

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman
The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. – O.A. 232 of 2019

MEER MD. YASIN – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. Manujendra Narayan Roy, Advocate
<u>13</u> 22.03.2022	For the Respondents	: Mr. Gautam Pathak Banerjee, Advocate

In this application, Meer Md. Yasin, the applicant has prayed for several several reliefs, the relevant portion of which is as under:

“(a) An order do issue directing the concerned respondent authorities to forthwith grant retrospective promotion to your applicant to the post of Chief Probation-cum-After Care Officer, West Bengal with effect from 13.03.2019 under the respondent authorities and cancel/set-aside/quash the promotional order of the respondent no.4 vide notification no. 3098-DCA/O/4M-11/11 Pt.-I dated 13.03.2019.

(b) An order do issue directing the respondent authorities to issue Promotional Order to the post of Chief Probation-cum-After Care Officer, West Bengal retrospectively from 13.03.2019 when the respondent authorities granted promotion to the respondent no.4 and re-fix the pay and seniority of your applicant vis-a-vis the respondent no.4.”

Despite service of notice, as evident from the affidavit of service

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affirmed on 16th April, 2019, none has appeared on behalf of the private respondent no.4.

It appears that the applicant had joined the service as Probation Officer on 19th June, 1997. After joining, the services of the applicant was confirmed with effect from 18th June, 2000 and the Department published the gradation list of Probation Officers on 15th May, 2008 wherein the name of the applicant was placed at serial no.13 and the name of the respondent no.4 was placed at serial no.15. On 30th December, 2015 the applicant was promoted to the post of Deputy Chief Probation-cum-After Care Officer. Thereafter, the respondents published a draft gradation list of Deputy Chief Probation-cum-After Care Officer, wherein the name of the applicant appeared against serial no.1, and wherein the name of the respondent no.4 appeared at serial no.2. The Chief Probation-cum-After Care Officer superannuated on 28th February, 2019. According to the applicant he expected to be promoted to the post of Chief Probation-cum-After Care Officer, West Bengal. However, by notification dated 13th September, 2019 the respondent no.4 was promoted to the post of Chief Probation-cum-After Care Officer, West Bengal superseding the applicant. Aggrieved, the applicant has filed this Original Application. After the application was admitted, the State respondents have filed reply.

Mr. Manujendra Narayan Roy, learned advocate for the applicant submits that since the facts are undisputed and the issue is settled, no rejoinder is necessary.

It is submitted on behalf of the applicant that since the notification promoting the private respondent no.4 was issued on 13th March, 2019, being Annexure "F" to the application, and as the charge-sheet was issued to the applicant on 2nd April, 2019, being Annexure "R-1" to the reply, the applicant is entitled to relief as prayed for since the benefit of promotion accrued to him on

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13th March, 2019. Referring to Annexure-II at page 35 of the reply on behalf the State respondents, that is, proposal sent by the State authorities to the Public Service Commission, it is submitted by Mr. Roy that initiation of proceedings though approved, cannot be the basis for denial of promotion to the applicant in view of the law laid down by the Supreme Court in Union of India and Others vs. Anil Kumar Sarkar : (2013) 4 SCC 161. According to him since on 13th March, 2019, when the private respondent no.4 was promoted, no charge sheet was pending against the applicant, orders as prayed for, may be passed.

Mr. Gautam Pathak Banerjee, learned advocate appearing on behalf of the State respondents relying on the reply, submits as proceedings were initiated against the applicant on 8th February, 2019, as evident from Annexure-II to the reply, no order may be passed.

Heard learned advocates for the parties. There is no dispute that by notification dated 13th March, 2019 the private respondent no.4 was promoted to the post of Chief Probation-cum-After Care Officer, West Bengal when no disciplinary proceedings were pending against the applicant. It is to be noted that charge-sheet against the applicant was issued on 2nd April, 2019 as evident from Annexure "R-1" to the reply filed by the State respondents. As on 13th March, 2019 admittedly no departmental proceedings were pending, it is appropriate to mention that in Union of India vs. Anil Kumar Sarkar (supra) it has been held "the disciplinary proceedings commence only when the charge sheet is issued. The departmental proceeding is normally said to be initiated when a charge sheet is issued." Since the benefit of promotion accrued to the applicant on 13th March, 2019 when no departmental proceedings were pending against the applicant, the applicant is entitled to the reliefs as prayed for. Therefore, let there be an order in terms of prayer (a) to the application setting aside the promotional order of the respondent no.4, being annexure "F" to the

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SCN. original application. The application is allowed. Accordingly, let there be an order in terms of the prayer (b) directing the Principal Secretary to the Government of West Bengal, Department of Correctional Administration, Kolkata, the respondent no.1 to issue promotional order promoting the applicant to the post of Chief Probation-cum-After Care Officer, West Bengal retrospectively with effect from 13th March, 2019 when the respondent authority granted promotion to the respondent no.4 and refix the pay and seniority of the applicant vis-a-vis the respondent no.4 within eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN

WEST BENGAL ADMINISTRATIVE TRIBUNAL