

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – OA 925 OF 2016

Jamini Ranjan Mondal Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">07 <hr/>29.11.2018</p>	<p><i>For the Applicant : Mr. M.N. Roy, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. S. Ghosh, Learned Advocate.</i></p> <p><i>The applicant has prayed for direction upon the respondents for giving him benefit of promotion to the post of Typist Grade-I with effect from March 01, 1998 and other consequential reliefs.</i></p> <p><i>The contention of the applicant is that the applicant belonging to Scheduled Caste category was given promotion to the post of Typist Grade-I by order dated November 17, 2011 and he retired from the said post on September 30, 2016. The further contention of the applicant is that the private respondent belonging to the General Category was given promotion with effect from March 01, 1998 by depriving the applicant of his right to be considered for promotion with effect from March 01, 1998. By refereeing to the provisions laid down in the proviso to Section 6 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 and the provisions of Explanation (c) to Rule 10 of the West Bengal Scheduled</i></p>	

ORDER SHEET

Jamini Ranjan Mondal

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 925 OF 2016**

Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Rules 1976, Mr. M.N. Roy, Learned Counsel for the applicant contends that when the first vacancy in the roaster reserved for Scheduled Caste candidate is carried forward till the next reserved vacancy occurs in 50 point roaster, the said reserved vacancy must be nearest to the un-reserved vacancy available at the time of consideration of promotion of any employee belonging to the category of scheduled caste.

Mr. S. Ghosh, Learned Counsel representing the state respondents submits that the applicant approached the Tribunal long after giving promotion to the private respondent and as such the claim of the applicant is hopelessly barred by limitation.

Having heard Learned Counsel representing both parties and on consideration of the fact that the state respondents did not take the plea of limitation at the time of admission of the original application for hearing, even though notice was duly served as reflected from the affidavit of service filed on behalf of the applicant and recorded by the Tribunal in the order dated January 17, 2017, we are unable to reject the claim of the applicant on the ground of limitation at this stage.

What transpires from the materials on record is that one Mihir Gope belonging to General Category initially got promotion with effect from July 15, 1991 in the first

ORDER SHEET

Jamini Ranjan Mondal

Form No.

Vs.

The State of West Bengal & Ors.

Case No. OA 925 OF 2016

vacancy of the roaster, which was reserved for Scheduled Caste candidate. Subsequently, one Kalyan Kumdar Das belonging to General Category was granted promotion in first vacancy reserved for Scheduled Caste candidate after reversion of Mihir Gope to the feeder post. Since the first vacancy in the roaster was reserved for Scheduled Caste candidate, and since both Mihir Gope and Kalyan Kumar Das belonged to General category and promoted in the first vacancy of the roaster, the vacancy reserved for Scheduled Caste should have been carried forward to the nearest un-reserved vacancy available at the time of consideration of the present applicant for promotion, as the applicant belongs to Scheduled Caste category in terms of proviso to Section 6 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 and in terms of Explanation (c) to Rule 10 of West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Rules 1976. The applicant did not get berth in the carried forward vacancy reserved for Scheduled Caste in the roaster as per provisions of law mentioned herein above. The applicant got promotion to the post of Typist Grade-I on November 17, 2011, whereas he should have been promoted in the said post on March 01, 1998 as the vacancy in which the applicant got berth was not placed nearest to unreserved vacancy in the

ORDER SHEET

Jamini Ranjan Mondal

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. OA 925 OF 2016

roaster available at the time of consideration of the applicant for promotion.

In view of our above findings, we direct the respondent no. 2, the Director of Fisheries, Government of West Bengal to consider whether effect of promotion of the applicant to the post of Typist Grade-I should be from March 01, 1998 by passing a reasoned order in the light of the observations made by us in this order within a period of 12 (twelve) weeks from the date of communication of the order. If the applicant is given promotion with effect from March 01, 1998, the applicant should be given notional benefit of the said promotion till November 17, 2011 and the actual financial benefit will be given to the applicant from November 17, 2011.

With the above direction, the original application is disposed of.

Let a plain copy of the order be supplied to both parties.

**(S.K.DAS)
Member (A)**

**(R.K.BAG)
Member (J)**

H.S

ORDER SHEET

Jamini Ranjan Mondal

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. OA 925 OF 2016

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