

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

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

**Case No. MA-204 of 2019 along with (OA-1218 of 2016) arising out of OA-1218 of 2016**

Sujyoti Kumar Chattopadhyay

Versus

The State of West Bengal & Ors.

Serial No. and date of order  1	Order of the Tribunal with signature  2	Office action with date and dated signature of parties when necessary.  3
<u>02</u> 21/11/2019	<p><b>For the Applicant</b> : Mr. A.K. Das Sinha, Ld. Advocate.</p> <p><b>For the State Respondent</b> : Mr. A.L. Basu, Mr. S. Bhattacharya, Ld. Advocates.</p> <p>The applicant has prayed for direction upon the respondents for grant of promotion to the post of Head Clerk with retrospective effect and for release of all consequential benefits in favour of the applicant. The applicant has also filed Miscellaneous Application praying for condonation of delay of almost 10 (ten) years in filing the original application before this Tribunal.</p> <p>The applicant has produced one Gradation List published on December 03, 1989 and the state respondents have filed another Gradation List which was revised upto the month of May 2006. Both the above documents are kept with the record.</p> <p>The applicant retired from service as Upper Division Clerk from the Directorate of Animal Resources and Animal Health, Government of West Bengal on March 31, 2006. He is aggrieved for not granting him promotion to the post of Head Clerk as the post of Head Clerk was lying vacant at the time of his retirement from service. The delay of almost 10 (ten) years in filing the original application is explained by the applicant by making out a case that he was suffering from weakness</p>	

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	<p>of the limb and that he decided to approach the Tribunal when one of his juniors in the service, Gouri Chakraborty got promotion after her retirement by order dated December 26, 2011 issued by the Director of Animal Husbandry and Veterinary Services, West Bengal. The effect of promotion is given to the said employee Gouri Chakraborty from July 01, 2010 while she was in service though the order of promotion was issued after her retirement from service on July 31, 2010.</p> <p>Mr. Das Sinha, Learned Counsel for the applicant contends that the applicant should have been considered for promotion to the post of Head Clerk while he was in service, as the post of Head Clerk was lying vacant till the date of his retirement from service on March 31, 2006. He further submits that one Gouri Chakraborty who was junior to the applicant in the service got promotion after her retirement from service. The Gradation List published in the year 1989 produced on behalf of the applicant relates to the seniority of the applicant vis-à-vis his colleagues while they were working as the Lower Division Clerk.</p> <p>Mr. Basu, Learned Counsel representing the state respondents submits that the name of the applicant did not appear in the Gradation List which was revised in the month of May 2006 as the applicant retired from</p>	

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	<p>service in the month of March 2006. He further submits that promotion was given for filling up the post of Head Clerks on the basis of the said Gradation List which was revised in the month of May 2006 and the said Gradation List relates to seniority of the persons holding the post of Upper Division Clerk. The specific submission of Mr. Basu is that the applicant could not be considered for grant of promotion as he was not in service in the month of May, 2006 when the process for filling up the post of Head Clerk by promotion was initiated on the basis of the Gradation List revised till the month of May, 2006.</p> <p>With the above factual matrix, two issues emerge for our consideration:</p> <p>(i) whether the original application is barred u/s 21 of the Administrative Tribunals Act and (ii) whether the applicant is entitled to be considered for grant of promotion to the post of Head Clerk with retrospective effect as prayed for.</p> <p>With regard to first issue, we find that the applicant retired from service on March 31, 2006 and he approached this Tribunal by filing the original application on December 05, 2016. This delay of more than 10 (ten) years is sought to be explained by him by stating that he was suffering from various ailments including weakness of the limb. The further explanation</p>	

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	<p>given by the applicant is that he got inspiration to file the original application when his junior Gouri Chakraborty got promotion to the post of Head Clerk after her retirement and the said knowledge of promotion of Gouri Chakraborty was derived from the promotion order dated December 26, 2011. The employee who is junior to the applicant in service can get promotion if the length of the service of the said junior is more than the length of the service of the applicant. The promotion was given to Gouri Chakraborty with effect from the date when she was in service, though the order of promotion was issued after her retirement from service. The applicant cannot take the analogy of Gouri Chakraborty to explain the inordinate delay from the year 2006 to the year 2011. Nor can we persuade ourselves to hold that the applicant has explained the inordinate delay of almost 10 (ten) years in approaching the Tribunal only on the ground of suffering from various ailments including weakness of the limb. On consideration of explanations furnished by the applicant, we are constrained to hold that the applicant has miserably failed to explain the inordinate delay of almost 10 (ten) years in approaching the Tribunal by filing the original application. The irresistible inference is that the original application is clearly barred u/s 21 of the Administrative Tribunals Act, 1985. This issue is, thus, decided against the</p>	

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	<p>applicant.</p> <p>With regard to the second issue, we find that the applicant submitted some representations for consideration of his case for grant of promotion after his retirement from service. No government employee can claim for promotion as a matter of right, though every government employee has a right to be considered for promotion. The applicant has miserably failed to establish that anyone junior to him in the service was granted promotion to the post of Head Clerk till the date of his retirement from service. In other words, the applicant has failed to establish that he was superseded by any of his juniors in service at any material point of time till the date of his retirement from service on March 31, 2006. Admittedly, the process for filling up the post of Head Clerk from the feeder post of U.D.C. was initiated in the month of May 2006 on the basis of the revised Gradation list of U.D.Cs when the applicant was no longer in the service. Since the applicant was not in the service when the process was initiated to fill up the post of Head Clerk, the question does not arise for consideration of the case of the applicant for grant of promotion to the post of Head Clerk. Gouri Chakraborty who got promotion to the post of Head Clerk after her superannuation with effect from the date when she was in the service cannot be cited as an instance by the applicant to establish arbitrariness on the part of the</p>	

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Csm	<p>state respondents as the said Gouri Chakraborty was considered and granted promotion in the last part of the year 2011 i.e. long after almost 05 (five) years of retirement of the applicant from service.</p> <p>In view of our above findings, we cannot persuade ourselves to hold that the applicant was denied promotion in an unjustified manner or that the applicant was superseded by any of his junior while he was in service. The second issue is also decided against the applicant.</p> <p>The upshot of our above observation is that the applicant is not entitled to get any relief in the present application. The original application and miscellaneous application are, thus, <b>dismissed</b>.</p> <p>The <b>Urgent Xerox Certified</b> copy of the order if applied for be given to either of the parties on priority basis after fulfillment of all necessary formalities.</p> <p style="text-align: center;"><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p style="text-align: center;"><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	