

May 03, 2023
(7) ARDR

WPA 24593 of 2018
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CAN 1 of 2022

Sabyasachi Sengupta
Vs.
The Board of Trustees for the
Port of Calcutta & Ors.

Adv. Soumya Majumder,
Adv. Biswaroop Bhattacharya,
Adv. Nilay Sengupta,
Adv. Victor Chatterjee,

...for the petitioner.

Sr. Adv. Saptangsu Basu,
Adv. Somnath Bose,

...for the respondent no.1.

The writ petitioner has challenged the non-consideration of his promotion to the post of Senior Deputy Manager (Administration), Haldia Dock Complex, KPT. The said post felt vacant from March 26, 2018. The Departmental Promotional Committee (DPC) held meetings on August 3, 2018 and September 10, 2018.

The DPC held that since the Annual Performance Appraisal Reports (APARs) were not complete for the period of preceding five years (the period under consideration), it was not possible to assess the performance level and the integrity of the petitioner. The non-availability of preceding five years APARs went against the petitioner for promotion to the post of Senior Deputy Manager (Admn.). The second empanelled candidate was considered more suitable for the said post and promoted.

It is submitted on behalf of the petitioner that the APARs available with the respondent authorities should have been considered in the event the APARs for the period under consideration were either not complete or not available with the respondent authorities. The office memorandum dated March 10, 1989 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievance and Pensions, Government of India, clearly stipulated that where one or more confidential reports are not written, for any reason, during the relevant period, the DPC should consider the confidential reports (CRs) of the years preceding to the period in question and in case such CRs were not available then the DPC should take into consideration the CRs of a lower grade to complete the number of CRs required to be considered by the DPC, to assess the suitability of the officers for promotion. If however, such a course is not possible then all the available CRs should have been taken into account.

On behalf of the Port Trust it is submitted that not only the APARs that were required to be considered by the DPC while considering the suitability of the officer to the promotional post, but also experience, integrity and other factors were to be taken into account for determining the suitability of a candidate though no corroborative evidence was placed before the Court to indicate the experience and/or integrity of the

employee/petitioner was ever questioned by the employer.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the office memorandum dated March 10, 1989 was not considered while the Impugned order dated September 10, 2018 was passed.

The primary reason for not considering the petitioner '**eligible**' for promotion was the non-availability of APARs for the preceding five years and not only for preceding five years but for preceding ten years.

This Court is of the view that non-completion of available APARs was due to the inaction on the part of the respondent authorities/officers who were delegated with responsibility of writing the APARs. No employee should be penalised/made to suffer, because of inaction on the part of the respondent authorities/Employer.

This Court also finds that there is arbitrariness and/or capriciousness in failing to consider the provisions of the office memorandum dated March 10, 1989. Therefore, this Court is of the view that the decision making process of the authority concerned was perverse and the Impugned order dated September 10, 2018 is set aside and/or quashed.

Accordingly, the minutes of the meeting dated August 3, 2018 is also set aside and/or quashed.

The authorities concerned should constitute a Departmental Promotional Committee (DPC) within three weeks from date, considering the fact that the petitioner is due to retire in July, 2023. If the petitioner is otherwise found '**eligible**' to be considered for promotion to the post of Senior Deputy Manager, all the notional benefits that are corresponding to the said post will be given to the petitioner by fixation of his pay and computation of his retiral benefits. The fixation of the pay should be done from the date on which the second empanelled candidate was given the benefits of the promotional post. The DPC so constituted shall take into account the office memorandum dated March 10, 1989 for consideration of the petitioner's case.

The entire exercise is to be concluded by June 30, 2023.

With the directions aforesaid, **WPA 24593 of 2018** is **disposed of**.

Accordingly, **CAN 1 of 2022** is **disposed of**.

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

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

(Lapita Banerji, J.)