

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member**

**Case No. - OA 602 OF 2021**

**VINOD KUMAR - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No.	For the Applicant	:	None
and Date of order	For the State Respondents	:	Mr. Gaurav Haldar, Learned Advocate

The matter is taken up by the Single Bench pursuant to the order contained in 19 the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022  
04.09.2025 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to the respondent authorities to re-fix the position of the applicant by recasting and preparing the Gradation List of Sub-Inspectors of Batch No.57/2009-2010 of Kolkata Police by determining the inter-se seniority of the applicant particularly with regard to the act of alteration and down-gradation of the merit position of the applicant.

The Joint Commissioner of Police (Headquarters), Kolkata, in compliance with the order dated 18.11.2020 of the Tribunal in O.A. 274 of 2020, considered and regretted the prayer of the applicant by passing a reasoned order dated 14.01.2021 in terms of Rule 57C and Rule 63 of PTC Manual, 1936.

The applicant, Vinod Kumar, had participated in a selection process for the post of Sub-Instructor in Kolkata Police conducted by the West Bengal Public Service Commission. He was appointed on 16.01.2010. The applicant underwent training at PTC and the training concluded on 23.02.2011. In the examinations at the PTC, the applicant secured total 1221 marks, but failed in swimming. Though the pass mark in Swimming was fixed 12.8 and the applicant secured 0, but due to an inadvertent mistake on the part of the authority, having been a failed candidate, his name was recommended. Regulation 46(4)(b) of Chapter XV of the Police Regulations of Calcutta, 1968 requires a direct recruit to the post of S.I. to undergo one-year training in the PTC / PTS. In his memo dated 16.06.2011, the authority inadvertently accepted him as a successful candidate and his name was included in the merit list and placed in the gradation list at serial No.3. Immediately after

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detection of the error, necessary rectification was made vide order No.1237 dated 03.11.2011. Since the applicant cleared the swimming test in the second Supplementary Examination, by availing two additional opportunities, it must be construed the final examination. The applicant relied on Rule 57C and Rule 63 of PTC Manual, 1936. Rule 63 of the Police Training College Manual, 1936, lays down the modality of determination of relative seniority of cadets appointed to the post of Sub-Inspector in accordance with the marks obtained in the final examination.

The applicant had referred to the concluding paragraph of the reasoned order passed by the Joint Commissioner of Police (Hqrs.) Kolkata on 14.01.2021. The relevant para is as under:

*“In view of the facts and discussions stated above, I am of the considered view that, the applicant has been rightly placed at rank no. 171 in the final Gradation List published on 05.02.2013 which has been done in terms of the PTC Manual, 1936. His prayer, as made by him vide representations dated 17.01.2018 and 13.03.2018, is thus, considered and regretted.”*

The Rule, 63 of Bengal Police Training College Manual, 1936 obtained by the applicant's father through the RTI Act on 07.05.2019 is referred to. The relevant rule 63 is as under:

*“2. As per Rule 63 of Bengal Police Training College Manual, 1936- “The relative seniority of the cadets appointed as probationary Sub-Inspectors will be ordinarily in accordance with the marks obtained in the final examination”.*

Submission of Mr. Kumar was that the respondent authorities were incorrect in referring to Rule 63 as the reason for reduction of his rank from 3 to 171. Submission was that, as evident from Rule 63, seniority of a cadet as a probationary Sub-Inspector is to be based on aggregate marks obtained by him/ her in the final examination. Mr. Kumar had referred to copy of Merit List of Cadet SI's KP of Batch No. 57/2009-10. Appearing at serial No. 3, name of the applicant - Vinod Kumar is seen, having secured 1221 marks. As clear from the above cited

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paragraph, Mr. Kumar had submitted that, having secured 1221 marks and placed 3rd in the overall merit list, the authorities cannot dilute and downgrade him to 171 position. Continuing his submission, Mr. Kumar placed a copy of Memo. 1882-F dated 11.03.1981. This is a Notification published by the Finance Department titled “West Bengal Services (Determination of Seniority) Rules, 1981”. Emphasis is given by him at Rule 4, which is as under:

*“4. Determination of seniority of direct recruits- The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Commission or selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on the result of a subsequent selection.”*

Submission was that as clear from this Rule, his seniority should have been maintained on the basis of the merit in the examination in which he had been placed at serial No.3.

The learned counsel for the respondents had submitted that the applicant had approached this Tribunal earlier in OA-274 of 2020 in which similar prayers were heard by the Tribunal and a direction was given to the respondent authorities to consider the representation filed by the applicant by order dated 18.11.2020. In terms of such a direction of the Tribunal, the respondent authority, the Joint Commissioner of Police (Hqrs.) passed the reasoned order dated 14.01.2021. Submission of Mr. Roy is that since the prayer in this application filed earlier as well as the prayer in this application are similar and his main grievance of being downgraded from serial No. 3 to 171 are same, therefore, this application is hit by constructive res judicata. Secondly, the applicant having accepted earlier the Police Training College Manual, 1936, now he cannot take shelter under West Bengal Services (Determination of Seniority) Rules, 1981. Mr. Roy, further submits that as per Rule 57C of PTC Manual, a candidate is required to obtain at least 50% in each subject and 60 % of the total marks in each Group- A and B to be fully successful

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in the said examination. In this case, the applicant could not clear his swimming examination, therefore, his original seniority at serial No. 3 was not considered and such seniority was not retained. Having passed the swimming test on second chance, he was relegated to position 177 in the Gradation List.

The applicant had submitted that the inter se seniority in his case is determined in terms of notification of West Bengal Services (Determination of Seniority) Rules, 1981. It is contended that the relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for appointment on the recommendation of the Commission or other selecting authority. By way of filing O.A. 274 of 2020, the applicant prayed for re-fixation of his position in the said gradation list in terms of merit list dated 16.06.2011 and all consequential benefits may be granted by considering his representation dated 17.01.2018 and 13.03.2018. On 18.11.2020 the Tribunal directed the concerned respondent authority to consider the representations of the applicant as per Rules.

The Joint Commissioner of Police (Headquarters), Kolkata, in compliance with the order dated 18.11.2020 of the Tribunal in O.A. 274 of 2020, considered and regretted the prayer of the applicant by passing a reasoned order dated 14.01.2021 in terms of Rule 57C and Rule 63 of PTC Manual, 1936.

Submission of the learned counsel for the respondents is that a candidate passed out in the Second Supplementary Final Examination cannot claim his position in the merit list of the regular candidates. The applicant's name was included in the merit list on 11.06.2012 and as per the Gradation List, prepared on 05.02.2013 and published in Kolkata Police Gazette on 11.02.13, the applicant's name appeared at Serial No.171. It was very well admitted by the applicant till 2018.

The learned counsel for the respondents submits since the Tribunal earlier considered the self-same prayers in O.A. 274 of 2020, this application is hit by the principle of constructive res judicata. Once the applicant, having accepted earlier

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the Police Training College Manual, 1936, now he cannot take shelter under West Bengal Services (Determination of Seniority) Rules, 1981. The applicant cannot approbate and reprobate the PTC Manual, 1936 and the 1981 Rule at the same time. As per Rule 57(C) of PTC Manual, a candidate is required to obtain at least 50% in each subject and 60% of the total marks in each Group A and B to be fully successful in the said examination. The applicant could not clear his swimming examination, therefore, his earlier seniority, being not valid, was not retained.

Having heard the applicant in person and the learned counsel for the respondents, after meticulously examining the records and the result of Final Examination of SI (UB) WBP & KP of Batch No.57/09-10, the Tribunal finds that though the applicant secured total 1221 marks at the first examination, he failed in the Swimming Test conducted by the authority. In the second supplementary opportunity, he cleared the test. Having passed the swimming test, his rank dropped to serial No.171 in the final Gradation List dated 05.02.2013. The authorities have every right to rectify any inadvertent mistake on their part and one should not be allowed to take advantage of such a mistake. Knowing very well he had failed in the outdoor competition as per the PTC Manual, he willingly participated in the opportunity granted by the authority. Having participated in subsequent attempt and not getting a favourable position in the gradation list, the applicant moved before the Tribunal. By clearing the supplementary examination, the applicant cannot demand the earlier place in the gradation list dated 16.06.2011. If the applicant was given a better position, he might not have agitated on this point. It is an admitted fact that the applicant availed one additional chance to complete the same examination. In this way determination of seniority of the applicant, as he prayed for, is unsustainable. Since 11.06.2012 the applicant stayed in Rank 171 without any objection, but only after 5 and half years, in 2018, his representation questions the validity of Gradation List and re-fixation of his position to the Rank 3. It does not confer any right to the applicant, therefore, such prayer cannot be accepted as valid under the eyes of law.

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From the above observations, it is clear that the reasoned order was passed in terms of the extant Rules. The Tribunal is satisfied with the decision taken by the respondent authority. The respondent authority was correct in taking a decision to reject the prayer of the applicant. Thus, finding no merit, this application is disposed of without passing any orders.

SCN.

(SAYEED AHMED BABA)  
OFFICIATING CHAIRPERSON  
and MEMBER (A)

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