

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble JUSTICE RANJIT KUMAR BAG**

**& The Hon'ble DR. SUBESH KUMAR DAS**

**Case No – OA 633 OF 2018**

*Manika Gayen* 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;">05</p> <hr/> <p>28.08.2019</p>	<p><i>For the Applicant : Mr. D.N. Ray, Mr. M.N. Roy, Mr. B. Nandi, Learned Advocates.</i></p> <p><i>For the State Respondents : Mr. S. Ghosh, Learned Advocate.</i></p> <p><i>The applicant has prayed for direction upon the respondents to grant her benefit of promotion to the post of Deputy Director of Health Services (Nursing) from the year 2015 when the vacancy arose.</i></p> <p><i>The applicant joined as Sister Grade I (ii) in West Bengal Nursing Service on September 17, 1985 in terms of order dated September 04, 1985 issued by Director of Health Services, West Bengal. She was confirmed in the said post in due course and got promotion to the post of Deputy Assistant Director of Health Services (Nursing) in terms of Notification dated November 22, 2007 issued in the name of the Governor by the Assistant Secretary to the Government of West Bengal, Department of Health and Family Welfare. The applicant got promotion to the post of Assistant Director of Health Services (Nursing) in terms of Notification dated March 17, 2015 issued in the name of the Governor by the Joint Secretary to the</i></p>	

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*Government of West Bengal, Department of Health and Family Welfare.(Nursing Branch). The seniority list of Assistant Director of Health Services (Nursing) published by Director of Health Services, Government of West Bengal on September 07, 2015 indicates that the applicant is the senior most Assistant Director of Health Services (Nursing). She was eligible for promotion to the post of Deputy Director of Health Services (Nursing) in terms of the recruitment rules published under Notification dated November 13, 2014 issued in the name of the Governor by the Principal Secretary to the Government of West Bengal, Department of Health and Family Welfare.*

*The contention of the applicant is that she was selected for promotion to the post of Deputy Director of Health Services (Nursing) by the Departmental Promotion Committee on August 18, 2016 and the Joint Secretary (Nursing), Department of Health and Family Welfare recommended for her promotion to the post of Deputy Director of Health Services (Nursing) by placing the file before the Principal Secretary, Department of Health and Family Welfare on January 05, 2018. The grievance of the applicant is that the order of promotion was issued in her favour after lapse of more than one year on March 29, 2019.*

*With the above factual matrix, Mr. M.N. Roy,*

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*Learned Counsel for the applicant contends that she suffered financial loss for the inordinate delay on the part of the state respondents in issuing of notification for promotion to the post of Deputy Director of Health Services (Nursing), West Bengal. He further submits that the applicant joined as Deputy Director of Health Services (Nursing) on March 29, 2019. Mr. S. Ghosh, Learned Counsel representing the state respondents submits that the promotion of the applicant is not matter of right and that the delay for issuance of notification for promotion took place for not getting approval of the higher authority for issuance of the notification in time.*

*Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant was selected by the Departmental Promotion Committee for promotion to the post of Deputy Director of Health Services (Nursing) on August 18, 2016. The note sheet of the office file was initiated for obtaining approval of the higher authority for grant of promotion to the applicant after recommendation of such promotion by the committee in due course. What transpires from the copy of the note sheet of the departmental file annexed of the original application is that the Joint Secretary (Nursing) placed the file before the Principal Secretary of the Department of Health and*

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*Family Welfare for consideration of promotion of the applicant after obtaining approval of the higher authority on January 05, 2018. No cogent reasons are assigned by the state respondents for not granting promotion to the applicant to the post of Deputy Director of Health Services (Nursing) within reasonable period of at least two and half months after placement of the file before the Principal Secretary by the Joint Secretary (Nursing) on January 05, 2018. We are inclined to give an allowance of at least two and half months for obtaining approval or refusal to grant promotion to the applicant within reasonable period of two and half month from the date of placing of the file before the Principal Secretary of the Department on January 05, 2018. Unfortunately the order of promotion was issued on March 29, 2019 and the applicant joined in the post of Deputy Director of Health Services (Nursing) on the said date i.e. March 29, 2019. Had the applicant been promoted to the post of Deputy Director of Health Services (Nursing) at least on March 29, 2018, she would have got one more increment in her present pay scale on the date of her appointment on March 29, 2019. We would like to observe that promotion is not a matter of right, but once a candidate is selected for promotion and the recommendation is made for grant of promotion, it is the duty of the appointing authority*

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*either to grant promotion or to refuse the same within the reasonable period of time from the date of recommendation for such promotion.*

*The law is well settled that promotion cannot be granted to any government employee with retrospective effect. However, we have already observed that the applicant has suffered financial loss for not getting promotion at least from the month of March 2018 and as such we are of the view that the applicant should be given benefit of promotional scale with notional fixation with effect from March 29, 2018 and the actual financial benefit of such promotion to the post of Deputy Director of Health Services (Nursing) from the date of her joining in the said post i.e. March 29, 2019.*

*In view of our above findings, we direct the respondent no. 1, Additional Chief Secretary to the Government of West Bengal, Department of Health and Family Welfare to grant to the applicant benefit of promotional scale of pay on March 29, 2018 and the actual financial benefit of promotion to the post of Deputy Director of Health Services (Nursing) from the date of her joining in the said post i.e. on March 29, 2019 within a period of 12 (twelve) weeks from the date of communication of the order.*

*With the above direction, the original application*

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*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)

*H.S*