

**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. 566 of 2017 : Maya Rani Jalua

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant:-

Mr. M.N. Roy,
Learned Advocate.

For the State Respondents:-

Mr. S.N. Ray,
Learned Advocate.

For the Private Respondents:-

Mr. G.P. Banerjee,
Learned Advocate.

Judgment delivered on: September 19, 2019.

JUDGMENT

The applicant in the present application is a Lower Division Assistant (LDA) working in the establishment of the Estate Manager, Housing Department, Government of West Bengal. She was appointed in the said establishment as Bengali Typist by order no. 3302 dated December 3, 1993 issued by the Estate Manager, Estate Directorate, Government of West Bengal. Subsequently, she was appointed as LDA by transfer in terms of Rule 5 (2) (d) of the West Bengal Services (Recruitment to Clerical Cadre) Rules, 2010 vide order No. 865-ED dated September 16, 2013.

2. In this application, the applicant has prayed for a direction upon the state respondents to appoint the applicant on promotion to the post of Upper Division Assistant (UDA) with effect from March 1, 2015 with consequential benefits after setting aside the file noting of the respondent authorities communicated by Memo. No. 861-ED dated April 5, 2017 and also the order no. 572-ED dated March 8, 2017 by which the private respondent was promoted to the post of UDA with effect from March 1, 2015.

3. Appearing on behalf of the applicant Mr. M.N. Roy, Learned Counsel submitted that the application should be allowed on the following grounds:

- (i) The applicant was deliberately and wilfully denied the promotion to the post of UDA due to misreading of the Circulars/Orders of the Government of West Bengal with regard to confirmation in service.
- (ii) The applicant was already confirmed in the post of Typist and should have been considered as confirmed in terms of Memo. No. 5225 dated May 17, 1995 and should have been promoted with effect from March 1, 2015.
- (iii) The applicant belongs to Scheduled Caste community and she was in the zone of consideration when the 37th vacancy reserved for scheduled caste under carry forward system was filled up. The state respondents, however, promoted a general candidate in the said post.
- (iv) The action of the respondent authority in treating the applicant as fresh recruit in the post of LDA is illegal, unjust, and arbitrary and in violation of the Rules framed by the Government of West Bengal.
- (v) This Tribunal has already adjudicated a similar matter in "Rabindra Nath Dey & Another – Vs – The State of West Bengal & Others"(OA-

173 of 2012) observing that further confirmation is not be required in the LDA post for a confirmed Group-D employee promoted to LDA.

- (vi) One Smt. Nabnita (Roy) Dhar has been exempted by the respondents from appearing in the Computer operation and Computer type test, but the applicant has been discriminated and has not been so exempted.

4. Appearing on behalf of the private respondent Mr. G.P. Banerjee, Learned Counsel submitted that the application should be dismissed on the following grounds:

- (i) At the time of consideration for promotion to the post of UDA which fell vacant on March 1, 2015, the applicant was not eligible for promotion.
- (ii) Although, the order for promotion of the private respondent was issued on March 8, 2017, the proposal for promotion was initiated long before as is evident from the note initiated on June 4, 2015, when the issue of confirmation/ promotion/ increments of the applicant was dealt with and the private respondent was promoted only after receiving views of the Housing Department on the said note.

5. Appearing on behalf of the state respondents Mr. S.N. Ray, Learned Counsel submitted that the application should be dismissed on the following grounds:

(i) The applicant is required to be confirmed before being considered for promotion to UDA post, as the applicant has not passed the required test of computer operation and computer typing.

(ii) Even if we consider that the confirmation is one time event in the career of a government employee in terms of Memo. No. 5225-F dated May 17, 1995, but she cannot claim to be considered for promotion to UDA until the direct recruits LDAs holding senior position in the same gradation list are eligible for promotion after being confirmed on successful completion of temporary service and probation period.

6. Having heard Learned Counsel for all the parties and on considering the materials on record, we would like to first examine whether the applicant needs to be confirmed again after being recruited on transfer from the post of "Bengali Typist" to LD Assistant. The confirmation issues are regulated under the provisions of the WBS (Appointment, Probation and Confirmation) Rules, 1979. In terms of Rule (5)

of the said Rules, a government employee shall be deemed to be on probation on completion of temporary service for two years after his initial appointment and shall be confirmed and made permanent on satisfactory completion of the period of probation and period of temporary service provided where passing of any departmental examination is essential before confirmation, the same shall have to be complied with. The memorandum issued by the Finance Department, Audit Branch No. 5225-F dated May 17, 1995 is particularly relevant in this case. The relevant portion of the memorandum is reproduced below:

- i) *“Confirmation will be made only once in the service of Govt. employee which will be in the entry post/service/cadre provided further confirmation shall be necessary when there is fresh entry subsequently in any other post/service/cadre by way of direct recruitment or otherwise;”*

The applicant was confirmed in the “Bengali Typist” post with effect from December 7, 1996 vide order dated January 12, 2001. As in terms of the memorandum dated May 17, 1995 confirmation will be made only once in the service of a government employee, we are of the view that further confirmation of the applicant will not be required in the LDA post as she was confirmed in the post of “Bengali Typist”.

7. Confirmation is about awarding permanent status to a government employee after satisfactory completion of temporary service and probation period. As confirmation is a onetime event, it may lead to a situation where a direct recruit LDA will have to wait at least for three years to be confirmed and to be considered for promotion, while a promoted or transferred LDA will not have to wait for such confirmation. The issues of confirmation and promotion of the promoted or transferred LDAs have been clarified in the memorandum No. 4851 dated August 4, 2017 by the Finance Department (Audit Branch), Government of West Bengal. The relevant portion of which is reproduced below:

“(iv) Since confirmation is a one-time event in the career of a Govt. Employee in terms of Memo. No. 5225-F dated 17.09.1995, the promoted LDA/LDC and also the transferee LDA/LDC need not be declared confirmed further but in spite of their having completed probation period of 1 (one) year, they shall not be considered for promotion to the post of UDA/UDC or any equivalent post until the direct recruit LDAs/LDCs holding senior position in the same Gradation List are found eligible for promotion after being confirmed in service on successful completion of 2 (two) years probation followed by 1 (one) year temporary service.”

This circular was issued on August 4, 2017 after the order of promotion of the private respondent, but the relevant portion of the circular quoted above clarifies the existing rules and orders on the issues of confirmation and promotion of LDAs and thus the principles enunciated in the Circular can be considered to explain the issues of confirmation and promotion of the applicant. According to this memorandum, the applicant after being appointed in the LDA posts should not be considered for promotion until the direct recruit LDAs holding senior positions in the cadre are found eligible for promotion after being confirmed in default the seniority of the directly recruited LDAs will be compromised.

8. We would now like to examine whether the applicant was eligible to be considered for promotion on the date on which the private respondent (respondent no. 4) was promoted to the post of UDA. On this issue, we would like to consider the relevant provisions in the West Bengal Services (Recruitment to Clerical Cadre) Rules, 2010 as amended vide Memo. No. 9145-F (P) dated November 9, 2012 issued by the Finance Department (Audit Branch), Government of West Bengal which is reproduced below. The Rule 6 of the said Rules providing qualifications for appointment in the LDA post was modified by the amendment dated November 9, 2012 with the inclusion of the following provision.

“6(ii) acquisition of elementary knowledge in Computer operation with ability of Typing on Computer at speed of 35 words per minute in English and 25 words per minute in Bengali from a reputed organization for a period not less than 6 (six) months;

In the said 2012 amendment the Rule 9A in the form of Departmental Examination was introduced which is as follows :

9A(1) – Compulsory passing on elementary knowledge in computer operation and computer typing : After recruitment to the post of the Lower Division Assistants, Lower Division Clerks etc. shall have to pass the examination on elementary knowledge on computer operation and computer typing as per clause (ii) of rule 6 of these rules which will be held twice in every year at half yearly intervals. The Lower Division Assistants/Clerks who will be unable to pass the examination, shall not be entitled to get increment or any other career benefits including promotion or any benefit under (Career Advancement Scheme).

(2) In case of Lower Division Assistants/Clerks being appointed on promotion from Group-D and eligible Group-C employees or otherwise in accordance with rule 5 of the these rules, such Lower Division Assistants/Clerks shall have to pass the examination on elementary knowledge in computer operation and computer typing as mentioned in sub-rule (1). Such Lower Division Assistants/Clerks who will be unable to pass the examination, shall not be entitled to get annual increment and Career benefit as mentioned in sub-rule (1).

(3) Such examination on Computer operation and computer typing shall be conducted by State Government at different places as may be decided by the State Government in the Finance Department from time to time.”

It is clear from the above provisions of the Rules that the LDA who is unable to pass the examination on elementary knowledge in computer operation and computer typing will not be entitled to get increments or any other career benefits including promotion or benefits under CAS. Admittedly, the applicant did not pass the said examination, nor was she exempted from passing the said examination. Accordingly, we are of the view that the applicant was not eligible for promotion to UDA at the time of consideration of the promotion proposal.

9. Learned Counsel for the applicant has referred to the Memorandum No. 176-TW/EC dated April 17, 1990 issued by the Backward Classes Welfare Department, Government of West Bengal for filling up the vacancies reserved for SC/ST by promotion with retrospective effect. In the said memorandum, it has been clarified that in deciding the cases of promotion in reserved vacancies with retrospective effect, the date of consideration of proposal for promotion shall be the factor and not the date of availability of vacancy. In the instant case, the vacancy occurred on March 1, 2015 and the promotion order of the private respondent was issued on March 8, 2017. It appears that a note on the issue of confirmation and eligibility of the applicant for increments, promotion, and benefits of CAS was initiated on June 4, 2015 asking for views of the Housing Department, Government of West Bengal. The Department on February 15, 2017 observed that the applicant is required to pass the Test on Computer Operation & Computer Typing to become eligible for the said benefits. The promotion order of the private respondent to UDA was issued immediately after receipt of views of the Housing Department. In view of such findings, we do not find any reason to revisit the issue.

10. Learned Counsel for the applicant has submitted that one Smt. Nabnita (Roy) Dhar was exempted by the Respondents from appearing in the Computer operation and Computer type test, but the applicant has not been so exempted. It appears that Smt. Dhar was exempted from passing computer operation and computer typing test while she was considered for appointment in the LDA post as required under Rule 6(ii) of the West Bengal Services (Recruitment to Clerical Cadre) Rules, 2010 as amended vide Memo. No. 9145-F (P) dated November 9, 2012. This is not a case of exemption from passing of the computer operation and computer typing test after appointment in LDA post as required under Rule 9A of the said Rules. In view of

such position, the applicant cannot cite the case of Smt. Dhar for her exemption in passing the examination required under Rule 9A of the said Rules. Further, any such exemption is to be examined on merit of individual cases by the competent authority.

11. We would now like to examine whether the file noting of the respondent authority communicated under Memo. No. 861-ED dated April 5, 2017 is to be set aside. This noting is on the basis of observation of the Housing Department dated February 15, 2017. We have already observed that in case of the applicant further confirmation is not required, but she has to pass the examination on Computer Operation & Computer Typing to get increments, promotion, and benefits under CAS. In view of such position, we are unable to set aside the said file noting. However, the noting is to be considered as modified in terms of our observations in this Judgment.

12. In view of our above findings that the applicant was not eligible for promotion on the date on which the promotion proposal of the private respondent was initiated. Under such circumstances, we are unable to set aside the order of promotion of the private respondent and accordingly we would not like to issue any direction to the state respondents for promotion of the applicant to the post of UDA.

13. With the above observations and directions, the original application is **dismissed**.

14. 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).