

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. – OA 811 OF 2021

SHIBANI BANERJEE - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and

Date of order

For the Applicant

: Mr.Goutam Pathak Banerjee
Advocate

04

15.02.2022

For the State respondents

: Mr.Manujendra Narayan Roy
Advocate

For the Public Service Commission
West Bengal

: Mr.Sourav Bhattacharjee
Advocate

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In this application, Shibani Banerjee, the applicant, Inspector of Police (Unarmed Branch), has prayed for certain reliefs, the relevant portion of which is as under:

“a) A mandatory direction do issue upon the concerned respondent authorities, to forthwith grant promotion in favour of the applicant to the rank of ‘Deputy Superintendent of Police (Unarmed Branch)’ retrospectively with effect from the date of granting promotion to her fellow incumbents so issued by the OSD and Ex-officio Deputy Secretary to the Government of West Bengal, Home and Hill Affairs Department under Notification No. 1359-PS Cell/HR/O/3P-50/14(Pt.-II) dated 24th August, 2021, being Annexure – ‘C’ herein, as well as to allow all the consequential benefits attached thereto and to command them to act strictly in

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accordance with law;”

It appears that while she was residing in her flat at Dum Dum, one of the flat owners of building lodged a complaint against the applicant and her husband which was registered as Dum Dum Police Station Case No. 511/2019 dated 28th June, 2019 and G.R. No. 3197/ 19 under section 366A/34 IPC (State -Vs- Unknown). As in the investigation nothing was found against the applicant and her husband regarding the allegations, the Investigating Officer submitted the final report, - a mistake of fact - vide. FRMF No. 347/2021 dated 5th April, 2021 before the Court and ultimately, after hearing the defacto complainant, the learned Additional Chief Judicial Magistrate, Barrackpore, accepted the prayer of FRT by passing an order on 19th July, 2021. Thereafter, the applicant submitted a representation on 28th July, 2021 before the Inspector General of Police (Hqrs.-II) West Bengal Police Directorate, the respondent no.4 intimating the outcome of the criminal case with a prayer to consider her case for promotion to the rank of Deputy Superintendent of Police (Unarmed Branch). However, it has been alleged that subsequently the OSD and Ex-officio Deputy Secretary to the Government of West Bengal, Home and Hill affairs Department, Kolkata, the respondent no.2 by order of the Governor issued an order of promotion in favour of 46 nos. of Inspector of Police (Unarmed Branch) to the next higher rank of Deputy Superintendent of Police (Unarmed Branch) by notification dated 24th August, 2021, ignoring the claim of the applicant. Evidently though the name of the applicant stood at serial no. 82, her juniors have been promoted to the post of Deputy Superintendent of Police (Unarmed Branch) superseding the applicant which is beyond the procedural norms.

It is submitted by Mr.G.P.Banerjee, learned advocate appearing on behalf of the applicant since criminal case is not pending, appropriate order as

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prayed for, may be passed directing the respondents to promote the applicant to the post of Deputy Superintendent of Police (Unarmed Branch) with retrospective seniority along with consequential benefits.

Mr.M.N.Roy, learned advocate appearing on behalf of the respondent nos. 1 to 4 submits that since there is no dispute that no criminal case is pending against the applicant, if directed, the respondent authority will consider the case of promoting the applicant to the post of Deputy Superintendent of Police (Un-armed Branch) in accordance with law.

Mr.S.Bhattacharjee, learned advocate for the Public Service Commission, West Bengal, relying on the intimation dated 8th February, 2021 issued by the respondent no. 2 addressed to the Secretary, Public Service Commission West Bengal, along with annexure submits that the name of the applicant appears against serial no.25 and therein it has been mentioned that “one criminal case is pending at Dum Dum PS vide No 511/2019 dated 28/06/19 u/s 366 A/34 IPC”. Submission is perhaps in view of the said note pertaining to the applicant, the case of the applicant was not considered as the knowledge of FRT/ Final report was not within knowledge of Commission at the time of consideration regarding filing up of vacancies in the rank of Deputy Superintendent of Police, (Un-armed Branch) in West Bengal Police Directorate by promotion. Let a copy of intimation dated 8th February, 2021 along with annexure filed be kept on record.

Admittedly while the applicant was the Inspector of Police (Un-armed Branch) a complaint was lodged against the applicant and Dum Dum Police Station Case was started. However during investigation as nothing was found against the applicant and her husband, the Investigating Officer submitted final report as mistake of fact vide FRMF No. 347/2021 dated 5th April, 2021 before

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the learned Court and after hearing the defacto complainant, the learned Additional Chief Judicial Magistrate, Barrackpore, accepted the prayer for FRT- closing of the investigation - by passing an Order dated 19th July, 2021 as evident from the application. It is evident from the annexure to the letter dated 8th February, 2021 addressed by the Respondent no. 2 to the Secretary of the Commission though it was mentioned in the note that “*one criminal case is pending at Dum Dum PS vide No 511/2019 dated 28/06/19 u/s 366 A/34 IPC*”, however, it appears that the Commission was not intimated that the said case ended up with the submission of final report wherein it was stated that it was a mistake of fact. Thereafter, the applicant had filed a representation dated 28th July, 2021 before, the respondent no. 4 being annexure- ‘C’ to the application praying for promotion to the rank of Deputy Superintendent of Police (Un-armed Branch). However on 24th August, 2021, 46 vacancies to the post of Deputy Superintendent of Police (Un-armed Branch) were filled up by the Government of West Bengal, Home & Hill Affairs Department, Police Service Cell, Kolkata, appearing at pages 22 to 23 of the application, without considering the representation of the applicant praying for promotion.

Since I find that the criminal case ended up with the submission of the final report and it was noted that it was a mistake of fact which was accepted by the learned Additional Chief Judicial Magistrate, Barrackpore, as the said fact was not communicated to the Commission as evident from the annexure to the intimation dated 8th February, 2021, and as the respondents, particularly the respondent no.4 did not consider the representation dated 28th July, 2021 furnished by the applicant praying for promotion to the rank of Deputy Superintendent of Police (Un-armed Branch), in my view, the action of the respondents, particularly respondent nos. 1 to 4, in not promoting the applicant to the post of Deputy Superintendent of Police (Un-armed Branch) is erroneous

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and illegal.

Therefore, in the facts and circumstances of the case, the Principal Secretary, now re-designated as Additional Chief Secretary, Home and Hill Affairs Department, the respondent no.1 is directed to send the records, that is ACRs of the applicant to the Secretary, Public Service Commission, West Bengal, regarding promotion of the applicant to the post of Deputy Superintendent of Police (Un-armed Branch) within four weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal. After the same is sent to the Commission, after verifying the service record, the Commission shall recommend the applicant to the post of Deputy Superintendent of Police (Unarmed Branch) with retrospective effect from 24th August, 2021 within six weeks and shall communicate the same to the respondent no.1 who shall issue necessary order within four weeks thereafter. The application is disposed of.

(SOUMITRA PAL)
CHAIRMAN

BLR