

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. **OA 1013 of 2014**

Swapnan Kumar Khan

Versus

The State of West Bengal & Ors.

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19 <u>27/03/2019</u>	<p>For the Applicant : Mr. A.K. Neogi, Ld. Advocate.</p> <p>For the State Respondent : Mr. M.N. Roy, Ld. Advocate.</p> <p>For the P.S.C., W.B. : Mr. A.L. Basu, Mrs. M. Dhar Chowdhury, Ld. Advocates.</p> <p>The applicant has prayed for direction upon the respondents for granting him promotion in the post of Deputy Superintendent of Police and other ancillary reliefs.</p> <p>It appears from the materials on record that the applicant joined as Sub-Inspector of Police on July 20, 1986 and got promotion to the post of Inspector of Police on October 05, 2007. The name of the applicant was forwarded to Public Service Commission, West Bengal for consideration of his promotion to the rank of Deputy Superintendent of Police in the year 2013. The specific case made out by the state respondents and Public Service Commission, West Bengal is that the name of the applicant was forwarded to Public Service Commission for promotion to the rank of Deputy Superintendent of Police along with other eligible candidates in the year 2013 by mistake, as the applicant did not fall within the zone of consideration</p>	

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	<p>for promotion to the rank of Deputy Superintendent of Police in the year 2013. The applicant has failed to establish by placing materials on record that the applicant was in the zone of consideration for promotion to the rank of Deputy Superintendent of Police in the year 2013. Accordingly, we accept the stand taken by the state respondents and Public Service Commission, West Bengal that the name of the applicant was forwarded to Public Service Commission for consideration of promotion to the rank of Deputy Superintendent of Police in the year 2013 by mistake and the applicant was not in the zone of consideration for promotion to the rank of Deputy Superintendent of Police in the year 2013.</p> <p>The name of the applicant was forwarded for the second time to Public Service Commission, West Bengal for consideration of promotion to the rank of Deputy Superintendent of Police along with other eligible candidates in the year 2014. The Public Service Commission, West Bengal recommended the name of the applicant along with other eligible candidates for promotion to the post of Deputy Superintendent of Police vide the letter no. 111/808PSC/1P-07/15 dated March 26, 2015. The State Government did not grant promotion to the applicant due to pendency of the disciplinary</p>	

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	<p>proceeding against him from the year 2008. Admittedly, the departmental enquiry was started against the applicant on the charge of acquiring assets disproportionate of his income during the period from January 01, 1995 to December 31, 1997. The said disciplinary proceeding ended in imposition of punishment of withholding 02 (two) increments of the applicant for a period of 02 (two) years on December 12, 2017. By referring to provisions of memorandum no. 224-P&AR(vig) dated June 12, 1980 issued by the Chief Secretary to the Government of West Bengal, Department of Home, Learned Counsel for the applicant contends that the applicant is entitled to be considered for promotion inspite of pendency of the disciplinary proceeding as the disciplinary proceeding continued for more than 03 (three) years. The applicant has specifically stated in paragraph 6.6 of the original application that he challenged the charge sheet of the departmental enquiry before this Tribunal by filing OA-927/2014. The provisions of paragraph 2 (ii) of the memorandum dated June 12, 1980 lay down that the government employee against whom disciplinary proceeding has been started and continued for more than 03 (three) years, is not entitled to be considered for promotion if the said government employee has challenged the disciplinary</p>	

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	<p>proceeding or charge sheet issued in the departmental enquiry in Court of Law. In the instant case, the applicant is not entitled to be considered for promotion in terms of memorandum dated June 12, 1980 for continuation of the disciplinary proceeding against him for more than 03 (three) years, as the applicant challenged the charge sheet issued against him in the departmental enquiry by filing OA-927/2014 before the Tribunal. In view of our above observation, we are unable to accept the contention made on behalf of the applicant that the applicant should have been considered for promotion to the rank of Deputy Superintendent of Police during continuation of disciplinary proceeding against him for more than 03 (three) years in terms of memorandum dated June 12, 1980.</p> <p>We have already observed that the disciplinary proceeding started against the applicant by issuance of charge sheet in the year 2008 ended in imposition of punishment of withholding 02 (two) increments for a period of 02 (two) years on December 12, 2017. Since the disciplinary proceeding was pending against the applicant during the period from 2014 to 2017, the State Government was justified in not granting promotion to the applicant to the rank of Deputy Superintendent of Police, inspite of recommendation</p>	

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	<p>by Public Service Commission, West Bengal. In view of the pendency of the disciplinary proceeding against the applicant till December 12, 2017, the question of granting promotion to the applicant to the rank of Deputy Superintendent of Police did not arise.</p> <p>The name of the applicant was forwarded to the Public Service Commission, West Bengal for the third time by the department in the year 2018 along with other eligible candidates for promotion to the post of Deputy Superintendent of Police. It appears from the letter dated December 27, 2018 issued to the Principal Secretary to the Government of West Bengal, Department of Home and Hill Affairs by the Secretary of Public Service Commission, West Bengal that the names of 42 (forty two) candidates were recommended by Public Service Commission for promotion to the post of Deputy Superintendent of Police and the names of 16 (sixteen) candidates including the present applicant were not recommended by Public Service Commission for promotion to the post of Deputy Superintendent of Police. Nothing is on record to indicate that Public Service Commission, West Bengal did not consider the case of the applicant for promotion in proper perspective. Since the name of the applicant was not recommended by Public Service Commission for promotion to the post of Deputy</p>	

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Csm	<p>Superintendent of Police, the applicant cannot be granted promotion to the post of Deputy Superintendent of Police by the State Government. The punishment which has been imposed on the applicant by the disciplinary authority on December 12, 2017 will continue till June 30, 2020, as the first increment of the applicant which has been withheld will be effective from July 01, 2018 and the next increment which has been withheld will be effective from July 01, 2019. Since the applicant will serve the punishment imposed by the disciplinary authority till June 30, 2020, the applicant can be considered for promotion to the post of Deputy Superintendent of Police after expiry of the period of punishment on June 30, 2020.</p> <p>In view of our above observation, we are constrained to hold that the applicant is not entitled to promotion to the rank of Deputy Superintendent of Police as prayed for in the present application. As a result, the present application is dismissed.</p> <p>Let a Plain Copy of the order be supplied to all the parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	