

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. – OA 959 OF 2019

PRABIR MUKHERJEE - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

For the Applicant

: Mr.Manujendra Narayan Roy
Mr.Gourav Halder
Advocates

10
11.04.2022

For the State respondent No.1

: Mr.Sankha Ghosh
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, Prabir Mukherjee, the applicant, has prayed for several reliefs, the relevant portion of which is as under:

“ (a) An order do issue thereby directing the respondent authorities to allow your applicant to receive the benefit of promotion to the post of “Assistant Secretary” against the vacancies of 01.12.2016, to which 28 numbers of officers were given promotion vide Notification No. 2846-PAR (Genl.) dated 30.12.2016, within a stipulated time period.

(b) An order do issue directing the concerned respondent authorities to forthwith issue Promotional order in favour of your applicant to the post of “Assistant Secretary” in the West Bengal Secretariat Service with retrospective effect i.e. from 30.12.2016, taking into consideration of the fact that the applicant was in service.

(c) An order do issue directing the concerned respondent

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authorities to forthwith to issue Promotional order to your applicant to the post of “Assistant Secretary” in the West Bengal Secretariat Service and to pay the arrear amount including arrear pay, arrear pension and other retirement benefits arising out of such promotion with retrospective effect to your applicant, along with an interest thereto @ 18% p.a.

(d) A further order to issue directing the concerned respondent authorities to dispose of the representation / for granting promotion of the applicant by passing a reasoned and speaking order in accordance with law and rules prevailing in this regard after giving an opportunity of hearing.”

It appears that the applicant was an Officer-on-Special Duty under the Finance Department, who had superannuated on 31st December, 2016. The Personnel & Administrative Reforms Department (P&AR) by letter dated 26th October, 2016 and subsequent correspondences had sent the names of eligible candidates for promotion to the post of Assistant Secretary under the West Bengal Secretariat service under Personnel & Administrative Reforms Department during 4th quarter of 2016 and 1st quarter of 2017 before the Public Service Commission, West Bengal. The Personnel & Administrative Reforms Department appointed 28 officers on promotion from the post of Officer-on-Special Duty pursuant to the recommendation of Public Service Commission, West Bengal leaving out the applicant although being recommended by the Commission. As the applicant superannuated while holding the post of Officer-on-Special Duty on 31st December, 2016, he was not allowed to avail the promotional benefit. It has been alleged that though he was denied the benefit of promotion, 12 officers below him were promoted to the post of Assistant Secretary. After superannuation, the applicant made an application under the

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Right To Information Act, 2005 on 11th April, 2017 before the Commission. Ultimately, the Commission on 30th August, 2017 furnished an authenticated copy regarding the letter of recommendation wherefrom it is evident that though the name of the applicant is appearing at serial no. 1 against the prospective vacancy with effect from 1st December, 2016, he was denied promotion.

Referring to the rejoinder filed on behalf of the applicant, Mr.M.N.Roy, learned advocate for the applicant submits since it is evident from 3rd and 4th paragraphs of order of the Special Secretary that the name of the applicant appears at serial no. 1 against the prospective vacancy (II) with effect from 1st December, 2016, the respondents may be directed to give the benefit of promotion and to extend higher retirement benefits.

Mr.S.Ghosh, learned advocate appearing on behalf State respondent no. 1 submits that since the applicant had moved this application belatedly on 5th December, 2019 which is against the limitation prescribed under the Administrative Tribunals Act, 1985, the application has no merit. That apart as the applicant had superannuated, no benefit can be given at this stage.

Heard the learned advocates for the parties.

The question for consideration is whether the applicant who had superannuated from the post of Officer-on-Special Duty on 31st December, 2016 is entitled to the benefit of promotion to the post of Assistant Secretary against the vacancies on 1st December, 2016.

In order to answer the issue, it is pertinent to mention the communication dated 26th December, 2016 being Annexure- R1 of the reply which contains the reply of the Public Service Commission to the Principal Secretary, Personnel & Administrative Reforms Department regarding the promotion of the applicant

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to the post of Assistant Secretary in the West Bengal Service under the Personnel & Administrative Reforms Department, during the 4th quarter 2016 and 1st quarter 2017 wherefrom it appears that the name of the applicant appears in the following manner:-

“ I. Against existing vacancies (accumulated w.e.f. 01.10.2016 and 01.11.2016) :-

- 1) Sanat Kumar Mondal
- 2) Prabir Ray Mukherjee
- 3)

II. Against prospective vacancies :-

- A) w.e.f. 01.12.2016
- 1) Prabir Mukherjee
- 2)

So there is no dispute that on 1st December, 2016, the applicant was entitled to be promoted to the post of Assistant Secretary against the prospective vacancies. In this backdrop, it is also relevant to mention the “Orders of the Special Secretary” appearing at page 14 of the rejoinder, which is as under:

“It appears that for filling up of the posts of Assistant Secretary in WBSS on promotion, the WBPSC vide letter No. III/2596-PSC dt. 26.12.2016 recommended (i) 28 officers under para I against the vacancies accumulated wef 01.10.16 and 01.11.16, (ii) 13 officers under para II (A) against the vacancies accumulated wef 01.12.2016 and (iii) 6 officers under para II

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against the vacancies accumulated wef 01.01.17.

In turn the administrative deptt. Issued notifications (i) b No. 2846-PAR (Genl) dt. 30.12.16 appointing 28 officers to the post of Assistant Secretary against the vacancies accumulated wef 01.10.16, 01.11.16 and (ii) bearing No. 141-PAR (Genl) dt 08.02.17 appointing 12 officers to the post of Assistant Secretary against the vacancies accumulated wef 01.12.2016.

As the WBPSC furnished 3 lists namely (i) list I for the vacancies accumulated wef 01.10.16 and 01.11.16, (ii) list (II) (A) for the vacancies accumulated wef 01.12.16 and (iii) list (II) (B) for the vacancies accumulated wef 01.01.17 maintaining reservation points and the first notification allowing promotion was issued in December, 2016, the administrative deptt. could have processed list I and list II (A) simultaneously and could have issued two separate notifications on the same and in doing so reservation points would not be disturbed. Why this was not done is best known to the administrative deptt.

Had the above course of action been taken by the administrative deptt. Shri Prabir Mukherjee (Sl. No. 1 of list II (A) who retired on superannuation on 31.12.16 could have availed the benefit of promotion and to some extent higher retirement benefits. In this position, if Shri Mukherjee moves the Hon'ble Court for justice, apparently there will be nothing on the part of the Government to defend.

In view of the position explained, the administrative deptt. may take decision in the matter. Finance Deptt. has nothing to

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comment at this stage.”

Since the Commission had placed the applicant at the top of the list against the prospective vacancies with effect from 1st December, 2016 and the Special Secretary in his order had specifically mentioned that had promotion being given in due time the applicant could have availed the benefit of promotion and to some extent higher retirement benefits, I am of the view the application should succeed.

The question now remains whether there has been a delay on the part of the applicant in moving the application for redressal of his grievances. In my view as the applicant on 11th April, 2017 and on 6th July, 2017 had filed applications for furnishing information under 2005 Act and he got the reply from the Commission on 30th August, 2017 and as the applicant on 19th July, 2017 and on 2nd April, 2018 had filed representations before the Principal Secretary, Department of Personnel & Administrative Reforms and being dissatisfied with the orders passed under 2005 Act had filed appeal on 21st May, 2018 and the appellate authority on 18th June, 2018 had directed the SPIO of the Department of Personnel & Administrative Reforms & e-Governance to provide information to the applicant and the applicant's second appeal was disposed of on 13th December, 2018 and thereafter, representation was made to the Principal Secretary, Department of Personnel & Administrative Reforms on 25th June, 2019, the point of limitation raised on behalf of the State respondents has no basis.

Therefore, for the reasons noted hereinbefore, the Principal Secretary, Personnel & Administrative Reforms Department, Government of West Bengal, the respondent no. 1 is directed to allow the applicant to receive the benefit of promotion to the post of Assistant Secretary against the vacancies on

ORDER SHEET

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1st December, 2016 by issuing promotional order in favour of the applicant to the post of Assistant Secretary in the West Bengal Secretariat Service with retrospective effect from 30th December, 2016 including consequential reliefs of arrear pay, arrear pension and other superannuation benefits within fifteen weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal. The application is allowed to the extent as indicated hereinabove. The application is disposed of.

(SOUMITRA PAL)
CHAIRMAN

BLR