

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

Case No. –OA 181 of 2017

Kedar Nath Roy. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. G. P. Banerjee, Mr. A. Som, Advocates.
<u>20</u> 23.08.2022.	For the State Respondents	: Mr. S. Ghosh, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4th August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application, Kedar Nath Roy – the applicant has challenged the order dated 5th February, 2013 cancelling the order dated 8th February, 1985 promoting him as Upper Division Clerk at Mathabhanga PHC, Cooch Behar on the ground that it was done without giving an opportunity of hearing.

Mr. G. P. Banerjee, learned advocate appearing on behalf of the applicant submits that since, while passing the order dated 5th February, 2013, the Director of Health Services, West Bengal – the respondent no. 8 did not give an opportunity of hearing to the applicant to defend his case, it may be set aside. Moreover, the order dated 6th September, 2013 passed by the said respondents, appearing at page 30 of the application, is not sustainable if the order dated 5th February, 2013 is set aside.

Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents does not dispute that the order dated 5th February, 2013 was passed by the respondent no. 8 without giving an opportunity of hearing.

In reply, it is submitted by Mr. Banerjee that the order dated 5th February, 2013 and the order dated 6th September, 2013 may be set aside and quashed and as no pension has been granted to the applicant, the respondents may be directed to issue pension payment order.

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It appears that the matter was admitted and directions were issued upon the parties to file reply and rejoinder. However, the respondents have not filed reply. In the absence of reply the statements made in the original application are deemed to have been admitted by the respondents. Since admittedly the order granting promotion to the applicant on 8th February, 1985 was recalled by order dated 5th February, 2013 after 28 years and that too without giving an opportunity of hearing and after the applicant had superannuated, the said order dated 5th February, 2013 cannot be sustained and is thus set aside and quashed. The order dated 6th February, 2013 promoting the applicant to the post of UD Clerk-cum-Typist issued by the Director of Health Services, West Bengal – the respondent no. 8 is also set aside and quashed. The application is allowed. Accordingly it is made clear that the applicant would have deemed to have been promoted to the post of Upper Division Clerk at Mathabhanga PHC, Cooch Behar with effect from 1st April, 1984 in view of the notification dated 8th February, 1985, being annexure 'C' to the application. Thus the application is disposed of by directing the Director of Health Services, West Bengal – the respondent no. 8, to grant pension and other pensionary benefits to the applicant within 15 weeks from the date of compliance of formalities treating him to have been promoted to the post of Upper Division Clerk at Mathabhanga PHC, Cooch Behar with effect from 1st April, 1984. The said pension and pensionary benefits will be given in accordance with law and on compliance of formalities by the applicant. It is also made clear that the respondent no. 8 shall intimate the applicant about the formalities to be complied with within a fortnight from the date of presentation a copy of this order.

(SOUMITRA PAL)
CHAIRMAN

S.M.

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