

**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. 175 of 2016 : Mangal Bag

..... Applicant.

With

Case No. : O.A. 1167 of 2016 : Dhananjoy Das & Another

..... Applicants.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant:-

(In OA-175 of 2016)

Mr. G.P. Banerjee,
Learned Advocate.

For the Applicants:-

(In OA-1167 of 2016)

Mr. A. Lahiri,
Mr. S.K. Mondal,
Learned Advocates.

For the State Respondents:-

(In OA-175 of 2016)

Mr. R.A. Chowdhury,
Learned Advocate.

For the State Respondents:-

(In OA-1167 of 2016)

Mr. M.N. Roy,
Learned Advocate.

For the Pvt. Respondents Nos. 9 & 10:-

(In OA-175 of 2016)

Mr. A. Lahiri,
Mr. S.K. Mondal.
Learned Advocates.

For the Pvt. Respondents Nos. 8 & 9:-

(In OA-1167 of 2016)

Mr. G.P. Banerjee,
Learned Advocate.

Judgment delivered on: 17.06.2019

JUDGEMENT

The two applications namely OA-175 of 2016 and OA-1167 of 2016 have arisen in connection with dispute relating to combined gradation list of Sub-Assistant Engineer (Mechanical-Electrical) and promotion to the post of Assistant Engineer (Mechanical-Electrical). The applicant in OA-175 of 2016, Shri Mangal Bag, an Assistant Engineer (Mechanical/Electrical), is private respondent in OA-1167 of 2016 along with Shri Sudip Saha, an Assistant Engineer (Mechanical/Electrical) and the two applicants in OA-1167 of 2016, Shri Dhanonjoy Das and Shri Ashim Biswas both Sub-Assistant Engineers (Mechanical/Electrical), are private respondents in OA-175 of 2016. As the central issues involved in both the applications are same, we have taken up them together for being disposed by this composite judgment.

2 The applicants in both the applications were recruited through a selection process initiated by the Public Service Commission, West Bengal in 1998. Such examination was conducted in three different branches being Civil, Mechanical and Electrical Engineering following three different syllabi. Accordingly, the applicants of both the applications participated in the examination for Mechanical Engineering and they had no occasion to compete with the candidates for Electrical Engineering. The Public Service Commission, West Bengal prepared a panel and forwarded the same to the Chief Engineer (Mechanical-Electrical) of PHE Directorate in two memos. In the first memo, being no A/04/PSC(A) dated 08.02.2000, the names of the eligible candidates for Sub-Assistant Engineer (Electrical) were forwarded and in the second memo being no A/07/PSC(A) dated February 8, 2000, the names of the candidates selected for Sub-Assistant Engineer (Mechanical) were forwarded. In the first memo, the name of Sudip Saha (private respondent no. 9 of OA-1167 of 2016) appeared against serial No. 2 of the merit list of Sub-Assistant Engineers (Electrical)

prepared by Public Service Commission. In the second memo, the name of Mangal Bag (applicant in OA-175 of 2016) appeared against serial no. 1, while the name of Dhanonjoy Das and Ashim Biswas (applicants of OA-1167 of 2016) appeared at serial no. 3 and 9 respectively of the merit list of Sub-Assistant Engineers (Mechanical). Subsequently, the applicants of both the applications were appointed as Sub-Assistant Engineer (Mechanical) under appointment letter dated August 30, 2000. It was mentioned in the appointment letters that the inter-se-seniority will be determined in accordance with the merit list prepared by the Public Service Commission, West Bengal. Mangal Bag joined his service on October 31, 2000 while Dhanonjoy Das and Ashim Biswas joined their services on August 31, 2000.

3 A draft gradation list of Sub-Assistant Engineers (Mechanical-Electrical) as on November 30, 2007 was published by the Public Health Engineering Directorate on January 25, 2008. It was prepared on the basis of communication of the Joint Secretary, PHE Department addressed to the Chief Engineer (W/Z) bearing no. PHE/3343/2E-69/2004 dated November 5, 2007 for preparation of combined gradation list of Mechanical and Electrical cadre of Sub-Assistant Engineers since 2000 with the advice that the seniority of the Sub-Assistant Engineers in the combined gradation list would be fixed taking into consideration the respective dates and issue numbers of the memos sponsoring the names of the candidates by the Public Service Commission, West Bengal. In the said gradation list, name of Mangal Bag (applicant in OA-175 of 2016) appeared at serial no. 50 while the names Dhananjoy Das and Ashim Biswas (applicants of OA-1167 of 2016) appeared at serial no. 52 and 58 and the name of Sudip Saha appeared at serial No. 47. Dhananjoy Das and Ashim Biswas approached this Tribunal by filing OA-1288 of 2010 challenging the legality of the gradation list and prayed for direction upon the respondents to fix their seniority in accordance with the provisions of the West

Bengal Services (Determination of Seniority) Rules, 1981. The said application was disposed of by this Tribunal by an order dated January 18, 2011 directing the Chief Engineer (Mechanical-Electrical) of PHE Directorate to consider the prayer of the applicants and to dispose of the same by passing a reasoned order. The Chief Engineer concerned passed a reasoned order on August 24, 2011 where he observed that in preparation of the gradation list, the statutory Rules have not been followed. He observed that necessary steps should be taken to determine the seniority of the applicants as per Note 3 of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 and the applicants to be given all the consequential benefits accordingly. The Chief Engineer requested the Joint Secretary of PHE Department for giving approval of the reasoned order after getting concurrence of the Finance Department, Government of West Bengal. When the matter was referred to the Finance Department, they suggested to split up the common cadre of SAE (Mechanical-Electrical) in two separate cadres of SAE (Mechanical) and SAE (Electrical) and observed that Note 3 of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 is not applicable in the instant case. Dhananjoy Das and Ashim Biswas approached this Tribunal by filing application being OA-122 of 2012 where they challenged the view of the Finance Department for splitting up the cadre of SAE (Mechanical-Electrical) in two separate cadres.

4 After hearing all the parties in OA-122 of 2012, this Tribunal set aside the views of the Finance Department to split up the cadre of the SAE (Mechanical-Electrical) in two separate cadres and directed the Principal Secretary to the Government of West Bengal, Finance Department to reconsider the issue afresh in terms of Note 3 of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 and to communicate their views to the Principal Secretary to the

Government of West Bengal, Department of PHE for taking appropriate action including revision of gradation list already published. This Tribunal also directed that after publication of such gradation list if the applicants in OA-122 of 2012 are found to be senior to their juniors who have already been promoted, then the applicants are to be considered for promotion with effect from the date of promotion of their juniors. The matter was referred to the Finance Department for implementation of the order of this Tribunal dated February 14, 2014 in OA-122 of 2012. The Finance Department observed on February 4, 2015 that if the two applicants of OA-122 of 2012 are found senior on rectification of gradation list, they may be promoted as directed by the Tribunal and at the same time erroneous promotion of the two juniors may be cancelled and the entire overdrawn amount may be recovered in terms of FD No. 3740-F dated July 18, 1964.

5. On the basis of the order of this Tribunal, the draft gradation list of Sub-Assistant Engineer (Mechanical-Electrical) as on November 30, 2007 was rectified and published on November 25, 2014. Subsequently, the gradation list was finalized and circulated vide memo dated March 29, 2016. In this final gradation list, Mongal Bag appeared at serial no. 60 while Ashim Biswas and Dhananjay Das appeared at serial nos. 47 and 48 respectively and the name of Sudip Saha appeared at serial No. 57. Mongal Bag approached this Tribunal by filing OA-175 of 2016 and prayed for following reliefs: (a) to reconsider the order dated February 14, 2014 passed by this Hon'ble Tribunal in OA-122 of 2012 and to adjudicate the grievances of the applicant, (b) to cancel the impugned rectified draft gradation list of Sub-Assistant Engineer (Mechanical-Electrical) published on November 30, 2007 and published on November 25, 2014, (c) to set aside the observation of the Finance Department, Government of West Bengal dated December 4, 2015 communicated by the department vide Memo dated December 16, 2015 whereby the direction was given

to degrade the applicant from the post of Assistant Engineer to Sub-Assistant Engineer with refund of overdrawn amount, and (d) to direct the respondents to publish separate gradation list for the two different cadres of Sub-Assistant Engineers i.e. Mechanical and Electrical in terms of the Finance Department order no. 775 dated February 24, 2012.

6. On March 30, 2016, the Chief Engineer (PI & WQM) communicated vide a memo that the final gradation list published on March 29, 2016 be kept in abeyance until further decision of the Committee framed by the PHE Department for promotion of Sub-Assistant Engineer (Mechanical-Electrical) to Assistant Engineer (Mechanical-Electrical). Aggrieved by the said memo, Dhananjoy Das and Ashim Biswas approached the Tribunal by filing OA-1167 of 2016 and prayed for following reliefs: (a) to cancel and set aside the memo dated March 30, 2016 whereby the final gradation list published on March 29, 2016 was kept in abeyance until further direction, (b) to direct the concerned respondent to act on the basis of the final gradation list published on March 29, 2016, and (c) to direct the respondents to promote the applicants to the posts of Assistant Engineer (Mechanical-Electrical) along with all consequential service benefit on the basis of final gradation list published on March 29, 2016 upon reversion of the private respondents Nos. 8 and 9 to the posts of Sub-Assistant Engineers.

7. Mr. G.P. Banerjee, Learned Counsel for the applicant of OA-175 of 2016 and private respondents of OA-1167 of 2016 submitted that the judgment of this Tribunal passed in OA-122 of 2012 dated February 14, 2014 has adversely affected the legitimate right of the applicant, but the applicant was not made a party in the said OA-122 of 2012 and, thus, the same is liable to be reconsidered and the matter needs to be resolved afresh as has been observed by the Hon'ble Apex Court in

“Indu Sekhar Singh & Ors. vs. State of UP and Others.” reported in (2006) 8 SCC 129. The judgment was delivered without giving any opportunity of hearing to the applicant of OA-175 of 2016 and is liable to be reconsidered, otherwise the principle of natural justice will be seriously infringed. Learned Counsel submitted that when the applicant of OA-175 of 2016 and the private respondents were appointed in the year 2000, in their appointment letters it was clearly mentioned that the inter-se-seniority will be determined in accordance with the merit list prepared by the PSC, West Bengal. This was in conformity with the provisions of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981. The applicant of OA-175 of 2016 was in higher position in the merit list prepared by the PSC than the private respondents and thus he cannot be junior to the private respondents. The provisions of note 3 below Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 is not applicable in the instant case as has been observed by the Finance Department on February 24, 2012. Learned Counsel further submitted that the selection to the posts of Sub-Assistant Engineer (Mechanical-Electrical) was based on separate syllabus for written test and the PSC prepared two separate merit lists for Mechanical and Electrical cadres. Therefore, the PHE Directorate should maintain two separate gradation lists for the two cadres as has been observed by the Finance Department on February 24, 2012. Mr. Banerjee, Learned Counsel also submitted that after passing of the judgment in OA-122 of 2012 when the matter was referred to the Finance Department, they observed vide order dated December 4, 2015 to promote the private respondents as per direction of the Tribunal and to cancel the promotion of the applicant. This observation of the Finance Department was a complete deviation from its prior observation dated February 24, 2012 and is liable to be set aside.

8. Mr. A. Lahiri, Learned Counsel for applicants of OA-1167 of 2016 and private respondents of OA-175 of 2016 submitted that at the time of filing OA-122 of 2012, the name of the present applicant in OA-175 of 2016 was not in the gradation list prevailing at the relevant point of time published on July 18, 2011 and thus the applicant was not a necessary party in OA-122 of 2012 and thereby the applicant could not have been prejudiced by the order passed in OA-122 of 2012. Further, this original application is grossly delayed and filed beyond the period of limitation as he has prayed for reconsideration of the Judgment dated February 14, 2014, while the applicant had full knowledge of the Judgment on March 4, 2014. Learned Counsel also submitted that the applicant in OA-175 of 2016 joined on October 31, 2000, which was after the expiry of the stipulated period of two months from the date of offer of appointment and thus as per proviso to Rule 4, his seniority should be counted from the date of his joining. Learned Counsel further submitted that the present applicant in OA-175 of 2016 did not challenge the reasoned order in spite of knowledge of the reasoned order passed by the Chief Engineer on August 24, 2011 pursuant to the direction of this Tribunal passed in OA 1288 of 2010 and now he cannot criticise the same. As by communication dated November 11, 2011 promotion to the posts of Assistant Engineer was kept in abeyance till finalization of the dispute and the reasoned order of the Chief Engineer was not acted upon, the private respondents of OA-175 of 2016 had filed OA-1167 of 2016. Learned Counsel also submitted that the observation of the Finance Department dated February 24, 2014 is uncalled for as the Chief Engineer passed the order by invoking his power and authority vested upon him by the Hon'ble Tribunal. Mr Lahiri, Learned Counsel while supporting the prayers of the applicants in OA-1167 of 2016, submitted that the Memo. No. 2777/5/F/2015 dated March 30, 2016 issued for keeping in abeyance the final gradation list published on March 29, 2016 for the purpose of promotion to the posts of Assistant Engineer (Mechanical-Electrical) has

been issued in an arbitrary and whimsical manner without assigning any reason as to why the finally prepared gradation list would be kept in abeyance. There is no provision for formation of departmental promotional committee and the respondents are bound by the judgment passed by the Hon'ble Tribunal in OA-122 of 2012 which has not been challenged or set aside.

9. Mr M. N. Roy, Learned Counsel representing the State Respondents in OA-1167 of 2016 submitted that in the PHE Directorate the two posts of SAE (Mechanical) and SAE (Electrical) are included in single cadre named as SAE (Mechanical-Electrical) in the Mechanical/Electrical wing and combined gradation list is always maintained for SAE (Mechanical/Electrical). Learned Counsel further submitted that this Tribunal by an order dated January 19, 2017 in OA-175 of 2016, restrained the state respondents from giving effect to the revised gradation list dated March 29, 2016 and the order of the Finance Department dated December 4, 2015. Learned Counsel submitted that the reliefs sought for by the applicants in OA-1167 of 2016 are devoid of merits and ought to be dismissed.

10. Mr. R. A. Chowdhury, Learned Counsel representing the State Respondents in OA-175 of 2016 submitted that necessary order may be passed on the basis of submissions of the parties and materials on record.

11. Having heard Learned Counsel of all the parties and taking into consideration materials on record, we are of the view that the issues involved in OA-175 of 2016 needs to be taken up first not only because OA-175 of 2016 was filed before OA-1167 of 2016, but also because the issues involved in OA-1167 of 2016 cannot be resolved without adjudicating the major issues involved in OA-175 of 2016. The first issue we take up for determination is whether the Judgment of the Tribunal dated

February 14, 2014 passed in OA-122 of 2012 is to be reconsidered. There is no dispute that the applicant was not impleaded as a party in OA-122 of 2012 and that he has been adversely affected by the said Judgment. Learned Counsel for the private respondents of OA-175 of 2016 submitted that at the time of filing OA-122 of 2012, the name of the present applicant of OA-175 of 2016 was not in the prevailing gradation list published on July 18, 2011 and thus the applicant was not a necessary party in OA-122 of 2012. On scrutiny of the Judgment dated February 14, 2014 passed in OA-122 of 2012, we find that one of the prayers of the applicants in OA-122 of 2012 was to give directions to amend the draft gradation list of Sub-Assistant Engineers (Mechanical/Electrical) published on January 25, 2008 in which name of the present applicant of OA-175 of 2016 was in higher position than the applicants of OA-122 of 2012. Thus, the argument put forward by the Learned Counsel cannot be accepted. Learned Counsel for the applicant of OA-175 of 2016 submitted that the applicant was a necessary party in OA-122 of 2012 and that he has been adversely affected by the Judgment by way of reversal of his seniority and therefore the judgment should be reconsidered as the judgment was passed without giving the applicant of OA-175 of 2016 any opportunity of hearing. He referred to the judgment of the Hon'ble Apex Court in "Indu Sekhar Singh & Ors. vs. State of UP and Ors." reported in (2006) 8 SCC 129, where the Hon'ble Apex Court held that the High Court could not have determined the question of inter-se seniority in the absence of the concerned affected parties. In our opinion, the ratio of the Judgment of "Indu Sekhar Singh & Ors" (Supra) is squarely applicable to the facts and circumstances of the present case. In view of such findings, the Judgment of the Tribunal dated February 14, 2014 in OA-122 of 2012 is taken up for reconsideration.

12. The next issue for our consideration is how the seniority of the applicants vis-à-vis the seniority of the private respondents will be decided in the combined

gradation list of SAEs (Mechanical) and SAEs (Electrical). The combined gradation list was published on November 30, 2007 on the basis of the Memo dated November 5, 2007 of the Joint Secretary, PHE Department, where it was communicated that the combined gradation list would be prepared based on respective dates and nos. of the memos under which the names of selected candidates were sponsored by the PSC, West Bengal. This Tribunal vide order dated February 14, 2014 set aside this communication of the Joint Secretary and directed the respondents to reconsider the issue of determination of seniority in the gradation list of SAEs (Mechanical/Electrical) afresh strictly in terms of Note 3 of Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 (in short "the Seniority Rules of 1981"). In order to appreciate the legal aspect of the matter, the relevant provisions of Rule 4 and Note 3 to Rule 4 of the Seniority Rules of 1981 are quoted below:

"Rule 4: The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Commission or other selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on the result of a subsequent selection:....."

Note (3): In so far as the determination of relative seniority of persons selected either by the Commission or by other selection authority for appointment to different posts in the same grade with different qualification such as posts of Assistant Professors in History, Economics, Physics, Chemistry etc. is concerned , seniority shall be determined from the date of joining."

The applicant and the private respondents in OA-175 of 2016 were appointed as Sub-Assistant Engineer (Mechanical) in the year 2000 on the basis of competitive examination and selection process and their names were recommended by the PSC, West Bengal vide memo no. A/07/PSC(A) dated February 8, 2000 in order of merit. The PSC, West Bengal recommended the names of 14 persons and out of them names of 12 officers appear in the combined gradation list published on January 25, 2008. Implementation of Note 3 of Rule 4 will have the effect of giving a go by to the merit list prepared by PSC, as their date of joining will become the sole criteria for fixation of seniority, while Rule 4 clearly spells out that the relative

seniority of all persons appointed directly through competitive examination or interview shall be determined by the order of merit in which they are selected for appointment on the recommendation of the Commission. In the instant case the Note 3 of Rule 4 cannot be applied as the 12 officers joined the posts of SAE (Mechanical) on the basis of a single competitive examination conducted by the PSC, West Bengal and their names were recommended on the basis of merit. It is pertinent to point out that the officers including the private respondent No. 9 of OA-1167 of 2016 joined the posts of SAE (Electrical) on the basis of separate competitive examination conducted simultaneously by the PSC, West Bengal. Further, the appointment letters of the applicant and the private respondents clearly indicate that the inter-se seniority will be determined in accordance with the merit list prepared by the Public Service Commission, West Bengal which is in conformity with the provisions of Rule 4 of the Seniority Rules of 1981. The object of appending "Note" to the Rules is to clarify or fill up the gaps when the rules are silent. Where the provisions of the Rules are clear and unambiguous, "Note" cannot be utilized to whittle down what has been provided in the rules. Accordingly, we are of the view that the seniority of the applicants selected through different competitive examination conducted simultaneously by the PSC will be decided on the basis of position in the merit list prepared separately by the PSC in terms of the provisions of the Rule 4 of the Seniority Rules of 1981. However, the combined gradation list of SAE (Mechanical) and SAE (Electrical) cannot be prepared for fixation of seniority in terms of Rule 4 of the Seniority Rules of 1981, because two separate merit lists were prepared on the basis of separate competitive examinations conducted simultaneously by the PSC, West Bengal.

13. In our view, the SAEs (Mechanical) and the SAEs (Electrical) cannot be considered as selected through a common competitive examination as their

examinations involved different syllabi and PSC, WB did not recommend their names in a single merit list. The state respondents have submitted that a combined gradation list is maintained for the SAEs (Mechanical) and the SAEs (Electrical) and promotions to the posts of Assistant Engineer (Mechanical/ Electrical) are given on the basis of the said list. It is also submitted that in order to avoid complications arising out of multiple designations of SAE (Mechanical) and SAE (Electrical) in a single cadre, the department is considering for changing designation of such Engineers (Mechanical/ Electrical). With this approach the dispute on seniority cannot be avoided and the same will not resolve the present seniority dispute. In this context, we now examine whether there can be two separate gradation lists for the SAEs (Mechanical) and the SAEs (Electrical) as was observed by the Finance Department in order No. 775 dated February 24, 2012. In view of our above findings, we find every justification to have two separate cadres of SAEs (Mechanical) and SAEs (Electrical) by maintaining two separate gradation lists. If two separate cadres of SAEs (Electrical) and SAEs (Mechanical) are created, the next question is how to promote officers from these two separate cadres to a single cadre of Assistant Engineer (Mechanical/ Electrical). In order to resolve this issue, one can draw inspiration from the West Bengal Civil Services Examination Recruitment Rules, 1978 as amended in 2012 which provides for promotion to WBCS (Executive) from three feeder posts based on quota provided for the feeder services on the basis of cadre strength of respective feeder services. In our view, the best solution to this problem is to create one cadre consisting of the posts of SAEs (Mechanical) and another cadre consisting of the post of the SAEs (Electrical) and both as feeder services for promotion to the posts of Assistant Engineer (Mechanical/ Electrical). The promotion to the post of Assistant Engineer (Mechanical/Electrical) from the two cadres will be on the basis of quota to be fixed for the two feeder services in accordance with the cadre strength. In this approach,

the PHE Department will be required to maintain a roaster for promotion to the posts of Assistant Engineer (Mechanical/ Electrical) identifying whether a particular post is to be filled up by promoting an officer from the cadre of SAE (Mechanical) or SAE (Electrical). The identification and counting of such posts will start from the post in the roaster point where Shri Sudip Saha (the private respondent No. 9 of OA-1167 of 2016) was promoted in the year 2011, which was the first promotion amongst officers appointed as SAE (Mechanical) or SAE (Electrical). In this first point of the roaster, Shri Sudip Saha holding the highest position in the merit list of SAEs (Electrical) appointed in the year 2000 is to be posted for seniority of Assistant Engineer (Mechanical/Electrical) as he joined the post prior to Shri Mongal Bag holding highest position in the merit list of SAEs (Mechanical) appointed in the year 2000. After this point, each promotional post in the roaster is to be identified and filled up based on quota as discussed above.

14. One of the issues raised by Learned Counsel of the private respondents in OA-175 of 2016 is that the applicant joined on October 31, 2000, which was after the expiry of the stipulated period of two months from the date of offer of appointment and as per proviso to Rule 4, his seniority should be counted from the date of his joining. In reply the Learned Counsel for the applicant submitted that the applicant was allowed time to join and thus this provision is not applicable in his case. On scrutiny of records we are unable to accept the submission of the Learned Counsel for the private respondents as we find that the applicant was granted time for joining subsequently and thereby proviso to Rule 4 of the Seniority Rules of 1981 cannot be invoked to deny the seniority to the applicant of OA-175 of 2016 on the basis of merit list prepared by PSC, West Bengal.

15. With the above discussions and analysis of various issues involved, we would like to briefly summarise below our observations and directions:

- (i) The judgment of the Tribunal dated February 14, 2014 in OA-122 of 2012 has been taken up for reconsideration and the issues involved have been reexamined.
- (ii) Note 3 of Rule 4 of the Seniority Rules of 1981 is not applicable in the instant case.
- (iii) The final gradation list published on March 29, 2016 was prepared based on Note 3 of Rule 4 of the Seniority Rules of 1981, and as such the same is set aside.
- (iv) The main prayer of the applicants in OA-1167 of 2016 was to direct the respondents to act on the basis of finally published gradation list dated March 29, 2016, but we set-aside the said final gradation list and as such the OA-1167 of 2016 is dismissed.
- (v) The communication of the Joint Secretary of PHE Department dated November 5, 2007 is set aside as it is not in conformity with the provisions of the Seniority Rules of 1981.
- (vi) The draft gradation list published on January 25, 2008 prepared on the basis of the communication of the Joint Secretary and all the subsequent gradation lists published by the PHE Directorate are set aside.
- (vii) Two separate cadres are to be constituted – one for SAEs (Mechanical) and the other for SAEs (Electrical) and they cannot be included in a single gradation list, as their names have not been recommended by the PSC, WB in a common merit list.
- (viii) The promotion to the post of Assistant Engineer (Mechanical/ Electrical) is to be done on the basis of quota to be fixed on the basis

of cadre strength of SAEs (Mechanical) and SAEs (Electrical) as discussed above with the rider that the quota for one service cannot be diverted to the other service but can be carried forward in the absence of the availability for suitable candidate for promotion.

- (ix) The observations of the Finance Department dated February 24, 2012 and dated February 4, 2015 are justified under the law in view of our discussions in the preceding paragraphs.
- (x) The department will be at liberty to amend the Recruitment Rules for Assistant Engineer (Mechanical/Electrical) and for the feeder posts of SAEs (Mechanical) and SAEs (Electrical).

16. The respondent No 6 in OA-175 of 2016, the Chief Engineer (PI and WQM) is directed to publish the gradation lists of the SAEs (Mechanical) and SAEs (Electrical) in terms of the observations made by us in the judgment within 6 weeks from the date of communication of the order and communicate the same to all concerned within 2 weeks thereafter. The respondent No 1 in OA-175 of 2016, the Principal Secretary, PHE Department is directed to issue revised promotional orders, if required, within a period of 12 weeks in terms of the directions and observations in the Judgment. With the above observations and directions OA-175 of 2016 is disposed of. OA-1167 of 2016 is dismissed.

17. 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).