

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 924 of 2009

**Subir Bhattacharjee
Versus
State of West Bengal & Ors.**

For the petitioner : Mr. Mihir Kumar Das
Mr. Sujit Bhattacharya

For the WBPDCCL : Mr. Ranjay De
Mr. Basabjit Banerjee
Mr. A.A.Bose

Heard on : 02.04.2024

Judgment on : 1st July, 2024

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, calling upon the respondents, especially the respondent no. 4 to take all possible steps for affording due promotion to the petitioner to the post of Senior Personal Assistant commensurate with the scale 17 and to award the third promotion under the Assured Promotion Scheme¹.

2. The petitioner had initially joined the West Bengal State Electricity Board² on 3rd December 1980 on temporary basis in the post of Stenographer, Grade-II and at the relevant point of time was posted at Nadia. After completion of one year of service in the WBSEB, the service of the petitioner was confirmed on December 1981. According to the petitioner, after completion of five years of service with the WBSEB in the year 1985 in view of the Office order no. 3054 dated 3rd March 1980 and Office order no. 3143 dated 30th October 1980, he was elevated to the senior scale, i.e., from scale 7 to scale 8 with scale of pay of Rs.790-30-(19)-1060-32(5)-1220 vide office order dated 7th January, 1986.
3. Records reveal that while working with the WBSEB on the basis of the option exercised by the petitioner and subsequently in terms of circular dated 15th September 1988, the petitioner was offered the post of Stenographer Grade-II in West Bengal Power Development Corporation Ltd³, with continuity in service and all benefits admissible under the WBSEB in the scale of pay of Rs. 790-30-(19)-1060-32(5)-1220. The petitioner accepted the said appointment in WBPDCCL subject to the above conditions. Following the aforesaid and in terms of revision of pay and allowances in short (ROPA) vide office order no. 4496 dated 31st March 1990 as applicable to the WBPDCCL, the petitioner's pay

¹ Hereinafter referred to as APS

² Hereinafter referred to as WBSEB

³ Hereinafter referred to as WBPDCCL

was revised from 790-30-(19)-1060-32(5)-1220 to Rs. 1200-35(8)-1480-40(8)-1800-45(5)-2025.

4. Still later, in terms of office order no. 185/91 dated 19th December 1991 benefit to the next higher scale of pay in certain contingencies embodied in Regulation 76 (I) & (II) of the West Bengal Power Development Corporation Limited Employees' Service Regulations⁴ was given effect to, on the basis of the guidelines prescribed therein. In partial modification of the aforesaid office order no. 185/91 dated 19th December 1991 a Career Advancement Scheme was introduced vide Office order no. 23/95 dated 14th March 1995. In terms of the aforesaid scheme it was provided that the employees on movement to next higher basic scale under Career Advancement Scheme shall be given the designation of the next promotional post in relation to his original lower post with a prefix of "*Additional*". It was further provided that employees placed to next higher scale with new designation prefixed with "*Additional*" shall, however, continue to perform the duties and responsibilities of lower post held by them immediately before movement to next higher scale and despite such movement to next higher scales with new designation, seniority of such employees shall be continued to be borne in the original lower post from which the movement is allowed and they will be eligible for consideration for regular promotion to the next

⁴ Hereinafter referred to as the said Regulations

higher post in relation to the lower post in terms of existing rules of the WBPDCCL.

5. It was further, *inter alia*, provided that employees holding regular post in senior scale of Rs. 3450-125(14)-5200/- against serial number 9 of ROPA 1990, who are initially appointed in the 1st level class-I, shall come under the purview of the Career Advancement Scheme. In terms of the aforesaid and on the basis of office order no. 36 dated 31st January 1996 the petitioner was redesignated as Additional Senior Stenographer with effect from 11th December 1995. Subsequently, in terms of ROPA, which was made effective to the employees of WBPDCCL vide Office order number 04/99 dated 14th January 1999, the petitioner was fitted to the scale of Senior Stenographer with the existing pay of Rs. 1260-2184 and revised pay of Rs.4250-7260 in the revised post of Senior Stenographer (Scale number 10).
6. In April 2001 vide office order no. 54/2001 dated 25th April 2001, the WBPDCCL had introduced a new Assured Promotion Scheme (APS) for its employees. In terms of clause 5.3 of such scheme a Corporation employee who has been holding a higher scale of pay attached to the next promotional post applicable to him and had been given the designation of the higher post with suffix 'A' under the existing Career Advancement Scheme, shall be formally promoted to the said higher post with effect from the date of issuance of the order without undergoing any formalities. It was,

inter alia, provided that in terms of clause 5.4 of the APS that a Corporation employee who had already moved to the first or second promotional post as applicable to him either on getting normal promotion prior to issuance of the order, or promotion given in terms of paragraph 5.3 of the order shall be deemed to have got the first APS or second APS respectively and shall be entitled to move to the next promotional post on completion of continuous and satisfactory service of 16 years and 20 years respectively reckoned from the date of first entry in Corporation's regular service as well as three years of continuous and satisfactory service in the first promotional post or the second promotional post, as the case may be, reckoned from the date of promotion to such a post, both conditions being fulfilled.

7. As such, the petitioner, in terms of the aforesaid APS not only stood promoted to the post of Senior Stenographer but became entitled to a revised pay scale no., 11, i.e., Rs.4500-8200/- with effect from the date of introduction of APS. In terms of Office order number 728/2004 dated 4th March 2004 the petitioner had been given the effect of scale no., 11 with effect from 1st February 1999. According to the petitioner in terms of annexure II of the aforesaid APS, he was entitled to award of first APS on and from 25th April 2001 in scale no. 13, since, according to the petitioner he had, already by such time, been granted scale no. 11.

8. The petitioner contends that although, in terms of Office order no.728/2004 dated 4th March 2004 he was given the scale of Senior Stenographer with effect from 1st February 1999 in lieu of 25th April 2001, however, the designation of Selection Grade Stenographer was not granted to him from 1st February 1999 till 19th March 2007. The petitioner contends that although, in conformity with movement and path of Annexure-II, of Office order no. 54/2001 dated 25th April 2001 the up-gradation fixation of Scale no. 11 was available to the petitioner along with the first APS, the respondents, however, vide Office memo no. 993 (1-12) dated 21st February 2008 had called upon the petitioner to appear in the second promotional post directly in line with the lower revised induction scale no. 9 by wrongfully treating his case of upgradation as promotion.
9. This according to the petitioner had caused an anomaly. It is in the circumstances that the petitioner had requested the authorities stating that his next higher grade on promotion was Special Assistant in the promotion Scale no.15 and not in scale no. 13 as Personal Assistant. Unfortunately, the respondents have wrongfully withheld the promotional avenue of the petitioner and had acted contrary to their own designated APS by issuing the letter dated 9th April 2008 calling upon the petitioner to participate in a promotional process which would restrict the petitioner's eligibility to the post.

10. Learned advocates appearing for the respective parties have argued the matter at length. I find that the bone of contention lies in implementation of the APS dated 25th April 2001. I find that Mr. Dey, learned advocate appearing for the respondents by referring to Clauses 5.3 and 5.4 of the APS and Annexures thereto has contended that since, the petitioner was inducted in the WBPDCCL in the year 1986, the scale no. at the induction level should be taken into consideration and in the petitioner's case since, the same was scale no. 9, his award of first APS would be restricted to scale no. 11 and not scale no. 13.

11. To substantiate the same, Mr. Dey relies on the offer letter dated 27th February/2nd March 1989. As such, on the basis of the said letter since, the scale of the petitioner was scale no. 9, the same is to be treated as the scale no., at the induction level. Having regard to the same, if the scale no. 9 is treated to be the induction level scale for the petitioner and scale no. 11 being the award as the first APS with effect from 25th April 2001 which was later revised in terms of the office order dated 4th March 2004, with effect from 1st February 1999, there can be no denial for grant of 2nd APS to the petitioner, on the petitioner completing 16 years of continuous and satisfactory service and three years of continuous and satisfactory service in the first promotional post.

12. If the date of first promotion in the APS in terms of Clause 5.4 of the Office order dated 25th April 2001 is treated to be 25th

April 2001, then on completion of three years of continuous and satisfactory service the petitioner became entitled to the 2nd APS with effect from 25th April 2004, inasmuch as, by such time the petitioner had already completed 16 years of satisfactory and continuous service.

13. Admittedly, in this case such benefit was not afforded to the petitioner. It appears that by office order dated 9th April 2008, the petitioner was called upon to attend the selection committee for suitability test from Selection Grade Stenographer to Personal Assistant. Since, the petitioner has questioned the aforesaid belated promotional opportunity and since, according to the petitioner the aforesaid offer of promotion to the post of Personal Assistant was contrary to the APS, the petitioner was constrained to move the instant writ petition before this Court.

14. Records, however, reveal that the respondents did not consider the case for permitting the petitioner to the next higher grade inasmuch as the petitioner had remained absent. It may, however, be noticed that the APS was introduced with the object of providing assured promotion. In terms of the said scheme, the procedure for assessment of suitability of incumbents for promotion under APS has been provided in Annexure-I of the said APS. The relevant portion thereof is extracted hereinbelow:

“The procedure for assessment of suitability of incumbents for promotion under **Assured Promotion Scheme (APS)**”

(Ref : Office Order No. 54/2001 Dated 25.04.2001)

- i) The Selection shall be made on the basis of marks obtained by candidates against following yardsticks :
 - a) Attendance
 - b) Performance Appraisal Report (PAR)
 - c) Suitability Test
 - d) Observance of command line structure
- ii) The maximum marks against Attendance shall be 25 against PAR shall be 25 and against Suitability Test shall be 40 and against observance of command line structure shall be 10.
- iii) In order to be considered for promotion the candidates should have 70% marks in the Attendance and should have integrity clearance from the Controlling Authority.
- iv) The candidate securing 60 marks or more shall be promoted under Assured Promotion Scheme subject to fulfilment of condition, contained in previous Clause.
- v) The Suitability Test will be conducted for evaluation of employee regarding his knowledge of work, initiative, promptness in disposal of works and communication skills, etc.
- vi) Different suitability Tests shall have to conducted for different categories of employees considering their nature of responsibilities in the present assignment as well as likely responsibilities in the proposed promotional assignment. The details of suitability tests for different posts are being finalized and shall be subsequently published. However, incumbents who appeared in the Written Tests at induction level or to any promotional posts may not be required to appear in the Written Test for APS.”

15. From the above, it would be apparent that there is no special consideration for the interview. The assessment for suitability to the post are based on past performance, which,

inter alia, include, attendance, performance, appraisal, report, observance of command line structure and suitability test. The details of suitability test are yet to be finalized. Having regard to the above, there was no justification for the respondents to deny the benefit of assured promotional scheme to the petitioner for the petitioner having not appeared in the interview. In my view the respondents having found the petitioner eligible for promotion under APS and having shortlisted the petitioner promotion to the post of personal assistant in terms of the circular letter dated 9th April 2008 ought not to have denied the said benefit to the petitioner in as much as the petitioner otherwise comes within the zone of consideration, for promotion to the next higher post, being the post of personal assistant.

16. Having regard to the above I am of view, the petitioner should be afforded with the benefits of the promotional post with effect from the date when the petitioner became eligible for promotion under the APS that is with effect from 25th April 2004. In the interregnum since, the petitioner has already stood superannuated the petitioner shall be eligible to notional promotional benefits by treating the petitioner to have retired from the promotional post and the retiral benefits of the petitioner be recomputed and the same be disbursed in his favour, within a period of eight weeks from the date of communication of this judgment and order.

17. With the above observations and directions writ petition stands disposed of.

18. There shall be no order as to cost.

Urgent photostat certified copy of this order if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)