherein sub-para 2(ii), it has been stipulated that if the disciplinary proceedings will continue without the fault of the delinquent officer more than three years he should be granted promotion if otherwise found fit on provisional post. But in the instant case, he was considered for promotion during the period 1999 – 2011 due to the pendency of the disciplinary proceedings that there is no fault on the part of the applicant as would be evident from the final order dated 22.12.2011. Therefore, he should be granted promotion provisionally beyond the period of three years from the date of Charge Sheet dated 25.05.2019 as held by

Form No.

Tapan Kumar Das-Gupta

Vs.

Case No. **OA – 376 of 2022**

THE STATE OF WEST BENGAL & ORS.

this Tribunal in O.A. No. 552 of 2015.

The counsel for the respondent has submitted that they have acted upon the recommendation of the Public Service Commission as Public Service Commission has to be recommended the candidate for promotion of cadre of West Bengal Forest Services.

I have heard the parties and perused the records. It is noted that the applicant was not found fit for the promotion as per the Public Service Commission since he was suffering punishment up to the period of 06.01.2013. As per the Public Service Commission, the period of debarment from promotion in respect of the applicant due to imposition of penalty of “Censure” expires on 06.01.2013; therefore, he is only eligible for after 06.01.2013, whereas the final order was passed on 22.12.2011 even if as per the Public Service Commission, it is for one year. Then one year would start from 23.12.2011 and will expire on 22.12.2012 but not on 06.01.2013. Therefore, it is not understood on what basis the cut of date for expiry of punishment for “Censure” was stipulated as 06.01.2013. It has been further observed that the disciplinary authority in his final order dated 22.12.2011 had imposed punishment of “Censure”. However, he had also observed that due to such prolong pendency of the disciplinary proceedings, the applicant has suffered financially by not getting promotion and if the “Censure” period would be taken up to 06.01.2013 i.e. after passing of final order dated 22.12.2011. In that case, after expiry of three years from the date of issuance of Charge Sheet, the applicant is entitled to consider his promotion if any due to him as the punishment order would not effected during that period for promotion, which has been held in the judgement dated 08.09.2022, wherein it has been observed that the applicant would be entitled to get promotion, if any, during this period. In view of the above, I quash the reasoned order dated 21.01.2022 and remand back the matter to the authority to conduct a D.P.C. for consideration the case of the applicant for promotion for the

ORDER SHEET

Form No.

Tapan Kumar Das-Gupta

Vs.

Case No. **OA – 376 of 2022**

THE STATE OF WEST BENGAL & ORS.

period beyond three years on the date of issuance of Charge Sheet dated 25.05.2019 and to communicate their decision within a period of six months from the date of receipt of the order in accordance with law.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.