

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. **OA-720 of 2014**

Smt Sarmistha Mondal Mahata & Ors.

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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17/01/2019

For the Applicant : *Mr. S.P. Dalapati,*
Ld. Advocate.

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

The applicants have prayed for quashing of the order dated May 22, 2014 passed by the Director of Health Services, Government of West Bengal and communicated to one of the applicants by the Joint Director (Personnel), Directorate of Health Services, Government of West Bengal under letter dated May 29, 2014 (annexure 'H' to the original application).

The contention of the applicants is that they joined in the post of Health Assistant (Female) in different places of State of West Bengal in terms of the order dated December 29, 2008 issued by the Director of Health Services, Government of West Bengal. The further contention of the applicants is that they submitted application before the Deputy Director of Health Services (Nursing) through Proper Channel for appointment to the post of Staff Nurse, Grade II in response to the notice dated August 16, 2012 issued by the Deputy Director of Health Services (Nursing), Government of West Bengal being modified by addendum dated August 29, 2012 issued by the Deputy Director of Health Services

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	<p>(Nursing), Government of West Bengal. Since the applications submitted by the applicants for appointment to the post of Staff Nurse, Grade II were not considered by the authority concerned, the applicants approached the Tribunal by filing OA-1028/2013, which was disposed of on October 28, 2013 by directing the respondents of the said original application to consider the prayer of the applicants for appointment to the post of Staff Nurse, Grade II in terms of notice dated August 16, 2012 by passing a reasoned order. The reasoned order passed by the Director of Health Services, Government of West Bengal in terms of the direction given by the Tribunal in OA-1028/2013 is under challenge in the present application.</p> <p>Learned Counsel for the applicant contends that the applicants have the right to get promotion from Staff Nurse, Grade III to Staff Nurse, Grade II in terms of circular dated April 23, 2010 issued by the Director of Health Services, Government of West Bengal. The applicants have miserably failed to establish before the Tribunal by producing any document that they have been working as Staff Nurse, Grade III. In the absence of any document to establish that the applicants have been working as Staff Nurse, Grade III, we are unable to accept the contention made on behalf of the applicants that they have a right to be considered for promotion to Staff Nurse, Grade II in terms of circular dated April 23, 2010 issued</p>	

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	<p><i>by the Director of Health Services, Government of West Bengal.</i></p> <p><i>Learned Counsel for the applicants further contends that the applicants have the right to be appointed as Staff Nurse, Grade II in terms of notice dated August 16, 2012 being modified by addendum dated August 25, 2012. On perusal of notice dated August 16, 2012 and addendum dated August 21, 2012 issued by the Deputy Director of Health Services (Nursing) we find that the said Deputy Director of Health Services (Nursing) invited applications from G.N.M. passed candidates working as Health Assistant (Female) in different Health Institutions for appointment as Staff Nurse, Grade II in different Health facilities of the State of West Bengal. On our query, Learned Counsel for the applicants has frankly submitted that there is no rule for promotion from the post of Health Assistant (Female) to the post of Staff Nurse, Grade II. In the absence of existence of any recruitment rules or administrative direction in the form of G.O. laying down the provisions for promotion from the post of Health Assistant (Female) to the post of Staff Nurse, Grade II, the State of West Bengal can lay down the policy either to fill up the post of Staff Nurse, Grade II directly by publication of advertisement in the newspaper or from the employees working as Health Assistant (Female). The reasoned order passed by the Director of Health Services on May 22, 2014 indicates that there was no administrative exigency</i></p>	

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Csm	<p><i>for filling up the post of Staff Nurse, Grade II from the cadre of Health Assistant (Females). In the absence of production of any recruitment rules in this regard, this policy decision of the State of West Bengal cannot be construed as arbitrary or illegal. Since there is no promotional avenue from the post of Health Assistant (Female) to the post of Staff Nurse, Grade II, the applicants have no right to claim for consideration for appointment to the post of Staff Nurse, Grade II as contended on behalf of the applicants.</i></p> <p><i>Learned Counsel representing the state respondents has supported the reasoned order under challenge in the present application. In view of our above findings, we do not find any merit in the present application. As a result, the present application is dismissed.</i></p> <p><i>The urgent Xerox certified copy of the order may be supplied to the parties, if applied for, after compliance of all necessary formalities.</i></p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	