

ORDER SHEET

WPO/169/2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

PARWEZ KHAN
Versus
THE STATE OF WEST BENGAL AND 5 OTHERS

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date : 15th December, 2020.

Appearance:

Mr. Dipankar Pal, Adv.

Mrs. Kakali Naskar, Adv.

Ms. Deblina Chattaraj, Adv.

The Court: The petitioner was appointed by The Calcutta Tramways Company (1978) Limited as a Maintenance Staff by an offer letter dated 31st August, 2010. By an order dated 24th November, 2010 the petitioner, being the Maintenance Staff, was transferred to the Central Department. In the order it was mentioned that the Senior Engineer (OH&C/Stores) may utilise his service for the repairing job of telephones and other hand sets under the Telecommunications department, as and when required. The said order was issued upon taking approval of the Managing Director of the Company.

The petitioner claims that since thereafter he was made to perform the duties of Telephone Mistry which is a higher post having higher scale of pay. The petitioner applied before the Company for payment of the differential pay of the two grades i.e. the Maintenance Staff and the Telephone Mistry. He also prayed for promotion to the post of Telephone Mistry from that of the Maintenance Staff. The prayer of the petitioner stood rejected. The

petitioner challenged the same by filing a writ petition before this Court being WP No. 188 of 2015. By an order dated 1st September, 2016 the Court disposed of the writ petition by observing that from the materials available and produced before the Court, the Court was convinced that the petitioner was made to discharge the duties of a Telephone Mistry from the very beginning, although his appointment was made to a lower post of the Maintenance Staff. The impugned order of rejection of the prayer of the petitioner for promotion was set aside by the Court and the matter was remanded back to the Managing Director for fresh consideration. The Managing Director was directed to ensure that the petitioner gets his lawful dues insofar as his posting and emoluments were concerned, commensurate with his qualification and the service that he in fact rendered.

The prayer of the petitioner was taken up for consideration by the Managing Director and by an order dated 20th October, 2016 the Managing Director was of the opinion that his services were utilised for the repairing job of telephone and other hand sets. The Managing Director was of the opinion that the petitioner was entitled to get promotion as Telephone Mistry from the post of Maintenance Staff.

By an order dated 20th April, 2017 the application of the petitioner for promotion was considered and upon the subsequent Trade Test & interview the petitioner was selected for promotion to the post of Auto Telephone Mistry with effect from 1st May, 2017.

The petitioner submits that on and from 1st May, 2017 he is being paid in the grade pay of the Auto Telephone Mistry.

Presently, the case of the petitioner is that since he had been made to work as a Telephone Mistry on and from November, 2010 till the date he was actually promoted to the post of Telephone Mistry, he is entitled to receive the differential pay. The petitioner has made an appeal for releasing his differential pay by a representation made to the Managing Director on 19th July, 2018. The petitioner submits that his representation is yet to be considered by the respondent.

It appears that though the petitioner was engaged in the post of Maintenance Staff but his services were actually utilised for the repair job of telephone and other hand sets.

The learned Advocate representing the respondent submits that there is slight difference between the job profile of a Maintenance Staff and that of a Telephone Mistry. It is only after a Maintenance Staff undergoes a training that he is promoted to the post of Telephone Mistry. A Maintenance Staff can never be allowed to perform the work of a Telephone Mistry in the absence of the training to be undertaken by him. It was only after the petitioner was given the training and he participated in the promotional test and qualified in the same, the promotion was given to him.

Be that as it may, it is not for the Court to take a decision whether the service of the petitioner was actually utilised as a Maintenance Staff or that as a Telephone Mistry. It may be that the Maintenance Staff also looks after and performs the work of telephone repair. It is for the Company to look into the matter and conclusively decide as to whether the service of the petitioner was actually utilised as that of a Telephone Mistry or not.

The Managing Director of the Company is accordingly directed to consider the prayer of the petitioner in accordance with the Rules and the guidelines of the Company within a period of six weeks and come to a conclusive finding with regard to the nature of the work performed by the petitioner prior to his promotion. If the Managing Director is of the opinion that the petitioner was made to work as a Telephone Mistry then steps shall be taken by the said authority to release the differential pay to the petitioner within a period of ten weeks from the date of taking a decision in the matter.

With the aforesaid observation, WP 169 of 2020 stands disposed of.

Affidavit of service filed in Court is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion usual legal formalities.

(AMRITA SINHA, J.)