

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)

-AND-

The Hon'ble Dr. A. K. Chanda
MEMBER(A)

J U D G M E N T

-of-

Case No. OA-1476 of 2012

Arup Bhattacharyya & Others.....Applicants.

-Versus-

State of West Bengal & others.....Respondents.

- For the Applicants** :- **Mr. Indranath Mitra,
Mr. Rajib Lochan Chakraborty,
Mrs. Sonali Mitra,
Mr. Priyanjit Kundu,
Learned Advocates.**
- For the State Respondents (Other than Respondent no. 5)** :- **Mr. Soumendra Narayan Ray,
Learned Advocate.**
- For the State Respondents Respondent no.5 (Chief Engineer)** :- **Mr. Goutam Pathak Banerjee,
Learned Advocate.**
- For the Respondent Nos. 09 & 10. (P.S.C., W.B).** :- **Mr. Apurba Lal Basu,
Mrs. Manjula Dhar Chowdhury,
Learned Advocates.**
- For the Respondent Nos. 11 to 16.** :- **Mr. Rajarshi Halder,
Mrs. Anita Dutta,
Mr. Chirantan Sarkar,
Learned Advocates.**

Judgment delivered on: 01-08-2018

**The Judgment of the Tribunal was delivered by :-
Hon'ble Dr. A. K. Chanda, Member (A)**

Judgment

In the instant Application, being O.A.-1476 of 2012, the Applicants have, inter alia, prayed for the following reliefs :-

(a) An order do issue setting aside and /or quashing the order impugned dated 01.10.2012 passed by the Principal Secretary, Department of Public Health & Engineering, Government of West Bengal communicated under memo dated 11.10.2012 forthwith;

(b) An order do issue directing the respondents, to confer due service seniority at suitable higher position vis-à-vis candidates recommended by the Public Service Commission, West Bengal, forthwith;

(c) An order do issue directing the respondents, each one of them, their agents and /or assigns to consider the case of promotion of the applicants to higher post recognizing the seniority and continuing the past service experience as Assistant Engineer from the date of joining in service, forthwith.

(d) An order do issue directing the respondents, each one of them, their agents and/or assigns to count the past service

**of the applicants towards protection of pay, CAS, pension
and other service benefit, forthwith.**

2. The case, in short, is that the Applicants were first appointed as Assistant Engineer (Mech. /Elect.) in Public Health & Engineering (hereinafter referred to as 'PHE') Department in July, 1995. Their appointment was made on the recommendation of the Public Service Commission, West Bengal (hereinafter referred to as the "Commission"), based on an interview on 23.11.1994 held in pursuance of Commission's advertisement dated 12.06.1993. 4 (Four) departmental candidates had also applied for appearing in the said interview, but as their names were not shortlisted, they were not called for interview. Being aggrieved with the decision of the Commission, the four departmental candidates preferred an application before the Hon'ble High Court, Calcutta in 1995, being C.O. No. 35(W) of 1995. During pendency of the said writ petition, the West Bengal Administrative Tribunal was constituted and, therefore, the writ petition was transferred to the Tribunal, being re-numbered as T.A No. 1118 of 1996. Eventually, the Tribunal passed an order dated 13.01.1998 rejecting the prayer of the departmental candidates.

3. Being dissatisfied with the order of the Tribunal, the Applicants in T.A No. 1118 of 1996 preferred an appeal before the Hon'ble High Court, Calcutta, being W.P.S.T. No. 76(W) of 1998. The Hon'ble Division Bench, after hearing the aforesaid writ petition, set aside the entire selection process to the post of Assistant Engineer (Mech. /Elect.) by an order dated

08.09.1999. As a result, the services of the Applicants who had been selected and joined as Assistant Engineer (Mech. /Elect.) pursuant to the recommendation of the Commission, were terminated w.e.f. 31.03.2000 vide an order dated 08.03.2000. Such Applicants were, however, engaged on contractual basis w.e.f. 01.04.2000 to meet the exigency arising out of sudden creation of vacancies. Such contractual engagement was extended from time to time till fresh appointment was made to fill up the vacancies.

4. In this context, it is material to note that the Hon'ble Division Bench, in their order dated 08.09.1999, had also directed the Commission to hold a competitive examination for filling up two vacant posts (General Category) of Assistant Engineer (Mech. /Elect.), preferably within six months. Pursuant to the said order of the Hon'ble Court, the Commission held a written examination on 24.10.2000 for selection to the posts of Assistant Engineer (Mech. /Elect.) in PHE Department, in which the Applicants and the departmental candidates participated. The written examination was followed by an interview. The contractual appointees and some other candidates, other than the departmental candidates, were successful in the selection process and they were recommended by the Commission on 10.11.2000 for appointment to the posts of Assistant Engineer (Mech. /Elect.) in the PHE Department. The candidates recommended by the Commission were appointed by the Government to the posts of Assistant Engineer (Mech. /Elect.) in the PHE Department w.e.f. 23.08.2001.

5. Meanwhile, during the pendency of the selection procedure in compliance of the order of the Hon'ble Court, the Commission held another selection process based on its advertisement dated 9th February, 1999 for recruitment to the posts of Assistant Engineer (Mech. /Elect.) in the PHE Department. On the basis of the said selection process, the Commission recommended certain fresh candidates in November, 2000 following which they joined service in June, 2001 as against the Applicants herein who joined service in August, 2001. Thus, the new entrants became senior to the contractual appointees.

6. In the present application, the Applicants have claimed seniority over the Private Respondents who were appointed on the basis of Commission's advertisement dated 9th February, 1999. Their challenge rests on the ground that their selection process was set in motion vide Commission's notification published in the year 1993 and the said selection process was completed in 2001. Though in the interim period, their services were terminated by an order of the Hon'ble Calcutta High Court, it was not due to any fault of their own. Furthermore, the Commission made inordinate delay for their fresh selection in compliance with the order of the Hon'ble Court dated 08.09.1999, otherwise they would have joined service again much before the Private Respondents.

7. The matter came up for the hearing before this Tribunal in O.A.- 216 of 2011 when the Tribunal was pleased to direct the Principal Secretary, PHE Department, Government of West Bengal to dispose of the application

together with all its annexure by treating the same as a representation by passing a speaking and reasoned order in accordance with law within a period of four months from the date of communication of their order dated 15.06.2011. Pursuant to the said order of the Tribunal, the Principal Secretary, PHE Department, passed a reasoned order dated 01.10.2012 which has been challenged by the Applicants in the instant application before us.

8. Appearing on behalf of the Applicants, Mr. Indranath Mitra, Ld. Counsel, assisted by Mr. Rajib Lochan Chakraborty, Mrs. Sonali Mitra and Mr. Priyanjit Kundu, Ld. Advocates, questioned the impugned order dated 01-10-2012, mainly on the following grounds:-

- i) That the impugned order passed by the Principal Secretary, PHE Department is not sustainable in law for it suffers from lack of application of mind. As such, the impugned reasoned order is liable to be set aside.
- ii) That the Applicants have been rendering continuous service since their joining service way back in 1995. As such they have acquired more experience than the Private Respondents appointed in June, 2001. Non-counting of the past service rendered by the Applicants violates their rights under Article 14 and 16 of the Constitution of India.
- iii) That if the selection process had been completed by the Commission within the time stipulated by the Hon'ble Court, the

Applicants would have been senior to the Private Respondents who joined in June, 2001.

- iv) That the reasoned order failed to appreciate that the Applicants have been appointed as Assistant Engineer (Mech./Elect.) in terms of the advertisement dated 12.06.1993 and, therefore, they cannot be treated as junior to the Private Respondents who were recruited in terms of Commission's advertisement dated 9th February, 1999. Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 clearly stipulates that the relative seniority all persons appointed directly through a competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected based on the recommendation of the Commission or other selection authority, persons appointed on the result of an earlier selection being senior to those appointed on the basis of a subsequent selection. The said Rules, 1981 has a statutory force and therefore, the PHE Department cannot determine their seniority in contravention of the said Rules.
- v) That the PHE Department at the time of determination of the seniority ought to have considered that the services rendered by the Applicants are uninterrupted since their joining in the year 1995. Seniority of the Applicants, therefore, ought to have been determined considering the length of their continuous officiation in the post of Assistant Engineer (Mech. /Elect.). In support of

their contention, Mr. Mitra relied upon a judgment passed by the Hon'ble Apex Court in *G. P. Doval & Ors. Vs. Chief Secretary, Government of U.P. & Ors. (AIR 1984 SC Page 1527 (paragraph 15)*, wherein it has been held that where officiating appointment is followed by confirmation, unless a contrary rule is shown, the service rendered through officiating appointment cannot be ignored for determination of seniority. Mr. Mitra also cited the judgment of the Hon'ble Apex Court in *State Of U.P., Etc Vs Rafiquddin & Ors. Etc (AIR 1988 SC Page 162 (paragraph 32))*, wherein it was held that candidates selected earlier through competitive examination are always senior to candidates selected through a competitive examination held on a later date.

9. Appearing on behalf of the State Respondents, Mr. Goutam Pathak Banerjee (for State Respondent no.5) & Mr. Soumendra Narayan Ray (for Other State Respondents) submitted that in case of appointment of Assistant Engineer (Mech/Elec), the department's responsibility is restricted to sending requisition to the Commission for selection of suitable candidates to fill up vacant posts, but not to the selection process as such. In the present case, the primary selection of the Applicants was terminated by an order of the Hon'ble Calcutta High Court. Their contractual engagement was made to meet sudden exigency, Such contractual engagement can never be treated as a continuity of service. As such the claim of the Applicants for seniority over the persons recruited on the basis Commission's advertisement dated 9th February, 1999 has no merit.

10. Appearing on behalf of the Commission, Mr. Apurba Lal Basu, Ld. Counsel, assisted by Mrs. Manjula Dhar Chowdhury, Ld. Advocate, submitted that in the instant case, the dispute is over the claim of the Applicants regarding seniority over the Private Respondents. It is the constitutional obligation of the Commission to select and recommend suitable candidates against notified vacant civil posts. But the question of seniority of the selected candidates joining service is the exclusive jurisdiction of the concerned Department.

11. Challenging the submissions made on behalf of the Applicants, Mr. Rajarshi Halder, Learned Counsel for the Private Respondents, with Mrs. Anita Dutta, Mr. Chirantan Sarkar, Ld. Advocates, submitted that the Private Respondents applied for the post of Assistant Engineer (Mech. /Elect.) in response to an Commission's advertisement dated 09.02.1999. Their selection was completed on 19th October, 2000 and the names of the selected candidates were recommended by the Commission vide their memo dated 16.11.2000. The incumbents joined the service in June, 2001. On the contrary, the Applicants in the instant application, although they joined initially on the basis of an advertisement published in the year 1993, but subsequently the Hon'ble High Court, Calcutta, vide an order dated 08.09.1999, set aside their selection and directed the Commission to hold fresh selection which was also affirmed by an order dated 28.01.2000 of the Hon'ble Apex Court.

12. Continuing further, Mr. Halder submitted that the Hon'ble High Court, Calcutta in their order dated 08.09.1999 directed the Commission to

hold fresh selection for two posts of General Category candidates only, but the Commission issued an advertisement on 04.04.2000 for selection of eight posts afresh, namely, for 05 General, 02 SC, 01 ST vacancies. These eight posts were advertised on 04.04.2000 includes subsequent vacancies that occurred after publication of advertisement dated 09.02.1999 based on which the Private Respondents were selected. As such fresh applications were invited in the year 2000, but at the same time the Commission also called the seven original Applicants of the year 1993, who had been recommended in 1994 and 1996 for appointment. It should be recalled here that the services of these Applicants were subsequently terminated by an order of the Hon'ble High Court, Calcutta. These candidates who were called for selection in the year 2000, appeared in the test on 24th October, 2000 and thereafter, they were interviewed. Eventually, the names of the successful candidates were recommended by the Commission on 16th August, 2001 i.e. 10(ten) months after recommendation of the names of the Private Respondents on 16th November, 2000.

13. Mr. Halder further submitted that from the materials on record, it would be evident that selection process of the Applicants started vide advertisement dated 04.04.2000, whereas that the Private Respondents was initiated based on an advertisement of the Commission dated 09.02.1999. As such the selection process of the Private Respondents started much earlier compared to the selection process of the Applicants in the present application. This apart, the selection of the Private Respondents was completed before the selection test of the present Applicants. The recommendation of the

Commission in respect of the Private Respondents was also made 10 (ten) months before the present applicants were recommended for appointment. Finally, the Private Respondents also joined the Govt. service in June, 2001 well ahead of the Applicants herein who joined in August, 2001. The Private Respondents are, therefore, ahead of the Applicants on all counts and as such, in terms of Section 4 of the West Bengal Services (Determination of Seniority) Rules, 1981, they are decidedly senior to the Applicants in regular service.

14. Mr. Halder also pointed out that the new advertisement published in the year 04.04.2000 allowed fresh applicants along with the seven previously selected candidates. As such it is an entirely fresh process of selection that started on 04.04.2000. The excess posts advertised on this occasion had allowed better chance of selection to the present Applicants. The participation of the present Applicants in the new process clearly indicates that they accepted such fresh selection. Having done so, they are to be reckoned as candidates selected on the basis a process initiated vide Commission's advertisement dated 04-04-2000 and, therefore, they are no longer entitled to claim seniority over the Private Respondents selected on the basis of an earlier advertisement dated 9th February, 1999,

15. To buttress his case, Mr. Halder relied upon the judgement of the Hon'ble Apex Court in *State Of U.P. & Ors vs Arvind Kumar Srivastava & Ors (2014 (14) SCC 720)* wherein it has been held that seniority cannot be reckoned from the date of occurrence of a vacancy and cannot be given

retrospectively unless expressly provided in the rules. Seniority, the Hon'ble Court has observed, cannot be given on retrospective basis even when an employee has not even been borne in the cadre. Unless otherwise is stipulated in the letter of appointment, seniority is to be computed from the date appointment to the post. In the light of the ratio laid down by the Hon'ble Court, the claim of seniority of the Applicants over the Private Respondents, therefore, is not sustainable in law as it would require them to be given seniority on retrospective basis.

16. Mr. Halder also stressed the point of limitation and argued the instant application is time barred. The Applicants in the present case were appointed in August, 2001 and at that time they never claimed that they were senior to the Private Respondents who were appointed in June, 2001 through a selection process based on Commission's advertisement dated 9th February, 1999. Now after a lapse of 10 years, the Applicants have staked their claim for seniority over the Private Respondents, which is not maintainable, being time barred. The Applicants all joined the service as Assistant Engineer (Mech/Elec) and all relevant information about their cadre strength and respective seniority are available in their Department's portal. Moreover, it is important to note that the Private Respondents had, in the meanwhile in 2007, been elevated to the post of Executive Engineer while Applicant nos. 1 & 2 were still continuing as Assistant Engineer and Applicant no.3 was placed lower than the Private Respondents. The instant application is, therefore, hopelessly time barred.

17. Based on these premises, Mr. Halder contended that the instant application is devoid of any merit and is liable to be dismissed.

18. We have heard the rival submissions of both the sides and also perused the records. The point at issue before us relates to the claim of the Applicants that they should be reckoned as appointees on the basis of the earlier selection process initiated in 1993 and, accordingly, they should be accorded seniority over the Private Respondents who were appointed on the basis of a selection process initiated through Commission's advertisement in 1999.

19. Delving into the issue, we find that the claim of seniority of the Applicants is primarily rests the fact they had initially been appointed on the basis Commission's advertisement in 1993 and had joined service in 1995. But it cannot be lost sight of that their services were terminated by an order dated 08-09-1999 of the Hon'ble Calcutta High Court. It is true that the engagement of the Applicants was continued on contractual basis, but that by itself cannot justify their claim for counting their contractual period as past service for determination of their seniority. A contractual engagement is quite different from regular service. It is, by no stretch of imagination, an officiating appointment to which Mr. Mitra apparently has sought to liken it by relying upon *G. P. Doval case* (supra). The contractual engagement of the Applicants, it appears from records, was on consolidated remuneration basis and governed by terms grossly different from regular service. It is a fact that the Applicants were subsequently appointed in regular posts, but it was through a selection

process based on Commission's advertisement dated 04-04-2000. It, therefore, readily follows that their selection took place based on an advertisement dated later than the advertisement based on which the Private Respondents were selected.

20. It is also on record that the Private Respondents joined the service in June, 2001 whereas the Applicants joined the regular service in August, 2001. It is common knowledge that any question involving seniority is to be decided in accordance with the relevant Rules for the purpose, namely, the West Bengal Services (Determination of Seniority) Rules, 1981. In this context, relevant excerpts from Rule 4 of the said Rules is reproduced below:

“4. Determination of Seniority of direct recruits. The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Commission or other selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on the result of a subsequent examination...”

21. Applying the above yardstick, it readily follows that the Private Respondents would be senior to the Applicants having joined the service on the basis of an advertisement dated 9th February, 1999 that was published well before the subsequent advertisement of the Commission dated 04.04.2000

based on the selection process of the Applicants was conducted. As such the claim of the Applicants for seniority over the Private Respondents does not have any basis. Their claim, as it appears, is mainly based on the fact that they had joined service earlier as Assistant Engineer (Mech/Elec) through on a selection process initiated on the basis of an advertisement of the Commission in 1993. But it is no longer relevant for the purpose of counting their seniority as their services were subsequently terminated w.e.f. 31-03-2000 pursuant to an order dated 08-09-1999 of the Hon'ble Calcutta High Court in WPST (76) of 1998. Therefore, in our opinion, the Applicants will do well to accept the reality and reckon their previous spell of service as a closed chapter insofar as the question of their seniority is concerned. Though Mr. Mitra has stressed on their period of contractual engagement to argue that the Applicants have rendered continuous service since their initial date of joining in 1995, but we find it difficult to treat contractual service at par with regular service. As it appears to us, the earlier spell of service rendered by the Applicants had come to an end with the termination of their service in terms of order of the Hon'ble Court and thereafter, for all practical purposes, they became fresh entrants in regular service after being appointed through the selection process conducted by the Commission based on its advertisement dated 04-04-2000. We are, therefore, of the view that these are two spells of service that cannot be added together, least of all through a period of contractual engagement.

22. The other ground based on which the Applicants have claimed their seniority over the Private Respondents is that if the Commission had scrupulously followed the direction of the Hon'ble Court to complete the

process of selection for filling up the two vacancies from general category within six months, then they would have been senior to the Private Respondents. We are not impressed by this submission on more than one count. Firstly, the Hon'ble Court had directed the Commission to complete the process as early as possible, preferably within six months. As such it was not a definite time-bound direction. Secondly, if the Applicants were aggrieved by the delay on the part of the Commission, they could have approached the Hon'ble Court for redressal of their grievance. In our opinion, after having participated in the selection process conducted by the Commission without demur, the Applicants' raising the issue at this stage after so many years to claim seniority hardly stands to reason and is not acceptable.

23. Before we conclude, we shall briefly visit the objection raised on the ground of limitation. The A major plank on which the reliefs sought for in the present application are based is delayed selection process by the Commission in 2000-2001. As per Administrative Tribunal Act, 1985, an application to ventilate a grievance must be filed within one year of the cause of action. Therefore, raising an issue concerning a purported delay that occurred over a decade ago needs to be explained. We are of the view that this point has not been adequately addressed in the submissions made on behalf of the Applicants.

24. In view of the above, having regard to the factual matrix of the case as well as the materials on record, we are of the view that the instant

application is devoid of any merit. As such the application fails. Accordingly, we dismiss the application. Interim order, if any, is vacated.

25. The Original Application is thus disposed of. No costs.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

(DR. A. K. CHANDA)
MEMBER (A)

(K. CHAKRABORTY)
CHAIRMAN-IN-CHARGE