

19.06.2024
Item No.90
Court No.11
Avijit Mitra

WP.ST 34 of 2024

In re: An application under Article 226 of the
Constitution of India;

And

Samir Karati
- Versus -
State of West Bengal & ors.

Mr. D.N. Ray,
Mr. Rajesh Kumar Shah,
Mr. Sourav Halder

....for the petitioner

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,
Mr. Pinaki Dhole,
Ms. Ashmita Chakraborty

...for the State

The present writ petition has been preferred
challenging an order dated 17th May, 2023 passed by
the learned Tribunal in the original application
(hereinafter referred to as OA) being OA 529 of 2022.

The petitioner's case is that he was selected and
recruited as constable in '*Kolkata Police*'. He joined on
15th March, 1999 and when he was undergoing
training in Police Training College, Barrackpore, he fell
ill on 30th August, 1999 and was admitted in Brigade
Police Hospital. He was released from the said hospital
on 6th September, 1999 with medical advice for taking
rest for further seven days. He submitted a
representation stating such facts on 12th September,
1999. The competent authority thereafter issued a
memo dated 22nd September, 2009 asking him to join

within 3 days but he failed and as such a show cause notice was issued on 3rd November, 1999 to which the petitioner replied but by a memo dated 4th January, 2000 issued by the respondent no.3, he was informed that he had been discharged. Challenging the said order, the petitioner preferred OA 1012 of 2001. The same was disposed of by an order dated 21st August, 2001 directing the respondent no. 2 to consider the said representation. Pursuant thereto, the said respondent passed an order on 4th December, 2001 discharging the petitioner with effect from 14th September, 1999. Aggrieved thereby, the petitioner preferred OA 238 of 2002. The same was dismissed by an order dated 2nd July, 2004. Challenging the same, the petitioner preferred a writ petition being WPST 589 of 2004. By an order dated 10th September, 2004, the writ petition was allowed and the orders dated 4th January, 2000 and 4th December, 2001 were quashed. The Court directed the authorities to reinstate the petitioner and to allow him to complete his training, in accordance with law. Pursuant to the said order, the petitioner, who was a candidate of the 62nd batch was allowed to complete basic training with the 80th batch, as would be explicit from the order dated 24th December, 2004 and in the said order, it was also stated that the period from 14th September, 1999 till his reinstatement would be

treated as '*dies-non*'. The petitioner thereafter was not being promoted though candidates belonging to his batch were being favoured with such promotion. Aggrieved thereby, the petitioner preferred OA 529 of 2022 *inter alia* praying for modification of the order dated 24th December, 2004 and for issuance of necessary direction upon the respondents to re-fix his seniority amongst his batch mates, who belonged to 62nd batch as he had already passed departmental examination. The said OA was dismissed by the order impugned in the present writ petition.

Mr. Ray, learned advocate appearing for the petitioner submits that by the order dated 10th September, 2004 passed in WPST 589 of 2004 the order of discharge was set aside and quashed and accordingly his reinstatement ought to have been considered by the authorities on and from the date of discharge and the entire period from the said date of discharge till his reinstatement ought to have been considered by the authorities for granting him promotion from the date the candidates of the 62nd batch were promoted. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the same.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents denies and disputes such contention and submits that the

order of reinstatement dated 24th December, 2004 was accepted by the petitioner and he did not challenge the same. In the said order, it was categorically directed that the period from the date of discharge till reinstatement, would be treated as '*dies-non*'. About 18 years thereafter, the petitioner had preferred the OA primarily praying for refixation of his seniority and promotion from the date on which his batch mates of the 62nd batch were promoted. Such claim is not tenable in law more so when in the midst thereof about 5,500 candidates have been promoted and their rights cannot disturbed. Reliance has been placed upon a judgment delivered in the case of *Vijay Kumar Kaul & Ors. Vs. Union of India & Ors.* reported in (2012) 7 SCC 610.

Indisputably, the petitioner completed his training with the candidates of the 80th batch and after completion of such training, he joined regular service and as such the learned Tribunal rightly observed that '*the question of reverting to the 62nd batch and thus, being promoted to the post of ASI (UB) is not valid*'.

The argument of Mr. Ray that the period from the date of discharge till the date of reinstatement (14th September, 1999 to 24th December, 2004) ought to have been treated by the respondents as '*as on duty*' since the discharge order was quashed in the earlier writ petition was rightly discounted by the learned

Tribunal since the petitioner accepted the said order and completed training with the candidates of the 80th batch. He admittedly did not challenge the said order dated 24th December, 2004 in which it was categorically stated that the period from the date of discharge till the date of reinstatement would be treated as '*dies-non*'. About 18 years thereafter, the petitioner sought for clarification of the said order dated 24th December, 2004 by filing OA 529 of 2022.

A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

For the reasons discussed above, the writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Supratim Bhattacharya, J.) (Tapabrata Chakraborty, J.)