

01.07.2021
SL No.15
Court No.16
(gc)

WPST 37 of 2021

**Smt. Lina Ghosh
Vs.
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. Nayan Rakshit,
Mr. A. Chatterjee,
...for the Petitioner.
Mr. Tapan Kr. Mukherjee, Ld. G.P.,
Mr. Somnath Naskar,
...for the Respondents.

In this writ petition the petitioner has challenged the order passed by the learned West Bengal Administrative Tribunal in Case No. O.A. 1147 of 2016. The impugned order was passed in connection with an application filed by the writ petitioner for a direction upon the respondents to consider her case for grant of promotion to the post of Supervisory Grade Typist and other consequential reliefs. The application was filed at the point of time when the writ petitioner was in employment. The writ petitioner joined the post of Typist on July 12, 1987 and got promotion to the post of Typist Grade I with effect from November 24, 1998. The name of the present petitioner appeared in serial no.1 in the gradation list of Typist Grade-I published by the Director of Health Services on 31st August, 2015. The contention of the writ petitioner before the Tribunal was that two of her juniors in the service, namely, Sudhangshu Sarkar and Pradip Baghira were granted promotion to the post of

Supervisory Grade Typist without granting promotion to the present petitioner on the ground of her poor Annual Performance Report (in short “APR”). The petitioner ultimately retired from service on 31st January, 2017.

Before the Tribunal, the respondent authorities disclosed documents to show that her promotion was not considered because of adverse entries in the APR for the year 2014-2015 in which the entries made by the employer was “Average” along with adverse entries in the integrity column that “she does not carry out the order”. The Tribunal proceeded on the basis that although the writ petitioner may not have been communicated with the adverse remark in the APR but her representation on 31st May, 2016 for reconsideration of the entries in her APR would clearly show that she was quite aware that she was denied promotion due to her poor rating in the APR for the year 2014-2015.

Indubitably and undoubtedly it can be seen from the record that the ground for which she was marked “Average” was never communicated to the writ petitioner. It appears that the denial for her promotion is based on the communication dated 27th January, 2015. The acceptance of this letter was, however, denied by the respondents. Be that as it may, it appears from the said communication that she was asked to perform the duty of “Issue and Despatch Register” in terms of certain Government order dated 29th October, 2014 of Chief Medical Officer of Health (in short

“CMOH”), North 24-Parganas and she was verbally directed to perform the said duty and also that she was asked to deal with GPF loan related work of the employees. There is no written communication which directed her to perform the aforesaid duty. The reluctance of the employee to carry out a verbal instruction cannot visit her with the remark “Average” considering the fact that the remark for the earlier years was very good. An employee cannot be entitled to carry out any instruction which does not fall within the scope of her employment. This aspect of the matter could not be clarified by the employer before the Tribunal.

The learned Counsel for the petitioner has rightly drawn our attention to the RTI application dated 29th November, 2017 in which following details of information were asked for:-

5.	<i>Details of information required (if necessary a separate sheet may be attached)</i>	1. <i>Please confirm whether the provision contained under Memorandum no.9135-F dt. 10/09/2002 of Govt of WB is applicable / followed in your department.</i> 2. <i>Promotion of Smt Lina Ghosh, (Retired Typist Gr-1, English) was denied since her APR for 2014-15 was unsatisfactory, please provide a copy of the letter under which the said fact was communicated to her as per above Memorandum.</i> 3. <i>Please confirm whether any written warning issued to Smt Lina Ghosh in the year 2014-15, if so please provide the copy.</i>
----	--	--

In answer to the aforesaid, the CMOH, North 24-Parganas on 13th December, 2017 furnished the following information:-

“The undersigned is hereby informing you that the reply to information as asked in your RTI application follows:

- 1. The provision contained under Memorandum No.9135-F dt. 10/09/2002 is applicable.*
- 2. No such letter has been issued.*
- 3. No written warning was issued to Smt Lina Ghosh in the year of 2014-15.”*

Instead of remanding the matter to the learned Tribunal, we are of the opinion that in view of the explanations offered by the writ petitioner on 3rd February, 2015, the CMOH shall re-consider the matter afresh. It cannot be denied that considering her nature and scope of employment she was not required to perform the duties for which she was held to be guilty. It seems that this representation was not considered while adverse entry was made in the service record.

Accordingly, we direct the CMOH, North 24-Parganas to reconsider the representation dated 3rd February, 2015 and dispose of the said representation taking into consideration her initial letter of appointment, her performance for the earlier years and the explanations offered by her in the letter for not being able to perform clerical work in addition to her normal duty. The matter should be disposed of by the CMOH, North 24-Parganas

uninfluenced by its earlier order dated 27th January, 2015 within a period of eight weeks from the date of communication of this order and also taking into consideration the Memorandum dated 10th September, 2002. It is needless to mention that the CMOH shall give a reasonable opportunity of hearing to the writ petitioner and upon consideration of the materials on record and the observations made by us shall pass a reasoned order which shall be communicated to the writ petitioner within one week from the date of the order. The order dated 27th January, 2015 is set aside.

The hearing shall be held after maintaining all Covid Protocol and, if required, on the virtual platform.

The order of the Tribunal is, accordingly, set aside.

With the aforesaid observation, the writ petition being WPST 37 of 2021 stands disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)