

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag,
Judicial Member

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member.

J U D G M E N T

-of-

Case No. : O.A. 1537 of 2009 : Nirmal Kumar Mitra

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant :-

Mr. S.N. Ray,
Learned Advocate.

For the Respondent Nos. 1,2 & 3 :-

Mr. A.L. Basu,
Learned Advocate.

For the Respondent No. 4 :-

Mr. G.P. Banerjee,
Learned Advocate.

For the Pvt. Respondent Nos. 5-10 :-

None.

Judgment delivered on : April 11, 2019

JUDGEMENT

In this application, the applicant, who was a Cashier in the Directorate of Electricity, Government of West Bengal has prayed for setting aside the impugned order dated February 3, 2009 issued by the Chief Electrical Inspector, West Bengal by which promotion of the applicant to the post of Head Clerk was kept in abeyance and for giving direction to the concerned respondent to give effect of the promotion order dated February 2, 2009 with all service benefits.

2. The case of the applicant in brief is that he was appointed as a Cashier on December 27, 1991 in the Directorate of Electricity, Government of West Bengal after his name was sponsored by the Employment Exchange. The said post of Cashier is equivalent to the posts of UDC and the post of UDC, Accountant, and Cashier are born in the same scale of pay under ROPA Rules of 1981, 1990 and 1998. The Directorate published a draft gradation list of Upper Division Clerks vide Memo. dated November 23, 2008 which did not include applicant's name. The applicant raised objection to the draft gradation list and made a prayer that the post of Cashier be included in the said gradation list. The final gradation list was published by the Directorate vide Memo. dated February 2, 2009, where his name was included in the gradation list of Upper Division Assistants. He was promoted to the post of Head Clerk vide Memo No CEI/420 dated February 2, 2009 and he assumed charge of Head Clerk on the same day. On February 3, 2009, the promotion order issued on February 2, 2009 was kept in abeyance on the basis of a deputation submitted by the West Bengal Directorate Employees Association and the matter was referred to the Joint Secretary, Department of Power & NES for opinion. The Joint Secretary, Power and NES Department vide Memo No. 84-JS(KPB)/OE-2/09 informed the views of the Department indicating that there is no

valid reason for keeping in abeyance the promotion order issued on February 2, 2009. However, subsequently the Department of Power & NES referred the matter to the Finance Department. The Finance Department observed that the post of Cashier may not be treated as belonging to the cadre of UDC and accordingly the applicant cannot be placed in the gradation list of the UDC cadre of the Directorate. The applicant challenged the said order dated February 3, 2009 and the reference order involving observation of the Finance Department by filing this original application OA-1537 of 2009. The original application was allowed and the order dated February 3, 2009 keeping in abeyance the order of promotion of the applicant was quashed by the Second Bench of the Tribunal by a judgment dated August 24, 2010. The view of the Finance Department holding that the applicant cannot be placed in the gradation list of UD cadre was also quashed. It was ordered that the applicant is entitled to get promotion to the post of Head Clerk to which he already joined on February 2, 2009 with effect from the same date and he is also entitled to get allowances and consequential benefits.

3. Mr. M.M. Mondal & 5 others, by filing OA-80 of 2011 prayed for review of the judgment delivered in OA-1537 of 2009 on 24.08.2010. A Special Bench consisting of Hon'ble Chairman, Hon'ble Member (Judicial) and Hon'ble Member (Administration) was constituted. The said Bench after giving opportunity of hearing to all the parties of OA-80 of 2011 finally recorded its order on September 19, 2013 by allowing OA-80 of 2011 and thereby setting aside the judgment of the 2nd Bench of this Tribunal in OA-1537 of 2009 delivered on August 24, 2010 and ordered for fresh hearing with the following direction:

(i) Applicant of OA-1537 of 2009 shall implead all the petitioners of OA-80 of 2011 as respondents and shall send copies of applications of OA-1537 of 2009 while sending necessary notice to each of them.

(ii) Applicant of OA-1537 of 2009 shall implead the Finance Department, Government of West Bengal and shall send copy of the application of OA-1537 of 2009 along with necessary notice.

4. It was also directed by the Special Bench that the impleaded private respondents and the state respondents will have the liberty to file reply and the applicant will also have the opportunity to file rejoinder.

5. The Special Bench of the Tribunal observed that while the judgment of the Tribunal delivered in OA-1537 OF 2009 quashed the views of the Finance Department and dealt with cases of the applicants of OA-80 of 2011, neither the Finance Department nor the applicants of OA-80 of 2011 were impleaded as party. In other words, the judgment was delivered without impleading the necessary parties in whose absence an effective order cannot be passed by the Tribunal.

6. Mr. S.N. Ray, Learned Counsel for the applicant argued that his name was at serial no. 1 in the gradation list on UD Assistants of the Directorate of Electricity and he was duly promoted by the appropriate authority vide order dated February 2, 2009 and he joined in the said assignment on the same date. The order of promotion was illegally kept in abeyance because of a deputation by the West Bengal Directorate Employees' Association in a most unusual manner. In spite of the fact that the Department of Power after scrutiny found that he was promoted to the post of Head Clerk properly, the matter was unnecessarily referred to the Finance Department under pressure from the Association concerned. The Finance Department on the basis of erroneous facts held that the post of Cashier was to be considered as ex-cadre post and the inclusion of applicant's name in the gradation list of UD Clerks was not found valid. Such opinion of the Finance Department is palpably wrong. In terms of memo dated March 31, 1984, the posts of Cashier,

Accountant etc. are considered to be equivalent to UDCs and as such there is every justification for including applicant's name in the gradation list of UD Assistants.

7. Mr. A.L. Basu, Learned Counsel representing the respondent nos. 1 to 3, submitted that the reply already filed by the respondents before initial disposal of the present application may be treated as the reply. He submitted that the Chief Electrical Inspector correctly prepared the gradation list and promoted the applicant to the post of Head Clerk. The draft gradation list of the UD Cadre was published vide Memo No. CEI/2364 dated November 27, 2008, the objections to the draft gradation list were examined by a committee, and after considering all the representations and objections the final gradation list was published on February 2, 2009. On the basis of the said final gradation list, the applicant was promoted to the post of Head Clerk on February 2, 2009. The said order of promotion was kept in abeyance under coercion and threat. The Department of Power and NES after scrutinizing all the relevant papers observed that the order which was kept in abeyance was issued under coercion having no justification under the law. However, the matter was finally referred to the Finance Department. The Learned Counsel also observed that the observation of the Finance Department that the applicant cannot be placed in the Gradation List of UD Cadre of the Directorate is not in conformity with the Recruitment Rules for the post of cashier of the Directorate and more importantly not in conformity with the Memorandum No. 3868F dated March 31, 1984, which declared that the posts like Accountant, Cashier, Store Keeper, Senior Assistant etc. borne in the pay scale identical to the UD Clerks are to be treated as upper division posts.

8. Several opportunities were given to the Finance Department to submit reply, but they have not submitted any reply. Mr. G.P. Banerjee Learned Counsel

representing the respondent Finance Department submitted that appropriate order may be passed on the basis of materials on record.

9. Mr. M.N. Roy, Learned Counsel representing respondent no. 11 submitted that this Bench passed an order on July 18, 2018 giving liberty to the applicant to expunge the name of the respondent no. 11. He further submitted that, the respondent no. 11 is not a necessary party in the original application and the said respondent is not willing to contest the present application.

10. The private respondents (5 to 10) submitted their reply on January 9, 2015 and also submitted a List of Dates, but they were absent from final hearing. The contention of the private respondents is that the action of the Chief Electrical Inspector promoting the applicant to the post of head clerk was erroneous as the applicant was illegally and arbitrarily included in the gradation list of UDC cadre. The post of cashier is an ex-cadre post and cannot be included in the Gradation List of UDCs as has been observed by the Finance Department. There is no channel of promotion to fill up Upper Division Clerical posts other than from amongst the Lower Division Clerks of the Directorate and thus the post of cashier cannot be treated as Upper Division Post. The post of cashier prior to 1991 used to be filled up from amongst the Upper Division Clerks by inviting option. There are other differences between the posts of Upper Division Clerks and Cashier like the nature and responsibility of duties performed by them. The further contention is that the post of Cashier cannot be a feeder post of Head Clerk which is a supervisory post for overall supervision of the UDCs and LDCs working under him. The private respondents also argued that a draft gradation list of Upper Division Clerks was published on November 27, 2008 and the applicant of this Original Application was not included in the list. The draft gradation list was not circulated widely and the name of the applicant was included in the finally published Gradation List and placed

at Sl. No. 1 behind the back of the private respondents and without calling for objection to the said list. The nomenclature of the "Gradation List of Upper Division Clerk" was altered arbitrarily and whimsically as "Gradation List for the Cadre of UD Post" dishonoring all government policies, statutory provisions of the rules, and legal principles. With the publication of the gradation list on February 2, 2009, the Respondent Authority of the Electricity Directorate on the same day promoted the applicant to the post of Head Clerk. The unusual hasty action of the State Respondents not only suggests their malafide intention, but also indicates that the entire thing was done in order to show undue favour to the applicant. On the above ground the application may be dismissed and direction may be given to the state government to revise the gradation list after removing name of the present applicant and to give notional benefits of promotion to the private respondents.

11. It is not in dispute that the applicant was appointed as a Cashier in the Directorate of Electricity, a UD level post with effect from December 27, 1991 and was confirmed in the said post with effect from December 27, 1994. The dispute arose when the Gradation List for UD posts with name of the applicant at serial no. 1 was published on February 2, 2009 and the applicant was promoted to the post of Head Clerk on February 2, 2009, but subsequently the promotion order was kept in abeyance vide Memo dated February 3, 2009. The fact of "keeping in abeyance" the order dated February 3, 2009 and the observation of the Finance Department, Government of West Bengal that the post of Cashier is an ex-Cadre post and thereby cannot be included in the Gradation List of UD Clerks, are subject of dispute in the present application. The main argument of the private respondents (5-10) is that the post of Cashier cannot be included in the Gradation List of the UD Clerks, and that he should not be given promotion, and such promotion should only be given from the UD Clerks of the Directorate of Electricity. Under the above circumstances, we need to examine whether the Chief Electrical Inspector was right in including

name of the Cashier in the Gradation list of the UD posts of the Electricity Directorate.

12. We first examine whether the post of Cashier can be treated as belonging to UD Cadre and whether inclusion of the name of the applicant in the gradation list of UD Assistants was in accordance of rules/Government orders. The Finance Department observed that the post of Cashier may not be treated as belonging to UD Clerk. This observation was on the basis of a paper indicating the number of employees and vacancies in each post in the Directorate of Electricity. In this document, against the post of Head Clerk, the following entry is noted, "By promotion from Upper Division Clerk" and against the post of Cashier, the following entry is noted, "By selection through Employment Exchange". Under no circumstance, this document can be considered to be the Recruitment Rule for the post of Head Clerk or Cashier. It has been stated by the State Respondents (1-3) that there is no Recruitment Rule of the Directorate for the post of Cashier in the Directorate of Electricity. In spite of giving several opportunities the Respondent Finance Department did not file any reply on the issue. Learned Counsel for the Finance Department did not make any submission on the subject arguing in favour of the observation of the Finance Department.

13. On scrutiny of materials on record, we find that in terms of Memo dated 31.03.1984, the Finance Department declared that the posts like Accountant, Cashier, Store keeper, Senior Assistant, etc. borne in the time scale identical to that of the UDC shall be treated as UD posts. The Directorate of Electricity initially treated the post of Cashier as a promotional post like UDC and tried to fill up the post as per Recruitment Rules of Upper Division posts modified vide Memo dated 02.09.1978. As no permanent staff of the feeder post of LDC was willing to accept the post of Cashier and no UDC was willing to join the post on transfer, the post was

filled up by inviting names from the Employment Exchange. This was permissible as the Finance Department vide its Memo dated September 2, 1978 made an amendment to the Recruitment Rules wherein the provision for "otherwise" recruitment to UD post (other than promotion of LD Post) was made. Therefore, in view of the existing circulars as explained above, the contention of the Finance Department that the post of cashier may not be treated as belonging to the UD cadre cannot be accepted.

14. The Department of Power and NES had advised Respondent no. 2 to prepare final gradation list of the cadre of UD posts in the Directorate consisting of UD Clerk, Cashier, and Accountant, on the ground that these posts are in the same pay scale and all having clerical work. Such direction is certainly in conformity with Memo dated March 31, 1984, where the Finance Department declared that the posts like Accountant, Cashier, Store keeper, Senior Assistant, etc. borne in the scale of pay identical to that of the UDC shall be treated as UD posts. It is natural that while the posts of Cashiers and Accountant are taken along with UDC posts in the counting of UD posts for promotion from LD posts to UD posts, these posts should be in the same gradation list. On scrutiny of records, it appears that name of Sri Madan Mohan Mondal, Accountant appears at serial no. 2 of the gradation list finally published on February 2, 2009. If an Accountant can be included in the Gradation List of UD posts, there is no reason why the Cashier – another UD level post should not be included in the same Gradation List. In the final Gradation List dated February 2, 2009, we also find names of non-PSC candidates, who were promoted from Group-D posts to LDCs and then to UDCs (Serial No. 3, 12, 15). They have been included in the gradation list dated February 2, 2009 although their recruitment process was different from those of direct recruit LDCs appointed through PSC. In view of such findings, the applicant cannot be discriminated against by not including

him in the gradation list of UD Assistants on the ground that his source of recruitment was not through PSC.

15. One of the issues raised by the private respondents is that the draft list was not widely circulated and the name of the applicant was included in the gradation list behind the back of the private respondents. On scrutiny of the materials on record, we find that the draft gradation list for the UD Cadre was published vide memo. no. CEI/2364 dated 27.11.2008 by the Chief Electrical Inspector inviting objections if any. Several objections were filed and those were examined by a committee appointed by the Chief Electrical Inspector. The Chief Electrical Inspector after considering the objections and the views of the committee and after consulting the Power and NES department published the final gradation list vide no. CEI/419 dated February 2, 2009. Under such circumstances, we are unable to accept the contention of the private respondents (5 to 10) that due process was not followed in preparation of the final gradation list. Accordingly, we are unable to accept that the final gradation list was erroneous.

16. It has been stated by the respondents (1 to 3) that respondent no. 2 was forced to keep the order of promotion of the applicant in abeyance on February 3, 2009 under compelling circumstances and under coercion and threat. The reason cited in the said order of keeping the promotion in abeyance was raised by the West Bengal Directorate Employees' Association. Certainly this cannot be accepted as a valid reason for keeping the promotion order in abeyance.

17. In view of the discussions above, the application is allowed. The order of the respondent no. 2 issued vide Memo dated February 3, 2009 keeping the order of promotion in abeyance is quashed. Similarly, the view of the Finance Department implying that the applicant cannot be placed in the Gradation List of UD post is also

set aside. The applicant is to be included in the gradation list of UD Assistants and is entitled to get promotion to the post of Head Clerk with effect from February 2, 2009, the date on which he joined the said post. The applicant is entitled to get all consequential service benefits thereof. The respondent is directed to implement the order within eight weeks from the date of communication of the order.

18. The urgent xerox certified copy of the judgment and order may be supplied to the parties, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).