



ORDER SHEET

Form No.

MALAY BAIRAGI.

Vs.

Case No. OA 437 of 2018 (MA 114 of 2019).

THE STATE OF WEST BENGAL & ORS.

Grade-I on 18<sup>th</sup> January, 1992. The grievance of the applicant is though a promotion list was published by the department on 10<sup>th</sup> June, 2011, the applicant was excluded and the employees junior to him were promoted. The applicant submitted his grievances before the department. The department by memo dated 31<sup>st</sup> January, 2013 included the applicant in the promotion list . On 8<sup>th</sup> May. 2013 the applicant joined the promoted post. The applicant has highlighted the fact that one Subhas Halder, who joined in 1989 in the basic grade in Grade –II post, was promoted to the post of Record Supplier on 14<sup>th</sup> July, 1994 and was further promoted to the post of Muharrir in 1990 and thereafter to the post Muharrir Grade-I on 30<sup>th</sup> October, 2003. Allegation is although Subhas Halder was not included in the selection list prepared on 12<sup>th</sup> November, 1992 he was allowed to steal a march over the senior employees in the same cadre. It appears that the applicant had made representations on 5<sup>th</sup> August, 2016, 16<sup>th</sup> August, 2017 and 16<sup>th</sup> February, 2018 praying for promotion to the post of Muuharrir Grade-II. The applicant through learned advocate by letter dated 13<sup>th</sup> April, 2017 had demanded justice.

The matter was taken up from time to time. The applicant had filed a supplementary affidavit on 10<sup>th</sup> December, 2018. It appears that the matter was taken up on 8<sup>th</sup> August, 2018 and an order was passed which is as under :-

*“....The applicant has challenged order of promotion of his junior which took place in the year 1994 by filing the present original application in the year 2018. The delay of twenty-four years has not been explained by filing separate application by the applicant. Gradation list has not been enclosed with the original application to establish that the person who got the promotion was junior to the applicant in the year 1994.*

*None appears on behalf of the state respondents in spite of service of notice as reflected from the affidavit of service filed on behalf of the applicant.*

*The applicant is directed to serve afresh notice and copy of the original application on all the respondents by Speed Post within a period of four weeks and to file fresh affidavit of service in this regard on the next date of hearing. The applicant is also at liberty to file an application under appropriate provision of law for condonation of delay of twenty-four years for filing of the present application challenging promotion of his junior on the next date of hearing.*

*List the matter under the heading “admission hearing” on 12<sup>th</sup> December, 2018.....”.*

Mr. B. Chakrabarti, learned advocate appearing on behalf of the applicant submits as denial of promotion is a continuing wrong, the application for condonation of delay filed be allowed as the application has merit.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents submits that the MA 114 of 2019 does not disclose the reasons for moving the application in the year 2018 after a delay of twenty-four years. Since there has been considerable delay and as the order dated 8<sup>th</sup> August, 2018 has not been challenged, no order may be passed. Referring to the supplementary affidavit, submission is since the applicant was aware that his prayer for stepping up of pay was rejected by the respondents by order dated 9<sup>th</sup> March, 2015 annexed to the supplementary affidavit, no order may be passed. Moreover the application is not maintainable for non-joinder of parties since Subhas Halder, against whom allegations have been made, has not been made party respondent.

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Heard learned advocates for the parties.

Since we find that the Miscellaneous application for condonation of delay has not been drafted properly and is defective as no mention has been made in number of years in the delay in moving the application, we proceed to deal with the matter on merit. MA 114 of 2019 is disposed of.

Though it is submitted on behalf of the applicant that the denial of promotion is a continuous wrong, however surprisingly the applicant has not challenged the order dated 9<sup>th</sup> March, 2015 rejecting his prayer for stepping up of pay. The applicant during his service tenure had filed representations. He had superannuated on 28<sup>th</sup> February, 2018 and thereafter he has filed the original application on 14<sup>th</sup> June, 2018. It is surprising that the applicant instead of challenging the order dated 9<sup>th</sup> March, 2015 during his service tenure had waited and filed the application after superannuation. Assuming the application has merit, though allegations have been made against Subhas Halder, he has not been made a party respondent to the application. Therefore, it is hit by the principles of non-joinder of parties.

Hence, no order is passed on the original application as it is without merit. The original application is disposed of.

(SAYEED AHMED BABA)  
MEMBER(A)

(SOUMITRA PAL)  
CHAIRMAN.

Sk.

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