

**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. 657 of 2012 : Umapada Pal

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant:-

Mr. G.P. Banerjee,
Learned Advocate.

For the State Respondents:-

Mr. S.K. Pal,
Mrs. Sunita Agarwal,
Learned Advocates.

Judgment delivered on: 07.08.2019

JUDGMENT

The applicant in OA-657 of 2012 joined in a Group-D post as Durwan-cum-Mali on February 6, 1979 at Gadardihi Demonstration Farm in the establishment of Joint Director (Soil Conservation), Directorate of Agriculture under the Department of Agriculture, West Bengal.

2 The applicant earlier filed OA-317 of 2011 before this Tribunal with the prayer to issue necessary direction to the concerned respondents to promote him in the post of Clerk-cum-Typist. This Tribunal disposed of the said application on September 02, 2011 with the direction upon the Joint Director of Agriculture (Soil Conservation), West Bengal to consider the application together with all annexures as representation and to dispose of the same by passing a reasoned order in accordance with law. The Joint Director of Agriculture (Soil Conservation), West Bengal passed a reasoned order on November 20, 2011 after hearing the applicant and rejected prayer of the applicant on the ground that the applicant was not eligible to be considered for promotion from Group-D post to Group-C post in terms of the existing Rules and Orders of the Government of West Bengal regulating promotion of employees from Group-D posts to Group-C posts. Being aggrieved, the applicant filed the present application.

3. In this application, the applicant has prayed for direction upon the respondents to appoint him in Group-C post on the ground that he has been superseded by his junior. The applicant has claimed that one Paresh Chandra Bandyopadhyay who was junior to him as per gradation list was promoted to Group-C post in the year 2010. The applicant has also prayed for setting aside the order dated December 20, 2011 passed by the Joint Director of Agriculture (Soil Conservation), West Bengal.

4 Appearing on behalf of the applicant, Mr. G. P. Banerjee, Learned Counsel submitted that the reasoned the order passed by the Joint Director of Agriculture (Soil Conservation), West Bengal dated December 20, 2011 should be set aside and direction may be issued to the state respondents to promote the applicant to Group-C post on the following grounds:

(i) On September 14, 2009, the Joint Director of Agriculture (Soil Conservation), West Bengal published the final gradation list of the qualified Group-D staff under the Soil Conservation Wing of the Directorate of

Agriculture for promotion from Group-D posts to Group-C posts in which the applicant's name was at serial no. 6, but he has not been given promotion.

(ii) One Paresh Chandra Bandyopadhyay, junior to the applicant was promoted to Group-C post by an order dated February 3, 2010 on the basis of order of the Hon'ble High Court passed on January 13, 1993. His position was at serial no. 17 in the gradation list of qualified Group-D employees, while the applicant's position in the said list was at serial no. 6.

(iii) Joint Director of Agriculture (Soil Conservation), West Bengal failed to appreciate in the impugned order dated December 20, 2011 that the applicant passed Class-X Examination from the Higher Secondary School Madhuban Goenka Vidyalaya in 1973 which is equivalent to Madhyamik Examination in terms of G.O. No. 133 (52) dated January 12, 1963.

(iv) The recruitment to clerical grade rules, 2010 is not applicable to the applicant as the said rules was notified long after joining of the applicant in 1979 and it cannot have retrospective effect.

5. Learned Counsel for the applicant referred to the Judgment of the Hon'ble High Court on June 06, 2001 in the unreported case of "Tapan Kumar Nandi vs. State of West Bengal and Others" (WPST no. 270 of 2000) in support of his contention that the Class-X pass certificate of a Higher Secondary School issued before January 01, 1974 should be considered as valid for the purpose of promotion from Group-D cadre to Group-C cadre.

6. Appearing on behalf of the state respondents, Mrs. S. Agarwal, Learned Counsel relying on the reply filed by the state respondents, submitted that the application should be dismissed on the following grounds:

(i) Shri Paresh Chandra Bandyopadhyay was promoted on the basis of order passed by Hon'ble High Court, Calcutta on January 13, 1993 in C.R.-W/93. The promotion of Shri Bandyopadhyay cannot be considered as a regular case of promotion and the applicant is not similarly placed as that of Sri Banydopadhyay.

(ii) The Class-X passed mark-sheet produced by the applicant is not at all reliable where the father of the applicant signed the Progress Report on December 24, 1973 while the Headmaster of the School signed it on December 26, 1973.

(iii) In terms of Memo. No. 5874-F dated June 21, 1985 read with No. 175-F dated January 9, 1980, the applicant is not eligible to get benefit of certificate for passing Class-X Examination for promotion. The employees who are already in service on the strength of order No. 133(52)-F dated 12.01.1963 are eligible to continue in service but they cannot be considered for promotion on the basis of Class-X pass certificate of a Higher Secondary School.

(iv) The gradation list published on September 14, 2009 was cancelled vide order dated June 21, 2011 on the basis of G.O. no. 5874-F dated June 21, 1985 and Notification No. 7165 dated July 01, 2010 of the Finance Department regulating recruitment and promotion in the Clerical cadre.

(v) No one was promoted from Group-D to Group-C status under the 10% reserved quota for promotion on the basis of the gradation list published on September 14, 2009. The only exception was the promotion of Shri Bandyopadhyay, who was promoted only on the basis of order of Hon'ble High Court, Calcutta. Thus the claim of the applicant that his juniors were promoted is not acceptable.

7. Having heard Learned Counsel for the applicant and Learned Counsel for the respondents and on consideration of the materials on record, we are of the view that we should first examine whether the certificate of passing Class-X Examination issued by the Headmaster, Madhuban Goenka Vidyalaya on December 26, 1973 should be considered as Madhyamik pass Certificate for promotion from Group-D to Group-C cadre and whether any direction should be issued to the respondents in this regard. Learned Counsel for the applicant has referred to the Judgment in "Tapan Kumar Nandi vs. State of West Bengal and others" (supra) in support of the claim of the applicant. In this unreported case the government employee joined in a Group-D post in 1980 and his name was included in the panel prepared for promotion from Group-D posts to Group-C posts in the year 1985, but he was not promoted as his name was at sl. No. 50, while promotion was given only up to sl. no 37. In the year 1993, when the time for promotion again came around his name was not included in the panel for promotion on the ground that his academic qualification was Higher Secondary (plucked) and the benefits given under Memorandum dated January 12, 1963 was withdrawn by a circular dated June 21, 1985. Hon'ble High Court, Calcutta by order dated June 26, 2001 observed that the petitioner should be considered as Class-X passed and to be considered as eligible for promotion and directed the state respondents to

consider the petitioner's case for promotion from Group-D to Group-C grade within three months. On the basis of the Judgment in the unreported case, we are of the view that the applicant in the present case has acquired academic qualification for fulfilment of eligibility criteria for promotion from Group-D to Group-C cadre, if he is otherwise found suitable. However, there are some differences between the unreported case and the present case. In the unreported case the applicant was in service at the time of delivery of the Judgment and there was no order for giving retrospective effect of promotion. In the instant case, the applicant has already retired and as such we are unable to issue any direction to consider his promotion within a reasonable period of time by accepting his academic qualification to be equivalent to passing Madhyamik Examination. However, if he is otherwise found suitable and if any of his junior has been given promotion before his retirement from service, we can issue suitable direction to examine his case for promotion with effect from the date on which his immediate junior was promoted from Group-D to Group-C post.

8. We now examine whether any one junior to the applicant as reflected in the gradation list of qualified Group-D employees published on September 14, 2009 was promoted from Group-D post to Group-C post prior to retirement of the applicant from government service. The applicant has claimed that one Paresh Chandra Bandyopadhyay, who was junior to the applicant, was promoted from Group-D post to Group-C post. It appears that Shri Bandyopadhyay was promoted vide memo no. 786(12) dated September 30, 2010 issued by the Joint Director of Agriculture (Soil Conservation) on the basis of order of the Hon'ble High Court, Calcutta in Case No. CR-W/93. It has not been disclosed before us by the applicant under what circumstances Hon'ble High Court, Calcutta passed the said order. The respondents have submitted in their reply on April 09, 2013 that the promotion of Shri Bandyopadhyay was on the basis of the order of Hon'ble High Court and that none was promoted from Group-D post to Group-C post under the 10% reservation quota for promotion from Group-D to Group-C cadre. On scrutiny of the order of the Joint Director of Agriculture (Soil Conservation) dated September 30, 2010 promoting Shri Bandyopadhyay, we are unable to accept that he was promoted in a regular manner under the 10% reservation quota. Under such circumstances, we are unable to accept the claim of the applicant that any Group-D employee junior to the applicant was promoted to Group-C post.

9. With the above observations, we now examine whether the applicant was eligible for promotion to Group-C cadre. The promotion from Group-D cadre to Group-C cadre is regulated by the West Bengal Services (Recruitment to Clerical Cadre) Rules 2010. In term Rule 5(2) (e) of the said Rules 10% of posts in the clerical cadre are to be filled up by promotion from Group-D and eligible Group-C employees who possess the requisite qualifications. The requisite qualifications are (i) a pass in Madhyamik Examination of the West Bengal Board of Secondary Education or its equivalent, and (ii) acquisition of computer literacy. As we have already discussed, the applicant satisfies the first requirement of academic qualification, but we are unable to assess whether he satisfies the second requirement of computer literacy. It appears from the order of Joint Director of Agriculture (Soil Conservation) bearing memo no. 519(30) dated June 21, 2011 that the list of qualified Group-D employees as published on September 14, 2009 was cancelled as none of the employees in the said list satisfied the eligibility criteria required for promotion to Group-C cadre. On scrutiny of the list, it appears that the list had many names who are graduates, but they also did not satisfy the eligibility criteria. The order dated June 21, 2011 has not been challenged by the applicant. Under such circumstances, we are unable to accept that the applicant was eligible for promotion.

10 With the above observations and discussions particularly as the applicant has failed to establish that any one junior to him in the Group-D cadre in the establishment of Joint Director of Agriculture (Soil Conservation) was promoted under 10% reserved quota for promotion to Clerical cadre, we are unable to allow the prayer of the applicant for appointment in Group-C post on promotion. The application is, thus, **dismissed**.

11. 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).