

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**Before:**

**The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA/2700/2018**

**IA NO: CAN/1/2020(Old No:CAN/955/2020)**

**ASHUTOSH DAS**

**VS**

**STATE OF WEST BENGAL & ORS.**

|                    |                                                                             |                |
|--------------------|-----------------------------------------------------------------------------|----------------|
| For the Petitioner | : Mr. Arabinda Chatterjee,<br>Mr. Arkadipta Sengupta,<br>Mr. Alminhaz Karim | .....advocates |
| For the State      | : Mr. Jahar Lal De,<br>Mr. Shamim ul Bari                                   | ... advocates  |
| Reserved on        | : 13.04.2023                                                                |                |
| Judgment on        | : 13.09.2023                                                                |                |

**Hiranmay Bhattacharyya, J.:-**

1. Petitioner has prayed for a writ of mandamus to command the respondents to promote him in Grade I post with effect from 02.11.2012 and to pay the consequential benefits to him.
2. Petitioner was appointed as Lower Division Clerk of the Judicial Department in the year 1980 and he was subsequently promoted as an Upper Division Clerk and joined as "Nazir" at Raghunathpur Court sometimes in the year 1989. The learned Munsif, Raghunathpur, on a casual inspection of the "Nazarat section", found some discrepancies and lodged an FIR being Raghunathpur P.S. Case no. 43/90 dated 21.03.1990 under Section 409 and 109 of Indian Penal Code. Upon a complaint lodged by the learned Judicial Magistrate, another FIR being Raghunathpur P.S. Case No. 42/90 dated 20.03.1990 under Section 409/109 IPC was registered. On the basis of the aforesaid FIRs two cases being GR case no. 587/90 and G.R. Case no. 610/90 were started which were renumbered as Special Court Case No. 4 of 1992 and 2 of 1993 respectively. The learned District Judge, Purulia being the Disciplinary Authority initiated Disciplinary proceedings being Proceeding Case No. 1 of 1990 and 3 of 1990 against the petitioner. Petitioner was, however, acquitted in the aforesaid criminal cases. The Inquiring Authority found the petitioner not guilty of the charges leveled against the petitioner in Departmental proceeding no. 1 of 1990 and 3 of 1990.

The learned District Judge being the Disciplinary Authority accepted the report of the Inquiring Authority and exonerated the petitioner from all the charges framed against him. In the meantime, in view of the report of the Shetty Commission, an Office Order no. 294 of 2012 was issued from the office of the learned District Judge extending the benefits to the employees who were incorporated in Grade I posts. However, the benefits of the said Office Order was not extended to the petitioner in view of pendency of departmental proceedings. After being exonerated in the disciplinary proceedings, petitioner claimed such benefits and alleging inaction on the part of the respondent authorities, have approached this Court.

3. Mr. Chatterjee, learned Senior Counsel appearing in support of the writ petition contended that the petitioner is entitled to the benefits of Grade I posts with effect from 01.11.2012 as he has been exonerated in the disciplinary proceedings. He further contended that the petitioner has to be extended the benefit of the salary of Grade I post along with other benefits from the date on which he would have been normally promoted but for the disciplinary proceedings. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Union of India and ors. vs. K.V.Jankiraman and ors.*** reported at **(1991) 4 SCC 109**.
4. Per contra, Mr. De, learned advocate representing the State contended that due to pendency of two departmental proceedings petitioner was not given promotion. After the petitioner was exonerated from the charges, he was promoted to the post of Grade II Bench clerk with effect from 01.03.2017. By referring to G.O. No. 4662-F dated 01.06.2005. Mr. De contended that the petitioner was entitled to further promotion only after completion of one year probation period. He submitted that since there was no vacancy in Grade I post for the period from 01.03.2018 till 31.03.2019, petitioner could not be promoted to Grade I post during his service tenure.
5. Heard the learned advocates for the parties and perused the materials placed. The criminal cases initiated against the petitioner being Special Court Case Nos. 04 of 1992 and 02 of 1993 were decided sometimes in the year 2007 and the petitioner was acquitted in the said criminal cases. The District Judge being the disciplinary authority, found the petitioner not guilty and exonerated

him from all the charges framed against him vide Office Order No. 255 of 2016 dated 29.09.2016. Consequent upon the sudden demise of the senior most Additional Supervisory Clerk posted as Record Keeper, District Record Room, Purulia, petitioner being the senior most Upper Division Clerk was promoted to the post of Grade II Bench Clerk with effect from 01.03.2017. Petitioner duly accepted the said Office Order dated 02.03.2017.

6. Government of West Bengal, Finance Department Audit Branch issued a G.O. No. 4662-F dated Kolkata 01.06.2005 which reads as follows.

*“1) The question of prescribing the period of probation in the promotion post for considering further promotion to higher post or grade has been under consideration of the Government for some time past.*

*2) After careful consideration of the matter the Governor is pleased to decide that unless a different period of probation stands prescribed under any rules regulating recruitment to any post or service or grade, the period of probation in any promotion post, notwithstanding the provisions of Rule 11 of WBS (ROPA) Rules, 1970, shall be one year and only on successful completion of the period the incumbents may be considered for further promotion to higher post or grade subject to fulfillment of other eligibility criteria for promotion. 4) The period of probation of one year as aforesaid will count from the date of joining the promotion post. 5) This order will take immediate effect.”*

7. Petitioner was promoted to Grade II Bench Clerk with effect from 01.03.2017. Therefore, in view of the G.O. No. 4662-F dated 01.06.2005, petitioner was not entitled to get any promotion till 28.02.2018.

8. Pursuant to an order dated 23.02.2023, the learned District Judge, Purulia filed an affidavit which was affirmed on 16.03.2023. It was specifically stated therein that during the period of 01.03.2018 till 31.03.2019 there was no vacancy of Grade I post in the Court of the District Judge at Purulia for giving promotion to the petitioner and thereafter he retired from service on superannuation on 31.03.2019 and received all retiral benefits.

9. Petitioner would have been normally promoted to Grade I post with effect from 01.11.2012 but for the disciplinary and other proceedings. For such reason petitioner had to retire from service on superannuation holding Grade II post and received the benefits which an employee of Grade II post was entitled to. Under such circumstances, the question that arises is whether the petitioner is entitled to any relief(s).

10. "Sealed cover procedure" is a well known concept in service jurisprudence. Such procedure is adopted when an employee is due for promotion, increment etc. If at the relevant point of time disciplinary or criminal proceedings are pending against an employee, the findings of the Promotion Committee as to the entitlement of such person of the aforesaid benefits are kept in a sealed cover to be opened after such proceedings are over.
11. The Hon'ble Supreme Court in the case of **Jankiraman** (supra) held that when an employee is completely exonerated and is not visited with penalty it indicates that he was not blameworthy in the least and he should not be deprived of any benefits including the salary of the promotional post. It was further held that under such circumstances such employee is to be given notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. The Hon'ble Supreme Court further observed that the normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his.
12. The petitioner seeks to take advantage of the aforesaid proposition laid down by the Hon'ble Supreme Court and the learned Senior Counsel of the petitioner would contend that the petitioner is entitled to all the benefits under Grade I post with effect from 01.11.2012.
13. Now, turning back to the case on hand, this Court finds that only after the petitioner was exonerated from all the charges by the disciplinary authority, he was promoted to Grade II post with effect from 01.03.2017. Petitioner accepted the promotion to Grade II post with effect from 01.03.2017. Therefore, the petitioner cannot be given notional promotion to Grade I post with effect from 01.11.2012. In view of the prevailing Government Order dated 01.06.2005, the petitioner became entitled to promotion to Grade I post only on 01.03.2018 i.e., upon successful completion of the period of probation of one year in Grade II post. However, it is the specific case of the respondents that in the absence of vacancy in Grade I post, petitioner could not be promoted to Grade I post. It is not a case where the petitioner remained away from work for his own reasons although he was offered work. On the contrary the petitioner herein was kept away from the work which is done by an employee in Grade I post for no fault of his. This Court therefore, holds that the petitioner is to be given notional

promotion to Grade I post from 01.03.2018 i.e., the date when he became eligible for promotion to Grade I post in view of G.O. dated 01.06.2005. The petitioner shall have to be given the benefit of the salary of the higher post along with other benefits with effect from 01.03.2018 till the date of his superannuation. The petitioner shall also be given the retirement benefits in terms of the salary fixed by the authorities as per this order.

14. For all the reasons as aforesaid, the following directions are passed by this Court.

- (i) Petitioner shall be given notional promotion to the Grade I post from the date immediately following the date of completion of the period of probation in Grade II post.
- (ii) The salary of the petitioner with effect from the date of notional appointment in the scale of pay attached to Grade I post along with other benefits shall be fixed accordingly.
- (iii) The differential amount on account of arrears salary from the date of such notional appointment to the date of superannuation as well as other benefits shall be paid to the petitioner.
- (iv) Retirement benefits and all consequential benefits in terms of this order shall be paid to the petitioner.
- (v) All necessary steps including forwarding of papers to the concerned authorities shall be taken expeditiously.
- (vi) The entire exercise shall be completed not later than twelve weeks from the date of receipt of the server copy of this order.

15. The writ petition stands disposed of with the aforesaid directions. Application stands disposed of accordingly. There shall be, however, no order as to costs.

16. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**(Hiranmay Bhattacharyya, J.)**

(P.A.-Sanchita)