

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 691 of 2023.

RUPA SARKAR - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

03
30.07.2024

For the Applicant : Mr. G.P. Banerjee,
Advocate.
For the State Respondents : Mr. D. Koley,
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.

The applicant, Rupa Sarkar, a Grade II Nursing personnel was allowed to proceed on Trainee Reserve facility to pursue her M.Sc (Nursing) course for the academic year 2021-2023 vide order dated 12.4.2022. While studying the course, she was promoted to the post of Sister Gr I (ii)/ Sr. PHN Gr. I (ii) / Sister Tutor Gr. I (II) by order dated 24.8.2022. On 29.8.2022, she was released from Malda Medical College and Hospital to the office of the CMOH, South 24-Parganas for her duty at Canning SDH, South 24-Parganas as Sister, Gr- I (ii). On 31.8.2022, the Director of Health Services issued an order to the effect that Gr. (II) Nursing personnel presently on Trainee Reserve will be allowed to join their respective promotional posts only after completion of their trainee reserve period. The order also made it clear that their promotional benefit will come into effect from the date of their joining in the promotional posts. As a follow up to this order the Director of Health Services issued an order on 08.09.2023 disallowing the promotional post as Sister in-charge, Gr I(ii) at Canning SD Hospital, South 24-parganas.

Submission of Mr. Banerjee on behalf of the applicant is that there is no law depriving the promotion while studying a course under Trainee Reserve. Further, two similarly circumstanced candidates undergoing a course and promoted like the applicant were allowed to join their new place of posting on promotion by the order of the DHS being 1072 dated 20.7.2023.

ORDER SHEET

Form No.

RUPA SARKAR.

Case No. OA 691 of 2023.

-Vs-
THE STATE OF WEST BENGAL & ORS.

Responding to the first submission of Mr. Banerjee that rules do not prohibit an employee to simultaneously pursue her studies under Trainee Reserve and as well join a post on promotion, Mr. Koley refers to the same order dated 31.8.2022 of the DHS and holds that such promotional post can be joined only after completion of her studies.

As regards the second submission that similarly circumstanced persons were allowed to join the new place of posting, Mr. Koley refers to the order dated 20.7.2023 and submits that these two nurses were allowed to discontinue their studies and join the new place of posting on promotion. In this case, the applicant, Rupa Sarkar continued to pursue her studies without declining the promotion. Therefore, she was not eligible to join the new post on promotion while still continuing with the course. A Government employee cannot continue to be on study under TR Facility and also join a new place of posting on promotion simultaneously.

So far what has been submitted by the learned counsels and shown the records, the basic fact of this case is that the applicant was allowed to pursue M.Sc (Nursing) under T.R. facility during the years 2021-23. While pursuing such course, the applicant was issued a promotion order dated 24.8.2022 for the post of Sister Gr I (ii)/ Sr. PHN Gr. I (ii) / Sister Tutor Gr. I (II). Incidentally, on 31.8.2022, the Director of Health Services (DHS) passed an order which essentially meant that employees while undergoing a course under Trainee Reserve can avail their promotional benefits only after completion of the course. According with such order, her release order passed earlier on 29.8.2022 was cancelled by the MSVP, Malda Medical College & Hospital, Malda. By such cancellation of her release order, the applicant was deprived of joining the new place of posting on promotion. The learned counsel for the applicant has cited the case of Chandrima Paria and Amrita Bhattacharyya as instances by which such promotions were availed. Mr. Koley has presented a comparative chart and disagreed that the case of Rupa Sarkar, this applicant is completely different from the case of two other employees as referred to by the applicant's side. In the comparative statement, five different reasons have been given to differentiate the case of the applicant with that of other two employees.

ORDER SHEET

Form No.

RUPA SARKAR.

Case No. OA 691 of 2023.

-Vs-

THE STATE OF WEST BENGAL & ORS.

While hearing the matter, the Tribunal had wanted to know from both the sides if any specific rule exists by which such a promotion can either be availed or cannot be availed while undergoing a training course under Trainee Reserve. From the submissions of the learned counsels, it is now clear that no specific rule exists by which any inference can be made regarding such decision of the Respondent authorities. Further, it has been made clear that the Notification for Trainee Reserve does not contain any provision by which joining on a promotional post can be stayed under the Trainee Reserve. The Tribunal has to examine whether the decision of the DHS disallowing the applicant from joining this promotional post while undergoing a course under Trainee Reserve was a valid order or not.

It is clear now to the Tribunal that by passing such an order, the DHS has not defied any existing rule. The order passed by him was within his official capacity and in administrative prudence keeping in mind, the importance of public health sector. It is also apparent that by such an order, the DHS was not depriving the employee of her legitimate and rightful claim to any promotional post. The Tribunal also is aware of the fact that an employee, who is allowed to join a course under Trainee Reserve, is given full salary. The two cases referred to by the applicant's side as instances of other employees, who were given such a benefit of a course and the promotional post at the same time appears to be different from each other. As has been made clear in the comparative statement and by submission of Mr. Koley, the course the applicant was undertaking was of her own optional volition, supported under Trainee Reserve facility. On the other hand, the courses which the other two employees (Chandrima Paria and Amrita Bhattacharyya) were based on a selection under Maternal Mortality Rate (MMR) & Infant Mortality Rate (IMR) in the larger interest of public health. Though the applicant has agitated before this Tribunal and prayed for setting aside the order passed by the DHS but the fact remains that the applicant did avail and benefitted from her promotional post albeit at a later stage. She joined the promotional post at Canning S.D. Hospital on 30.8.2022 as reflected in page 46 of the Original application. The Tribunal does not agree with her contention that by setting aside the Director's order, she could have availed of such promotion

ORDER SHEET

Form No.

RUPA SARKAR.

Case No. OA 691 of 2023.

-Vs-
THE STATE OF WEST BENGAL & ORS.

earlier on 24.8.2022.

In conclusion, the Tribunal after hearing the submissions of the learned counsels and on close examination of the records is not satisfied with the contention of the applicant in her prayers. The Tribunal has not found neither any malafide intention in depriving the applicant of her promotional benefits nor any illegality in the order passed by the DHS. Such an order passed on administrative propriety was valid and enforceable under the law. Therefore, having not found any merit in this application, it is disposed of without passing any direction.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

HS/Skg.