

**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 :-

*Hon'ble Justice Ranjit Kumar Bag,*  
Judicial Member

-AND-

*Hon'ble Dr. Subesh Kumar Das,*  
Administrative Member

**J U D G M E N T**

-of-

**Case No. : O.A. 1022 of 2016 : Kalyan Roychoudhury**

..... Applicant.

-Versus-

**State of West Bengal & Others.**

..... Respondents.

**For the Applicant:-**

**Mr. S. Ghosh,**  
Learned Advocate.

**For the State Respondents:-**

**Mrs. S. Agarwal,**  
Learned Advocate.

**For the Private Respondent:-**

**Mr. M.N. Roy,**  
Learned Advocate.

**Judgment delivered on: 13.03.2020**

**JUDGMENT**

In this application, the applicant who is a Superintending Engineer, Municipal Engineering Directorate under the Department of Urban Development & Municipal Affairs, Government of West Bengal has prayed for setting aside the gradation list of the Executive Engineers of the Municipal Engineering Directorate published on April 28, 2006 and the Corrigendum Order issued by the Joint Secretary to the Government of West Bengal dated September 15, 2016 by which the positions of the applicant and the respondent no. 6 in the gradation list published on April 28,

2006 were interchanged. The applicant has also prayed for direction upon the state respondents to prepare corrected fresh gradation list of the Executive Engineers in the Municipal Engineering Directorate and to extend all consequential benefits upon redetermination of seniority position of the applicant including promotions to the posts of Additional Chief Engineer as well as the Chief Engineer of the Directorate concerned.

2 The applicant along with private respondent nos. 5 and 6 were appointed as Assistant Engineer, Municipal Engineering Directorate on the basis of recommendation of the Public Service Commission, West Bengal (in short, PSC, WB) by Notification dated February 27, 1986. In the said Notification, the applicant's position was at serial no. 10 while the positions of private respondents were at serial nos. 6 (private respondent no. 5) and 9 (private respondent no. 6). The applicant was promoted to the post of Executive Engineer vide order dated October 19, 1998 on ad-hoc basis. The private respondent no. 5 was promoted to the post of Executive Engineer on November 3, 2000 on ad-hoc basis and the private respondent no. 6 was promoted to the post of Executive Engineer on June 28, 2001 on regular basis. The ad-hoc appointments of the applicant and the private respondent no. 5 were regularised to the post of Executive Engineer w.e.f. June 22, 2001. A draft gradation list of Executive Engineers in the Municipal Engineering Directorate as on January 1, 2006 was published under the signature of Deputy Secretary, Department of Municipal Affairs on April 28, 2006. In the said gradation list, the applicant was placed below the private respondent no. 5, but above the private respondent no. 6. The applicant was promoted to the post of Superintending Engineer including private respondent no. 6 vide order dated January 24, 2008. The private respondent no. 5 was promoted to the post of Superintending Engineer in the year 2006 and thereafter he was promoted to the post of Additional Chief Engineer in the year 2009 and to the post of Chief Engineer in the year 2013. The Joint Secretary to the Government of West Bengal issued Corrigendum dated September 15, 2016 by which the applicant was placed below the private respondent no. 6 by modifying the gradation list published on April 28, 2006.

3. We have heard at great length Mr. D.N. Roy, Learned Counsel for the applicant, Mr. M.N. Roy, Learned Counsel for the respondent no. 6 and Mrs. S. Agarwal, Learned Counsel for the state respondents.

4. Learned Counsel on behalf of the applicant has submitted the following points for our consideration :

(i) The applicant was promoted to the post of Executive Engineer in the year 1998 on ad-hoc basis although there was no reason to appoint him on ad-hoc basis as the applicant possessed all the requisite qualification for being promoted on a regular basis to the post of Executive Engineer.

(ii) The private respondent no. 5 was promoted to the post of Executive Engineer in the year 2000 on ad-hoc basis and the private respondent no. 6 was promoted to the said post of Executive Engineer in the year 2001 on regular basis, while the applicant was appointed to the said post in the year 1998. The applicant should be considered senior to both the private respondents as he was appointed to the post of Executive Engineer before the private respondents were appointed.

(iii) The respondent authorities published a gradation list of Executive Engineer on April 28, 2006 where the applicant was placed below the private respondent no. 5 who was appointed on ad-hoc basis much after the applicant. In the said gradation list, the respondent no. 6 was placed below the applicant. The private respondent nos. 5 and 6 were unable to clear the Professional and Departmental Examination completely prior to March 15, 1999 and October 6, 1999 respectively i.e. much later than the promotion of the applicant to the post of Executive Engineer on October 28, 1998 whereas, he cleared both the Professional and Departmental Examination completely on September 30, 1994. Therefore, the applicant became senior to the private respondents when he was appointed to the post of Executive Engineer in the year 1998.

(iv) The private respondent no. 5 though being junior to the applicant in the post of Executive Engineer was promoted to the post of Superintending Engineer in the year 2006 and thereafter got promotion to the post of Additional Chief Engineer in the year 2009 and Chief Engineer in the year 2013. The applicant made representation pointing out that he was superseded by the private respondent, but such representation was not at all considered by the respondent authorities.

(v) The respondent authorities issued a Corrigendum dated September 15, 2016 revising the gradation list published on April 28, 2006 wherein the applicant was placed below the private respondent no. 6 whereas the private respondent no. 6 was appointed in the post of Executive Engineer long after appointment of the applicant in the said post. Such change in the gradation list is arbitrary and in violation of the existing rules.

(vi) The respondent authorities published the Recruitment Rules regulating the recruitment to the posts in the Engineering Services (Municipal Engineering) and according to the said rules, the Senior Engineering Services (Municipal Engineering) consists of the posts of Chief Engineer, Superintending Engineer and Executive Engineer. So, the lowest post in this service is Executive Engineer and once an eligible candidate from the rank of Assistant Engineer get promotion to the post of Executive Engineer, he comes in the cadre of Senior Engineering Services (Municipal Engineering). Accordingly, the question of maintaining the seniority position in the feeder post of Assistant Engineer does not arise in the Senior Engineering Services.

Learned Counsel for the applicant further submitted that the applicant was initially appointed on ad-hoc basis which was subsequently regularised. This period of ad-hoc appointment of the applicant should have been counted towards his seniority as he fulfilled all criteria for promotion to the post of Executive Engineer on regular basis. The applicant cannot be deprived of the service rendered by him during the period of ad-hoc appointment for the purpose of determination of seniority as has been observed by the Hon'ble Apex Court in the unreported Judgment of "Secretary, Minor Irrigation Department & RES v. Narendra Kumar Tripathi" (Civil Appeal No. 3348 and 3349 of 2015). In this unreported case, the Hon'ble Apex Court has observed that the period of initial ad-hoc appointment should be counted for the purpose of seniority.

5. Appearing on behalf of the private respondent no. 6 Learned Counsel has urged us to consider the following points:

(i) The state respondents regularised the ad-hoc appointment of sixteen Assistant Engineers to the post of Executive Engineers vide Memo. Dated December 24, 2004 wherein the procedure for regularization was clearly mentioned. It was clearly mentioned in the said Memo that the inter-se seniority of the officers would remain unchanged as appeared in the gradation list of the lower feeder post of Assistant Engineers.

(ii) The applicant and the private respondent no. 6 were initially appointed in the post of Assistant Engineer by virtue of an Examination conducted by the Public Service Commission, West Bengal. The PSC, WB recommended names of forty four candidates vide Memo dated September 10, 1985 in order of merit. In the said order of merit, the name of the private respondent no. 6 appeared at serial no. 13 whereas the name of the applicant appeared at serial no. 14. It clearly indicates

that the respondent no. 6 was senior to the applicant in the post of Assistant Engineer and accordingly he should be considered as senior to the applicant in the gradation list of Executive Engineers. The state respondents rightly placed the respondent no. 6 above the applicant by issuing Corrigendum dated September 15, 2016 in terms of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981.

(iii) That when appointment is given on ad-hoc basis as stop gap arrangement dehors the Recruitment Rules, the officiation in such a post cannot be taken into account for considering the seniority as has been observed by the Apex Court in the case of "The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others" reported in AIR 1990 SCC 1607. The appointment of the applicant was on promotion and the period of ad-hoc service cannot be counted for the purpose of determination of seniority in the present case.

6. Appearing on behalf of the state respondents Learned Counsel for the state respondents has submitted the following points for our consideration :

(i) In the Department's Notification dated December 24, 2004 regularising the appointment of the applicant and others in the post of Executive Engineer, it is clearly mentioned that the inter-se seniority of the officers who were appointed to the post of Executive Engineer on ad-hoc basis would remain unchanged in relation to their respective positions in the gradation list in the lower feeder post of Assistant Engineer. Accordingly, both respondent nos. 5 and 6 are to be considered as senior to the applicant.

(ii) That the Cadre Controlling Authority interchanged the position of the applicant and the private respondent no. 6 in the gradation list of the Executive Engineers, Municipal Engineering Directorate vide Corrigendum dated September 15, 2016 in terms of West Bengal Services (Determination of Seniority) Rules, 1981. The provisional gradation list published on December 24, 2004 read with the Corrigendum published on September 15, 2016 is to be considered as correct and according to the rules.

7. Having heard Learned Counsel for all the parties and on consideration of the materials on record, we are of the view that we should first examine whether the respondents were wrong in placing respondent no. 5 at a higher position than the applicant in the gradation list published on April 28, 2006. The next issue which should examine is whether the state respondents were wrong in issuing the

Corrigendum dated September 15, 2016 whereby the positions of the applicant and the private respondent no. 6 were interchanged and the applicant was placed below the private respondent no. 6. Finally, we will examine whether any direction is to be issued upon the respondent authorities to revise the gradation list and to take any subsequent actions, if the gradation list is revised.

8. Before we examine the specific issues as identified above, let us examine whether the applicant in the present case is similarly situated as that of the applicant in the Civil Appeal No. 3348 & 3349 of 2015 in the case of "Secretary, Minor Irrigation Department & RES v. Narendra Kumar Tripathi (supra)". In both the referred and instant cases, the initial appointments were made on ad-hoc basis, which were subsequently regularised. In the referred case, the Hon'ble Apex Court observed that when the rules provided for ad-hoc appointment and subsequent regularisation, seniority is to be counted from the date of appointment and the Government employee cannot be deprived of the past service rendered on ad-hoc appointment. In the referred case, the employees were appointed for the first time in the Government service while in the instant case, the applicant was appointed in the post of Executive Engineer on promotion. The facts of the present case are thus clearly distinguishable from the facts of the referred case. Moreover, no Rules governing the service condition of the applicant was placed before us whereby the service rendered by the applicant on ad-hoc basis can be counted for seniority in the service. So, the ratio of the referred case of "Secretary, Minor Irrigation Department & RES v. Narendra Kumar Tripathi" (supra) cannot be applied in the facts of the present case. In view of such position, we are of the view that ad-hoc services rendered by the applicant in the promotional post of Executive Engineer cannot be counted towards his seniority. His seniority in the post of Executive Engineer is to be determined in terms of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981.

9. The first issue we take up for consideration is whether the respondents were wrong in placing the private respondent no. 5 in higher position than the applicant in the gradation list published on April 28, 2006. The applicant and the private respondents were appointed as Assistant Engineer, Municipal Engineering Directorate on the basis of the recommendation of the PSC, WB vide notification dated February 26, 1986. In the said Notification, the position of the private respondent no. 5 was at serial no. 6 whereas the applicant's position was at serial

no. 10. The applicant was promoted to the post of Executive Engineer on ad-hoc basis vide order dated October 19, 1998 and the private respondent no. 5 was promoted on ad-hoc basis to the said post on November 3, 2000. Their ad-hoc appointments were regularised w.e.f. June 22, 2001 vide order dated December 24, 2004 issued by the Joint Secretary to the Government of West Bengal, Department of Municipal Affairs. In the said order, it was clearly stipulated in the paragraph 4 (b) that:

**“4(b). The inter-se seniority of the officers would remain unchanged as per their position in the gradation list in the lower feeder post of Assistant Engineers.”**

10. The applicant and the Private Respondent no. 5 were appointed through the same recruitment process in the posts of Assistant Engineer. Accordingly, the seniority of the officers recruited through the same recruitment process is to be determined in terms of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981. The relevant portion of the said Rule 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 recommendation of the Commission or other selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on result of a subsequent selection.....”**

On consideration of the provisions of the above Rules, we are of the view that the state respondent authority was not wrong in placing the private respondent no. 5 above the applicant in the gradation list published on April 28, 2006 as the inter-se seniority of the applicant and the private respondent will be decided in terms of the order of merit in which they have been selected by the PSC, WB. The said inter-se seniority on the basis of merit of selection will remain unchanged after promotion to the post of Executive Engineer as laid down in the order of regularisation of ad-hoc appointment in promotional post of Executive Engineer.

11. The second issue we take up for consideration is whether the state respondents were wrong in issuing Corrigendum dated September 15, 2016, by which the applicant was placed below the private respondent no. 6. Both the applicant and the private respondent no. 6 were appointed following the recommendation of the PSC, WB. In the said order of merit while the private

respondent no. 6 was placed at serial no. 13, the applicant was placed at serial no. 14. In the gradation list of the Assistant Engineer published on December 30, 1996, the private respondent was placed at serial no. 50 while the applicant was placed at serial no. 51. After publication of the provisional gradation list of Executive Engineers on April 28, 2006, the private respondent no. 6 made objection and claimed that he should have been placed in the gradation list above the applicant. The gradation list was modified vide Corrigendum dated September 15, 2016 issued by the Joint Secretary to the Government of West Bengal, Department of Municipal Affairs. There is no dispute that in the merit list recommended by the PSC, WB by which the appointments were made to the post of Assistant Engineer, the name of the private respondent no. 6 appeared in higher position than the applicant. In terms of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981, we are of the view that the private respondent no. 6 should be placed above the applicant in the gradation list of Executive Engineers. In view of such position, we are not in a position to accept that the state respondents were wrong in issuing the Corrigendum dated September 15, 2016 in terms of the provisions of the West Bengal Services (Determination of Seniority) Rules, 1981.

12. In view of our above findings, both the private respondent nos. 5 and 6 are to be considered as senior to the applicant. We do not find any justification to issue any direction to the state respondents to rectify the gradation list and to extend any consequential benefit to the applicant as prayed for.

13. The original application is, thus, dismissed.

14. The urgent xerox certified copy of the judgment and order may be supplied to the parties on priority basis, if applied for, subject to compliance of necessary formalities.

( Dr. Subesh Kumar Das )  
MEMBER(A)

(Ranjit Kumar Bag )  
MEMBER (J).