

ORDER SHEET
West Bengal Administrative Tribunal

Present.-

The Hon'ble Justice Ranjit Kumar Bag

&

The Hon'ble Dr. Subesh Kumar Das

Case No. **OA-260 of 2016**

Asis Kumar Naskar

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.
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15 04/03/2020	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Ld. Advocates.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Ld. Advocate.</p> <p>The applicant has prayed for direction upon the respondents for granting him promotion to the post of Superintending Engineer from the post of Executive Engineer by following 50 Point Roster prepared in terms of the provisions of West Bengal Scheduled Castes and Schedule Tribes (Reservation of vacancies in services and posts) Act, 1976 (in short, the SC and ST Act, 1976) and other consequential reliefs.</p> <p>The applicant joined in the government service as Assistant Engineer in the Department of Public Health Engineering and got promotion to the post of Executive Engineer on December 24, 2007. The contention of the applicant is that he belonging to the category of Scheduled Caste was not considered for promotion to the post of Superintending Engineer in the 4th vacancy of 50 Point Roster which was reserved for Scheduled Tribe, though no candidate belonging to the category of Scheduled</p>	

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	<p>Tribe was available within the zone of consideration for grant of promotion. The further contention of the applicant is that the Respondent No. 10 who belongs to the General category, was granted promotion to the post of Superintending Engineer in the 4th reserved vacancy of 50 Point Roster in an illegal manner. The respondent No. 10 was impleaded as party during pendency of the original application before the Tribunal as he was granted promotion to the post of Superintending Engineer in the Directorate of Public Health Engineering by issuance of notification dated November 17, 2017 during pendency of the present application before the Tribunal.</p> <p>Mr. M.N. Roy, Learned Counsel for the applicant contends that the applicant belongs to Scheduled Caste category and thereby he should have been granted promotion to the post of Superintending Engineer in the 4th vacancy of 50 Point Roster which was reserved for Scheduled Tribe candidate, as no Scheduled Tribe candidate was available within the zone of consideration for promotion. He further submits that the grant of promotion to the respondent no. 10 belonging to General category to the post of Superintending Engineer in 4th reserved vacancy of 50 Point Roster</p>	

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	<p>is not justified under the law. On the other hand, Mr. G.P. Banerjee, Learned Counsel representing the state respondents has referred to paragraph 6 of the reply and submitted that the gradation list published on April 05, 2012 on the basis of which the applicant has claimed seniority above one Amit Kumar Sarkar was modified by publication of another gradation list on March 22, 2018 in terms of the Judgment and order passed by this Tribunal in OA No. 526 of 2015 (Amit Kumar Sarkar v State of West Bengal & Others), which was affirmed by the Division Bench of the Hon'ble High Court in W.P.S.T. No. 184/2016. He further submits that Amit Kumar Sarkar belonging to Scheduled Caste category was senior to the present applicant in terms of the merit list prepared by Public Service Commission for initial appointment in the post of Assistant Engineer. The specific submission of Mr. Banerjee is that the seniority of Amit Kumar Sarkar was restored in terms of the order of the Tribunal being affirmed by the Division Bench of the Hon'ble High Court and he was placed above the applicant in the Gradation List published on March 22, 2018 and as such the claim of the applicant for grant of promotion in the 4th Reserved vacancy of 50 Point Roster in supersession of the claim of Amit Kumar</p>	

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	<p>Sarkar for promotion in the said 4th reserved vacancy of 50 Point Roster is not sustainable under the Law.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the 4th vacancy of 50 Point Roster for promotion to the post of Superintending Engineer from the post of Executive Engineer was reserved for Scheduled Tribe candidate. Admittedly, the first, second and third vacancy of 50 Point Roster were filled up by one Debasis Gharami (belonging to Scheduled Caste category) and the Respondent No. 8 & 9 respectively. The further admitted position is that the Respondent No. 10 belonging to General category was granted promotion to the post of Superintending Engineer during pendency of the original application before the Tribunal on November 17, 2017.</p> <p>The question for our consideration is whether the applicant belonging to Scheduled Caste category should have been granted promotion to the post of Superintending Engineer in the 4th reserved vacancy of 50 Point Roster instead of granting promotion to the respondent No. 10 in the said vacancy of the roster. There is no dispute that no candidate</p>	

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	<p>belonging to Scheduled Tribe was available in the zone of consideration for grant of promotion to the post of Superintending Engineer in 4th vacancy of 50 Point roster reserved for Scheduled Tribe candidate. Since the Scheduled Tribe candidate was not available in the zone of consideration, the 4th reserved vacancy should have been filled up by any candidate belonging to Scheduled Caste category. One Amit Kumar Sarkar belonging to Scheduled Caste category was wrongly placed below the applicant in the previous Gradation List published on April 05, 2012. The seniority of Amit Kumar Sarkar was subsequently restored and placed above the applicant in the Gradation List published on March 22, 2018 in terms of Judgment and order passed by the Tribunal in OA-526/2015, which was affirmed by the Division Bench of the Hon'ble High Court in W.P.S.T. No. 184/2016. Since Amit Kumar Sarkar belonging to Scheduled Caste category is senior to the present applicant belonging to Scheduled Caste category, the said Amit Kumar Sarkar might have claimed promotion in the 4th reserved vacancy of 50 Point roster in place of the Respondent No. 10, who was granted promotion in the said reserved vacancy on November 17, 2017. The claim of the applicant for promotion to the 4th</p>	

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	<p>reserved vacancy of 50 Point roster on the basis of Gradation List dated April 05, 2012 which was wrongly prepared without giving due seniority to Amit Kumar Sarkar, is not justified under the law. In view of our above findings, we cannot persuade ourselves to accept the contention of the applicant that he should have been granted promotion to the post of Superintending Engineer in the 4th reserved vacancy of 50 Point roster. As a result, the original application is dismissed.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	
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