

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 125 OF 2016

Kalidas Kushari 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 |
|---|--|--|
| <p style="text-align: center;">14</p> <hr/> <p style="text-align: center;">18.07.2019</p> | <p>For the Applicant : Mr. S. Acharya, Mr. P. Paul, Learned Advocates.</p> <p>For the State Respondents : Mr. B.P. Roy, Learned Advocate.</p> <p>For the Respondent No. 2 : Mrs. S. Agarwal, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for granting promotion to the applicant in the post of Upper Division Clerk (in short, UDC) in terms of the gradation list prepared under Memo. No. 628/Estt. dated August 8, 1996 and for implementation of G.O. dated January 19, 1996 (Annexure-B to the original application) in terms of order dated July 3, 2009 passed by this Tribunal in OA-1094 of 2004.</p> <p>The applicant joined in the post of Mohurrior in under the establishment of the Special Land Acquisition Officer in the District of South 24-Parganas in the year 1984. He was re-designated as Lower Division Clerk (in short, LDC) w.e.f. July 1, 1989 in terms of order no. 628/Estt. dated August 8, 1996 issued by the Collector, South 24-Parganas in compliance with the direction laid down in Memo. No. 861-F dated January 19, 1996 of the Finance Department, Government of West Bengal, which was issued in compliance with the direction given by the Hon'ble</p> | |

ORDER SHEET

Kalidas Kushari

Form No.

.....
Vs.

The State of West Bengal & Ors.
.....

Case No. **OA-125 of 2016**

Supreme Court in the case of State of West Bengal & Others v. S.C. Das & Others (CA No. 11566 of 1995 arising out of SLP (C) No. 16867 OF 1994). The applicant got promotion to the post of UDC in the establishment of Collector, South 24-Parganas w.e.f. May 1, 2008 in terms of the order issued by the Collector, South 24-Parganas on October 1, 2008. The applicant was further promoted to the post of Head Clerk in the establishment of the Collector of South 24-Parganas w.e.f. August 01, 2015 in terms of the order issued by the Collector, South 24-Parganas on October 28, 2015. The applicant came to learn about the order of promotion of one Ashoke Kumar Paul to the post of UDC in the Collectorate of South 24-Parganas w.e.f. September 01, 1997 by virtue of the order issued by the Collector, South 24-Parganas on July 28, 2015 in compliance with direction given by the Tribunal on December 19, 2013 in OA No. 925 of 2013. The contention of the applicant is that he is similarly circumstanced with Ashoke Kumar Paul who also joined as Mohurrior and re-designated as LDC w.e.f. July 01, 1989 in terms of order no. 628/Estt. dated August 08, 1996 (Annexure A to the original application). The applicant has prayed for consideration of his case for promotion to the post of UDC in the Collectorate of South 24-Parganas w.e.f. the date on which promotion was given to Ashoke Kumar Paul in the post of UDC.

Learned Counsel for the applicant contends that the applicant is similarly circumstanced with Ashoke Kumar Paul

ORDER SHEET

Kalidas Kushari

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA-125 of 2016**

who was granted promotion to the post of UDC w.e.f. September 01, 1997. He has also placed reliance on the judgment of the Apex Court in “Kakali Basu Chatterjee v The State of West Bengal & Ors.” (petition for Special Leave to Appeal (C) No. 11597 of 2018 decided on May 14, 2018) in support of his contention that the applicant being similarly circumstanced with Ashoke Kumar Paul is entitled to get the benefit which is given to Ashoke Kumar Paul by way of promotion. He has also relied on the judgment of “Sristidhar Biswas v State of West Bengal” reported in 2001 (1) CHN page 524 in support of his contention that the applicant being similarly circumstanced with Ashoke Kumar Paul is entitled to get benefit of promotion as UDC w.e.f. September 01, 1997. On the other hand, Learned Counsel representing the state respondents submits that the applicant was not a party to previous original application filed before this Tribunal by Ashoke Kumar Paul for getting the benefit of promotion and as such he is not entitled to get benefit given by the Tribunal in the previous original application. Learned Counsel further submits that the applicant has approached this Tribunal after almost 8 (eight) years from the date of grant of promotion to the post of UDC and about one year after grant of promotion to the post of Head Clerk and as such the present application is clearly barred under Section 21 of the Administrative Tribunals Act, 1985. Learned Counsel has also pointed out that the applicant did not raise the issue of his promotion with effect from an earlier date when he got promotion

ORDER SHEET

Kalidas Kushari

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA-125 of 2016**

to the post of UDC in the year 2008.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant was re-designated as LDC w.e.f. July 01, 1989. One Ashoke Kumar Paul was also re-designated as LDC w.e.f. July 01, 1989. Both the applicant and Ashoke Kumar Paul previously worked as Mohurrior. The name of the applicant appears in serial no. 36 of the list annexed to the order issued by the Collector, South 24-Parganas on August 08, 1996 for the purpose of re-designation of Mohurrior of the Collector as LDC, whereas the name of Ashoke Kumar Paul appears in serial no. 5 of the said list. If we accept the said list annexed to the order dated August 08, 1996 issued by the Collector, South 24-Parganas (Annexure A to the original application) as gradation list of the re-designated LDCs in the Collectorate of South 24-Parganas, then Ashoke Kumar Paul is much senior to the applicant as per the said gradation list. Admittedly Memorandum No. 861-F dated January 19, 1996 was issued by the Finance Department, Audit Branch, Government of West Bengal for issuance of guidelines for grant of promotion of eligible Mohurrior re-designated as LDCs to the post of UDC. By the said memorandum dated January 19, 1996, the Finance Department has clearly laid down that promotion of re-designated LDC will be granted to the post of UDC in the ratio of 1:1 of directly recruited LDC and re-designated LDC.

ORDER SHEET

Kalidas Kushari

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA-125 of 2016**

The order of promotion of 44 directly recruited LDC to the post of UDC was issued by the Collector, South 24-Parganas under Memorandum dated June 11, 2004, which was challenged by Ashoke Kumar Paul before this Tribunal by filing OA-1094 of 2004. The said order of promotion of LDC was issued in violation of the direction given by the Hon'ble Supreme Court in compliance with which Memorandum No.861-F dated January 19, 1996 was issued by the Finance Department, Audit Branch, Government of West Bengal. Since the said promotion of 44 LDC was issued by the Collector, South 24-Parganas in violation of memorandum no. 861-F dated January 19, 1996 and since the candidature of re-designated LDCs were not considered for promotion to the post of UDC of the Collectorate of South 24-Parganas, the Tribunal by order dated July 03, 2009 passed in OA-1094 of 2004 quashed the said order of promotion issued in terms of Memorandum dated June 11, 2004 and directed for consideration of re-designated LDCs and directly recruited LDCs of the Collectorate for promotion to the post of UDC on the basis of 1:1 as mandated under Memorandum no. 861-F dated January 19, 1996. What order was passed by the Collector, South 24-Parganas in compliance with the direction given by the Tribunal on July 03, 2004 in OA-1094 of 2004 has not been placed before us either by the applicant or by the state respondents. What has been placed on record is the order dated October 01, 2008 issued by the Collector, South 24-Parganas by giving promotion to both the directly recruited LDC

ORDER SHEET*Kalidas Kushari*

Form No.

Vs.**The State of West Bengal & Ors.**Case No. **OA-125 of 2016**

and re-designated LDC to the post of UDC in the Collectorate in the proportion of 1:1. The said order of promotion was issued when the original application no. OA-1094 of 2004 was pending for adjudication before the Tribunal. The present applicant got promotion to the post of UDC w.e.f. May 01, 2008 in terms of the said order dated October 01, 2008 issued by the Collector, South 24-Parganas. On close scrutiny of the said order of promotion, we find that the said order of promotion has been issued by the Collector, South 24-Parganas not only in terms of memorandum No. 861-F dated January 19, 1996 issued by the Finance Department, Audit Branch, Government of West Bengal, but also in compliance with the direction given by the Hon'ble Supreme Court in CA No. 11566 of 1995 arising out of SLP (C) 16867 of 1994 (State of West Bengal v Subal Chandra Das & Ors).

The name of Ashoke Kumar Paul who is much senior to the applicant as per gradation list was not granted promotion to the post of UDC by the order dated October 01, 2008 issued by the Collector, South 24-Parganas. Naturally, Ashoke Kumar Paul must have approached the Tribunal by filing OA 925 of 2013 which was disposed of on December 09, 2013. The said order of the Tribunal passed in OA No. 925 of 2013 has not been placed before us by the applicant and as such we are in the dark about the order of the Tribunal. However, by virtue of the said order of the Tribunal in OA 925 of 2013, Ashoke Kumar

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA-125 of 2016**

Paul was granted promotion to the post of UDC w.e.f. September 01, 1997.

The present applicant being much junior to Ashoke Kumar Paul in the gradation list (Annexure A to the original application) cannot claim that he is similarly circumstanced with Ashoke Kumar Paul, particularly when the name of Ashoke Kumar Paul appears in serial no. 5 of the gradation list, whereas the name of the applicant appears in serial no. 36 of the said gradation list. It is not the case of the applicant that he has been superseded by any of his junior in the gradation list at the time of granting promotion to the applicant to the post of UDC in the Collectorate of South 24-Parganas. By following the decision of our High Court in “Sristidhar Biswas & Another v State of West Bengal & Others (Supra) and the judgment of the Apex Court in “Kakali Basu Chatterjee v The State of West Bengal & Others” (Supra), we would like to hold that the applicant is not similarly circumstanced with Ashoke Kumar Paul as contended on behalf of the applicant. Accordingly, we do not find any merit in the submission made on behalf of the applicant.

The applicant has not challenged the order of his promotion to the post of UDC (Annexure D to the original application), which has been issued not only in terms of the memorandum issued by the Finance Department, Audit Branch, Government of West Bengal but also in compliance with the direction given by the Apex Court. Admittedly the applicant has

ORDER SHEET*Kalidas Kushari*

Form No.

Vs.**The State of West Bengal & Ors.**
.....Case No. **OA-125 of 2016**

already been promoted to the post of Head Clark in the Collectorate of South 24-Parganas w.e.f. August 01, 2015. The applicant has approached this Tribunal on January 29, 2016 i.e. long after almost 8 years of grant of his promotion to the post of UDC in the Collectorate of South 24-Parganas. Even assuming for argument's sake that the cause of action of the applicant is continuing one, the question of limitation will be attracted as the settled position for last 8 years will be unsettled and prejudice will be caused to all the persons who got promotion to the post of UDC in the Collectorate of South 24-Parganas from the year 2008. As a result, we of the view that the filing of the present application long after 8 years of arising of cause of action is clearly barred under Section 21 of the Administrative Tribunals Act, 1985.

In view of our above observation, we are constrained to hold that the present application is liable to be dismissed. As a result, the original application is dismissed.

Let a plain copy of the order be supplied to both parties.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S