

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 883 of 2021.

MONOJIT BAGISH –VS-THE STATE OF WEST BENGAL & ORS.

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| Serial No. and Date of order | For the Applicant | : Mr. M.N. Roy, Advocate. |
| <u>6</u> 5.7.2022 | For the State Respondents | : M. G.P. Banerjee, 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.

As prayed for by Mr. M.N. Roy, learned advocate for the applicant, leave granted to add Inspector General of Police (Administration), West Bengal as a party respondent by amending the cause title of the Original application. Since Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents accepts service of notice on behalf of the added respondent, no further copy of the application be served on the added respondent.

In this application the applicant has prayed for certain reliefs, the relevant portion of which is as under :-

“(a) An order do issue thereby setting aside, quashing the reason order dated 16.04.2021 passed by the Deputy Inspector General of Police (Administration), West Bengal Police Directorate and the minutes of the meeting of the Board of Control for Examination and Promotion held on 28.06.2021, 20.0.2021 and 24.11.2021 in respect of the applicant for non granting him provisional promotion to the rank of Assistant Sub Inspector (Unarmed Branch) amongst others with immediate effect.

(b) An order do issue thereby direct the respondent authorities to grant provisional promotion to the rank of Assistant Sub-Inspector (Unarmed Branch) and to fix his seniority accordingly after setting aside/quashing the reason order dated 16.04.2021 passed by the Deputy Inspector General of

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Police (Administration), West Bengal Police Directorate and the minutes of the meeting of the Board of Control for Examination and Promotion held on 28.06.2021, 20.0.2021 and 24.11.2021 in respect of the applicant with immediate effect. ”

It is submitted by Mr. M.N. Roy that in view of the stipulations contained in paragraph 2(ii) of the Memorandum dated 12th June, 1980 the applicant is entitled to be provisionally promoted to the rank of Assistant Sub Inspector (Unarmed Branch) of the police as the departmental proceedings which commenced on 2nd March, 2017 could not be completed by 2nd March, 2020. Referring to the minutes of the meeting of the Board of Control of Examination and Promotion held on 24th November, 2021, being annexure R-2 to the reply, filed on behalf of the State respondents, particularly page 14 thereof, it is submitted that Courts are not covered by the Model Code of conduct issued by the Election Commission and therefore, the direction not to promote the applicant during the subsistence of the Code is unlawful and illegal. Further, since criminal proceeding against the applicant was contemplated and not initiated, the respondent authorities erred in denying the promotion to the applicant. Moreover, the direction with regard to the continuance of closed cover proceeding is illegal in view of the judgement of the High Court delivered on 18th September, 2018 in W.P.S.T. No. 113 of 2018 Supriya Mondal – Vs- The State of West Bengal & Ors. Mr. Roy has referred to the judgement passed in Union of India – vs- Anil Kumar Sarkar (2013) 4SCC 161 in support of his submission.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents and the added respondent relying on the reply submits that no order may be passed as charges against the applicant are grave and criminal proceedings have been initiated on 24th February, 2022.

Heard learned advocates for the parties.

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There is no dispute that departmental proceedings against the applicant was initiated on 2nd March, 2017 which is still continuing. Under the memorandum dated 12th June, 1980, particularly paragraph 2(ii) thereof, in the case of promotion *“The confirmation/promotion/efficiency bar crossing/selection grade appointment of a Government servant or recruitment of in-service candidates to higher posts should not be held up in cases, where disciplinary proceedings having been started, have continued for more than three years, unless the delay in the disposal of the disciplinary proceedings is due to any dilatory tactics employed by the Government servant concerned or due to proceedings in a Court of Law started at the instance of the officer concerned. However, when confirmation/promotion/efficiency bar crossing/Selection Grade appointments or recruitment of in-service candidates to higher posts is allowed to any one against whom disciplinary proceedings are pending, it should be ordered to be “on provisional basis”*. In view of the memorandum since the disciplinary proceedings are continuing for more than three years and a right to be promoted *“on provisional basis”* has accrued to the applicant, the applicant is entitled to be promoted. Further in view of the judgement delivered in Supriya Mondal (supra) the decision of the Board to continue closed cover proceedings is arbitrary and illegal and is therefore set aside and quashed.

Moreover the decision taken by the Board of Control for Examination and Promotion to initiate criminal case cannot be a bar for promotion to the applicant as no criminal case was initiated on that date when the applicant became entitled to be promoted under the Memorandum, that is on 2nd March, 2020. Mere contemplation to file a criminal case cannot disentitle an employee of his right to be promoted on provisional basis which has already accrued.

Further the decision of the Board that *“However, presently,*

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State Assembly Election in West Bengal is going on and Model Code of conduct (MCC) is in force. Therefore, no promotion board can be held due to MCC guidelines” cannot be a ground for the respondents to defer the issue for long and should take steps to take a decision regarding promotion within four weeks after the Model Code of Conduct is withdrawn.

Therefore, in view of the facts stated hereinbefore and the position of law, the applicant is entitled to the orders as prayed for. Therefore, let there be an order in terms of prayer (a) of the application by setting aside the reasoned order dated 16th April, 2021 passed by the Deputy Inspector General of Police (Administration) West Bengal Police Directorate, - the added respondent, and that part of the minutes of the meeting of the Board of Control for Examination and Promotion held on 24th November, 2021 relating to the applicant and consequently the added respondent is directed to give provisional promotion to the applicant to the rank of Assistant Sub Inspector of Police within a period of eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal. The application is allowed.

Skg.

(SOUMITRA PAL)
CHAIRMAN.

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