

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag
&
The Hon'ble Dr. Subesh Kumar Das

Case No. **MA - 187 of 2016 (OA 939 of 2016)**

Md Abdulla Shaikh

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

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28/01/2019

For the Applicant : *Mr. P. Chakraborty,*
Ld. Advocate.

For the State Respondent : *Mr. S.N. Roy,*
Ld. Advocate.

The applicant has prayed for direction upon the respondents to appoint the applicant in the post of Head Clerk (Supervisor) after quashing of order dated July 19, 2016 issued by the Director of Animal Husbandry and Veterinary Services, Government of West Bengal in OA-939/2016. The applicant has subsequently prayed for quashing of order dated November 10, 2016 issued by the Director of Animal Husbandry and Veterinary Services, Government of West Bengal in MA-187/2016. The applicant has also prayed for quashing of Memorandum dated June 19, 2017 issued by the Director of Animal Husbandry and Veterinary Services, Government of West Bengal in MA-79/2017. Issues involved in the original application and both the miscellaneous applications are connected and as such all the applications are taken up together for hearing and disposal by this common order.

The applicant joined in Group 'D' post in the Directorate of Animal Husbandry and Veterinary Services, Government of West Bengal on May 04,

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	<p>1976. He got promotion to the post of Lower Division Clerk in the Directorate on January 16, 1992 subject to the condition that he will be reverted to the substantive post of Group 'D' in the Directorate in the event one Ramendra Nath Halder, Ex-Lower Division Clerk holding lien in the said service joins back to the Directorate. He also got promotion to the Upper Division Clerk w.e.f. August 01, 2002. The applicant was aspiring to get promotion to the post of Head Clerk (Supervisor) in the Directorate, but the same was not considered by the concerned authority. The applicant approached the Tribunal by filing OA-162/2015 which was disposed of on February 24, 2016. The Tribunal directed the Director of Animal Husbandry and Veterinary Services, Government of West Bengal to take a decision on the issue of promotion of the applicant on the basis of his representation after giving the applicant an opportunity of hearing. On July 19, 2016 the Director of Animal Husbandry and Veterinary Services, Government of West Bengal passed a reasoned order denying the claim of the applicant for being considered for promotion to the post of Head Clerk (Supervisor) in the Directorate on the ground that upward movement of the applicant from the post of Peon to the post of Lower Division Clerk and</p>	

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	<p><i>subsequently to the post of Upper Division Clerk was not done in a regular manner. The reasoned order indicates that regularisation of the promotion of the applicant and the seniority of the applicant will be refixed in accordance with rules applicable to the employees of the Directorate in due course. The applicant challenged the said reasoned order dated July 19, 2016 in the original application.</i></p> <p><i>During pendency of the original application the Director of Animal Husbandry and Veterinary Services, Government of West Bengal issued order dated November 10, 2016 by setting aside the irregular order of promotion of the applicant after long lapse of time. In view of joining back of Ramendra Nath Halder in the service of the Directorate, the irregular promotion granted to the applicant was rectified by the Director of Animal Husbandry and Veterinary Services by issuing order dated March 27, 2017 and order dated June 19, 2017. Ultimately, the applicant got promotion to the post of Lower Division Clerk w.e.f. February 01, 1997 and promotion to the post of Upper Division Clerk w.e.f. March 24, 2005. The applicant retired from service on February 28, 2018.</i></p> <p><i>With the above factual matrix, Learned Counsel for the applicant contends that the applicant cannot</i></p>	

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	<p><i>be reverted to the substantive post of Group 'D' in the Directorate after long lapse of 14 (fourteen) years. He also submits that the salary drawn by the applicant for discharging his duty as Lower Division Clerk and as Upper Division Clerk cannot be recovered from him as directed by order dated March 27, 2017. He also submits that the retiral benefits of the applicant should be given w.e.f. the date of his previous promotion to Upper Division Clerk on August 01, 2002. On the other hand, Learned Counsel representing the state respondents submits that the previous promotion granted to the applicant was a mistake and the applicant was well aware of the fact of getting promotion on condition of reversion to the substantive post in the event Ramendra Nath Halder joins back in the service of the Directorate for holding lien in the said service.</i></p> <p><i>Having heard Learned Counsel representing both parties and on consideration of the background of passing order of recovery of the overdrawal amount of the applicant, we find that the applicant had no role to play in getting previous promotion from the post of Group 'D' to Lower Division Clerk and thereafter promotion from Lower Division Clerk to Upper Division Clerk. We are not oblivious of the fact that irregularity committed by the administration in</i></p>	

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	<p><i>granting further promotion to the applicant from the post of Lower Division Clerk to the post of Upper Division Clerk needs to be rectified, as no right can accrue on the basis of a mistake committed by the administration. However, the applicant has drawn the salary of Lower Division Clerk and salary of Upper Division Clerk in discharging his duty in those posts without having any role to play in the promotion and as such the salary which has been drawn by the applicant cannot be considered as overdrawal. The question of recovery of the amount of salary drawn by the applicant for discharging his duty in the post of Lower Division Clerk and in the post of Upper Division Clerk cannot be recovered as ordered by the Director in the impugned order dated March 27, 2017 and order dated June 19, 2017. Since the applicant is not entitled to get any benefit for previous irregular promotion, we are of the view that the applicant is entitled to get Pension, Gratuity and other retiral benefits of service in terms of promotion to the post of Upper Division Clerk in the Directorate w.e.f. March 24, 2005 as reflected in the order dated June 19, 2017.</i></p> <p><i>It is pertinent to point out that the Learned Counsel for the applicant has not pressed for the prayer for promotion to the post of Head Clerk</i></p>	

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Csm	<p><i>(Supervisor) in the Directorate made in the original application.</i></p> <p><i>In view of our above observation, we cannot persuade ourselves to quash the order dated July 19, 2016, order dated November 10, 2016, order dated March 27, 2017 and order dated June 19, 2017 passed by the Director of Animal Husbandry and Veterinary Services, Government of West Bengal, except the order of recovery of overdrawal mentioned in the order dated June 19, 2017 and order dated March 27, 2017 passed by the Director of Animal Husbandry and Veterinary Services, Government of West Bengal. Accordingly, the Director of Animal Husbandry and Veterinary Services, Government of West Bengal is prohibited from recovering any amount of overdrawal from the applicant in terms of the orders passed by him on March 27, 2017 and June 19, 2017. With the above direction, the original application stands disposed of.</i></p> <p><i>Let a Plain Copy of the order be supplied to both parties.</i></p> <p style="text-align: center;"><i>Sd/-</i> S. K. DAS MEMBER(A)</p> <p style="text-align: center;"><i>Sd/-</i> R. K. BAG MEMBER(J)</p>	