

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 197 of 2024.

SAMAPTI CHANDA & ANR - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

05
13.12.2024

For the Applicants : Mr. M.N. Roy,
Advocate.

For the State Respondents : Mr. S. Ghosh,
Advocate.

For all the Private Respondents except
6 & 16 : Mr. G.P. Banerjee,
Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. – II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for issuance of an order directing the respondents to prepare and publish fresh promotional lists after cancelling the Notification no. 163/HFW-37014(15)/1/2021-DIR-Nursing Sec. Dated 31.01.2024 and the Notification no. 182/HFW-37014(15)/1/2023-DIR-Nursing Sec. Dated 05.03.2024 for promotion to the post of Senior Lecturer from the post of Clinical Instructors after following the normal zone of consideration of the Promotion Rules, 1982.

Mr. Roy refers to promotional orders dated 31st January, 2024 and 05.05.2024 by which the private respondents were promoted to the post of Senior Lecturers depriving such promotion to the applicants. He has drawn my attention to para 2A(ii) of the Notification dated 17th January, 2014. This particular clause of the Notification relates to promotion from the post of Clinical Instructor to the post of Senior Lecturer. Submission is that though the rule in this Notification makes the applicants eligible for such promotion, but they were denied. Further, emphasis is given on clause 'B' 'a' (ii) of the Notification. This particular provision states "Minimum of three years' experience after acquiring M.Sc degree" is required to

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make a person eligible for such promotion. In relation to the above provision, Mr. Roy submits that the applicants have more experience than the private respondents. Attention has also been drawn to para 2 of the “Normal Zone of Consideration for promotion Rules, 1982” issued by Notification No. 11195(f) dated 22nd October, 1982, in particular emphasis has been laid in the following sentences :-

“.....Promotion to such service or post shall consist of such of the employees eligible for promotion to such service or post according to the rules or procedure regulating the recruitment thereto as occupy when arranged in descending order of the seniority, five times the number of vacancy or vacancies actually available for filling up by promotion at the time of consideration....”.

Submission of Mr. Roy is that during the exercise of promotion, the respondent authorities failed to enlist five times of the vacancies in the zone of consideration. By the impugned promotion order, a total of 37 Clinical Instructors were promoted to the post of Senior Lecturers without adhering to the rule of keeping five times the number of vacancies. To complete the exercise of the promotion to the post of 37 Senior Lecturers, the respondent authorities should have considered a total of 185 candidates in the zone of consideration for such promotion.

As per the Notification No. GCoN-Direct/25/2023 dated 29.12.2023, a marking criteria for experience has been shown by which proportionate marks are to be given against the candidates' experience in nursing. For instance, against a total marks of 10 for such experience, a candidate having less than 04 years of experience would be given 05 marks. Similarly, a candidate having more than 08 years of experience in the field of nursing after completion of M.Sc degree would be given a total of 10 marks. However, upon asking whether the applicants are aware how much marks were given against the experience of these private respondents, Mr. Roy replies that he is not aware of such marks given to them.

From the submission of Mr. Roy and the records presented by him, it is not clear whether the private respondents have been given more marks in

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their experience category in violation of this Notification.

By comparing the entry of applicant no. 1 Samapti Chanda, who had completed M.Sc in November, 2011 with Rahima Rahaman (Khatun) appearing at serial 82, who had completed her M.Sc (Nursing) only in September, 2016, Mr. Roy assumes that the applicant has been given lesser marks and thus not considered against the experience compared to the private respondent.

It was also argued that Rahima Rahaman (Khatun) appearing at serial no. 82 of the Gradation List having lesser experience was given higher rank in the list compared to Samapti Chanda. It may be so but the entries in the Gradation List shows Rahima Rahaman (Khatun) was appointed on 09.9.2010 and her service was confirmed on 09.09.2013 whereas Samapti Chanda, appearing at serial No. 144 was appointed on 25.08.2015 and confirmed in the service later on 25.8.2018. It cannot be expected that the applicant whose appointment was five years later to the private respondent, Rahima Rahaman (Khatun), can be given higher seniority.

As understood from the submissions, the entire exercise of this promotion was undertaken and completed by relying on the names in the final Gradation List of Clinical Instructors. It has become clear that those 37 of Clinical Instructors who were promoted to the post of Senior Lecturers were higher in ranking in the Gradation List, higher than the names of the applicants, who by virtue of having entered the service through lateral entry were posted lower to the direct recruits in the Gradation List.

The West Bengal State General Service (Recruitment and Promotion to Teaching Posts in Government Colleges of Nursing) Rules, 2013 describes the manner by which recruitment to the post of a Senior Lecturer can be filled up through three channels :-

- (1) Direct Recruitment.
- (2) By promotion from the post of Clinical Instructor.
- (3) By lateral induction.

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This Rule does not specify any experience as a criteria for promotion to the post of Clinical Instructor. The Rule further allocates promotion to the post of Senior Lecturer by reserving 40% of such posts through lateral induction, 20% through selection (Direct Recruitment) and 40% from promotion. For the candidates being recruited directly, a degree M.Sc in Nursing and a minimum three years' experience after M.Sc is required, besides knowledge of Bengali – spoken and written. Similarly, for candidates joining by lateral induction, M.Sc degree in Nursing with knowledge of Bengali are also required. But, for those who are to join through promotion from the post of Clinical Instructor, no experience is required. Therefore, by citing this relevant Rule, the contention of the applicants that those who were promoted to the post of Senior Lecturer without having sufficient experience is not a valid ground.

The applicants had approached this Tribunal earlier agitating similar cause of action by filing OA 628 of 2017. In a reply filed by the State respondents, it had stated that “....*Seniority of Clinical Instructors has been made according to their years of appointment orders in the post of Clinical Instructors....*”. This specific Rule also tells that the seniority in the Gradation List has been fixed on the basis of year of appointment.

As observed in the foregoing paragraph, one of the private respondents named by the applicants Rahima Rahaman (Khatun) was senior by virtue of her year of appointment, which was earlier than Samapti Chanda, whose appointment year was five years later. The Tribunal also notices that the Hon'ble Members, who were hearing the matter in OA 628 of 2017 had recorded the following :-

“.....In view of our above findings, we do not find any illegality or irregularity or arbitrariness in preparation and publication of the Seniority list dated July 05, 2017 whereby the private respondents have been placed above the applicants....”.

The Tribunal also suggests, “*But the experience of the applicants as Nursing personnel in West Bengal Nursing Services through lateral induction into the*

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cadre of Clinical Instructor may be taken into consideration for their further promotion to the post of Senior Lecturer in terms of the Provision of the West Bengal Teaching Service of Nursing Rules, 2013.....”.

By a close examination of the words of the Tribunal in their order as referred above, it has become clear that without any second thought or ambiguity, the Tribunal was clear that the applicants in the earlier application agitating for seniority were not senior to the private respondents. However, the word “*may*” used by the Hon’ble Members in their orders need to be seen more as a suggestion to the Respondent authorities for considering their experience in their future promotion. This Tribunal is clear that it was not a direction, rather a suggestion after having decided that such Nursing personnel joining through lateral entry were junior to the private respondents. Had the Tribunal in the earlier OA directed the Respondent authority to consider the experience, it would have definitely used the word “*shall*”. An order with the order “*shall*” definitely will imply that it was a directive of the Tribunal to be complied. Either such direction would have been complied or assailed in an appropriate forum; no such development took place and the original Recruitment Rule i.e. West Bengal State General Service (Recruitment and Promotion to Teaching Posts in Government Colleges of Nursing) Rules, 2013 remains unchanged.

The Tribunal cannot agree with the argument that the respondent authorities limited their choice of promotion only on the basis of the Gradation List and not on other entries. Decision for promotion primarily rests on the basis of the ranking in the Gradation List. Experience as a qualification cannot over ride the importance of the Gradation List. No rule has been cited contrary to this point, where experience over takes the importance of ranking in the Gradation List, nor the Gradation List disputed and challenged.

Therefore, the Tribunal cannot disagree with the decision of the respondent authority in placing the private respondents above the petitioners for

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promotion. Their decision was fully in tune with the extant rules.

Thus, this application devoid of any merit, is disposed of without passing any orders.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

Sk.

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