

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 204 OF 2015

Subhra Bose vs The 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
18 04.09.2019	<p>For the Applicant : Mr. A. N. Ghosh, Learned Advocate.</p> <p>For the State Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>For the Respondents No. 4, 6 & 7 :- Mr. M.N. Roy, Learned Advocate.</p> <p>The controversy of interse seniority between the person appointed as Lower Division Clerk (in short, LDC) on compassionate ground and the persons appointed as LDC directly through Clerkship Examination conducted by Public Service Commission (in short, P.S.C.), West Bengal calls for our determination in the present application.</p> <p>The applicant joined as LDC in the establishment of the respondent No. 5, Commissioner, Employees' Compensation (now re-designated as Workmen's Compensation) West Bengal on December 7, 1987 and confirmed in the said post on December 7, 1990. He got promotion to the post of Upper Division Clerk (in short, UDC) on June 1, 1996 and confirmed in the said post on June 1, 1999. The applicant was appointed in the post of LDC on compassionate ground in terms of the Cabinet decision of the State Government on October 26, 1987. The private respondents joined as LDC in the establishment of the respondent No. 5, Commissioner of Workmen's Compensation, West Bengal on different dates in the year 1988 and 1989 on the basis of result of Clerkship Examination,</p>	

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

1985 conducted by P.S.C., W.B.. The contention of the applicant is that she was placed above the private respondents in the seniority list / gradation list of LDC and UDC published by the Commissioner, Workmen's Compensation, West Bengal. The interse seniority between the applicant and the private respondents was reversed by order dated December 31, 2014 issued by the Additional Secretary to the Government of West Bengal, Department of Labour and order dated January 19, 2015 issued by the Commissioner, Workmen's Compensation, West Bengal. The applicant has prayed for setting aside the above orders dated December 31, 2014 and dated January 19, 2015, by which the applicant has been placed below the private respondents in the gradation list / seniority list.

Mr. A.N. Ghosh, Learned Counsel for the applicant contends that the applicant joined in the post of LDC on December 7, 1987, whereas the private respondents joined in the post of LDC on different dates in the year 1988 and in the year 1989 and as such the applicant should be placed above the private respondents in the seniority list in terms of the provisions of Rule 4 of West Bengal Services (Determination of Seniority) Rules, 1981 (in short, the Seniority Rules, 1981). He further submits that the date of joining in the service should be the criterion for determination of seniority of the applicant and the private respondents in terms of the provisions of Rule 4 of the Seniority Rules, 1981.

Mr. S. Ghosh, Learned Counsel representing the State respondents submits that the private respondents and one Parimal

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

Ghoshal were selected by P.S.C., W.B. on the basis of Clerkship Examination, 1985 conducted by P.S.C., W.B. and the said Parimal Ghoshal joined in the post of LDC prior to the date of joining of the applicant in the said post. According to Mr. Ghosh, the private respondents and Parimal Ghoshal being selected through one selection process viz. the Clerkship Examination of 1985 conducted by P.S.C., W.B. should be treated as enbloc senior and as such the private respondents should be placed along with Parimal Ghoshal above the applicant in the seniority list / gradation list.

Mr. M.N. Roy, Learned Counsel representing the private respondents contends that the date of selection for appointment to the post of LDC should be the criterion for determination of seniority of the applicant and the private respondents in terms of the provisions of Rule 4 of the Seniority Rules, 1981. According to Mr. Roy, the applicant was selected for appointment to the post of LDC on compassionate ground by the Cabinet decision of the State Government on October 26, 1987, whereas the private respondents were selected by way of competitive examination viz. The Clerkship Examination, 1985 conducted by P.S.C., W.B.. The gist of submission of Mr. Roy is that the date of selection of the private respondents should be in the year 1985, whereas the date of selection of the applicant by way of Cabinet decision will be with effect from the date of Cabinet meeting held on October 26, 1987 and thereby the private respondents will be placed above the applicant in the seniority list in terms of Rule 4 of the Seniority Rules, 1981.

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

Having heard Learned Counsel representing all the parties, we would like to quote the provisions of Rule 4 of the Seniority Rules, 1981 for proper appreciation of the submission made on behalf of the respective parties, which is as follows :

“4. Determination of seniority of direct recruits – *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 :*

Provided that where appointment of persons initially made otherwise than in accordance with the relevant recruitment rules is subsequently regularised in consultation with the Commission, where necessary, seniority of such persons shall be determined from the date of regularisation and not from the date of appointment. The inter-se seniority amongst such persons shall, however, depend on the date of appointment of each such person in the department or office concerned :

Provided further that if any person selected for appointment to any post does not join within two months of the offer of appointment, his seniority shall count from the date on which he joins the post unless the appointing authority for reasons to be recorded in writing condones the delay.

Note. – (1) A list of candidates for the purpose of selection for

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

appointment shall be prepared in all cases by the selecting authority, when there will be recruitment in a single process of selection of more than one person.

(2) Where the inter-se seniority amongst several persons has not been determined prior to the coming into force of these rules, such seniority shall, on the coming into force of these rules, be determined on the basis of actual date of their joining. When the date of joining of all such persons is the same, seniority shall be determined on the basis of date of birth, persons retiring earlier being adjudged as senior. When the date of birth is the same, seniority shall be determined on the basis of total marks obtained by each in the examination passing of which is the qualification prescribed for recruitment to the particular post, cadre or grade.

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

On consideration of the above provisions of Rule 4 of the Seniority Rules, 1981, we find that the relative seniority of all persons appointed directly through competitive examination conducted by P.S.C., W.B. or appointed otherwise shall be determined by the order of merit on which they have been selected for such appointment – the persons appointed on the result of an earlier selection will be senior to those appointed on the result of a subsequent selection. The

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

proviso to Rule 4 of the Seniority Rules, 1981 indicates that the persons who are appointed de hors the recruitment rules must be regularised subsequent to their appointment and the date for determination of seniority of such persons will be the date of regularisation in the service and not the date of appointment in the service. This proviso, in our view, is applicable to the persons who are appointed on contractual basis or on adhoc basis without following the provisions of the recruitment rules. In the instant case, the applicant was appointed on compassionate ground by way of relaxation of recruitment rules in terms of the specific scheme formulated by the State Government and as such the order of appointment is issued in favour of the applicant on the basis of the decision of the Cabinet meeting held on October 26, 1987. Since the applicant has been appointed on compassionate ground on the basis of the decision of the Cabinet of the State Government by way of relaxation of recruitment rules, we cannot persuade ourselves to hold that the appointment of the applicant in the post of LDC needs to be regularised. Our view gets support from the fact that the service of the applicant was not regularised at any material point of time by the appointing authority. On the contrary, the service of the applicant was confirmed in the post of LDC and in the post of UDC in terms of the provisions of West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979. The natural corollary of our above observation is that the applicant should be treated as a directly recruited candidate who was appointed otherwise than by way of selection through P.S.C.

The Finance Department, Government of West Bengal has

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

clarified in the note dated February 12, 2014 and April 10, 2014 that the seniority of the applicant will be counted from the date of his joining in the post of LDC on December 7, 1987. We would like to consider how far this observation is justified in terms of the Seniority Rules, 1981, particularly when the issue of relative seniority is conspicuously absent from the said observation. The scheme formulated by the State Government for giving compassionate appointment to any member of family of the deceased Government employee indicates that a member of family of deceased Government employee is selected by way of calculation of income of members of the family of the deceased employee. If there are more than one member in the family of the deceased Government employee, the authority concerned takes the decision of selecting one member of the said family for giving appointment on compassionate ground in order to tide over the financial crisis suffered by the members of the family due to premature death of the sole bread-winner of the concerned family. In our view, the appointment of the applicant in the post of LDC by way of Cabinet decision in relaxation of the recruitment rules also involves the process of selection and the date of such selection will be the date of meeting of the Cabinet on October 26, 1987.

The private respondents and one Parimal Ghoshal were selected for appointment to the post of LDC by P.S.C., W.B. on the basis of Clerkship Examination, 1985. The year of conducting the examination can by no stretch of imagination be construed as the year of selection unless the names are recommended by the P.S.C.

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

for appointment in the year in which the examination was conducted. In the instant case, the names of the private respondents were recommended by P.S.C., W.B. for appointment as LDC on 18th March, 1988, 7th October, 1988, 29th December 1988 and 4th March, 1989, though name of one Parimal Ghoshal was recommended for appointment as LDC in the year 1987. Since the applicant was selected for appointment on compassionate ground by way of Cabinet decision on October 26, 1987 and since the private respondents were selected by P.S.C., W.B. for appointment to the post of LDC on different dates in the year 1988 and 1989, we are constrained to hold that the applicant was selected prior to the selection of the private respondents for appointment to the post of LDC. By applying the test laid down in Rule 4 of the Seniority Rules, 1981, we have no hesitation to hold that the applicant being selected prior to the selection of the private respondents for appointment to the post of LDC will be senior to the private respondents in the cadre of both LDC and UDC.

In view of our above observation, we do not find any merit in the submission made on behalf of the applicant that the interse seniority of the applicant and the private respondents will be decided on the basis of date of appointment in the post of LDC. Nor can we persuade ourselves to hold that the observation made by the Finance Department for determination of seniority of the applicant with effect from the date of joining is justified in terms of Rule 4 of the Seniority Rules, 1981. The argument made on behalf of the State respondents that the private respondents and Parimal Ghoshal should be treated

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

as enbloc senior to the applicant in view of their selection through Clerkship Examination, 1985 conducted by P.S.C., W.B. is also not found to be justified in terms of the provisions of Rule 4 of the Seniority Rules, 1981.

The logical inference of our above findings is that the order dated December 31, 2014 issued by the Labour Department and order dated January 19, 2015 issued by the Commissioner, Workmen Compensation, West Bengal are liable to be set aside. Accordingly, order dated December 31, 2014 issued by the Additional Secretary to the Government of West Bengal, Department of Labour, GE Branch (annexure P-8 to the original application) is set aside. Similarly, order dated January 19, 2015 issued by the Commissioner, Workmen's Compensation, West Bengal, (annexure P-10 to the original application) is also set aside. The respondent No. 5, Commissioner, Workmen's Compensation, West Bengal is directed to publish fresh gradation / seniority list of the applicant and the private respondents by placing the applicant above the private respondents in the said seniority list / gradation list within a period of eight weeks from the date of communication of the order.

With the above direction, the original application stands disposed of.

The urgent Xerox certified copy of the order may be supplied to the parties on priority basis, if applied for, subject to compliance of necessary formalities.

S. K. DAS
MEMBER(A)

R. K. BAG
MEMBER(J)

Rajib

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--

ORDER SHEET

SUBHRA BOSE

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-204 of 2015**

.....

--	--	--