

13.04.2022

WPCT 14 of 2016

Court : 04
Item : PB-06
Matter : WPCT
Status : OP
Transcriber: nandy

Dr. Amar Krishna Ray
Vs.
Union of India & Ors.

Mr. Soumya Majumdar, Advocate
Mr. Barun Chatterjee, Advocate

.....for the Petitioner

Mr. Rajib Mukherjee, Advocate
Ms. Supriya Dey Barat, Advocate
Ms. Shreyasi Bhaduri, Advocate

.....for the BSNL

By the impugned order dated May 6, 2015, the Tribunal dismissed the Original Transfer Application being TA 6 of 2011 which was previously registered as WP 381 (W) of 2006, solely on the ground of the same becoming infructuous on attainment of superannuation.

The petitioner claimed promotion to the post of a Welfare Officer or SDE having served to the post of Junior Telecom Officer (JTO) and by the promotion order dated June 25, 2005 issued by the Deputy General Manager (Administration), he has been excluded without assigning any reasons. The matter was pending before the Tribunal for a pretty long time and it is undeniable that the petitioner attained superannuation on and from May 31, 2006. When the matter appeared before the Tribunal, the said application was dismissed as the relief claimed in the original application is no longer surviving and has virtually become infructuous.

Our attention is drawn to the fact that the petitioner was appointed to the post of JTO by virtue of an order dated November 19, 1996 and, therefore, the

stand of the respondent no. 2 that he has not served three years in the said post is untenable. However, the respondent no. 2 submits that in order to bring within the zone of consideration, one must serve three years on regular basis to the post of JTO and the petitioner having not served or qualified the same, he was spared.

These are the stands taken by the rival parties and essentially the question of fact to be decided on the basis of the materials available from the record. We are further given impression by the learned Counsel for the parties that the criterion for promotion is only seniority and no other mode has been provided and, therefore, even if the person has superannuated, the Court may mould the relief if ultimately the claim is found legally tenable and sustainable. There is no fetter on the part of the Court/Tribunal to mould the relief if the subsequent events necessitated the same and, therefore, we do not find the way in which the application is dismissed as infructuous is tenable in the eye of law.

Since the Tribunal has not decided the matter on merit, we find that the original application cannot be rendered infructuous solely on the ground of attainment of the retirement age. We, therefore, set aside the impugned order.

We thus direct the Tribunal to consider the matter on merit after affording an opportunity of hearing to all the parties and by recording proper reasons in accordance with law.

For abundant precaution, we hereby make it clear that we had no occasion to go into the merit or demerit of the respective stand of the parties and, therefore, the Tribunal shall not be swayed by any observations touching upon the merit of the claim and shall decide the same independently in accordance with law.

We expect that the Tribunal would fix the date for hearing of the said original application within fifteen days from the date of communication of this order and endeavour shall be shown to dispose of the same within two months therefrom.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)