

**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. 299 of 2019 :
ASIT SENGUPTA – V. STATE OF WEST BENGAL & ORS.

For the Applicant :-

Mr. G.P. Banerjee,
Learned Advocate.

For the State Respondents :-

Mrs. S. Agarwal,
Learned Advocate.

Judgment delivered on : November 15, 2019.

J U D G M E N T

The applicant has prayed for direction upon the respondents to grant him promotion to the post of Upper Division Clerk (in short, UDC) with retrospective effect from the date on which his juniors were granted promotion to the post of UDC in the Education Directorate, Department of Higher Education, Government of West Bengal.

2. The applicant joined in the post of Laboratory Assistant in Botany Department of Barasat Government College on March 20, 1997 on the basis

of the order dated March 17, 1997 issued by the Director of Public Instruction, Government of West Bengal. A provisional common gradation list of the clerical cadre working in subordinate offices of different Directorates under Education Department, Government of West Bengal was published on June 29, 1998 wherein the applicant was placed at serial no. 784, respondent no. 4 – Montu Lal Mondal was placed at serial no. 786 and one Lal Mohan Hansda was placed at serial no. 787 (who has not been impleaded as respondent in the original application). Subsequently, the gradation list of Group C employees working in different Directorates was published by the Director of School Education, West Bengal on October 5, 2007, wherein the applicant was shown in serial no. 815 and the respondents no. 4 and 5 were shown in serial no. 817 and serial no. 819 and Lal Mohan Hansda (who has not been impleaded as respondent) in serial no. 818. The contention of the applicant is that he was not granted promotion to the post of UDC, though his junior - Lal Mohan Hansda was given promotion to the post of UDC on December 21, 2009. The further contention of the applicant is that the respondents no. 4 and 5 who were juniors to the applicant as per gradation list were granted promotion to the post of UDC in terms of order dated October 3, 2016 issued by the Director of Public Instruction, West Bengal, but the applicant was not granted promotion to the post of UDC. The grievance of the applicant is that his case has not been considered for grant of promotion to the post of UDC in spite of the fact that he will retire from service on December 31, 2010, whereas his juniors namely respondents no. 4 and 5 have already been granted promotion on October 3, 2016.

3. The State respondents have denied the claim of the applicant for promotion to the post of UDC on the ground that the applicant was granted benefit of Career Advancement Scheme (in short, CAS) for completion of 8 years of service on March 20, 2005 and thereafter benefit of Modified Career Advancement Scheme (in short, MCAS) for completion of 16 years of service on July 1, 2013. The specific plea taken by the State respondents in the reply is that the applicant is not entitled to get the benefit of promotion as he has already been granted benefit of CAS and MCAS.

4. Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant was

placed in serial no. 815 of the common gradation list of Group C employees published on December 21, 2009, whereas the respondents no. 4 and 5 were placed in serial no. 817 and 819 of the said gradation list. It is not disputed by the State respondents that respondent no. 4 and respondent no. 5 are juniors to the applicant in the service as per entries made in the common gradation list of Group C employees. The admitted position is that the respondents no. 4 and 5 were granted promotion to the post of UDCs / Accountant or its equivalent posts in terms of order dated October 3, 2016 issued by the Director of Public Instruction, West Bengal, but the applicant has not been considered for grant of promotion to the post of UDC. According to the State respondents, the applicant is not entitled to be considered for promotion to the post of UDC as he has been granted benefit of CAS w.e.f. March 20, 2005 for completion of 8 years of continuous and satisfactory service and benefit of MCAS w.e.f. July 1, 2013 for completion of continuous and satisfactory service of 16 years.

5. The question for consideration of the Tribunal is whether the State respondents can turn down the claim of the applicant for consideration for grant of promotion to the post of UDC on the ground that the applicant has already been granted benefit of higher scale of pay by way of grant of CAS benefit for completion of 8 years and MCAS benefit for completion of 16 years of satisfactory service.

6. The benefit of CAS and MCAS is granted to the employees serving under Government of West Bengal on fulfilment of criteria laid down in Memorandum No. 6075-F dated June 21, 1990 and Memorandum No.3015-F dated March 13, 2001 issued by the Finance Department, Government of West Bengal. On consideration of the above Memorandums, we find that an employee is not entitled to get the benefit of CAS or MCAS if he has already got the benefit of promotion or benefit of higher scale of pay during continuous and satisfactory service of 8 years, 16 years and 25 years. The contents of Memorandums do not disclose that promotion can be denied to any Government employee for granting him benefit of CAS and MCAS in terms of Memorandum dated June 21, 1990 and Memorandum dated March 13, 2001 issued by the Finance Department, Government of West Bengal. Accordingly, the denial of claim of the applicant for consideration of his case for grant of promotion to the post of UDC by the State respondents is

not justified under the law, when the juniors of the applicant in the service viz. the respondents no. 4 and 5 have already been granted promotion to the post of UDC in the year 2016. In our view promotion cannot be denied to the applicant only because he was granted higher scale of pay by way of benefit of CAS and MCAS in terms of Memorandum dated June 21, 1990 and Memorandum dated March 13, 2001 issued by the Finance Department, Government of West Bengal.

7. In view of our above findings, we would like to hold that the respondent No. 1 should consider the case of the applicant for grant of promotion to the post of UDC with effect from the date on which his juniors viz. the respondents No. 4 and 5 have been granted promotion to the post of UDC and take necessary follow-up action within specific period of time.

8. Accordingly, the respondent No. 1, Principal Secretary, Department of Higher Education, Government of West Bengal is directed to consider the case of the applicant for grant of promotion to the post of UDC w.e.f. October 3, 2016 when the respondent no. 4 and respondent no. 5 being junior to the applicant in the service were granted promotion to the post of UDC and take necessary follow-up action within a period of 12 weeks from the date of communication of the order.

9. The original application thus, stands disposed of. Let a plain copy of the judgment and order be supplied to both parties free of cost.

(Dr. Subesh Kumar Das)
MEMBER (A)

(Ranjit Kumar Bag)
MEMBER (J)