

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Ranjit Kumar Bag  
& The Hon'ble Subesh Kumar Das

Case No OA- 671 OF 2015

**BHUDHAR MONDAL Vs. 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;"><u>18</u> 28.03.18</p>	<p>For the Applicant : Mr.P.K.Sanyal Learned Advocate</p> <p>For the Respondent : Mrs.S.Agarwal Learned Advocate</p> <p>The applicant has prayed for quashing of the order conveyed by the Superintending Engineer, Damodar Irrigation Circle, Irrigation &amp; Waterways Directorate on April 2, 2015 and for direction upon the respondents to give appointment to the applicant in terms of orders passed by the Hon'ble Supreme Court of India in two (02) contempt applications.</p> <p>It appears from the materials on record that the applicant participated in the selection process for recruitment to Group-D posts in Irrigation &amp; Waterways Directorate under Government of West Bengal. The selection process was ultimately finalised and appointment was given to the successful candidates on the basis of the orders passed by the Hon'ble Supreme Court of India on August 13, 2013 in connection with Civil Appeal No. 6748-6749 of 2013 arising out of S.L.P(C) No. 6177-6178 of 2012 and other connected</p>	

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	<p>matters and on February 20, 2015 in connection with Contempt Petitions No. 462 - 463 of 2013, arising out of Civil Appeals No. 6748 - 6749 of 2013 and other connected matters. By order dated February 20, 2015 in connection with the contempt applications, the Hon'ble Supreme Court directed the respondents to issue letter of appointments to the empanelled candidates and if appointment cannot be issued in favour of any candidate, the said candidate must be communicated the reasons for not issuing appointment letter as early as possible within a period of 45 days from the date of the order. The present applicant participated in the selection process to fill up Group-D posts as physically disabled person. The respondents checked the certificate of the applicant before issuing appointment letter and found that the applicant has 30 % physical disability and thereby appointment of the applicant was held up. The Superintending Engineer, Damodar Irrigation Circle, Irrigation &amp; Waterways Directorate has communicated to the applicant on April 2, 2015 the reasons for not giving appointment to the applicant. The appointment of the applicant is held up and the same will be decided</p>	

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	<p>after receipt of necessary instruction from the higher authority. On perusal of definition of "person with disability" in Section 2 (t) in the "Persons with Disabilities" (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, we find that "person with disability" means "a person suffering from not less than 40% of any disability as certified by a medical authority." Since the certificate given by the applicant for being recruited in the category of physically disabled person indicates the percentage of physical disability as only 30%, we are of the view that the applicant cannot be treated as person with disability within the ambit of Section 2 (t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In view of our above findings we are unable to intervene in the order dated April 2, 2015 passed by the Superintending Engineer, Damodar Irrigation Circle, Irrigation &amp; Waterways Directorate (Annexure-C to the original application), which is legal, valid and justified under the law. Accordingly, there is justification for refusal to give appointment to the applicant in Group-D post in the category of physically disabled person.</p>	

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	<p>However, the State Respondents have enclosed a copy of selected panel of Group-D candidates who are placed in the roaster indicating the number of marks obtained by the said candidates. The present applicant is placed at serial no. 12 of the said roaster. It appears from the said roaster of selected candidates that the last selected candidate in the General Category obtained 82 marks and got the appointment in Group-D post, whereas the applicant who submitted application in the Category of Physically disabled person, obtained 92 marks, but did not get appointment as he was not found to be person with disability as per Section 2 (t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Since the applicant obtained higher marks than the last selected candidate belonging to General Category, we are of the view that the candidature of the applicant should be considered sympathetically for giving appointment in the General Category, if he is found to be otherwise suitable for appointment in Group-D post.</p> <p>In view of our above findings, the Respondent No.2, Director of Personnel &amp; Ex-Officio Chief Engineer,</p>	

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BLR	<p>Irrigation &amp; Waterways Directorate, Government of West Bengal is directed to consider whether the applicant can be appointed in Group-D post in the General Category within a period of 12 weeks from the date of communication of the order. If the applicant is appointed in Group-D post under General Category, the seniority of the applicant will be counted from the date of his actual joining in the post. With the above direction, the original application is disposed of.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p style="text-align: center;"> <b>(S.K.Das)</b>  <b>MEMBER(A)</b> </p> <p style="text-align: center;"> <b>(R.K.Bag)</b>  <b>MEMBER (J)</b> </p>	

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