

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

Hon'ble Justice Soumitra Pal, Hon'ble Chairman &
 Hon'ble Mr. P. Ramesh Kumar, Administrative Member.

Case No. OA 922 of 2019.

BHUDHAR MONDAL - VERSUS- THE STATE OF W.B. & OTHERS.

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>2</p> <hr/> <p>9.1.2020.</p>	<p>For the Applicant : Mr. A.K. Niyogi, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Advocate.</p> <p>Affidavit of service filed today be kept on record.</p> <p>In this application Bhudhar Mondal, the applicant, has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>"...An order quashing and setting aside the impugned order dated 14.8.18 which is Annexure "C" to this application and further directing the said respondents to give appointment to the applicant as Group "D" employee forthwith with effect from the date from which other empanelled candidates were given appointment pursuant to the order of Hon'ble Apex Court"</i></p> <p>It appears that the applicant was sponsored by the Employment Exchange for appointment in Group D post under the physically handicapped category. He appeared in the competitive test and secured qualifying marks. After interview, a panel was prepared. According to the applicant, his name was empanelled under the</p>	

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	<p>physically handicapped category. It appears from the submission that during verification of the documents, it was found that as the applicant had 30 per cent physical ability and not 40 per cent, he could not be given appointment. Thereafter, the applicant had filed application before the Tribunal, being OA-671 of 2015, which was disposed of on 28th March, 2018 by passing an order, the relevant portion of which is as under :-</p> <p style="text-align: center;"><i>“.....In view of our above findings, the Respondent No.2, Director of Personnel & Ex-officio Chief Engineer, Irrigation & 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....”.</i></p> <p>Pursuant to the said order, the Director of Personal & Ex officio Chief Engineer, I & W Directorate, the respondent no. 2, considered the matter and had rejected the contention of the applicant by passing a</p>	

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	<p>reasoned order, the relevant portion of which is as under :-</p> <p><i>“.....Being aggrieved and dissatisfied with the aforesaid decision the Applicant herein has moved the instant original application before the Hon’ble WBAT wherein vide order dt. 28.03.18 the Hon’ble Tribunal has observed that there is justification for refusal to the appointment of the applicant Group-D post in the category of physically disabled person. However, vide the said order the Tribunal considering the restorer position of the applicant and the marks obtained by him directed the undersigned to consider him for appointment under Group-D post in the General Category now the age of Sri Bhudhar Mondal i.e. applicant herein as on 01.01.06 was 41 years 7 months 24 days is his date of birth by 07.05.1964 as per the Admit card of West Bengal Board of Secondary Education. He considered under physically disabled category after giving him age relaxation as per prevailing rules, which is not available to the general caste candidates where the bigger age limit as per the then prevailing norms was 37 years.</i></p> <p><i>In the context it is pertinent to mention here that in the absence of specific rules of recruitment and</i></p>	

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	<p><i>advertisement in the newspaper the date of determination of minimum age for recruitment to Group D posts will be governed by the notification dated 17.02.1995 issued by the Directorate of Employment with the concurrence of Finance department Govt. of West Bengal the relevant portion of the notification dt. 17.02.1995 may be reproduced below:</i></p> <p><i>Unless specifically mentioned in the recruitment rules the prescribed age limits both lower and upper should be as on the first date of the year of recruitment i.e. the year when the procedure for recruitment has been taken up by the application authority in case of vacancies under the state Govt. of undertaking and in local bodies.</i></p> <p><i>as such it is amply clear that in terms of the above notification in absence of recruitment rules the minimum and maximum age of recruitment to Group-D posts will be decided as on the first date of the year of recruitment. Here the first date of the instant recruitment process is to be considered as on 01.01.2006. The aforesaid recruitment process was conducted inviting names from employment exchange by the authority concerned though some candidates were also appeared through court orders. As such in the absence of specific recruitment</i></p>	

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	<p><i>rules in this regard in respect of the instant recruitment process and in absence of any advertisement in the newspaper cut off date for deciding the eligibility of the candidates is to be considered as on 01.01.2006 for which the applicant herein namely Sri Bhudhar Mondal cannot be considered under General Category owing to his over age as on 01.01.2006.</i></p> <p><i>Based on the above said facts, circumstances and prevalent rules and regulations of the Government considering the instant mater in compliance of the direct actives of the Hon'ble WBAT is hereby decided that Sri Bhudhar Mondal cannot be considered for recruitment in Group D post under I & W Directorate in the General Category....".</i></p> <p>We find that the State authorities had considered the application of the applicant in the General category as directed by the Tribunal. As in the general category the cut-off age is 37 years and the applicant is over-aged and as the rule mentioned in the impugned order has not been challenged, no order can be passed. The application is disposed of.</p> <p>(P. Ramesh Kumar) Member (A)</p> <p>(Soumitra Pal) Chairman.</p>	

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