

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present:- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Subhendu Samanta.

APO 90 of 2019
GA 4 of 2022
With
WPO 480 of 2017

The Board of Trustees for the Port of Kolkata & Anr.
Vs.
Mitali Ghose & Ors.

For the Appellant : **Mr. Probal Mukherjee, Sr. Adv.**
Mr. Somnath Bose,

For the Respondent : **Mr. Soumya Majumdar, Sr. Adv,**
Mr. Victor Chatterjee,
Mr. Barnamoy Basak,

Judgment on : **14.07.2022**

Subhendu Samanta, J.

Facts :

The post of Deputy Labour Advisor and Industrial Relation Officer/ Personal Officer (DYLA and IRO/PO, in short) in the Calcutta Port Trust fell vacant for only one unreserved post on 26th June of 2013, to be filled up on promotion by selection. There were five (05) candidates in the zone of consideration holding the post of IRO/SR Labour Officer (IR) (Feeder Post) for selection in the said post of DYLA and IRO/PO.

Accordingly, the Departmental Promotion Committee (DPC, in short) was formed for the promotion to the selection post. The said DPC held a meeting on 27th June of 2014 and unanimously selected the respondent\writ petitioner to be a fit candidate for the said post of DYLA and IRO/PO.

Accordingly, she was promoted to the post on 18th July, 2014. She worked in the promotional post for more than three (03) years. Suddenly by an

order dated 9th August of 2017, by the Senior Personal Officer\ Labour Advisor and Industrial Relation Officer, Kolkata Port Trust (KOPT in short) the respondent was reverted back to the post of SLO (IRO) and the respondent no. 4 in the Writ application/Respondent No.3 herein namely, Mrinalkanti Das was promoted to the selection post of DYLA and IRO/PO.

A seniority list dated 11th August of 2017 was also issued showing the respondent/ writ petitioner to be the junior to the three (03) officers whom she had been superseded on merit previously, by the recommendation of DPC.

The order of the KOPT dated 19th August of 2017 and seniority list prepared on 11th August of 2017 prepared by the KOPT was under challenge before the writ court. The Hon'ble Writ Court after hearing both parties at length, allowed the writ application by setting aside the order passed by the KOPT on 9th August, 2017 and seniority list dt- 11th August, 2017, hence this appeal.

Appellants Ground:

During the prolonged argument by the appellant it reveals that the candidates who were eligible for the selection to the post in question, one was a Scheduled Caste candidate who made a complaint before the National Commission for Scheduled Caste and Tribes that he was likely to superseded in violation of the prevalent Rules. The Commission constituted a Special Investigating Team (SIT) on 4th December 2014 to investigate the decision making process taken by KOPT for selection in the said post. The SIT while examining the complaint after considering the submission made on behalf of the aggrieved party formed a reasoned decision that the process adopted by the KOPT while promoting the writ petitioner on the basis of recommendation of the original DPC was not correct and it should be re-opened and accordingly recommended revisitation of the issue of promotion given to the respondent/writ petitioner. On receipt of the above recommendation of the Commission, the Chairman KOPT referred the

matter to the review departmental promotion committee (R-DPC for short), The R-DPC held a meeting on 20th April and recommended the respondent No. 3 herein be promoted to the post in question.

It is the positive assertion of the appellant that the appellants only acted according to the recommendation of the Commission and the R-DPC was formed. It is the further contention of the appellants that the decision of earlier DPC was erroneous since it only based upon the over all grades given by the Reviewing Officer in the APAR whereas the RSP regulation 1985 and DOPT OM dated 10.04.1989 contained guidance to consider the individual traits of the candidates which were given a go by the DPC. Thus, the RDPC has committed no error by selecting afresh. The R-DPC has only rectified the mistakes committed by the earlier DPC. Learned Advocate for the appellant further argued the ground that the recommendation to revisit the decision making process by a body created by the National Commission is binding on the appellants and they are duty bound to act upon the recommendation and accordingly the RDPC was formed. He further argued that the RDPC never applied any wrong test while reconsidering the entire process. It was further argued that the decision to revert back to the petitioner from the promotional post was taken by the KOPT on the basis of recommendation of the RDPC and thereby caused no prejudice or disadvantage to the writ petitioner and no principle of natural justice equity or fair play has been violated in this case.

On the basis of these grounds of attack Learned Advocate for the appellant fairly submitted that the impugned order passed by the Hon'ble Single bench is palpably illegal and suffer irregularity and it must be set aside.

Learned Advocate for the appellant further argued that the Hon'ble Single Judge has committed an error in finding that the writ petitioner has been victimised by the order dated 9th August 2017 and thereby the rule of Natural Justice has been violated. He further argued that the Learned Single Judge has also passed an erroneous finding on entering into the

merit of the decision making process of the RDPC, as the Hon'ble Single Bench was not acted as an Appellate Authority of the administrative order passed by the appellants (KOPT). He further argued that the Learned Single Judge has misguided herself in dealing with the matter and erroneously concentrated upon the dissenting note of one of the members of the RDPC. Learned Advocate for the appellant further argued that it is the erroneous finding of the Hon'ble Single Judge that the RDPC has conducted a different test to that of the procedure adopted in the earlier occasions. He specifically pointed out that the RDPC was only formed and guided by the recommendation of the SIT so, there are no options for the KOPT to act otherwise beyond the recommendation of the SIT. Thus he submitted that the instant appeal needed be allowed by setting aside the impugned judgment.

Submission of Respondent No. 1/Writ Petitioner :

Learned Advocate Mr. Majumder appearing on behalf of the petitioner /respondent No. 1 submitted that the order of Single Bench could not be altered or set aside if there was no palpable or irregularity. He supported the judgment of the Hon'ble Single Judge by submitting that on the earlier occasion in case of promotion at the office of KOPT, the procedure adopted by the DPC was followed but suddenly in this particular case the R-DPC has conducted a separate test for considering the promotion in the post in question. He pointed out that actually the procedure followed by the RDPC is not according to the RSP 1985 wherein the criterion was merit – cum – seniority. In this particular case, RDPC has promoted senior most person. The long standing practice adopted by the KOPT has go by in this case. Thus the decision making process of RDPC is palpably illegal and Learned Single Judge has been correctly pointed out the issue properly. He further argued that during the hearing before the Commission the KOPT has rightly defended the order of DPC but subsequently the KOPT has started de- novo consideration of forming RDPC. It is not permissible according to the

prevalent RSP 1985. He further argued that according to the recommendation of the SIT the KOPT has to revisit the decision making process of DPC but it is impermissible to apply a fresh set of rules in considering the promotion. So, he support the judgment of the Learned Single Judge by arguing that the Single Judge has rightfully come to a finding that the appellants/KOPT has acted illegally in accepting the recommendation of RDPC. He further argued that rules applied in DPC 2014 was uniformly applicable and followed in respect of every case of promotion of KOPT which took place prior to coming to the effect of RSP 2013. He argued that the apprehension of victimisation of the respondent/writ petitioner could not be ruled out since one of the member of the SIT suffered penalty wherein the respondent/ writ petitioner was the dealing officers of the vigilance case. He again argued that it was very surprising while Chairman of the KOPT had with-drawn himself from the membership of the SIT then the complainant A.K Sarkar was a member of the SIT. He categorically argued that the impugned order passed by the Hon'ble Single Bench did not suffered from any illegality or irregularity and finding thereof are speaking and reasoned finding thus, this appellate court has no jurisdiction to entertain the instant appeal.

Conclusion :

In considering the merit of the instant appeal it appears that appellants have adopted a procedure of promotion by way of forming RDPC on the basis of recommendation of the SIT. The SIT was actually formed complying with the recommendation of the National Commission for Scheduled Castes and Scheduled Tribes (COMMISSION) to consider the representation of Mr. A.K. Sarkar, a Scheduled Caste Candidate.

The Grievances of the Scheduled Caste Candidate were three fold Firstly, he was senior of the respondent/writ petitioner, Secondly, he was deprived of not getting grade as per office memorandum No.- 10/9/16-ESTT (SCT) dated 08.07.1969. Thirdly, the Government Memo No. 36012/3/75-

ESTT(SCT) dated 19.10.1996 was not adhered to in considering his promotion.

But surprisingly these grievances were not ultimately considered either by the commission or by the SIT. Moreover, following guidelines of RSP 1985 the DPC considered the promotion on the basis of criteria of Merit Cum Seniority, while R-DPC considered on the criteria of Senior - Cum – Merit as per RSP 2013.

DPC has considered over-all grading including the personal traits but RDPC has put more emphasise upon the personal traits of candidates. It further appears from the facts of this case that the KOPT prior to RSP 2013 had adopted the same procedure in all the case of promotion of candidates as enshrined in RSP 1985, but in the instant matter though the RSP 2013 is not applicable but the RDPC has acted separately to that of the procedure adopted by the KOPT in earlier occasions. Thus in considering the finding of Learned Single Judge, I am of a considered view that Hon'ble Single Bench is of correct in finding that RDPC has adopted a different set of procedure which is not according to the RSP 1985.

It further appears to my cognizance that a Reporting Officer/ Reviewing Officer is the person who write down the personal traits and an overall grading at APAR / ACR of an employee. The Reporting Officer/ Reviewing Officer is the person who actually deals with the employee regularly and has the opportunity to access the actual working ability of the employee. Thus the Reporting Officer/ Reviewing Officer is the only competent person who enjoyed the discretion to provide over all grading. So in my opinion, the DPC has not committed any error according to the RSP 1985 while the RDPC has committed wrong in adopting a new set of rules avoiding the long standing practice. Accordingly, I am of a view that the observation of the Hon'ble Single Judge is quite justified.

When the vacancy for the post of Deputy Labour Advisor and Industrial Officer/Personal Officer arose in June, 2013, the RSP regulations 1985 were in force and applicable. It prescribed selection on merit-cum-seniority principle.

Only those regulations could govern the selection process and not the RSP 2013, which became applicable later.

It further appears that the respondent/writ petitioner after being promoted to the post in question on the basis of unanimous recommendation of DPC on 27th June 2014 had performed unblemished service for the promotional post for more than three years but suddenly the order of reversion dated 9th August 2017; by which she was reverted back to the SLO (IRO) and the seniority list dated 11th August 2017 has taken the writ petitioners by surprise and in that score she was completely unaware about the said proceeding(R-DPC). Thus the principle of Natural Justice has obviously violated in this case.

On the basis of the discussions made above I find no palpable illegality or irregularity in the order impugned passed by the Hon'ble Single Judge and after considering all submissions of the parties, I am of a view that the instant appeal is devoid of merit and is liable to be dismissed.

Hence the appeal is dismissed.

The impugned order passed by the learned Single Judge in WP No. 480 of 2017 dated 14.05.2019 is hereby affirmed.

The application GA 4 of 2022 is disposed of accordingly.

(Subhendu Samanta, J.)

I. P. MUKERJI, J.-

I have had the privilege of reading in draft the judgment proposed to be delivered by my brother. I am in full agreement with the conclusion and reasons in support of it. However, I would like to add a few observations of my own.

In government or government type service, promotion of an employee from one post to a higher post should be the result of a considered decision. In ordinary circumstances, once a decision is taken it should be final and irreversible, bearing the stamp of permanence. This is so because once an administrative decision is taken it alters rights and obligations just as much in the same way a judicial decision does. A person vested with a right or saddled with an obligation should not entertain the apprehension or belief that it is temporary or transient and liable to revocation or alteration. Similarly, the public at large are also affected or guided by an administrative decision. It should not generate an idea that it is temporary or suddenly changeable without any reasonable cause.

More serious is the result when an employee has been promoted and occupied the promotional post for a substantial period of time. It is three years in this case. Reversal of promotion after this long period without any extraordinary cause is most unfair, unjust and inequitable. If this policy is encouraged then no employee would have security of employment or have continuity in service. His service would always be precarious and subject to alteration in terms and conditions. In this case an administrative decision, which ought to have been final, has been reopened.

At the time of making a decision for promotion, an employee need not be heard. But once an employee is promoted and after significant passage of time, when a decision is proposed to reverse the promotion, it has serious civil consequences. In my opinion, the employee is entitled to make a representation against such proposed reversion and to be heard. The first respondent was entitled to be heard.

The law governing promotion is what exists when the vacancy arises. In this case the 1985 regulations were in force when the vacancy arose in June, 2013. According to these regulations promotion was to be on the basis of merit cum seniority. On that basis the merit of the candidates was assessed and the first respondent promoted to the post of DYLA and IRO/PO.

There were parallel rules with regard to the promotion of Schedule Caste candidates as follows:-

“.....where there is no reservation but the SC/ST officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn are to be included in that list, provided they are not considered unfit for promotion. Cases where eligible SC/ST candidates though available in the seniority list, within the number of vacancies for which the select list is drawn are not selected, should be submitted to the Minister/Minister of State/Deputy Minister concerned as the case may be.”

In my opinion, the learned single judge was perfectly right when she observed that even according to those rules the Schedule Caste candidate, although senior to the first respondent, was ineligible as there was only one vacancy for the post in question and her seniority which had to be 1, was 3.

In 2013 another set of regulations came into force when seniority would have precedence over merit. Admittedly, those regulations were not in force when the first respondent's candidature was being considered for promotion. Therefore the 1985 regulation applied and were rightly applied to the subject selection. The 2013 regulations has no retrospective effect and could not govern the subject selection process.

Reversing the promotion of the first respondent after three years was most arbitrary, unjust and illegal on the part of the appellant.

The difference in ACR marks between the first respondent and the third respondent in the assessment made according to the 2013 regulations was negligible. Taking those marks into account and reversing the previous transfer of 2013 was most arbitrary and unjust. Even if the 2017 review was permitted, such a slender difference ought to have been ignored.

The promotion of the first respondent ought not to have been disturbed.

The impugned judgment and order is affirmed.

This appeal is therefore dismissed.

No order as to cost.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(I. P. MUKERJI, J.)