

87.
20.3.2023
S.D.

W.P.A. 24397 of 2022

Shri Amit Kumar Banerjee
Vs.
Union of India & Ors.

Mr. Kanti Kamal Sen
Mr. Manik Bhowmik
... For the Petitioner

Mr. Ranjay De
Mr. Basabjit Banerjee
...For the Respondent Nos. 2 & 3

The petitioner has retired from service with effect from April 30, 2021. By an Office Memorandum dated January 2, 2020, the petitioner was promoted to the posts of Assistant Engineer (Mechanical M 2) with the Pay and Allowances as admissible under the Rules in the Pay Matrix Level 10 of 7th CPC. The Executives by the said office order were given option to fix their pay on the date of approval of the increment in the lower post or allowed the option to fix their pay on the date of promotion within one month from the effective date of promotion. The petitioner was promoted with effect from January 1, 2020. He chose to get his pay fixed at the promotional level from January 1, 2020. The petitioner was granted normal increment in the promotional

post from July 1, 2020. The petitioner's date of retirement was April 30, 2021. By the Office Memo dated December 16, 2021, it has been clarified that in case of promotion/financial upgradation of employees falling between July 1 and January 1 of a particular year, the first increment in the level to which, the promotion is made shall accrue on the following 1st January or 1st July as the case may be, provided a period of six months of qualifying service is strictly fulfilled. Since the petitioner was promoted with effect from January 1, 2020 he was given normal increment after 6 months i.e. with effect from July 1, 2020.

Mr. Sen, learned counsel appearing on behalf of the petitioner submits that the petitioner was entitled to get his increment from the very day of the accrual of increment in the lower post even though he opted for the revised pay from the date of promotion within one month from the date of promotion. The petitioner should not have been given the increment after completion of six months in the promoted post. He should have been given increment at the lower post from the date of accrual of increment.

Mr. De, learned counsel appearing on behalf of the employer, Damoder Valley Corporation (DVC) submits that it has been amply made clear that the Memorandum dated

January 13, 2022 that in case of an employee who has been promoted or financially upgraded between January 2 and 1st July of a year after 2016 and has been **further** promoted/financially upgraded again at a later date and if they chose to opt or re-opt on the occasion of **subsequent** promotion then he/she may give his option in the same application mentioning the date of promotion and the post to which he is promoted whether he will accept the increment at a lower post from the date of the increment or the pay that he is entitled to from the date of promotion. He submits that only one promotion has been given to the writ petitioner after 2016 i.e. on January 1, 2020. The increment has been given to him after six months of completion in the promotional post on July 1, 2020, since he fixed his pay by opting to take the pay at the promotional post from the date of promotion. The next increment would only be granted to him after completion of one year from the date of grant of the previous increment. Since the petitioner retired within one year on April 30, 2021 from the date when the previous increment has been granted, the Memorandum dated January 13, 2022 had no manner of application to the writ petitioner. The writ petitioner was not entitled to re-opt the date of increment from July 1, 2020 to January 1, 2020. In any event, the writ

petitioner has challenged the date of payment of increment after one and half years of retirement and after accepting his monthly salary at the promotional post from the date of promotion.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the by the Office Memorandum dated December 16, 2021, it has been made amply clear that the increment is to be only provided after six months of completion in the promoted post. The said issue was clarified in the Office Memorandum dated November 28, 2019 and reiterated in the Office Memorandum dated December 16, 2021. The writ petitioner during his tenure his service did not challenge the stipulations made in the Office Memorandum dated November 28, 2019. He accepted his increment from July 1, 2020 after availing of the benefits in the promotional post and accepting the salary at the promotional post from the date of promotion on January 1, 2020. The petitioner could have exercised his option in terms of the office order dated January 2, 2020 and accepted increment at the lower post from the date of accrual. Instead of exercising that option the petitioner chose to opt for pay at the next promotional level from the date of promotion. The petitioner after taking the

benefits of the second option is not seeking to re-opt and get the benefits of the first option. In the present writ petition, the petitioner has not challenged the Office Memorandums dated November 28, 2019 and December 16, 2021 whereby increments could be given six months of completion of service at promotional post. He has only prayed for quashing of the Memorandum dated January 13, 2022 whereby option to re-exercise the date of applicability of the increment was given to the promotees who have received **further** promotion or were **further** financially upgraded between January 2 and July 1, after January 1 of 2016 since the same option was not given to the promotees between July 2 and January 1.

This Court finds that the Memorandum dated January 13, 2022 is not applicable to the petitioner as the petitioner was not **further** promoted after January 2016. He was promoted only once in 2020 after January 2016. Therefore, the issue whether the Memo dated January 13, 2022 is discriminatory as against the promotees between July 2 and January 1 is not needed to be decided in the present writ petition.

The petitioner after retirement cannot now seek to insist the Office Memorandum of 2019 and 2021 have to be given a go by by the respondent/DVC in respect of the date of

fixation of increment of the promotees who chose to exercise the second option after having exercised the second option himself.

In the light of the discussions above, **W.P.A. 24397 of 2022 is dismissed.**

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)