

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. - OA 173 of 2014

BIDYUT NARAYAN DAS - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order : For the Applicant : Mr. Kallol Basu,
Mr. S. Banerjee,
Advocates

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01.02.2021 : For the Respondents : Mr. B.P. Ray,
Mr. G.P. Banerjee,
Advocates

For the Public Service Commission West Bengal : Mr. S. Bhattacharya,
Advocate

The matter is taken up by the single Bench pursuant to the notification no.949-WBAT/2J-15/2016 dated 24th December, 2020 issued in exercise of the powers conferred under sub-Section (6) of Section 5 of the Administrative Tribunals Act, 1985.

In this application, Bidyut Narayan Das, the applicant, has prayed for several reliefs, the relevant portion of which is as under:

“a) Pass an order quashing and / or setting aside the entire promotional selection process wherein the name of the applicant has not been considered for promotion to the post of West Bengal Forest Service Cadre based upon faulty and illegal Annual Confidential Reports of the applicant;

b) Pass an order directing the respondent authorities concerned and / or their men, servants, agents and / or assigns to forthwith withdraw, cancel and / or rescind the Annual Confidential Reports of the applicant for the assessment years 2007-2008 and 2011-12 (particularly for the period from 21.10.2011 to 31.03.2012) which were sent to the Public Service Commission and considered by the West Bengal Public Service Commission while rejecting the claim

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for promotion of the applicant;

- c) *Pass an order directing the respondent authorities concerned and / or their men, servants, agents and / or assigns to forthwith correctly prepare the Annual Confidential Reports of the applicant for the assessment years 2007-2008 and 2011-12 (particularly for the period from 21.10.2011 to 31.03.2012) in strict conformity with the Finance Department's memorandum bearing no.9135-F dated 10.09.2002 as also Government order bearing no. 7200/PCM/1R-5(New) dated 09.01.2004, and to forthwith consider the case of the applicant for promotion and / or give promotion to the applicant to the post of West Bengal Forest Cadre with effect from 2007-08;"*

The Original Application was filed on 18th February, 2014. Reply, Rejoinders have been filed and are on record.

The facts are that the applicant was appointed as Forest Ranger in May, 1988. The applicant, in 2006, after completion of eight years of service, and after clearing the departmental examination, became eligible for consideration of promotion to the cadre of West Bengal Forest Service. Allegation is since then the State respondents have not granted promotion which is due. It has been stated that he was not promoted by the concerned respondents due to non-preparation of Annual Confidential Report ('ACR' for short) in due time in conformity with the rules and regulations and did not send the promotion proposal to the Public Service Commission, West Bengal. Though the State authorities under the law were bound to send the ACRs for the relevant years to the Public Service Commission, it was not done. Though for the period 2007-2008 and 2011-2012 adverse entries were made, those were not communicated to the applicant. As a result, promotion due was not granted in time. He was promoted belatedly on 26th August, 2014 instead of 15th May, 2013, when his juniors were promoted.

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Mr. Kallol Basu, learned advocate for the applicant submits that though promotion of the applicant is due from 2007-2008, as ACRs for the period 2007-2008 and 2011-2012 with adverse entries were not communicated, he was unable to make representation for promotion at the relevant point of time, that is 15th May, 2013. In this regard reliance has been placed on the judgement passed on 25th November, 2020 in O.A. 1083 of 2017 : S.P. Mishra v. State of West Bengal and Others and of the Supreme Court in Ramesh Kumar v. Union of India and Others : 2015 AIR(SC) 2904.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents submits that though the juniors to the applicant were promoted on 15th May, 2013, however, subsequently the applicant was promoted on 26th August, 2014 and as he had accepted it without protest during the pendency of this application, no order be passed. Relying on the judgement passed in O.A. 827 of 2009, Bidesh Ranjan Joardar versus State of West Bengal and others, it is submitted that assuming the applicant is entitled to seniority and other service benefits including the benefit of pay fixation, however, no order be passed in respect of arrears of the pay for the period from the date of notional promotion to the date on which he actually joined, that is the promotional post, as he did not work during the said period.

Mr. S. Bhattacharya, learned advocate for the Public Service Commission, West Bengal relying on the reply, submits that recommendations are made on the basis of the ACRs submitted by the concerned Department and in this case, the Commission had recommended on the basis of the documents sent by the State authorities and the Public Service Commission has no role to play regarding non-communication of the ACRs to the applicant.

Before I proceed, it is appropriate to set out the relevant paragraphs of the reply filed on behalf of the State respondents, which are as under:

“4. That the ACRs’ of Forest Rangers, who are under zone of

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consideration for promotion to the post of West Bengal Forest Service cadres according to existing vacancies are sent to West Bengal Public Service Commission through Department of Forests, Govt. of West Bengal. Subsequently these ACRs of Forest Rangers after thorough verification and perusal are sent to West Bengal Public Service Commission for selection to the cadre of West Bengal Forest Service. West Bengal Public Service Commission verified the ACRs and other documents as per the norm fixed by them and declare the list of selected candidates for promotion to the cadres of West Bengal Forest Service from Forest Rangers. Accordingly Sri Bidyut Narayan Das was not found eligible for promotion to West Bengal Forest Service by West Bengal Public Service Commission for reasons best known to the Commission. The Directorate have no role in selection of candidate or promotion from Forest Ranger to West Bengal Forest Service. The selection is done by the West Bengal Public Service Commission and promotion is given by the Forest Department.”

“11. With reference to the statements made in paragraphs 6(xxii) to 6(xxxii), I do not admit the correctness of the statements made therein.

12. With reference to the statements made in paragraph 6 (xxxiii) of the said application, I say that it is under purview of West Bengal Public Service Commission. Not awarding promotion to the applicant from Forest Ranger to West Bengal Forest Service cadre, are the reasons best known to them only.”

The relevant portion of the reply filed on behalf of the Public Service Commission, is as under:

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“4. At the outset I submit that the Commission considered the proposal for promotion to the post of Assistant Divisional Forest Officer and recommended the name of officers for such promotional post on the basis of Service particulars and considering the respective last 5 years ACRs, IC and other relevant information in respect of all eligible officers who’s names were furnished by the concerned Department. As such the allegations of improper assessment and/or unfair consideration as alleged are not correct and have no basis. Commission being a Constitutional Body considered the proposal for promotion impartially and in a rightful manner by observing all necessary procedure for such Selection. In the instant case the name of the applicant was not recommended for such promotional post by the Commission as the applicant acquired low merit rating on ACRs. As such the allegations against the Commission is absolutely vague, baseless and untrue inasmuch as ACRs of the officers were prepared by the concerned Department and not by the Commission. As such the instant application is liable to be dismissed in limine.”

“8. With reference to paragraph 6 (XIX) to 6 (XXII) and paragraph 6 (XXXII) of the said application I deny all contrary statements except those are matters of record. I state that the Commission has wrongly stated vide its letter no.3341/PSC dated 27.09.2013 that the case of the applicant was considered on 12.08.2013 which is admitted with deep regret.

The case of Shri Das had been considered alongwith other 38 officers in the Board meeting held on 03.05.2013 Dr. S.K. Das, Additional Chief Secretary, Forest Department attended the Board and the Commission recommended 23 eligible officers against 25

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existing vacancies. The Commission kept pending recommendation against 02 UR vacancies till receipt of present status report in respect of ACRs. In a separate Board meeting held on 12.08.2013 the Commission considered and recommendation those two officers.”

It is apparent that though many factual aspects have been raised by the applicant in the Original Application, the statements therein have neither been controverted either by the State respondents nor by the Commission in their respective replies. It is to be noted that the reply filed by the State respondents runs into 3 pages, and the reply of the Commission runs into 4 pages. The replies filed by the State respondents and the Commission do not touch on the merit of the case at all. Moreover the allegations made in the applications have not been traversed. Therefore the statements made in the Original Application are deemed to be correct particularly with regard to the fact that the applicant was not furnished with the ACRs having adverse comments for the year 2007-2008 and 2011-2012 and he could not file representation against it. It is a well settled proposition of law that it is the bounden duty of the administration to communicate the remarks in the ACRs. to the applicant. In “Rukhsana Shaheen Khan v. Union of India & Ors.” : (2018) 18 SCC 640, it has been held that “*uncommunicated and adverse ACRs cannot be relied upon in the process of.... for promotion*”.

Since the law is settled that uncommunicated ACRs cannot be relied on while considering the case of promotion and as non-communication of remarks is violative of Article 14 of the Constitution and is arbitrary and illegal, the action of the respondents in denying the promotion to the applicant from 15th May, 2013, when his juniors are promoted, till 26th August, 2014 cannot be sustained and is set aside and quashed as it is contrary to the principles of law laid down in the judgement discussed hereinbefore and the same is set aside and quashed.

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Now the question arises whether the applicant is entitled to the consequential and other benefits. The Supreme Court in Ramesh Kumar (supra) held that in appropriate cases a court of law may take into account all facts in entirety and pass appropriate order in consonance of law. The principle of no work no pay would not be attracted in the case of the applicant as ACRs were not communicated for the years 2007-2008 and 2011-2012 by the State respondents for which the applicant cannot be held responsible. The respondents were at fault. The replies filed by the State respondents and the Commission are silent in this regard. Hence, the respondents are bound to grant all the consequential reliefs from 15th May, 2013 to 26th August, 2014, the date when the applicant was subsequently promoted.

Accordingly, I direct the Secretary, Department of Forest, Government of West Bengal, the respondent no.1, to promote the applicant with effect from 15th May, 2013 that is the date of promotion of his immediate junior in service i.e. 15th May, 2013 and to place him above the immediate juniors who were promoted on 15th May, 2013, mainly above the added respondent no.12 within a period of eight weeks from the date of communication of this order. The applicant is also entitled to all consequential reliefs for the period from 15th May, 2013 to 26th August, 2014 which the said respondent shall release within eight weeks from the date of communication of this order. The Original Application is allowed.

So far as the M.A. 01 of 2021 is concerned, since the application, being O.A. 173 of 2014 has been heard and judgement has been delivered today, the Miscellaneous Application, in connection with O.A. 173 of 2014 has become infructuous and is, thus, dismissed.

(SOUMITRA PAL)
CHAIRMAN