

25.06.2024
Ct. no.11
Sl. no.11/sn/sb

WPCT 245 of 2011

**Rama Prosad Mukherjee
-Vs-
Union of India & Ors.**

Mr. Siddhartha Sankar Mandal
Ms. Arunima Das Sharmafor the petitioner.

Mr. Subrata Royfor the respondent.

The present writ petition has been preferred challenging the order dated 31st August, 2010 passed by the learned Tribunal in the original application (hereinafter referred to as OA), being OA No.305 of 2008.

Records reveal that the petitioner preferred the OA praying for issuance of necessary directions upon the respondents to revise his pay scale and to grant all consequential benefits treating him as senior most in the Clubbing Group-II category. One Ram Sagar Thakur was impleaded as respondent no.6 in the OA on the basis of a miscellaneous application preferred by the petitioner stating *inter alia* that Ram Sagar Thakur had superseded him as he had joined the post of Blacksmith Trade subsequent to the petitioner. In the said OA, it was *inter alia* stated that though such act of supersession was brought to the notice of the competent authority by repeated representations, the same were kept in abeyance and ultimately his claim was denied by orders dated 04.07.2007 and 28.09.2007.

Drawing our attention to the seniority list as annexed at page 33 of the writ petition and the office order dated 16.09.1982 at page 31 of the writ petition, Mr. Mandal, learned advocate for the petitioner strenuously argues that a composite perusal of the said two documents would reveal that the petitioner was given promotion to the skilled group in the Letterman trade with effect from 01.08.1978 whereas the respondent no.6 joined the skilled group in the Blacksmith trade on 17.09.1982. Such discrimination as practiced though brought to the notice of the respondents through repeated representations on and from the year 1993 was kept in abeyance and the petitioner's claim was ultimately turned down by orders dated 04.07.2006 and 28.09.2007. Immediately thereafter the petitioner filed the OA in the 2008 and as such there had been no delay on the part of the petitioner. The delay which occurred is clearly attributable to the respondents. A perusal of the impugned order would in fact reveal that the learned Tribunal without delving in to the merits of the petitioner's claim mechanically rejected the OA on the ground of limitation. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court. In support of such arguments, reliance has been placed upon the judgment delivered in the case of *Barindra Nath Jha Vs. Coal India Ltd. & Ors.* reported in 1996 (II) CHN 273.

Mr. Roy, learned advocate appearing on behalf of the respondents denies and disputes the contentions of the

petitioner and submits that it would appear from the records that the grievance of the petitioner originated from the date of promotion with effect from 01.08.1978. Subsequent thereto, the petitioner availed promotion to different other categories and finally retired on 30th September, 2007 from the post of Senior Technician. While accepting such promotion, the petitioner did not allege any discrimination. The service of some of the representations of the year 1993, as referred to in the OA, was categorically disputed by the respondents, as would be explicit from the averments made in the reply filed by the respondents before the learned Tribunal. It is only after cessation of employer employee relationship on 30th September, 2007, the petitioner had preferred the OA taking advantage of the reply given to the last representation of the petitioner in the year 2006. In the said conspectus of facts, the learned Tribunal has rightly refused to entertain the OA on the ground of delay.

Drawing our attention to the averments made in the affidavit-in-opposition filed before this Court, Mr. Roy, argues that the petitioner was appointed on 01.02.1970 as Khalasi (Group-D) and subsequently promoted as Letterman -III on 1st August, 1978 whereas the respondent no. 6 was appointed to the post of Khalasi on 06.03.1968. Subsequent thereto, the respondent no. 6 was placed under FCO -III category on 01.08.1978 on administrative grounds and there after he was placed in the post of Blacksmith. The said period of service, as rendered by the respondent no. 6 under

FCO –III category cannot in any manner affect the seniority of the said incumbent in the Clubbing Group-II category. In support of such contention reliance has been placed upon a Master Circular No. 34.

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

Indisputably, the respondent no. 6 joined the post of Khalasi on 06.03.1968 whereas the petitioner joined the post of Khalasi on 01.02.1970. Both of them availed promotion to the skilled post with effect from 01.08.1978. During the period from 01.08.1978 to 17.09.1982, the respondent no. 6 was transferred on administrative ground to FCO –III category. Such rendition of service as FCO –III does not deprive the said incumbent of his seniority in the Clubbing Group-II category, as reflected in the seniority list dated 13th November, 1993.

The argument of Mr. Mandal, that the delay which has occurred is attributable to the respondents is not acceptable to us. The promotion to skilled grade was with effect from 01.08.1978. It is only after his retirement on 30th September 2007 and after cessation of employer employee relationship, the petitioner approached the Tribunal alleging discrimination. There even exists a dispute as to whether all the representations referred to in the OA were at all appropriately served upon the authorities. In the midst thereof, on the basis of seniority attributed in the Clubbing category, the petitioner availed promotion in different other

groups till his retirement from the post of Senior Technician. The prayer made by the petitioner after retirement to treat him as senior to the respondent no. 6 and to grant all consequential benefits upon altering the seniority position from the date of promotion to skilled group would have wide ramifications, affecting the rights of several other employees. The judgment delivered in the case of *Barindra Nath Jha (Supra)*, upon which reliance has been placed by the petitioner is also distinguishable on facts.

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.

Accordingly, the writ petition stands dismissed without any order as to costs.

Urgent Photostat certified copy of this order be given to the parties on priority basis if the same is applied for.

(Partha Sarathi Chatterjee,J) (Tapabrata Chakraborty, J.)