

WPA 17410 of 2008
IA No. CAN 1 of 2020 (Old No. CAN 884 of 2020)

Tapan Kumar Chowdhury
Vs.
Kolkata Metropolitan Water and Sanitation
Authority & Ors.

Mr. Indranil Chakravarti
Mr. Hara Krishna Halder
Mr. Kaushik Bhattacharyya

..for the petitioner
Mr. Satyajit Talukdar
Mr. Abhishek Sarkar

...for the KMDA

Mr. Saikat Chatterjee
...for the respondent no. 5

Affidavit of service filed on behalf of the petitioner
is taken on record.

In this writ petition, petitioner has claimed unpaid
service benefits including benefits relating to promotion
which could not be extended to the petitioner at the
material point of time due to pendency of disciplinary
proceeding which was initiated against him.

Mr. Indranil Chakravarti, learned advocate appears
on behalf of the petitioner and submits that the
disciplinary proceeding which was initiated against the
petitioner, was culminated into an order which was
signed by the appropriate authority on 12th August, 2004
whereby the petitioner was exonerated from the charges
leveled against him and there was specific direction as

contained in the said order of exoneration directing the concerned department to give all service benefits to the petitioner as if there was no such proceeding pending against him within a period of 2(two) months. Placing reliance of such order of the appropriate authority dated 12th August, 2004, it has been submitted that petitioner, albeit retired on 31st October, 2007, but the service benefits including the benefits relating to promotion were not extended to him, as a result whereof the retiral dues were calculated at the time of his superannuation at a lower rate which caused monetary loss to the petitioner. Had there been due compliance of the said order dated 12th August, 2004, in that event, according to the petitioner, he would have been promoted to the higher posts as well as some other service benefits would have been accorded in his favour before his retirement and sanction of such benefits including promoting the petitioner to higher post, could also benefit him at the time of settling and sanctioning retiral dues to the petitioner.

Mr. Satyajit Talukdar, learned advocate representing the Kolkata Metropolitan Development Authority (for short "KMDA") being the principal respondent has submitted that on superannuation of the petitioner on 31st October, 2007, retiral dues have been released in his favour. According to KMDA, no other

service benefits could be released in favour of the petitioner in view of sanctioning of retiral dues on such superannuation.

This Court has considered the submissions of the rival parties and has perused the relevant documents as well as pleadings available on record.

This Court has seen the affidavit in opposition affirmed on behalf of the respondents on 16th March, 2009 where in paragraph 9 it has been averred that the promotion of the petitioner fell due, since he was entangled in vigilance enquiry as well as disciplinary proceeding and also Court case which resulted in postponement of promotion. As a result thereof, petitioner was placed behind his juniors in fixation of pay. On perusal of such pleadings in paragraph 9 it goes to show that the concerned respondent authorities could extend all service benefits which was available to him due to his exoneration from disciplinary proceeding and even at the time of settling and sanctioning the retiral dues, these service benefits remained unsanctioned. It also appears from the averments made in paragraph 9 of the said affidavit in opposition that employees who were junior to the petitioner, were sanctioned the service benefits on pay fixation which remained unpaid so far petitioner is concerned.

This Court has perused the order dated 12th August, 2004 issued by the Officer on Special Duty, K.M.W. & S.A wherein the Officer on Special Duty had specifically directed the concerned department to give all service benefits to the petitioner as if there was no initiation of disciplinary proceeding against him. On conjoint reading of this order dated 12th August, 2004 of the Officer on Special Duty, K.M.W. & S.A as well as paragraph 9 of the affidavit in opposition used on behalf of the respondents, it appears that though juniors were given certain benefits which remained unpaid to the petitioner even after his retirement.

In addition thereto, it has been specific contention on behalf of the petitioner during the course of hearing that initiation of disciplinary proceeding against him unnecessarily caused denial of benefit of promotion which ought to have been provided to the petitioner on consideration of the fact that the disciplinary proceeding initiated against the petitioner was culminated into an order of exoneration.

In view of aforesaid set of facts, this Court directs the Deputy Secretary, (Establishment) Kolkata Metropolitan Development Authority, being the respondent no. 4, to pass an order on the claim of the petitioner relating to sanction of service benefits as well as grant of benefits relating to promotion which fell due

during the tenure of the petitioner, but could not be extended due to pendency of the disciplinary proceeding within a period of 12 (twelve) weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or his representative and to pass a reasoned order. Such order to be passed by the said respondent no. 4 in terms of the aforesaid direction shall be communicated to the petitioner within 1 (one) week thereafter.

It has been made amply clear that respondent no. 4 is required to pass an order upon placing reliance on the order of exoneration dated 12th August, 2004 and shall proceed on the basis as if no disciplinary proceeding were initiated against the petitioner.

With the above direction, writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)