

WPCT 20 of 2018
(Mr. Dibyendu Biswas Vs.
Union of India & Ors.)

**Mr. Partha Sarathi Bhattacharya, Ld. Sr. Adv.
Mr. Pranab Kumar Biswas**

.... For the petitioner

Mr. Rudra Jyoti Bhattacharjee

..... For the respondents

The present writ petition has been preferred challenging an order dated 19th January, 2018 passed by the learned Tribunal in the original application (hereinafter referred to as the OA), being OA 350/1028/2016.

Records reveal that the OA was preferred by the petitioner primarily praying *'for a direction upon the respondents to give effect of promotion of the applicant to the post of Sr. Accounts Officer w.e.f. 1.1.2014 (at par the date of promotion of the immediate junior) instead of from 1.4.2015 and to effect the seniority from the same date on 1.1.2014 in the grade of Sr.AO above the position of immediate junior in the feeder post with all consequential benefits within a stipulated period'* averring, *inter alia*, that he was an Assistant Accounts Officer (hereinafter referred to as AAO) posted at Kolkata and was transferred on promotion as Pay & Accounts Officer (hereinafter referred to as PAO) to the Ministry of Urban Development in Shillong, Meghalaya on 23rd August, 2012. On 25th

August, 2012, the petitioner submitted a representation for consideration of his posting after promotion at any place in Kolkata area so that he can reside with his ailing father. The said representation was considered by the authorities and his posting at Shillong was cancelled and he was posted at Farakka, West Bengal *vide* order dated 19th October, 2012 and was released from his duty from the feeder post of AAO in Kolkata after his reliever joined as per request of PAO of CBEC *vide* letter dated 4th January, 2013. The next promotional post from the post of PAO was the post of Senior Accounts Officer (hereinafter referred to as Sr.AO) and such promotion was guided by the appropriate recruitment rules promulgated *vide* notification dated on 25th September, 2000. As per the said recruitment rules, the eligibility for promotion as Sr.AO was a minimum service of two years in the grade of PAO and that officers '*not short of the requisite qualifying/ eligibility service by more than half of such qualifying/ eligibility*' can also be considered for promotion if their juniors are considered for such promotion. By a memo dated 11th January, 2016 it was intimated that he '*was not eligible for the promotion as Sr. AO for the vacancy year 2014-15 due to less than one year service in the grade of PAO as on 01. 01. 2014. Further, he has already been promoted as Sr.AO w.e.f. 01. 04. 2015 for the vacancy year 2015-16 as per RRs and his seniority in the grade of Sr.AO fixed accordingly*'.

Considering such sequence of facts and applying the ratio of the judgment delivered by the learned Tribunal in the case of *G. S. Sharma Vs. Union of India & Ors.* (OA No. 543/2015), the learned Tribunal dismissed the OA.

Mr. Partha Sarathi Bhattacharya, learned senior advocate appearing for the petitioner submits that for the delay on the part of the respondents to consider the petitioner's initial representation dated 25th August, 2012 and for belated promotion to the post of PAO at Farakka *vide* memo dated 19th October, 2012 and issuance of release order thereafter on 4th January, 2013, the petitioner cannot be made to suffer. Such issue, as urged before the learned Tribunal, was glossed over and no finding was returned on the same. Such infirmity warrants interference of this Court.

He further argues that it was the contention of the respondents that the officers who have completed half of the requisite service (two years) can also be considered for promotion if their juniors are considered for promotion. In terms of such provision read with the relaxation clause as provided under the recruitment rules, the respondents ought to have considered the petitioner's claim even if he had not completed half of the requisite period service (two years). In support of such contention reliance has been placed upon a Gradation List as on 1st January, 2024 referring to one Shri Krishan Goyal whose date of promotion as AO was on 2nd May,

2018 and his date of promotion as Sr.AO was 1st January, 2019, i.e., less than one year.

Per contra, Mr. Rudra Jyoti Bhattacharjee, learned advocate appearing for the respondents submits that to substantiate his claim, the petitioner cannot rely upon any document which was not placed before the learned Tribunal.

He further submits that the petitioner has subsequently been promoted to the post of Sr.AO *vide* memo dated 31st March, 2015 and he could not have been promoted to the post of Sr.AO for non-fulfilment of the eligibility criteria in the vacancy of 2014-15.

He argues that initially promotion was granted to the petitioner to the post of PAO at Meghalaya on 23rd August, 2013. He himself did not join and submitted a representation to stay in Kolkata. Such representation was considered and he was posted at Farakka. The release order was ultimately issued on 4th January, 2013 and the same was accepted by the petitioner. In the said sequence of facts, the petitioner now cannot turn back and claim promotion pertaining to the vacancy period of 2014-15. In view thereof, the petitioner's claim was rightly refused by the learned Tribunal and there is no infirmity in the said order.

In reply, Mr. Partha Sarathi Bhattacharya submits that the Gradation List as on 1st January, 2024 could not

have been produced before the learned Tribunal since the OA itself was disposed of on 19th January, 2018.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the petitioner was transferred on promotion to the post of PAO at Meghalaya on 23rd August, 2012. He did not accept the same and submitted a representation praying for posting as PAO anywhere in Kolkata. In consideration of the representation, he was posted as PAO at Farakka in which he duly joined after issuance of the release order on 4th January, 2013. He admittedly did not complete one year of requisite service in the post of PAO for being considered for promotion to the post of Sr.AO pertaining to the vacancy period of 2014-15 and in the said conspectus of facts, the learned tribunal rightly discounted the argument of the petitioner that he should be granted promotion to the post of Sr.AO for the vacancy years 2014-15.

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 impugned order, warranting interference in the present writ petition.

Accordingly, the writ petition being **WPCT 20 of 2018** is dismissed.

It is, however, made clear that dismissal of the writ petition shall not prevent the petitioner from submitting a representation afresh on the basis of Gradation List as on 1st January, 2024, if so advised and in accordance with law.

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

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

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