

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE**

Present:

**The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee**

C.O.C.T. 1 of 2011

**Samir Kumar Ghosh
Versus
The Union of India & Ors.**

For the petitioner : *Mr. Surajit Samanta,
Mr. Biswajit Samanta,
Ms. Sohini Samanta.*

For the Union of India & Ors. : *Mr. Swapan Kr. Nandi,
Mr. Sachit Talkudar.*

Hearing is concluded on : *6th March, 2024.*

Judgment On : **25th April, 2024.**

Partha Sarathi Chatterjee, J.

Prologue:

1. The dispute involved in the writ petition is the alleged deprivation of notional seniority to the petitioner in the post of Supervisor B (Technical)

w.e.f. 01.01.1973 and its consequential benefits due to non-implementation of the Factory Orders Part-II nos. 86-89 dated 06.01.1996.

Petitioner's Case:

2. The facts, as projected in the writ petition, which need to be narrated for effective adjudication are epitomised as follows:

- a) the petitioner was directly recruited to the post of Grade-A workman (Fitter) on 03.08.1967 after completion of 3(three) years' training including one year's Journeymanship training in Gun Carriage Factory (in short, GCF), Jabalpur, Madhya Pradesh, a unit engaged in manufacturing weapon and equipment under Ordinance Factory Board (in short, OFB) (now ceased to exist and has come under NDPSUs which is under Ministry of Defence, Government of India).
- b) the workmen of trades namely, fitter, turner, miller etc. were graded 'A' whereas the workmen of trade Grinder was graded 'B' and the channel of promotion of the workmen of both the grades were hereunder:

*'Grade- A workman—Supervisor B(T) ---Supervisor A(T)--
Chargeman Grade-II—Chargeman-Grade-I—Assistant
Foreman(T)—Junior Works Manager'.*

*'Grade-B workman – Grade A workman-- Supervisor B(T) ---
Supervisor A(T)-----Chargeman Grade-II-----Chargeman-Grade-I---
—Assistant Foreman(T)—Junior Works Manager'.*

- c) On 18.12.1972, a Departmental Promotion Committee (in short, DPC), which was constituted to consider the case of promotion of Grade-A workman to the post of Supervisor B (T) prepared a '*select list*' of 34 candidates including the petitioner but due to unavailability of vacancy, only 20 numbers of workmen Grade-A were accommodated in the post of Supervisor B(T) w.e.f. 01.01.1973. The petitioner was promoted to the post w.e.f. 02.07.1973. Subsequently, the petitioner was elevated to the posts of Chargeman-II (T), Chargeman-I(T) and Assistant Foreman (T) w.e.f. 01.09.1980, 19.06.1992 and 30.12.2002 respectively. The petitioner demitted his office on 31.08.2005.
- d) In 1991, i.e. after 19 years, the decision of that DPC was reviewed and by passing an order dated 19.09.1991, the G.M., GCF, Jabalpur granted notional seniority to 102/103 numbers of Grade-B workmen to the post of Supervisor-B (T) w.e.f. 1.1.1973 though those workmen Grade-B were *en masse* juniors to the petitioner. Out of them, 50 nos. of those Grade B workmen were transferred to other factories, 35 nos. of Grade-B workmen were absorbed in Jabalpur factory and 15 were absorbed in other factories and 3 nos. of ex-journeymen Grade-B, who were juniors to the petitioner were granted notional promotion to the posts of Chargeman Grade-II and Chargeman Grade-I w.e.f. 01.04.1980 and 12.09.1991 respectively on the basis of their notional seniority in the post of Supervisor B (T) w.e.f. 01.01.1973 *vide* OFB order dated 01.12.1991 and Factory

order dated 23.10.1992 leading the petitioner to draw lesser pay than the above-referred three junior employees.

- e) Subsequent thereto, the General Manager, GCF, Jabalpur *vide* his order dated 10.12.1992 granted notional seniority to 97 numbers of Ex-journeymen (Grade-B) including 35 numbers Grade-B (who were subsequently reverted back to Jabalpur factory) in the post of Supervisor-B(T) six months after their initial posting in the Grade-A. Out of 97, 53 workmen(Gr.-B) were granted notional promotion in the post of Supervisor-B(T) w.e.f. 01.01.1973. Those workmen of Grade-B were uplifted in their career ladder on the basis of such antedated notional seniority.
- f) Since grant of such notional seniority to the workmen, Grade-B entail supersession of the petitioner by his *en masse* juniors and its resultant deprivation of higher pay, the petitioner made a representation to the competent authority on 03.06.1993, which was forwarded to OFB on 30.04.1994.
- g) The G.M. found reasonable force in the petitioner's claim and consequently, *vide* Factory order nos. 86-89 dated 06.01.1996, the petitioner was granted notional seniority in the post of Supervisor B(T) w.e.f. 01.01.1973 but the order dated 06.01.1996 was not implemented.
- h) The petitioner by making numerous representations requested the competent authorities to implement the order dated 6.1.1996 but to no avail. As such, the petitioner was

constrained to approach the learned Tribunal with an original application registered as O.A. no. 876 of 2005, which was dismissed by an order dated 6.11.2008.

- i) The petitioner preferred an application being R.A. no. 44 of 2008 seeking a review of the order 6.11.2008 which also suffered dismissal on 27.01.2009. The petitioner presented an application being M.A. 208 of 2009 praying for recalling of the order dated 27.01.2009 but eventually by an order dated 25.11.2009, the application for recalling was allowed. Situated thus, assailing all the afore-mentioned three orders, this present writ petition was preferred.

Respondents' case :

3. The defence taken by the respondents, as reflected from the affidavit-in-opposition, is as hereunder:

- i) as a sequel to the implementation of the recommendation of Chellam Committee, notional security was granted to the 'B' grade journeymen to that of 'A' grade after six months from the date of completion of journeymanhood and such workmen were considered for promotion only for the post of Supervisor B(T) or equivalent post as a one-time measure. Such benefit had not been extended beyond that post. The grant of such notional seniority had nothing to do with the 'A' grade journeymen who were *en block* seniors and were regularly promoted as per extant rules.

ii) None of notionally promoted Supervisors-B(T) as referred in the Factory Order no. 644-646 dated 10.02.1993 were ever uplifted to higher posts ahead of the petitioner who throughout his entire service tenure remained senior, held higher posts and enjoyed higher pay than those notionally promoted workmen.

iii) To implement the recommendation of 3rd Central Pay Commission, an Expert Classification Committee (in short, ECC) was constituted with an objective of fitment of scales in the grade of industrial employees of Defence Establishment. Based on job evaluation, the employees were categorised in five grades. The recommendation of ECC was accepted by the Central Government.

iv) As per recommendation of 2nd Pay Commission, highly skilled employees, who were drawing scale of Rs. 175/-, were only considered for promotion to the post of Supervisor B(T). Workmen of Grinder trade used to draw the scale of Rs.155/- and hence, they were treated as ineligible for that promotional post. Director General of Ordnance Factories (in short, DGOF) by a written instruction dated 2/11/1997, struck down such criterion and as per revised criterion, 7 years of service in Grade-A was held to be a base criterion to avail of the promotion.

v) Some employees sought intervention of this Hon'ble Court by preferring a writ petition (Civil Rule no. 2433(w) of 1974) which on being transferred to the learned Tribunal were registered as

T.A. nos. 1361/1986 and 1248/1986. By an order dated 30.10.1987 passed in the above-referred applications, the learned Tribunal struck down the executive instruction dated 2/11/1997 and directed grant of a scale of pay (Rs.380-560) to Grinder special at par with the Fitter-A and Miller-A by creating a grade of Grinder Special.

vi) Seeking review of the order dated 2.11.1997, an application vide. no. 74 of 1991 was preferred by the department, which was rejected on 27.11.1992. The issue was ultimately taken to the Hon'ble Supreme Court by the department by preferring a Special Leave Petition and by an order dated 23.01.1995, the SLP was disposed of directing the learned Tribunal to decide the review application on merits.

vii) In the midst thereof, the learned Tribunal (CAT), Jabalpur Bench by its order dated 31.08.1990 directed the department to extend the benefits of the order dated 30.10.1987 to identically circumstanced workmen. The order dated 31.08.1990 was impugned in SLP nos. 8088-8089 of 1995. Meanwhile, the review application *vide* no. 74 of 1991 was disposed of by the learned CAT, Calcutta Bench by an order dated 06.01.1997 recalling the order dated 30.10.1987. Consequently, the workmen, who were granted higher pay in terms of the order dated 30.10.1987, were reverted back to lower scale of pay of Rs. 330 - 480/-.

viii) By passing a common order dated 09.06.1993, the learned Tribunal, Calcutta Bench also directed to extend benefits of order dated 30.10.1987 to certain similarly circumstances workmen. The order dated 09.06.1993 was ultimately set aside by the Hon'ble Supreme Court and all the erstwhile Grinders including R.K. Kamparia, I.J.Bhola, R.S. Ram and SZA Rizvi were reverted back to lower scale and grade of pay. Therefore, the foundation on which the petitioner's claim hinged just collapsed. Resultantly, the Factory orders dated 06.09.1996, which had never been acted upon, had lost its pertinence.

4. The petitioner did not use any reply to the affidavit-in-opposition.

Submissions:

5. Mr. Samanta, learned advocate representing the petitioner submits that the application for review was preferred only to bring two documents to the kind notice of the learned Tribunal. He prays for leave to bring two documents by way of filing a supplementary affidavit. Since we invited the parties to address the main issue, we granted the leave, as, prayed for by Mr. Samanta and a supplementary affidavit, which was submitted incorporating the above-referred two documents, is taken on record.

6. Mr. Samanta, producing a comparative chart asserts that the petitioner was superseded by the workmen, as mentioned in the chart, who happened to be *en masse* junior to him. He claims that two workmen namely, i) Shri SV Thatte and Shri K.L. Namdeo were promoted to the posts of Chargeman Grade-II(T) and Chargeman

Grade-I (T) w.e.f. 1.4.1980 and 12.9.1991 respectively though both of them were juniors to the petitioner.

7. Drawing our attention to two circulars dated 19.09.1991 and 23.10.1992, issued by the competent authority in implementing the order of the learned CAT, Jabalpur Bench dated 11.01.1991 in TA 14 of 1988, O.A. nos. 72 of 1989, 79 of 1989, 118 of 1989, 119 of 1989 and 170 of 1989, it was contended by Mr. Samanta that the workmen referred in those circulars had enjoyed promotions in the service career on the strength of notional seniority w.e.f. 1.1.1973.

8. In response, Mr. Talukdar, learned advocate representing the respondents opposed such claim of Mr. Samanta contending that the petitioner had never been superseded by any of his junior and the petitioner throughout his service tenure was promoted ahead of his juniors. Ultimately, he was promoted to the post of Assistant Foreman and the petitioner has never been deprived of any service-related benefit. It is further contended by him that after the learned Tribunal, Calcutta Bench had recalled its order, all the workmen (Grade-B) who were accorded antedated notional seniority w.e.f. 1.1.1973 were reverted back to lower scale of pay and grade and as such, the factory orders dated 6.1.1996 have not been given effect to. He asserts that the DPC which passed the order dated 6.1.1996 was not properly constituted.

Observation:

9. Therefore, the epicentre of the dispute is the grant of notional seniority to the Grade-B workmen (Grinders) w.e.f. 01.01.1973 for

which the petitioner felt himself deprived of his seniority and its consequential benefits including pay-fixation and resultant enhancement of pension.

10. Records reveal that the workmen (Grade-A) who were placed in the 'select list' dated 18.12.1972 were graded 'Good' and 'Very Good' upon examination of their performance etc. The workmen who were graded 'Good' were then placed *en block* below the workmen graded 'Very Good' and the workmen acquiring the grade 'Very Good' were promoted w.e.f. 1.1.1973 and the petitioner, who was graded 'Good' was advanced to the post of Supervisor-B(T) w.e.f. 2.7.1973.

10. Records further reveal that after the 3rd pay commission, an Expert Classification Committee was constituted to address the issue of fitment of scales in the grade of industrial employees in Defence Establishment. Previously, the employees who would draw scale of pay of Rs. 175/- were considered for promotion to the post of Supervisor-B(T) and as such, the Grinders having maximum pay-limit of Rs.155 were kept outside the promotional avenue. By dint of an order of the Director General, Ordnance Factories dated 2.11.1997 such criterion being pay-limit of Rs.175/- was struck off and instead thereof, 7 years' service in 'A' grade was fixed as base criterion for being considered for promotion. Resultantly, an integrated and dovetailed seniority list was prepared and even, a new grade being Grinder Special which was equivalent to that of Highly Skilled in the grade of Miller, Fitter etc. was also created.

11. The issue came up in this Hon'ble Court in a writ petition. A rule was issued and as such, the same was registered as Civil Rule no. 2433(W) of 1974. Then on being transferred, the transferred case was renumbered as TA nos. 1361 of 1986 and 1248/1986. By an order dated 30.10.1987, the executive instruction dated 2.11.1997 was struck down. The department preferred a review application vide. R.A. no. 74 of 1991 which was ultimately disposed of in terms of the order of the Hon'ble Supreme Court and the order dated 30.10.1987 was recalled.

12. In the midst thereof, pursuant to the order passed by the CAT, Jabalpur Bench, benefits acquired by the employees in terms of order dated 30.11.1987 were extended to similarly circumstanced workmen but in view of orders of the Hon'ble Supreme Court passed on 21.07.1997, 20.10.1997 and 12.10.1998, the order recalling the order dated 30.11.1987 attained its finality. Consequent thereto, by virtue of the orders dated 5.3.1997, 19.08.1977, 26.08.1997, 29.09.2000 and 9.10.2000, all the Grinders including the four employees whose names were referred in the representation of the petitioner were reverted to lower grade and scale and the antedated notional seniority which was accorded to them w.e.f. 1.1.1973 was withdrawn. The respondents on solemn affirmation have admitted such facts.

13. By filing supplementary affidavit, the petitioner made an effort to cite examples of certain other workmen (Grade-B) contending that those employees though *en masse* juniors to the petitioner were awarded promotion ahead of the petitioners on the strength of their

notional seniority w.e.f. 1.1.1973. Based on the stand taken by the respondents, by passing well- reasoned order, the learned Tribunal, which in our view, has rightly observed that all the Grinders who were awarded antedated notional seniority w.e.f. 1.1.1973 were all reverted back to lower grade and scale. The learned Tribunal has observed that DPC which decided to issue orders dated 6.1.1996 was erroneously constituted. As such, the foundation upon which the petitioner based his claim collapsed. The learned Tribunal, in our view, was justified in holding that the petitioner had throughout his service tenure enjoyed promotions ahead all of his juniors. Despite reversion of all workmen (Grade-B) acquiring antedated notional seniority to lower grade or scale, any anomaly, if still subsists, no legality can be bestowed thereto and such anomaly cannot be based to direct the respondents to grant antedated notional seniority w.e.f. 1.1.1973 and its consequential benefits to the petitioner, as prayed for.

14. We are not oblivious that Article 14 of the Constitution of India speaks about positive concept and cannot be enforced in a negative manner. If any illegality or irregularity is committed in favour of any individual or group of individuals, one cannot invoke the jurisdiction of the Courts for perpetuating the same irregularity or illegality in his favour on the reasoning that he has been denied the benefits which have been illegally extended to others. [See, the judgment of *Union of India VS. M.K. Sarkar*, reported in (2010) 2 SCC 59]. The benefits that were extended to a certain group of workmen once but were

withdrawn subsequently in terms of the orders of the Hon'ble Apex Court cannot be directed to be extended in favour of the petitioner.

15. The learned Tribunal upon giving anxious consideration to the factual aspects has negated the petitioner's claim. We do not find any error, least to say any patent error or jurisdictional error warranting interference with the order impugned. The order impugned does not suffer from any substantial failure of justice or any miscarriage of justice to prompt us to take any other view at variance with the view taken by the learned Tribunal.

16. As a result, the writ petition being devoid of merits stands dismissed, however, without any order as to the costs.

17. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

18. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)