

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

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

WPCT 34 OF 2023

**Union of India & Anr.
Vs.
Madhusudan Mukhopadhyay.**

Appearance:

For the Appellant : **Mr. Nilanjan Bhattacharya, Adv.**
Mr. Rahul Sarkar, Adv.
Ms. Dipika Sarkar, Adv.
Mr. Siddhant Srivastava, Adv.

For the Respondent : **Mr. Madhusudan Mukhopadhyay, Adv.**
(in person)

Judgment On : **27.7.2023**

PRASENJIT BISWAS, J.:

The instant writ petition is filed by the appellants challenging the impugned order dated-14.09.2022 passed by the Central Administrative Tribunal, Calcutta Bench whereby and whereunder direction is given upon the appellants to adjust the respondent in EDP Centre and promote as JE (IT) or a

higher post SE(IT) in the IT cadre w.e.f. the date persons junior to the respondent were promoted as such notionally with fixation of pension and arrears of pension from such due date.

Being aggrieved by and dissatisfied with the impugned order the appellants have preferred this instant appeal.

The respondent was appointed in the care of Wireless Maintainer-III in the scale of Rs. 950 -1500/-in the year 1983 and subsequently was promoted to the post of Wireless Maintainer-II in the scale of Rs.1200 – 1800 with effect from 02.11.1990. Thereafter, a Notification was issued vide CPO's letter no.E.2890/2/31TRG (Bhuli)/Pt. IV dated 01.03.1990 to fill up one single cadre post of Console Operator in the scale of Rs.1600 – 2660/- under Principal/ZRTI/Bhuli outside the regular cadre of Wireless Maintainer by floating options. The respondent was selected and joined as console operator under Principal/ZRTI/Bhuli. As per entries in the service record of the respondent, in the year 1989 while in the initial stage of WTM- III he was extended 6 advance increments at one go due to his acquiring higher qualification.

The respondent raised issue that as a console operator he was utilised as an instructor, he ought to have been considered for promotion to the post of Sr. Console Operator and Programmer at EDP Centre, Kolkata with effect from his date of joining i.e. 18.02.1992 with all consequential benefits. Although recommendation was made by the Additional General Manager/ Eastern Railway and Dy. Chief Accounts Officer/G but his promotion was denied on the

ground that he was never a staff of EDP, rather he was a staff of Signal and Telecom Communication (S & T) Cadre.

It is the contention of the appellants that the respondent enjoyed the apex scale of Rs.6500-10500/- and Level-7 (7th CPC) in the year 2008 with the extension of the benefit of MACP in his favour and the last enjoyed pay scale of Level-7 is the Scale of supervisors in Group-C. As per averments made by the appellants that the respondent enjoyed a very accelerated career advancement i.e. after induction to Technician III in pay level of L-2 (corresponding to 7th CPC) in the year 1984 on regular basis, he had been elevated to one of the apex scales of supervisor with Grade Pay of Rs. 4200/-as console operator in the year 1992 and thereafter MACP in Grade Pay of Rs.4600/-. The respondent opted for the post of console operator out of his own volition and being selected he was posted as such console operator in scale of Rs.1600-2660/- under Principal/ZRTI/Bhuli since 1992.

On representation by the respondent and highlighted by the Principal/ZRTI/Bhuli the authority concerned made remarks on the issue relating to further promotion of the respondent in the following words-

“Sri M.S. Mukhopadhyay cannot continue against a solitary post of Instructor (Computer) which essentially should be an ex-cadre post. His lien has to be restored in his parent cadre or he has to continue in the single post. Option is Sri Mukhopadhyay’s. There is no question of upgrading the post of Computer Instructor. Sri Mukhopadhyay is already enjoying a higher grade than his contemporaries in WM Cadre. Sri Mukhopadhyay’s option may be initiated.”

The above decision was communicated to the respondent and he opted to continue as console operator/instructor (computer) and declined/refused to be repatriated in his parent cadre of Wireless Maintainer. Despite to the fact that the respondent gave his option to be remained as console operator he filed an application before the Tribunal which was disposed of on 23.09.2021 with the following directions-

“we give liberty to the applicant to prefer a comprehensive representation to the appropriate respondent authority within a period of 3 weeks from the date of receipt of a copy of this order. Upon receipt of the same, the addressee respondent authority, or, any other competent authority, shall dispose of the same in accordance with law and in accordance with the extant rules, within a period of 12 weeks from the date of receipt of such representation. In the event the applicant is able to establish his claim, consequent orders and benefits should issue within 10 weeks thereafter”.

Accordingly, the respondent submitted his representation dated 22.12.2021 before the authority concerned and it was disposed of by it. Challenging the said order the respondent again knocked the door of the Tribunal by filing application being no. O.A. No. 588/2022. The said application preferred by the respondent was disposed of by the Tribunal by passing the impugned order.

Learned counsel representing the appellants vociferously argued that in terms of RBA No.42/2004 the existing staff in EDP Centres who are encadred would be suitably trained and adjusted in corresponding/equivalent grade in the new IT Cadre. The grade in which they are working shall be basis for their absorption in the corresponding/equivalent grade. On the other hand RBA No. 46/2008 provides that the staff working in EDP Centre as on 01.04.2005

having 5 years of service in EDP Centre would be considered for absorption in new cadre w.e.f 01.04.2005 itself but this respondent never worked in the EDP Centre.

It appears from the communication in between the Eastern Railway and the Principal, ZTC, Bhuli that this respondent would be eligible to compete for any open selection like Law Assistant, APO etc. if he is otherwise eligible. Although the respondent was found eligible but his request was turned down by a letter dated 08.06.2004 without giving any reasons. The matter of deprivation was brought to the notice of the General Manager, Eastern Railway but the respondent was not allowed to appear in the selection process.

It further appears from the note of Dy. CPO dated 16.09.2003 that the respondent would be allowed to appear in the departmental open examinations of Law Assistant or APO etc. but again his application for appearing in LDC examination of S & T Department stood rejected in the year 2006. We find that the respondent was deprived of appearing in examination for enhancing his career prospects as well as he was denied the benefit of regularisation of IT cadre, whereas all the console operators were re-designated as JE (IT) and the senior console operator as SE (IT). There is no justification of such deprivation in giving promotional benefits of Gr. B posts.

It appears that a re-organisation of the staffing pattern of EDP Centres came in the year 2009 and new setup was known as Information Technology Centres (IT Centres). It is clarified that the existing staff in the EDP Centres, the staff working on ex-cadre basis in computer Centres of Divisions, workshop

and store depot would be considered for deployment in the equivalent grade subject to fulfilment of the prescribed conditions.

It is the specific stand point of the respondent that he ought to have been considered for promotion to the post of Sr. Console Operator and programmer at EDP Centre Kolkata with effect from his date of joining since all other console operators juniors to him were included in the IT Cadre. Respondent asserted that his promotion was denied on the ground that he was never a staff of EDP but was a staff of Signal and Telecom Communication (S & T Cadre).

Advice was given in the note of Dy.CPO dated 16.09.2003 that this respondent would be allowed to appear in the departmental open examination of Law Assistant or APO etc. but he was declined to give permission to appear in the selection process which is apparently unreasonable. On the other hand all the console operators who held their posts were re-designated as JE (IT) and SE (IT) but this respondent was denied the benefit on the ground that he was a console operator which we find also a whimsical act on the part of the appellants.

The Principal/ZRTI/Bhuli had initiated a proposal to include the single sanctioned post of console operator into the new IT Centre in the centralised cadre. Although, several staffs of EDP Centre were placed as JE(IT) and SE(IT) but this respondent was deprived due to his non-inclusion in the post of JE(IT) from his due date.

We have considered the note of AGM which is also reproduced in the impugned order wherein three options are given –

- (1) To revert Sri Mukhopadhyay back to Wireless Maintainer Group. This is an impossible task as all the lost opportunity supported by Sri Mukhopadhyay will come in the way. His lien was severed unilaterally by personnel branch in 1994 without considering all these aspects, therefore his case deserve a sympathetic consideration. It is also a fact that the wireless maintainer group had major technological changes and has become a sinking of cadre now. This would result in Sri Mukhopadhyay's entry, if attempted now, being seriously objected to by other staff and he would be seriously harmed.
- (2) Adjusting him in the existing cadre of EDP Centre could be a way out. The EDP Centre has a small cadre and it may be worthwhile to examine this option. The cadre is controlled by FA & CAO. Therefore, this would require approval of FA & CAO and both the unions as well as by Sri Mukhopadhyay. He could be given a proper seniority and continued in any of the ex-cadre posts of divisional EDP Centre.
- (3) To continue with the single cadre post of Console Operator at Bhuli after obtaining GM's Approval (it has been mentioned in the note by Dy. CPO/G that not obtaining this approval has been a major procedural error). Thereafter, Sri Mukhopadhyay can be adjusted through promotion either in EDP Centre or in ex cadre posts that may be available in other EDP centres by adjustment. Being in the care of console operator he will have then a legitimate claim of promotion to the Group 'B' post of APO.

As per note AGM prefers 3rd option which is according to him is the simplest one and requires no disruption to any other group.

Considering the entire scenario we are also of the view that the 3rd option as indicated in the note is just one as it does not disrupt to any other group more so when there is no reason to deprive the respondent of his due promotions.

We are in complete agreement with the view taken by the Tribunal and accordingly the impugned order dated 14.09.2022 passed by the Tribunal is affirmed.

In view of the above and for the reasons stated above, there is no substance in the present appeal and the same deserves to be dismissed and is accordingly dismissed

However, there is no order as to costs.

It is further directed that entire exercise as indicated in the impugned order dated 14.09.2022 passed by the Tribunal shall be completed within three months from the date of the order.

Pending applications, if any, also stand disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

