

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. **OA-600 of 2016**

Ashok Dhara

Versus

The State of West Bengal & Ors.

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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04/01/2019

For the Applicant : *Mr. T.D. Maiti,*
Mrs. N. Basu,
Ld. Advocates.

For the State Respondent : *Mrs. S. Agarwal,*
Ld. Advocate.

The applicant has prayed for direction upon the respondents for grant of promotion to the applicant in the post of Assistant Engineer (Civil) as Scheduled Caste candidate in the year 1998 after setting aside the impugned order passed by the Principal Secretary to the Government of West Bengal, Department of Public Health Engineering on July 26, 2013.

It appears from the materials on record that the applicant was appointed in the post of Sub-Assistant Engineer (Civil) in the Directorate of Public Health Engineering on August 10, 1983 and got promotion to the post of Assistant Engineer (Civil) in the Directorate of Public Health Engineering on April 25, 2007. The contention of the applicant is that he was not shown as Scheduled Caste candidate in the Gradation List of Sub-Assistant Engineers published on January 01, 1994. The further contention of the applicant is that he passed the professional examination conducted by Public Service Commission, West Bengal for the purpose of acquiring eligibility for promotion to the post of Assistant Engineer

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	<p><i>in the month of July 1997. Learned Counsel representing the applicant contends that the seniority of the applicant in the post of Sub-Assistant Engineer as Scheduled Caste candidate should be considered from the date of passing professional examination conducted by Public Service Commission, West Bengal for the purpose of granting promotion to the post of Assistant Engineer (Civil). Learned Counsel further contends that the Sub-Assistant Engineers who were juniors to the applicant got promotion to the post of Assistant Engineer, though they passed professional examination conducted by Public Service Commission, West Bengal subsequent to the passing of the said examination by the applicant. The gist of submission made on behalf of the applicant is that he should have been promoted to the post of Assistant Engineer (Civil) in the year 1998.</i></p> <p><i>Learned Counsel representing the state respondents has relied on two reasoned orders passed by the Principal Secretary to the Government of West Bengal, Department of Public Health Engineering on July 26, 2013 and December 10, 2015 respectively without filing any reply.</i></p> <p><i>The admitted position is that the applicant was not shown as Scheduled Caste candidate in the Draft Gradation List of Sub-Assistant Engineers, Directorate of Public Health Engineering published on January 01,</i></p>	

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	<p>1994. There is nothing on record to indicate that the applicant brought to the notice of the authority concerned about the omission to show the applicant as Scheduled Caste candidate in the Draft Gradation List published on January 01, 1994, inspite of due circulation of the said Draft Gradation List of Sub-Assistant Engineers by the Chief Engineer (M/E) of Public Health Engineering Directorate. The further admitted position is that the said Gradation List was subsequently rectified by the Chief Engineer (M/E) of Public Health Engineering Directorate by showing the applicant as Scheduled Caste candidate in the Gradation List on September 30, 2000 and he was placed in Serial No. 378 in the rectified Gradation List.</p> <p>The eligibility for promotion to the post of Assistant Engineer in the Directorate of Public Health Engineering from the feeder post of Sub-Assistant Engineer is passing of professional examination conducted by Public Service Commission, West Bengal, confirmation in the post of Sub-Assistant Engineer and completion of 10 (ten) years of service as Sub-Assistant Engineer. There is no doubt that the applicant fulfilled the eligibility criteria for promotion to the post of Assistant Engineer (Civil) from the post of Sub-Assistant Engineer (Civil) by fulfilling the above eligibility criteria for promotion in the month of July 1997. It is relevant to point out that in the absence of production of any Rule or G.O. laying down the norms for</p>	

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	<p><i>promotion from the post of Sub-Assistant Engineer to the post of Assistant Engineer in the Directorate of Public Health Engineering, we are unable to accept the contention made on behalf of the applicant in the feeder post of Sub-Assistant Engineer that the seniority of the applicant will be counted from the date of passing of professional examination conducted by Public Service Commission, West Bengal. Perhaps the applicant has confused the issue of seniority with the issue of acquiring eligibility criteria for promotion by passing professional examination conducted by Public Service Commission, West Bengal in the month of July 1997. The seniority of the applicant in the feeder post of Sub-Assistant Engineer will be on the basis of merit list prepared for joining in the post of Sub-Assistant Engineer.</i></p> <p><i>The legality and validity of 2 (two) reasoned orders passed by the Principal Secretary to the Government of West Bengal, Department of Public Health Engineering on July 26, 2013 and December 10, 2015 respectively need to be decided by considering the procedure for filling up reserved vacancies by way of promotion as laid down in West Bengal Scheduled Caste and Scheduled Tribes (Reservation of vacancies in Services and Posts) Rules, 1976. It is pertinent to quote the provisions of Rule 10 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Rules,</i></p>	

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	<p>1976 (in short “West Bengal Scheduled Caste and Scheduled Tribes Rules, 1979”), which are as follows:</p> <p>“10. Procedure for filling up of reserved vacancies by promotion: While filling up vacancies reserved for Scheduled Tribes by promotion, the following procedure shall be followed, namely:</p> <p>a) Selection against vacancies reserved for Scheduled Castes and Scheduled Tribes shall be made from among those Scheduled Caste and Scheduled Tribe employees who fall within the normal zone of consideration.</p> <p>Explanation. –Normal zone of consideration in respect of promotion to any particular post or posts shall consist of such of the employees eligible for promotion to such post or posts according to the prevailing recruitment rules or procedure as occupy, when arranged in descending order of the seniority, five times the number of vacancy or vacancies actually available for filling up by promotion at the time of consideration.;</p> <p>b) If candidates from Scheduled Castes and Scheduled Tribes obtain on the basis of merit with due regard to seniority, on the same basis as other candidates, less number of vacancies than that reserved for them, the difference shall be made up by selecting candidates irrespective of merit but who are considered fit for promotion:</p> <p>”Provided that for the purpose of fitness, all</p>	

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	<p><i>Scheduled Caste and Scheduled Tribe employees who are within the normal zone of consideration for promotion to higher posts shall be given one grading higher than the grading assigned to them on the basis of their record of service excepting in those cases where the highest grading has been assigned on the basis of record of service.”</i></p> <p><i>c) In the absence of a qualified Scheduled Caste or Scheduled Tribe candidate against a particular reserved vacancy, the reserved vacancy shall be carried forward till the next reserved vacancy occurs in the fifty-point roster but not beyond.</i></p> <p><i>d) While vacancies reserved for Scheduled Castes and Scheduled Tribes will continue to be reserved for the respective community only, a Scheduled Caste employee may also be considered for appointment against a vacancy reserved for Scheduled Tribes, or “vice-versa, where the appropriate reserved vacancy could not be filled by a Scheduled Tribe or a Scheduled Caste candidate, as the case may be.”</i></p> <p><i>On perusal of the above provisions of the West Bengal Scheduled Castes and Scheduled Tribes Rules, 1976, we find that an employee belonging to Scheduled Caste category can be considered for promotion to the next higher rank only when he will come within the normal zone of consideration for promotion. The zone of</i></p>	

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	<p><i>consideration for promotion is decided by taking into consideration 5 times of the number of vacancies to be filled up by way of promotion. The contention made by the Principal Secretary to the Government of West Bengal in 2 (two) reasoned orders is that the applicant did not come within the normal zone of consideration for promotion to the post of Assistant Engineers in the Directorate of Public Health Engineering during the period from 1997 to 2007 and as such the applicant was considered for promotion as Scheduled Caste candidate only in the year 2007.</i></p> <p><i>It appears from the first reasoned order dated July 26, 2013 that the position of the applicant in the list of eligible candidates belonging to the cadre of Sub-Assistant Engineers was 46, and names of only 45 Sub-Assistant Engineers were recommended to Public Service Commission for filling up of 9 (nine) vacancies in the cadre of Assistant Engineers by way of promotion. Naturally, the name of the applicant could not be considered when the names of 45 Sub-Assistant Engineers were recommended to Public Service Commission, West Bengal for promotion in the year 1998. Similarly, nothing is on record to indicate that the applicant was in the zone of consideration for promotion to the post of Assistant Engineer (Civil) in subsequent years till 2007 when names of Sub-Assistant Engineers were recommended to Public Service Commission for filling up vacancies in the</i></p>	

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Csm	<p><i>cadre of Assistant Engineers by way of promotion on different dates. No document is placed before us to indicate that the applicant would have come within the zone of consideration in any particular year from 1998 till 2007 for recommendation of the names to Public Service Commission, West Bengal for filling up vacancies in the cadre of Assistant Engineers in the Directorate of Public Health Engineering by way of promotion. In view of our above findings, we do not find any illegality or arbitrariness in the reasoned orders passed by the Principal Secretary to the Government of West Bengal, Department of Public Health Engineering.</i></p> <p><i>As a result, we do not find any merit in the present application. The application is, thus, dismissed.</i></p> <p><i>Let an urgent Xerox Certified Copy of the order be supplied to both parties on priority basis, subject to fulfillment of the legal formalities.</i></p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	

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