

**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. 856 of 2015 :
BISWAJIT PAUL & OTHERS –V- STATE OF WEST BENGAL &
OTHERS

For the Applicants :-

Mr. A. Lahiri,
Learned Advocate.

For the Respondents No. 1, 2 & 3 :-

Mrs. S. Sinha,
Learned Advocate.

For the Finance Department :-

Mr. M.N. Roy,
Learned Advocate.

For the Private Respondents :-

Mr. G.P. Banerjee,
Learned Advocate.

Judgment delivered on : December 19, 2019.

J U D G M E N T

The applicants have prayed for direction upon the respondents to include the cadre of Panchayat Accounts and Audit Officer (in short, PA & AO) in the feeder post for promotion to the cadre of Joint Block

Development Officer (in short, Jt. BDO) after declaring the existing Recruitment Rules for promotion to the post of Jt. BDO as ultra vires Article 14 of the Constitution of India and after setting aside the orders communicated under letter no. 996-RD/O/C/1E/08/2014 dated February 25, 2015 issued by the Special Secretary to the Government of West Bengal, Department of Panchayat and Rural Development, letter no. 693/II/DP/2F-40/2014 (Pt.-1) dated March 18, 2015 issued by the Joint Director, Panchayat and Rural Development Department, West Bengal and letter no. 703/II/DP/2E-5/2015 dated March 19, 2015 issued by the Commissioner, Panchayat and Rural Development Department, West Bengal respectively.

2. All eleven (11) applicants were appointed as PA & AO during the period from October 9, 1998 to October 5, 2007 and were attached to different Block Offices within the State of West Bengal. It is the contention of the applicants that the Association of PA & AO of West Bengal submitted one representation praying for inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO by amendment of the existing Recruitment Rules. The representation of the Association was forwarded by the Commissioner of Panchayat, Government of West Bengal to the Department, where favourable note was given by the Special Secretary of the Department. The proposal of the officers belonging to the cadre of PA & AO for promotion to Jt. BDO by including the said cadre in the feeder post for promotion to Jt. BDO got approval from the Hon'ble Minister-in-Charge of the Department of Panchayat and Rural Development on September 2, 2010. However, the favourable note of the Department of Panchayat and Rural Development was ultimately rejected by the Finance Department, Government of West Bengal.

3. The notification was issued for filling up 252 posts of Jt. BDO as reflected from the letter dated February 25, 2015 (annexure A to the original application) addressed to the Commissioner, Department of Panchayat and Rural Development by the Special Secretary to the Government of West Bengal, Department of Panchayat and Rural Development. The said letter dated February 25, 2015 indicates that the Department wanted to process eligible candidates from the cadre of Panchayat Development Officers (in short, PDO) and Assistant Programme Officers (in short, APO) for promotion to the post of Jt. BDO and as such the Department called for

ACR of 5 years of the eligible candidates of those cadres, along with integrity certificate and statement regarding submission of asset statement for onward transmission to the Public Service Commission, West Bengal. The subsequent letter dated March 18, 2015 issued by the Joint Director, Panchayat and Rural Development Department and letter dated March 19, 2015 issued by the Commissioner, Panchayat and Rural Development Department go to establish that 162 officers belonging to the cadre of PDO and 101 officers belonging to the cadre of APO were being considered for promotion to the post of Jt. BDO. The above three letters dated February 25, 2015, March 18, 2015 and March 19, 2015 are under challenge in the present application.

4. The applicants moved this Tribunal praying for an interim order to stall the selection process for filling up the post of Jt. BDO on the basis of the notification issued in the year 2015, without considering the case of the applicants for promotion to the post of Jt. BDO by way of amendment of the Recruitment Rules. The interim order initially issued in favour of the applicants by this Tribunal on September 9, 2015 was ultimately vacated on December 9, 2015. Now, the main grievance of the applicants is that the cadre of PA & AO has very narrow promotional avenue and as such the said cadre must be included in the feeder post for promotion to the cadre of Jt. BDO by way of amendment of the Recruitment Rules on the grounds (i) that they perform most of the duties which are being performed by the Jt. BDO, (ii) that the officers belonging to the cadre of EO, Panchayat (presently PDO) have two different promotional avenues including promotion to the post of Jt. BDO, whereas the officers belonging to the cadre of PA & AO having same qualifications and higher experience are being deprived of promotion to the post of Jt. BDO and (iii) that the favourable recommendation of the Department of Panchayat and Rural Development for inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO has been rejected in an arbitrary and irrational manner. The applicants, therefore, have prayed for declaring the Recruitment Rules for promotion to the post of Jt. BDO as arbitrary and ultra vires Article 14 of the Constitution of India by way of amendment of the original application.

5. The State respondents No. 1, 2 and 3 have not only denied and disputed the claim of the applicants for promotion to the post of Jt. BDO,

but also clarified why the cadre of PA & AO could not be included in the feeder post for promotion to the cadre of Jt. BDO. The stand taken by the State respondents is that the favourable recommendation for inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO did not get approval of the Finance Department, Government of West Bengal and as such the said recommendation of the Department of Panchayat and Rural Development cannot be relied upon by the applicants to reinforce the claim of inclusion of the cadre of PA & AO in the feeder post for promotion to Jt. BDO. It is specifically contended that the duty of PA & AO is totally different from the duty of the Jt. BDO. While the officers of the cadre of PA & AO conduct internal audit of the Gram Panchayat, the officers belonging to the cadre of Jt. BDO perform administrative duties in the Block. The State respondents have pointed out from the notification dated December 22, 2009 read with notification dated July 3, 2009 issued by the Principal Secretary to the Government of West Bengal, Department of Panchayat and Rural Development that 60% promotion to the post of Samity Accounts and Audit Officers will be only from the post of PA & AO under the Directorate of Panchayat and Rural Development and the PDOs are not getting two different promotional avenues including the cadre of Jt. BDO. The gist of reply of the State respondents is that the Recruitment Rules for filling up the post of Jt. BDO are reasonable and within the ambit of Article 14 of the Constitution of India.

6. The private respondents, who have been impleaded during the pendency of the original application before the Tribunal, have also denied the claim of the applicants. The specific stand of the private respondents is that the cadre of PA & AO has not been included in the Recruitment Rules for promotion to the post of Jt. BDO on the date of issuance of the notification for filling up the post of Jt. BDO, whereas the cadre of PDO and the cadre of APO were included in the feeder post for promotion to the cadre of Jt. BDO in terms of the said Recruitment Rules and as such no right has accrued in favour of the applicants for being considered for promotion to the post of Jt. BDO. Moreover, the private respondents have placed on record notification dated June 3, 2015 issued by the Department of Panchayat and Rural Development, whereby it appears that 45 officers in the cadre of PA & AO have already got promotion to the post of Samity

Accounts and Audit Officers in the pay scale of Rs.9000-40500/- + grade pay of Rs.4700/- and other allowances admissible under the Rules.

7. With the above pleadings of the respective parties, Mr. A. Lahiri, Learned Counsel for the applicants contends that the applicants have been deprived of adequate promotional avenue for non-inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO. He further contends that the officers in the cadre of EO, Panchayat (presently PDO) are enjoying two different avenues of promotion including promotion to the cadre of Jt. BDO, but the applicants having same qualifications and better experience are being deprived of promotion to the post of Jt. BDO. Mr. Lahiri has urged the Bench to consider that the favourable recommendation of the Department of Panchayat and Rural Development has been rejected by the Finance Department without assigning any reason and as such the fact of non-inclusion of the cadre of PA & AO in the feeder post for promotion to the post of Jt. BDO in the Recruitment Rules will render the said Rules arbitrary and ultra vires Article 14 of the Constitution of India.

8. Mrs. S. Sinha, Learned Counsel representing the respondents No. 2 and 3 submits that the Recruitment Rules for filling up the post of Jt. BDO notified in the year 1983 cannot be branded as arbitrary only for non-inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO, when the officers belonging to the cadre of PA & AO have been enjoying the benefit of entire 60% promotion to the cadre of Samity Accounts and Audit Officers by way of amendment of the existing Rules on July 3, 2009.

9. Mr. M. N. Roy, Learned Counsel representing the Finance Department of the State Government has supported the stand of rejection of the claim of the applicants by non-inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO.

10. Mr. G.P. Banerjee, Learned Counsel representing the private respondents have supported the claim of the State respondents. The specific submission of Mr. Banerjee is that no right has accrued in favour of the applicants for being considered for promotion to the post of Jt. BDO unless

and until a policy decision is taken by the State respondents to amend the Recruitment Rules for inclusion of the cadre of PA & AO in the feeder post for promotion to the cadre of Jt. BDO.

11. The first question for consideration of the Tribunal is whether the Recruitment Rules for filling up the posts of Jt. BDO under the Department of Panchayat and Community Development notified on July 21, 1984 are arbitrary and ultra vires Article 14 of the Constitution of India. The above Recruitment Rules have been challenged as arbitrary mainly on two grounds : first, the cadre of PA & AO has not been included in the feeder post for promotion to Jt. BDO, and secondly, the officers belonging to the cadre of EO for Panchayats (presently PDO) having same qualifications and experience as that of the officers belonging to the cadre of PA & AO have two different promotional avenues – one promotion to the cadre of Jt. BDO and the other promotion to the cadre of Samity Accounts and Audit Officer under the Directorate of Panchayats and Rural Development. Let us now consider from the materials on record whether officers in the cadre of PDO and the officers in the cadre of PA & AO have same qualifications and experience and recruited from the same source and performing the same duties. The Recruitment Rules for filling up the posts of EO for Panchayats (presently PDO) notified on November 11, 1978 indicates that (i) 60% of the posts will be filled up by direct recruitment on the result of the combined competitive examination for recruitment to West Bengal Civil Service (Executive) and certain other services and (ii) 40% of the posts will be filled up by promotion from Upper Division Assistant in the Directorate of Panchayats having 5 years of experience and in the absence of availability of suitable Upper Division Assistants from Lower Division Assistant of the same Directorate having 8 years of experience. On the other hand, the Recruitment Rules for filling up the posts of PA & AO under the Department of Panchayats and Community Development notified on June 8, 1979 indicates that (i) 50% of the posts will be filled up by direct recruitment through Sub-Divisional Recruitment Committee by inviting names from the Employment Exchange and (ii) 50% of the posts will be filled up by selection from employees under the Directorate of Panchayats and its subordinate offices, employees of Zilla Parishad (non-technical), Panchayat Samity and Gram Panchayat. The qualifications prescribed for

recruitment for filling up the posts of PA & AO and the qualifications prescribed for recruitment for filling up the posts of PDO are almost same, but the procedure for selection of PDO is definitely tough and rigorous than the procedure of selection for filling up the post of PA & AO. While the directly recruited officers of PDO are selected through State level competitive examination conducted by Public Service Commission, the PA & AOs are selected directly by Sub-Divisional Recruitment Committee by inviting names from the Employment Exchange. Naturally, the source of recruitment of the officers belonging to the cadre of PA & AO is different from the source of recruitment of the officers belonging to the cadre of PDO. The nature of duties performed by the PDOs and PA & AOs have not been spelt out specifically for arriving at the conclusion whether they perform the same duty or not.

12. Admittedly, the cadre of PA & AO has not been included in the feeder post for promotion to Jt. BDO in terms of amended Recruitment Rules notified on July 21, 1984, which is as follows :

“Government of West Bengal

Department of Panchayat & Rural Development

Community Development Branch

Raj Bhavan

No. V/6406-CDP/

Calcutta, the 21st July 1984

NOTIFICATION

In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor is pleased hereby to make the following amendments in the rules regulating the recruitment to the posts of Joint Block Development Officer under the Panchayat and Community Development (Community Development) Department, Government of West Bengal published with this department notification No. 1534-CDP, dated the 23rd February, 1903. (hereinafter referred to as the said rules):-

For rule 3 of the said rules, substitute the following rule -

3 Method of recruitment :- The vacancies shall be filled up –

- (I) By direct recruitment on the results of Group ‘C’ of the West Bengal Civil Service (Executive) and Allied Services Examination.*

(II) *By promotion from the following posts :-*

- (i) *Extension Officer for Panchayats,*
- (ii) *Extension Officer, Social Education (Man)*
- (iii) *Instructor of the Gram Sevak Training Centres under the Agriculture Department in the revised scale of pay of Rs.425-1050/-*
- (iv) *Account-Cum-Head Clerk of the office of the Block Development Officer under the Panchayats and Community Development (Community Development) Department and*
- (v) *Inspector, Progress and Evaluation under the Panchayats and Community Development (Community Development) Department :*

Provided that not more than sixty percent of the vacancies shall be filled up by promotion.

By Order of the Governor

N.R. HALDER,

Secretary to the Govt. of West Bengal”

13. By virtue of the above amended Recruitment Rules, the officers belonging to the cadre of E.O. for Panchayats (presently PDO) have been included in the feeder posts for promotion to the cadre of Jt. BDO, whereas the officers belonging to the cadre of PA & AO have not been included in the feeder posts for promotion to the cadre of Jt. BDO. The officers belonging to the cadre of E.O. (Panchayats) (presently PDO) enjoyed another promotional avenue for promotion to the post of Samity Accounts and Audit Officers in terms of Recruitment Rules notified on September 15, 2004, which is as follows :

“Government of West Bengal

Department of Panchayats & Rural Development

(Panchayat Wing)

Jessop Building

63, N.S. Road, Kolkata – 700 001

No. 3189/PN/O/III/1R-2/2004

Dated, the 15th September, 2004

NOTIFICATION

In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor is pleased to make the following amendments in the rules regulating the recruitment to the different posts under the Panchayat Accounts and Audit Organisation, published with this Department notification No. 9578-Panch, dated the 8th June, 1979, as subsequently amended (hereinafter referred to as the said rules):-

Amendment

In the said rules, for clause (i) of rule 2, substitute the following clause:-

(a) Name of the post - Samity Accounts and Audit Officer

(b) Method of recruitment - (i) 60% by promotion from the post of Extension Officers (Panchayat), Panchayat Accounts and Audit Officers and Computers under the Directorate of Panchayat and Rural Development, having at least five years of service in the post as such,

(ii) 40% by selection (direct recruitment) through the Public Service Commission, West Bengal.)

*By order of the Governor
M.N. Roy,*

Secretary to the Govt. of West Bengal"

14. The availability of two promotional avenues by the officers belonging to the cadre of E.O. for Panchayats (presently PDO) is the sheet anchor of the claim of the present applicants for inclusion of their cadre in the feeder post for promotion to Jt. BDO. However, the availability of two promotional avenues of the officers belonging to the cadre of E.O. for Panchayats (presently PDO) has been drastically changed on July 3, 2009, when the promotional avenue provided to the E.O. for Panchayats (presently PDO) to the cadre of Samity Accounts and Audit Officers was totally closed and the said promotional avenue was made exclusively available to the officers belonging to the cadre of PA & AO having 5 years of experience in the

service under Directorate of Panchayats and Rural Development. It is pertinent to quote the notification dated July 3, 2009, by which promotional avenue of E.O. for Panchayats (presently PDO) was closed and the same was exclusively made available to PA & AOs :

*“Government of West Bengal
Department of Panchayats & Rural Development
(Panchayat Wing)
Jessop Building
63, N.S. Road, Kolkata – 700 001*

NOTIFICATION

No. 2974/PN/O/III/IR-2/04 dated the 23rd July, 2009, In exercise of the power conferred by the proviso to Article 309 of the constitution of India, the Governor is pleased hereby to make the following amendment in the rules regulating the recruitment to the different posts under the Panchayat Accounts and Audit Organisation published with this Department Notification No. 9578-Panch, dated the 8th June, 1979, as subsequently amended (hereinafter referred to as the said rules):-

Amendment

In the said rules, in rule 2, for sub-clause (b) of clause (i) substitute the following sub-clause-

(b) Method of recruitment -

- (i) 60% by promotion from the post of Panchayat Accounts and Audit Officer under the Directorate of Panchayats and Rural Development, West Bengal, having at least five years of service in the post as such;*
- (ii) 40% by selection (direct recruitment) through the Public Service Commission, West Bengal.*

By order of the Governor

M.N. Roy,

Secretary to the Govt. of West Bengal”

15. The issuance of the above notification on July 23, 2009 for amendment of the Recruitment Rules for filling up the posts of Samity Accounts and Audit Officers by way of promotion negates the contention of the applicants that the officers in the cadre of E.O. for Panchayats (presently PDO) have two promotional avenues. It is crystal clear from the above notification dated July 23, 2009 that the officers belonging to the cadre of E.O. for Panchayats (presently PDO) have been excluded from promotion to Samity Accounts and Audit Officers and thereby now they have only one promotional avenue i.e. to the cadre of Jt. BDO, while the officers in the cadre of PA & AOs have the entire gamut of promotional avenue for promotion to the cadre of Samity Accounts and Audit Officers under the Directorate of Panchayat and Rural Development. The fact of providing all the promotional posts of Samity Accounts and Audit Officers under the Directorate of Panchayats and Rural Development (60% quota for promotion) exclusively for the PA & AOs also nullifies the claim of the applicants that they have narrow promotional avenue in career advancement. The notification No. 1887/PN/O/111/2A-10/2007 dated June 3, 2015 issued by the Special Secretary to the Government of West Bengal, Department of Panchayats and Rural Development (Annexure X to the reply of the private respondents) indicates that 45 officers in the cadre of PA & AO got promotion to the cadre of Samity Accounts and Audit Officers in Pay Band-4 (Rs.9000-Rs.40,500/-) plus grade pay of Rs.4700/- and other allowances admissible under the rules. The above observations lead us to hold that the Recruitment Rules for promotion to the cadre of Jt. BDO is neither arbitrary nor ultra vires Article 14 of the Constitution of India as contended on behalf of the applicants.

16. The next question for consideration of the Tribunal is whether the applicants can rely upon the notings in the departmental file and internal communications of the departments of the State Government to establish their right of being included in the feeder posts for promotion to the cadre of Jt. BDO. The favourable recommendations of the Department of Panchayat and Rural Development was ultimately turned down by the Finance Department of the State Government, presumably because the officers in the cadre of PA & AO were given the entire gamat of promotional quota for promotion to the post of Samity Accounts and Audit Officers by excluding

the cadre of E.O. for Panchayats (presently PDO) from the feeder post for promotion to the cadre of Samity Accounts and Audit Officers by way of amendment of the Recruitment Rules in this regard on July 23, 2009, as pointed out hereinabove. The Departmental notings in the file and internal communications of the two departments of the State Government, irrespective of whether favourable recommendations were made for inclusion of the cadre of PA & AOs in the feeder post for promotion to Jt. BDO, the said notings and internal communications can never be construed as decisions of the State Government. We would like to rely in this regard on paragraph 12 of the Judgment of the Hon'ble Supreme Court in "M/S Sethi Auto Service Station v. Delhi Development Authority" (Civil Appeal No. 6143 of 2008 arising out of SLP(C) No. 10230 of 2006 decided on October 17, 2008), which is as follows :

"12. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned."

17. By relying upon paragraph 12 of the Judgment of the Hon'ble Supreme Court in "M/S Sethi Auto Service Station v. Delhi Development Authority" (supra), we would like to hold that notings in the departmental file and internal communications made between the department of Panchayats and Rural Development and the department of Finance of the State Government cannot be relied upon by the applicants for enforcement of their right to include the cadre of PA & AOs in the feeder post for promotion to the cadre of Jt. BDO, as the decision making process of the State Government concluded by way of rejection of the recommendations made by the Department of Panchayat and Rural Development, Government of West Bengal.

18. As a result, the applicants are not entitled to get any relief in the present application. So, the original application is dismissed, but in the circumstances of the case without any cost.

19. The urgent Xerox certified copy of the judgment and order, if applied for, be supplied to either of the parties on priority basis after fulfillment of all necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER (A)

(Ranjit Kumar Bag)
MEMBER (J)