

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 492 OF 2023

MD. NAZIMUL ISLAM MOLLAH & ORS.- VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. M.N. Roy,
and Mr. G. Haldar,
Date of Advocates
order

For the State Respondents : Mr. Sankha Ghosh,
Advocate

9
13.12.2024

For the Private Respondent : Mr. G.P. Banerjee,
Nos.14,19,21,27,32,40,42,45,50,51,52, Advocate
54,56,57,67,70,71,72,79,84,88,91,94,
107,110,111,112,116,117,118,120,121,
131, 136,147 and 157

For the Private Respondent Nos. 7, : Mrs. S. Agarwal,
81, 85, 95, 96 and 125 Advocate

For the Private Respondent Nos. : None
16, 87 and 108

For the Public Service : Mr. Saurav Bhattacharjee,
Commission, West Bengal Advocate

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.

By filing this application, the applicants had prayed for setting aside the entire gradation list of officers belonging to the cadre of Joint Block Development Officers published by the respondent department on 15.05.2023. In brief, the allegation of the applicants is that despite being senior and direct appointees, they have been placed below the promotees, who were promoted from the feeder post. From the submissions and perusal of the records, the following observations are noted:

- i) The seniority of the officers featuring from serial No.1 to 76 have not been disputed for the fact that they are seniors to the applicants.
- ii) The private respondents featuring from serial no. 77 to 238 have been promoted to the post of joint B.D.O. from different feeder posts.

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- iii) The names of the 14 applicants feature from serial No.239 to 256.
- iv) The seniority of officers from 257 to 538 are not in dispute as they are juniors to the applicants.

If the arguments of the applicants are valid, their seniority should have been considered from serial No. 77 to 90 of the gradation list instead of 239 to 256. Before publication of this final gradation list, a draft gradation list was circulated and objections, if any, from all concerned were invited. The applicants had submitted their objections to the draft gradation list.

Submitting arguments on behalf of the applicants, Mr. M.N. Ray, learned counsel expresses the following points:

1. Being successful in the W.B.C.S. (Executive) Examination, 2013, the applicants were recommended by the Public Service Commission for holding the post of Joint Block Development Officers (Group 'C') by its notification No.222 dated 3rd July, 2015.
2. In terms of such recommendation, the Panchayats and Rural Development Department by a memo No.4541 dated 23rd September, 2015 offered the applicants the post of Joint Block Development Officer. After completion of their respective medical and P.V.Rs., the actual appointment letters were issued to them on 29.02.2016.

Now, the primary argument of the applicants is that, in the final Gradation List, despite being direct appointees they have been relegated to a lower position, lower to the officers who were promoted from various feeder posts. Mr. Ray expresses his surprise that in the case of these promote officers, the P.S.C. recommended their names on 3rd March, 2016 and on the same date the Department issued their promotion order for the post of Joint B.D.O. Summing up his argument today, Mr. Ray expresses that, being prejudiced against the interest of the applicants, the respondent authorities unnecessarily delayed the issue of actual appointment letters to the applicants. To prove this point Mr. Ray again refers to the promotion orders issued on 03.03.2016 of the promote officers whose names were recommended for promotion to the post of Joint B.D.O. by the Commission only on the same date. Whereas in the case of the applicants, the Commission recommended their names on 3rd July, 2015, but the actual appointment

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letters were issued to them only on 29.02.2016. He refers to the recommendation of the P.S.C. for the applicants to the post of Joint B.D.O., which was issued by the Commission on 03.07.2015. On the other hand, such recommendation in case of the promoted officers, were issued by the Commission much later on 03.03.2016. Therefore, in terms of dates of such recommendation by the Commission, the respondent should have offered and appointed the applicants earlier than 29.02.2016.

In response to the submissions and arguments presented by the applicant side, Mr. Ghosh draws attention to West Bengal Services (Determination of Seniority) Rules, 1981, in particular, rule 6 (a) which is as under:

“6. Relative Seniority of direct recruits and promotees – (1) The relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining.

(2) The promotees shall be en bloc senior to the direct recruits of the same year.”

Submission of Mr. Ghosh is that the rule 6 (2) makes it very clear that 2016, being the year of appointment for both the promotees and direct recruits, it is the promotes, who will be treated senior en bloc to the direct recruits of the same year.

It appears clear that in the matter relating to seniority in the gradation list, the Rule 6 of WBS (DoS) Rules, 1981, the year of the appointment is the most important criteria to determine one's seniority in the gradation list. Rule 6 (2) further clarifies that if the year of appointment happens to be the same year, in such case, the promotees en bloc will be determined senior to others. Memo. No. 4541 dated 23.09.2015 notifies 22 successful candidates that they have been recommended for the post of Joint Block Development Officer and thus, asking for their willingness to accept such offer. Since this Memo. is dated 23.09.2015, Mr. Roy's argument was that 2015 be considered as the year of appointment, is erroneous and not acceptable. Another Memo. referred in this application, being Memo. No. 188 dated 29.02.2016, appears to be an appointment letter. The first line itself says “the Governor is pleased to appoint the following candidates in the post of Joint BDO.....”. From such memos, it is very clear that these are

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appointment letters and, therefore, the year of appointment has to be accepted as 2016 for these applicants. Therefore, their argument of being senior to the private respondents, whose appointment dates were earlier to the applicants, is unfounded and thus, not tenable. With these observations, the Tribunal is not satisfied with the prayer of the applicants and, therefore, this application is disposed of without any orders.

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

SCN.

WEST BENGAL ADMINISTRATIVE TRIBUNAL