

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 335 OF 2018

Namita Chakraborty 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
11 <hr/> 05.03.2020	<p>For the Applicant : Mr. G.P. Banerjee, Mr. A. Samad, Md. S. Haque, Mr. S.S. Mandal, Learned Advocates.</p> <p>For the State Respondents : Mr. A.L. Basu, Mr. S.Bhattacharyya, Learned Advocates.</p> <p>The applicant has prayed for direction upon the respondents for grant of promotion of the applicant in the post of Inspector of Legal Metrology after setting aside the impugned order dated February 12, 2018 passed by the respondent no. 3, Controller of Legal Metrology, Government of West Bengal and other consequential reliefs.</p> <p>The applicant joined in the government service as Typist on February 08, 1982. She got promotion to the post of Grade I Typist in terms of the order dated August 22, 2001 and retired from service on November 30, 2015. The grievance of the applicant is that she was not granted promotion to the post of Inspector of Legal Metrology inspite of having experience and educational qualification to be considered for the post of Inspector of Legal Metrology. She approached this Tribunal by filing OA 167 of 2017 praying for grant of promotion to the post of</p>	

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	<p>Inspector of Legal Metrology on the basis of the representation submitted by her before the respondent no. 3, Controller of Legal Metrology, Government of West Bengal. On December 07, 2017 the Tribunal disposed of OA 167 of 2017 by directing the Controller of Legal Metrology, Government of West Bengal to take a decision in respect of the prayer of the applicant for grant of promotion to the post of Inspector of Legal Metrology after giving her an opportunity of hearing. Accordingly, the respondent no. 3 passed the reasoned order on February 12, 2018, which is under challenge in the present application.</p> <p>On consideration of the reasoned order passed by the respondent no. 3 on February 12, 2018 we find that the applicant was considered along with other eligible candidates for grant of promotion in nine (09) vacancies of Inspector of Legal Metrology under the Department of Consumer Affairs, Government of West Bengal. However, only six candidates were selected for promotion in the post of Inspector of Legal Metrology. The applicant was not granted promotion though she was considered for grant of promotion along with other eligible candidates. It is specifically observed in the reasoned order that no junior of the applicant in service was granted promotion to the post of Inspector of Legal Metrology on the basis of</p>	
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the recommendation in the year 2001. Subsequently, the Department of Consumer Affairs, Government of West Bengal again considered some candidates including the applicant for grant of promotion in the post of Inspector of Legal Metrology in the year 2004, but all the candidates were not found suitable for grant of promotion as they did not possess educational qualification required for promotion to the post of Inspector of Legal Metrology in terms of the provisions of the Recruitment Rules notified on April 25, 1992. The respondent no. 3, who was asked to take a decision in connection with promotion of the applicant by this Tribunal in OA 167 of 2017 has observed in the reasoned order that he is not competent to consider the issue of promotion of the applicant in the post of Inspector of Legal Metrology and as such he has forwarded the case of the applicant to the Secretary to the Government of West Bengal, Department of Consumer Affairs on February 12, 2018 for taking necessary action. We have not been informed of any subsequent decision taken in this regard by the Secretary to the Government of West Bengal, Department of Consumer Affairs.

With the above factual matrix, Mr. G.P. Banjerjee, Learned Counsel for the applicant has made two fold submissions for challenging the reasoned order : first, the

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respondent No. 3, Controller of Legal Metrology has passed the reasoned order in connection with the promotion of the applicant to the post of Inspector of Legal Metrology in compliance with the direction given by the Tribunal in OA 167 of 2017, though he has no authority under the law to take a decision about the promotion of the applicant and secondly, the opinion of the respondent No. 3 about not possessing requisite educational qualification by the applicant for grant of promotion to the post of Inspector of Legal Metrology is contrary to the provisions of the Recruitment Rules. By referring to the Recruitment Rules for grant of promotion to the post of Inspector of Legal Metrology, Mr. Banerjee further contends that the applicant having more than eight years of experience as a Typist has acquired the eligibility to be considered for promotion to the post of Inspector of Legal Metrology in the absence of availability of suitable candidate having qualification of Science Graduate with Physics as one of the subjects in terms of the Recruitment Rules. According to Mr. Banerjee, these aspects of eligibility criteria of the applicant have not been considered by the respondent No. 3 in the reasoned order dated February 12, 2018.

Mr. A.L. Basu, Learned Counsel representing the State

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respondents submits that the respondent No. 3 was duty bound to pass the reasoned order in connection with the promotion of the applicant to the post of Inspector of Legal Metrology in terms of the direction given by the Tribunal in OA 167 of 2017, though he is not the competent authority to consider the issue of promotion of the applicant to the post of Inspector of Legal Metrology. He further submits that the issue of promotion is agitated by the applicant long after arising of cause of action and thereby the present application is clearly barred under Section 21 of the Administrative Tribunals Act, 1985.

Having heard Learned Counsel representing both parties and on consideration of the reasoned order passed by the respondent No. 3 on February 12, 2018, we find that the claim of the applicant for grant of promotion to the post of Inspector of Legal Metrology was not turned down by the respondent No. 3 on the ground that he is not the competent authority to take a decision in connection with promotion of the applicant to the post of Inspector of Legal Metrology. The respondent No. 3 has duly forwarded the copy of the reasoned order to the Secretary to the Government of West Bengal, Department of Consumer Affairs on February 12, 2018, though we are in the dark as to whether any decision has been taken by the Departmental Secretary in connection with the promotion

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of the applicant. What transpires from the reasoned order of the respondent No. 3 is that the applicant was considered for grant of promotion to the post of Inspector of Legal Metrology but she was not found suitable for not acquiring minimum educational qualification required for promotion to the post of Inspector of Legal Metrology. The specific stand taken by the State respondents is that the applicant is not a Science Graduate with Physics as one of the subjects and thereby she has not acquired the educational qualification required for promotion to the post of Inspector of Legal Metrology in terms of the Recruitment Rules. It is relevant to quote the provisions of “Method of recruitment” and “Qualifications” for filling up the post of Inspector of Legal Metrology from the Recruitment Rules published on April 25, 1992, which are as follows :

Method of Recruitment :

(a) by selection (direct recruitment)

(b) by promotion from the confirmed Head Clerks, Upper Division Clerks and Accountants in the Weights and Measures Organisation under the Commerce and Industries Department of the Government of West Bengal, having five years' service in one or more of the above posts :

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Provided that if suitable candidates from any of the above posts are not available at any time, the cases of confirmed Lower Division Clerks as also the cases of confirmed Typists in the Weights and Measures Organisation under the Commerce and Industries Department of the Government of West Bengal having eight years' experience in the respective post shall be considered for promotion to the post of Inspector of Legal Metrology, West Bengal.

Provided further that the ratio in the vacancies to be filled up by Lower Division Clerks and Typists by promotion shall be 1:1.

Provided also that not more than 20% of the total posts shall be filled u by promotion.

Qualifications (for both direct recruitment and promotion) :

1.(a) Graduate of a recognised University in Science (with Physics as one of the subjects), Technology or Engineering or a recognised diploma in Engineering, and

(b) ability to speak, read and write Bengali and Nepali.

2. Nothing in sub-rule (1) shall apply to the parties who have been working as Inspectors or are eligible

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for promotion as Inspector before the enforcement of the West Bengal Standards of Weights and Measures (Enforcement) Rules, 1990.”

On perusal of the above method of recruitment for promotion to the post of Inspector of Legal Metrology, we find that promotion to the post of Inspector of Legal Metrology can be granted from the feeder post of confirmed Lower Division Clerk and Typist having eight years of experience in the absence of availability of suitable candidate, but the ratio of filling up such vacancy by promotion from the post of Typist and Lower Division Clerk will be 1:1 and the vacancies for such promotion cannot be filled up exceeding 20% of the total posts. Similarly, on perusal of the above educational qualifications for promotion to the post of Inspector of Legal Metrology, we find that Science Graduate with Physics as one of the subjects is the educational qualification prescribed for promotion to the post of Inspector of Legal Metrology. However, the above educational qualification is not applicable to the Lower Division Clerk and Typist who have acquired experience of eight years before coming into force of West Bengal Standards of Weights and Measures (Enforcement) Rules, 1990. The said West Bengal Standards of Weights and

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Measures (Enforcement) Rules, 1990 came into force by way of Gazette Notification on June 29, 1990. Since the applicant joined in the service as Typist on February 8, 1982, she acquired eight years of experience as Typist before June 29, 1990 and thereby acquired eligibility to be considered for promotion to the post of Inspector of Legal Metrology in the absence of suitable candidates having qualification of science graduate with physics as one of the subjects in terms of the Recruitment Rules.

In view of our above findings, we would like to hold that the Departmental Secretary should take a decision as to whether the applicant should have been granted benefit of promotion in the post of Inspector of Legal Metrology on consideration of her experience and educational qualification in terms of the Recruitment Rules. If the applicant is found to be suitable for promotion to the post of Inspector of Legal Metrology, the benefit of promotion must be given from the date on which her junior in the service got the benefit of the said promotion. The benefit of promotion of the applicant must be given notionally from the date of effect of promotion till the date of retirement and the actual financial benefit must be given in terms of pension and other retirement benefits. As a result, we cannot persuade ourselves to cancel or set aside the impugned order passed by the respondent No. 3 on

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February 12, 2018. Since the financial loss of the applicant in terms of denial of promotion is recurring cause of action, we cannot persuade ourselves to hold that the application is barred under Section 21 of the Administrative Tribunals Act, 1985.

In view of our above findings, the respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Consumer Affairs is directed to consider whether the applicant is entitled to get the benefit of promotion to the post of Inspector of Legal Metrology in the light of the observations made by us by passing a reasoned order within a period of twelve weeks from the date of communication of the order and take necessary follow-up action, if any, within a period of eight weeks thereafter.

With the above direction, the original application stands disposed of.

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

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

CSM