

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. **OA-213 of 2016**

Dr. Chitra Bhattacharya

Versus

The State of West Bengal & Others.

Serial No. and date of order	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary.
1 <u>09</u> 12/03/2020	<p style="text-align: center;">2</p> <p>For the Applicant : Mr. P.N. Palit, Mr. P. Palit, Ld. Advocates.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Mr. D. Koley, Ld. Advocates.</p> <p>The original applicant Ashok Acharya (hereinafter referred to as 'original applicant') died during pendency of hearing of the original application and his legal heirs have been substituted in his place by way of amendment of cause-title of the original application.</p> <p>The original applicant joined in the government service as Sub-Assistant Engineer under Directorate of Irrigation and Waterways on May 11, 1977. He was appointed to the post of Assistant Engineer under the Directorate of Irrigation and Waterways on June 22, 1978. He did not get any promotion to the post of Executive Engineer till the date of his retirement from service on January 31, 2008. Previously, the original applicant approached this Tribunal by filing OA-473 of 2015 praying for direction upon the Secretary to the Government of West Bengal, Department of Irrigation and Waterways to act upon the letter issued by the</p>	3

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	<p>Director of Personnel and Ex-Officio Chief Engineer, Directorate of Irrigation and Waterways, Government of West Bengal on September 25, 2014. On November 18, 2015, this Tribunal disposed of OA-473 of 2015 by directing the Departmental Secretary of the Department of Irrigation and Waterways to act upon the letter dated September 25, 2014 issued by the Director of Personnel and Ex-Officio Chief Engineer within specific period of time. As a result, the Secretary to the Government of West Bengal, Department of Irrigation and Waterways has passed a reasoned order after giving the applicant an opportunity of hearing on January 19, 2016, which is under challenge in the present application. The applicants have now prayed for direction upon the respondents for granting benefit of service of Executive Engineer in favour of the original applicant after setting aside the impugned order dated January 19, 2016 issued by the Respondent No. 1 i.e. Secretary to the Government of West Bengal, Department of Irrigation and Waterways.</p> <p>Learned Counsel for the applicant has made two fold submissions before us: first, that the original applicant has been discriminated by not granting benefit of promotion to the post of</p>	

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	<p>Executive Engineer, while one D.G.P. Mukherjee and one S. Dasgupta being similarly circumstanced with the original applicant, got the benefit of promotion to the post of Executive Engineer, and secondly, that the length of service of the original applicant should be extended by three years for getting retirement benefits in terms of the provisions of Rule 27 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (in short, the D.C.R.B. Rules, 1971) modified by Memorandum dated June 8, 1998 issued by the Deputy Secretary to the Government of West Bengal, Finance Department, Pension Branch. On the other hand, Learned Counsel representing the state respondents submits that the original applicant has failed to produce necessary documents before the Tribunal to establish that he is similarly circumstanced with one D.G.P. Mukherjee and S. Dasgupta for getting benefit of promotion to the post of Executive Engineer, and as such the applicants have miserably failed to establish that the original applicant is entitled to get benefit of promotion to the post of Executive Engineer without passing departmental and professional examination in terms of the provisions of West Bengal Services (Training and Examination) Rules, 1953. It is further</p>	

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	<p>contended on behalf of the state respondents that the original applicant being only a Graduate Engineer who was recruited as Assistant Engineer in the Directorate of Irrigation and Waterways, is not entitled to get benefit of extension of length of service by three years in terms of the modified provisions of Rule 27 of the D.C.R.B. Rules, 1971. It is also contended on behalf of the state respondents that the reasoned order passed by the Secretary to the Government of West Bengal, Department of Irrigation and Waterways is justified under the law.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the original applicant worked as Assistant Engineer under Directorate of Irrigation and Waterways w.e.f. June 22, 1978 till the date of his retirement on June 31, 2008. The admitted position is that the original applicant could not clear all the papers in professional and departmental examination and thereby he was not confirmed in the post of Assistant Engineer till the date of his retirement from service in terms of the provisions of Rule 4(1)(a) & (b) of West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979 read with Rules 12 & 13 of Chapter II(A) and Rule 1(vii) of Chapter I of West Bengal Services</p>	

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	<p>(Training and Examination) Rules, 1953. It is pertinent to point out that the original applicant has candidly admitted in paragraph 6 (c) of the original application that he did not pass Hindi I paper of Departmental and Professional examination in terms of the provisions of West Bengal Services (Training and Examination) Rules, 1953. Since the original applicant was not confirmed in the post of Assistant Engineer for not passing all the papers in Departmental and Professional examination in terms of the provisions of West Bengal Services (Training and Examination) Rules, 1953 and the provisions of West Bengal Services (Appointment, Probation and Configuration) Rules, 1979, the original applicant cannot claim to get promotion to the post of Executive Engineer in the Directorate of Irrigation and Waterways. It transpires from the materials on record that the original applicant was asked to remain in charge of the office of the Executive Engineer of Kangsabati Mechanical Division from December 1985 to January 1989 in addition to his normal duty and as such his posting in the cadre of Executive Engineer can never be construed as his promotion. The Secretary to the Government of West Bengal, Department of Irrigation and Waterways has categorically observed</p>	

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	<p>in the reasoned order that the original applicant is not entitled to get benefit of promotion to the post of Executive Engineer for not passing all the papers in the Departmental and Professional examination in terms of the provisions of West Bengal Services (Training and Examination) Rules, 1953, particularly when he was not confirmed even in the post of Assistant Engineer of the Directorate of Irrigation and Waterways in terms of the provisions of West Bengal Services (Appointment, Probation and Configuration) Rules, 1979.</p> <p>With regard to the claim of the original applicant to get benefit of counting of length of service by three years in terms of the provisions of Rule 27 of the D.C.R.B. Rules as modified by Memorandum issued by the Deputy Secretary to the Government of West Bengal, Department of Finance, Pension Branch on June 08, 1998, we would like to observe that Rule 27 of the D.C.R.B. Rules, 1971 can be invoked by a government employee for getting benefit of length of service by three years (which was previously five years before enhancement of retirement age of the government employee upto 60 years), if the post in which the government employee is appointed requires minimum educational qualification of Post Graduate</p>	

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	<p>Research or any other specific qualification or experience in Scientific or Technical or Professional field and the normal age of recruitment to the said post is above 25 years of age. The posts or services for which the provisions of Rule 27 of the D.C.R.B. Rules, 1971 are applicable are enumerated in Appendix IV and Appendix V of the D.C.R.B. Rules, 1971. On close scrutiny of both Appendix IV and Appendix V of the D.C.R.B. Rules, 1971, we find that the post of Assistant Engineer and the post of Executive Engineer under Directorate of Irrigation and Waterways are conspicuously absent from the said appendices. The additional scientific qualification or technical qualification or post graduate qualification is not required for recruitment to the post of Assistant Engineer under Directorate of Irrigation and Waterways and thereby the benefit of extension of length of service in terms of the modified provisions of Rule 27 of the D.C.R.B. Rules, 1971 cannot be invoked in the case of the original applicant.</p> <p>With regard to the allegation of discrimination of the original applicant with D.G.P. Mukherjee and S. Dasgupta, we would like to observe that the allegation of discrimination has not been substantiated by producing documents to establish</p>	

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Csm	<p>that D.G.P. Mukherjee and S. Dasgupta got promotion to the post of Executive Engineer without clearing all papers in the departmental and professional examination while working as Assistant Engineer in the Directorate of Irrigation and Waterways. In view of our above findings, we cannot persuade ourselves to grant the reliefs prayed by the applicant in the original application. As a result, the original application is dismissed.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>The urgent Xerox Certified Copy of the order, if applied for, be supplied to either of the parties on priority basis, subject to fulfillment of all necessary formalities.</p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	