

ORDER SHEET

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 39 OF 2019

MD. SHAFIULLAH GAZI - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and

Date of order

18

19.02.2025

For the Applicant

:

Mr.Gourav Haldar
Advocate

For the State respondents

:

Ms. Ruma Sarkar
Mr. Sourav Debray
Mrs. Anjana Bhattacharya
Mr. R.Bag
(Departmental Representatives)

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

On consent of the learned counsel and the learned Departmental representatives for the contesting parties, the case is taken up for consideration sitting singly.

By filing this application, the applicant has prayed for directing the respondent authorities to give him notional effect to the promotion of Special Revenue Officer, Grade-II with effect from 07.12.2007 and re-fix the pay and seniority accordingly. The applicant, being the charged officer, was imposed a punishment of withholding of two increments in the final order passed on 11.06.2014 after conclusion of the Disciplinary Proceedings. On 23.07.2014, the applicant being within the zone of consideration for promotion was promoted to the post of SRO-II. Mr.K.Basu, learned counsel for the applicant had submitted that since his juniors had availed of such promotional benefit earlier, therefore, he is also entitled to receive notional promotion with effect from 07.12.2007. The learned Departmental representatives, however, opposed this prayer on the preliminary ground that no promotion during pendency of the Disciplinary Proceedings can be given to any employee.

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Further submission was that the promotion order had it made clear that benefits arising out of such promotion will be from joining to the promotion post. This promotion order being referred to was issued on 23.07,2014. Therefore, their point was that the applicant cannot agitate at this stage for giving benefits of such promotion notionally with effect from 07.12.2007, the period during which a Disciplinary Proceeding was being conducted against him. The Department also emphasised the point of limitation, since this application filed before this Tribunal in the year 2019 prays for a cause which occurred in the year 2014. The Department had filed a copy of the judgement of the Hon'ble Apex Court in the matter of Union of India and Others Vs. K.V.Jankiraman and Others as a relevant reference in this matter.

Mr.Basu, learned counsel had disagreed that the application is barred by limitation because of its continuity by filing different representations before the respondent authorities.

Having heard the submissions of the learned counsels and the departmental representatives and after perusing the documents so submitted by them and after going through the judgement of Hon'ble Apex Court in Union of India and Others -Vs- K.V.Jankiraman and Others so relied upon by the State Respondents, the Tribunal has come to its conclusion that at the time when the batchmates of the applicant were given promotion to the rank of Special Revenue Officer Gr-II from Revenue Officer with effect from 07.12.2007 a departmental proceeding was already initiated against the applicant vide charge sheet dated 16.10.2007. Thereafter, the applicant was given promotion in the rank of Special Revenue Officer Gr-II by an order No. 3699-Aptt/1E-38/2013 dated 23.07.2014 on the first instance after passing of the punishment order in the said departmental proceeding. Furthermore, in that order

itself, it was mentioned that the order will take effect from the date of submission of the joining report of the officers to the DLR&S, WB. The applicant joined the promotional post being fully aware of the conditions and accepting the same as laid down in the promotional order.

The judgment passed by the Hon'ble Three Judges' Bench of the Apex Court in the matter of Union of India and Others Vs. K.V.Jankiraman and Others is relevant here and the following paragraph of the judgement is cited below:

“To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently.”

“When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.”

In the light of above judgement, the Tribunal has reached this conclusion that the applicant cannot claim notional effect of promotion from the date when his batchmates were promoted and departmental proceeding was already initiated against him by issuing charge sheet which ultimately culminated in imposing penalty upon the applicant.

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Thus, this Tribunal does not find any merit in this application and therefore, this instant application is disposed of without passing any order.

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

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