

12.10.2023
DL-47
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6078 of 2023

Dr. Mili Nag Biswas
Vs.
Union of India & Ors.

Mr. Ujjal Ray,
Mr. Sk. Abdur Rahim

...for the petitioner.

Mr. D. N. Ray,
Ms. Sumita Sarkar

....for Union of India.

The petitioner is rendering her service as a Commandant Chief Medical Officer with the Border Security Force (BSF). The annual performance assessment reports (APARs) for the last 5 years show the performance of the petitioner to be “*very good*”. The health status of the petitioner is also found to be in “**Shape-IG-I**”.

The petitioner’s grievance is that despite fulfilment of the eligibility criteria to be considered for promotion to the post of Deputy Inspector General (DIG) she was not considered for promotion.

Mr. Ray, learned counsel appearing on behalf of the petitioner submits that the petitioner was arbitrarily, illegally and with mala fide intent not considered for promotion by the Departmental Promotion Committee (DPC) held on September 1, 2022.

It was initially submitted by the learned counsel appearing on behalf Union of India that disciplinary proceedings were initiated against the petitioner and due to the pendency of such proceedings, the petitioner was not considered for promotion in the 2022 DPC.

A Report-on-Affidavit was sought for by this Court on the issue when such departmental proceedings were initiated.

From the Report-on-Affidavit, it appears that the petitioner was neither placed on suspension nor any charge sheet was issued nor was any disciplinary proceedings pending against her as on April, 2022, when the clearance certificate was issued to her on September 2022 when the DPC was held. From the clearance certificate it also appears that the integrity of the petitioner was “beyond doubt”. There is no criminal charge pending in any Court of law against the petitioner.

Mr. D. N. Ray, learned counsel appearing on behalf of the respondents/Union of India submits that the disciplinary proceedings are being contemplated against the petitioner. It is true that on the date when the DPC was constituted there were no departmental proceedings pending against the petitioner. Charge sheet was not issued on that date.

Due to such contemplation, 2022 DPC did not consider petitioner's case for promotion.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that by not considering the petitioner for promotion in DPC that was held in September, 2022, the respondent authorities acted contrary to the office memorandum dated September 14, 1992 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India. Under clause 2 of the said memo, it is clear that Government servants shall be considered for promotion unless:-

- (i) *The Government servants under suspension;*
- (ii) *The Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*
- (iii) *The Government servants in respect of whom prosecution for a criminal charge is pending.*

This Court also finds it is a well-settled proposition of law that without the disciplinary proceedings being pending against an employee, he/she cannot be unfairly ousted from being considered for promotion by the DPC.

A beneficial reference may be made to the decision reported in (1991) 4 SCC 109 (**Union of India vs. K. V. Jankiraman**). The same view has been reiterated in a decision cited by Mr. Ray reported in (2013) 4 SCC 161 (**Union of India and others vs. Anil Kumar Sarkar**).

In the light of the discussions hereinabove, this Court holds that the petitioner was unfairly and arbitrarily not considered for promotion in the DPC that was constituted on September 1, 2022. There is perversity in the decision making process of the respondent authorities by failing to consider the petitioner for promotion.

Accordingly, this Court directs a DPC to be constituted within 2 months from the date of this order in order to consider the petitioner for promotion to the post of DIG, in accordance with law.

In the event the petitioner is found eligible for promotion after assessment of the APARs, her health status and other parameters, then the petitioner will be given notional benefits of her promotion with effect from the date on which the other successful candidates were given the effect of the promotion, as per the DPC constituted in September 2022.

With the directions aforesaid, **WPA 6078 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Lapita Banerji, J.)