

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – OA 1147 OF 2016

Smt. Lina Ghosh Vs **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
10 <hr/> 27.11.2019	<p><i>For the Applicant : Mr. D.K. Mukherjee, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. S.N. Ray, Learned Advocate.</i></p> <p><i>The applicant has prayed for direction upon the respondents to consider her case for grant of promotion to the post of Supervisory Grade Typist and other consequential reliefs.</i></p> <p><i>The applicant joined in the post of Typist on July 12, 1987 and got promotion to the post Typist Grade I with effect from November 24, 1998. The name of the applicant appeared in serial no. 1 in the gradation list of Typist Grade I published by Director of Health Services on August 31, 2015. The contention of the applicant is that two of her juniors in the service viz. Sudhangshu Sarkar and Pradip Baghira were granted promotion to the post of Supervisory Grade Typist without granting promotion to the applicant on the ground of her poor Annual Performance Report (in short, APR). The applicant ultimately retired from service on January 31, 2017.</i></p> <p><i>With the above factual matrix, Mr. D.K. Mukherjee, Learned Counsel for the applicant contends</i></p>	

ORDER SHEET

Smt. Lina Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. OA 1147 OF 2016
.....

that the entries in the APR of the applicant for preceding 5 years from the date when she was considered for promotion were very good, except the entries in APR for the year 2014-2015 where her performance was graded as “Average” along with observation that she does not carry out the order. Mr. Mukherjee further contends that the adverse entries in the APR for the year 2014-2015 were not communicated to the applicant and as such the authority cannot act upon the adverse entries in the APR of the applicant for the purpose of denial of promotion. He has relied on the decision of the Hon’ble Supreme Court in “Prabhu Dayal Khandelwal v Chairman, Union Public Service Commission & Others” reported in (2015) 14 SCC 427, in support of his contention that uncommunicated adverse entries in the APR cannot be relied upon for denial of promotion.

Mr. S.N. Ray, Learned Counsel representing the state respondents, submits that the applicant disobeyed the direction given by the Chief Medical Officer of Health (in short, CMOH), North 24-Parganas for performance of duty in making entries in the “Issue and Despatch Registers” of the office. The explanation was called for by the CMOH, North 24-Parganas from the applicant by issuing letter dated January 27, 2015 and the explanation submitted by the applicant was not found to be

ORDER SHEET

Smt. Lina Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1147 OF 2016**
.....

satisfactory and as such entries were made in the APR that she does not carry out the order of the superior officer. With regard to the contention of the applicant that the adverse entries in the APR were not communicated to the applicant, Mr. Ray has referred to the document marked by Annexure-D to the original application and submitted that the applicant made representation against her poor rating of APR for the year 2014-2015 on May 31, 2016. The specific submission of Mr. Ray is that the applicant would not have submitted representation for reconsideration of her entries in the APR for the year 2014-2015, had the adverse entries in the APR not been communicated to her from the office.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant was considered for promotion to the post of Supervisory Grade Typist, but promotion was denied to her due to her poor rating in the APR. The question for consideration of the Tribunal is whether the authority was justified in acting upon the adverse entries in the APR for the year 2014-2015 for denial of promotion to the applicant, particularly when her two juniors got promotion to the post of Supervisory Grade Typist on March 1, 2016 and on June 13, 2016 respectively.

The Joint Director (Personnel), Directorate of

ORDER SHEET

Smt. Lina Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. OA 1147 OF 2016
.....

<p><i>Health Services, Government of West Bengal called for the APR of three years viz. 2013-14, 2014-15 and 2015-16 of twelve candidates including the applicant for the purpose of consideration for grant of promotion to Supervisory Grade Typist in terms of the Finance Department Memo. No. 9135-F dated September 10, 2002 issued to the said Joint Director in this regard (Annexure-C to the original application). On consideration of entries made in the APR of the applicant for the above mentioned period of three years, we find that the entries of two years were very good, but the entries of APR for the year 2014-2015 was found to be average with adverse entries in the integrity column that “she does not carry out the order”. The written order of CMOH, North 24-Parganas issued in favour of the applicant under Memo. No. 352 dated January 27, 2015 (Annexed to the reply) indicates that the applicant was asked to perform the duty of “Issue and Despatch Register” in addition to her work of dealing with GPF loan of the employees, but the applicant did not perform the duty. The applicant also submitted representation for reconsideration of the entries in her APR for the year 2014-2015 on May 31, 2016 (Annexure-D to the original application) wherefrom it is evident that the applicant was quite aware of her poor rating in the APR for the year 2014-2015.</i></p>	
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ORDER SHEET

Smt. Lina Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1147 OF 2016**
.....

In view of our above findings, we are unable to accept the submission made on behalf of the applicant that the adverse entries in the APR for the year 2014-2015 were not communicated to the applicant before relying on the same for denial of promotion to the applicant. Since the adverse entries in the APR were communicated to the applicant before consideration of the same for denial of promotion to the applicant, we would like to hold that the ratio of the decision of the Hon'ble Supreme Court in "Prabhu Dayal Khandelwal v Chairman, Union Public Service Commission & Others" (supra) will not be applicable in the facts of the present case.

*The upshot of our above observation is that the applicant is not entitled to get any relief in the present application. The original application is, thus, **dismissed**.*

Let the urgent xerox certified copy of the order be supplied to both parties, on prior basis, if applied for, after compliance of all necessary formalities.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S