

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.O 37 of 2017

Suvra Kumar Dey

Vs.

The State of West Bengal & Ors.

For the Petitioner
(Appears in person)

: Mr. Suvra Kumar Dey.

For the Respondent Corporation

: Mr. Niladri Bhattacharjee,
: Ms. Deblina Chattaraj,
: Mr. Prateek Acharya.

For the State

: Mr. Bhaskar Prasad Vaisya,
: Mr. Ranjan Saha.

Heard On

: 16/01/2024

Judgment On

: 16/01/2024

Rai Chattopadhyay, J.

1. The writ petitioner is the retired employee of respondent No. 2/West Bengal Transport Corporation Limited (formally known as Calcutta Tramways Company Limited). His grievance is with regard to the alleged inaction on part of the said respondent in allowing him cash differential benefits for the period from November 1, 2006 to June 30, 2011 during which period he has been granted the notional benefits of promotion firstly to the post of 'Superintendent-B' and thereafter to the post of 'Superintendent-A'.

2. The petitioner's legal journey has been a long drawn one and necessary facts will be mentioned as when required. For the present it would suffice to mention that the respondent No. 2/respondent No. 4/Managing Director of the Corporation was hearing the written representation of the petitioner, pursuant to a direction of this Court for the same and has ultimately passed an order, i.e, dated June 22, 2011. The relevant portion of the order be quoted as herein below:-

“Apparently, some juniors to Shri Suvra Kumar Dey have been promoted above him. Moreover, meanwhile Shri Suvra Kumar Dey has been awarded Carrier Advancement by the Management in two occasions and that also denote that he is very much eligible for getting higher grade, whatsoever.

The points to be reckoned are that the candidature of Shri Suvra Kumar Dey was not considered at all for the lapses of office though he had very much applied and that he was deprived and that his juniors were made to rise above him. In the personal opinion of the undersigned also Shri Suvra Kumar Dey is by no means inferior to any of the employees promoted to the post of Superintendent-B and Superintendent-A in November 2006 and November 2007 respectively. This lapse of not considering his legitimate case needs to be rectified though this cannot be equated with other normal cases of pay-protection as the circumstances in this particular case is apparently abnormal. The Hon'ble Calcutta High Court has also kindly observed-

“However, it is made clear that this order shall not be treated as a precedent in any other case.”

On the basis of above facts, the present writ petition, as per solemn direction of the Hon'ble Calcutta High Court is disposed of with the following order-

- (a) That Shri Suvra Kumar Dey will be deemed to have been promoted to the post of Superintendent-B with effect from 01.11.2006 and notional benefit to be awarded to him for this.*

(b) That Shri Suvra Kumar Dey will be deemed to have been promoted to the post of Superintendent-A with effect from 01.11.2007 and notional benefit to be awarded to him for this.

(c) The actual effect of the benefit of promotion (now to the post of Superintendent-A) will however be allowed to Shri Suvra Kumar Dey, Superintendent-A with effect from 01.07.2011.”

- 3.** Since thereafter, with effect from November 1, 2006, the petitioner was notionally treated to be promoted as a ‘Superintendent-B’ and was granted the equivalent emoluments. It is evident from the said order of the authority dated June 22, 2011, that the petitioner was granted deemed promotion to the post of ‘Superintendent-B’ with effect from November 1, 2006 and to the post of ‘Superintendent-A’ with effect from July 1, 2011.
- 4.** Mention may be made as regards an order of the said respondent, i.e, respondent No. 2/respondent No. 4/Managing Director dated December 16, 2016. The said respondent while disposing of the petitioner’s claim for differential cash benefit for the period of his notional promotion and in terms of the order of this Court dated December 16, 2016, passed in a contempt proceeding, has decided the issue in the following manner:-

“That Sri Suvra Kr. Dey was deemed to have been promoted to the post of Supdt. ‘B’ with effect from 01.11.2006 & also deemed to have promoted to the post of Supdt. ‘A’ with effect from 01.11.2007 and notional benefit was awarded to him from the date of his promotion mentioned as above. Further it appears that actual effect of the benefit of promotion was allowed with effect from 01.07.2011 as he didn’t work on that period which was deemed to be treated as notional benefit awarded to him.’

It is hence, concluded that the writ petitioner is not entitled any cash benefit from the period from 01.11.2006 to 30.06.2011.”

5. This order dated December 16, 2016, as mentioned above has given rise to the present writ petition in which the petitioner has sought for relief *inter alia* that the said order of the respondent authority dated December 16, 2016, may be set aside. Also that the petitioner may be directed to be immediately granted the differential benefit pursuant to his notional promotion, during the period from November 1, 2006 to June 30, 2011.

6. The petitioner has appeared personally in this case. He has principally raised his grievance on the basis of two fold grounds. Firstly, the petitioner has agitated the point that in 2006 the respondent Corporation/respondent No. 2 notified vacancy, to be filled by way of promotion to the post of 'Superintendent', from amongst the incumbents occupying the feeder post of 'clerk'. The petitioner had applied in response to such notification. However, the petitioner says that he has never been called for to participate in the selection process pursuant to the said vacancy notification for promotion, in spite of duly applying for that. Facts remain that after completion of the process he inquired in writing and was made known to the fact that his application has been misplaced and untraceable from the office of the Corporation/respondent No.2. This being the reason for the petitioner not having granted the opportunity to compete in the selection process, the writ petitioner says that the reason was beyond his control and he had no manner of contribution to the lapse as above that has happened on the part of the respondent authority. It is further emphasised that so far as he himself is concerned, there has no flaw on his part in applying for the post and showing his willingness to come to the consideration zone to participate in the selection process. His case is that, had his application been duly processed by the said respondent, he would have participated in the selection process and be duly promoted at an appropriate time. As at the relevant point of the time he was competent and eligible for promotion he reasonably expects to have been granted such promotion in due course.

Be that as it may, his main contention is that he should not be jeopardised and suffer due to lapses on part of the respondent No.2/Corporation.

7. Secondly, the writ petitioner has vehemently objected to the reasons shown by the respondent authority while rejecting his prayer for differential benefits for the period of notional promotion. He says that the finding of the respondent authority in its order dated December 16, 2016, is passed on absolute non-application of mind and arbitrariness. By referring to relevant documents in the affidavit-in-reply, the writ petitioner has made endeavour to establish before this Court regarding the fact that during the said period he has actually been compelled to discharge duties in the respondent Corporation of an employee of 'Superintendent' category. Very anxiously, he has made this Court to go through the said documents annexed with his affidavit-in-reply from which he has pointed out the job descriptions of the 'Section Officers' and of himself, to submit that he has been made to discharge similar duty as of an employee of 'Superintendent' category, during the concerned period of time. Therefore according to the writ petitioner, the impugned order dated December 16, 2016, is absolutely unsustainable in the eye of law and he urges that the same may be set aside.
8. Ms. Chattaraj has represented the respondent/Corporation/respondent No.2 to 6. She has supported the findings of the respondent in the impugned order dated December 16, 2016. She has specifically pointed out that an employee, unless and until have discharged duties with respect to a particular post shall not be entitled to the emoluments commensurate to the post in actual terms. The entire facts pertinent to the present writ petitioner, before filing of the present writ petition has however, not been disputed in this case. Ms. Chattaraj has admitted on behalf of her client the fact that application of the writ petitioner in

response to the employment notification (for promotion) in 2006 was untraceable from the office of the said respondent for which reason she says, that the present writ petitioner neither could be considered within the zone of consideration for promotion, nor could be called for to participate in the process of selection. According to Ms. Chattaraj the respondent Corporation while accepting its latches to some extent as above, has granted notional benefit to the present petitioner in terms of its order dated June 22, 2011.

- 9.** Ms. Chattaraj would further submit that grant of actual benefits for the said period to the writ petitioner would subject her client to jeopardy in as much as the writ petitioner had agreed with the respondent Corporation for an order as herein below to be passed by this Court in a previous case filed by him being W.P No. 1788 of 2008. The order of the Court in the said matter dated June 13, 2013, has been specifically referred to and it is submitted that the said directions (as quoted herein below) were passed on consent of the parties. It is submitted further that even after consenting before the Court of law with respect to an order the writ petitioner could not have come before the Court of equity again on the self-same ground. That the writ petitioner has not come with clean hands to obtain an order or relief from the Court of equity, as prayed for.
- 10.** Let the relevant portion of the order dated June 13, 2013 in W.P No. 1788 of 2008 be quoted as herein below, as it was quoted in order dated October, 2013 in writ petition being W.P No. 866 of 2011:-

“There was an understanding between the contesting parties in connection with the dispute during the pendency of that writ petition and a compromise petition, being G.A. No. 1602 of 2011 was filed in W.P. No. 1788 of 2008. On the basis of such compromise, the writ petition was disposed of by an Hon’ble Single Judge by an order passed on 13th June 2013 to the following effect, on consent of the parties:-

“After hearing the parties to the Writ Application and on consideration of the materials on record, the Respondent No. 4 is directed to consider the grievances of the writ petitioner supported by documents annexed to the Writ Application and the Supplementary Affidavit in connection thereto and to take a reasoned decision after giving an opportunity of hearing to the Writ Petitioner within three weeks from the date of communication of this order positively.

However, it is made clear that this Order shall not be treated as a precedent in any other case.

Since no Affidavit-in-Opposition has been filed by the Respondents, the allegations made in the Writ Application are not admitted.

The Writ Petition is disposed of without any order as to costs.

All parties are to act on a signed photocopy of this order on the usual undertaking.”

- 11.** Ms. Chattaraj further submitted that the respondent authority has been mindful of the fact that the promotion (notional) granted to the present writ petitioner has been under extraordinary circumstances and not through the regular channel of due selection process. Ms. Chattaraj has further pointed out that since after his promotion in the year 2011, till the date of retirement, the writ petitioner has never been deprived of or discriminated in any way, so far as the service benefits and emoluments are concern. She has sought for dismissal of the writ petition. Ms. Chattaraj has further submitted that the reason of the concerned period being extended that far, i.e, from the year 2006 to the year 2011 is attributable to the writ petitioner only. According to her, had the writ petitioner espoused his grievance within a reasonable period of time, the respondent authorities would have adequate scope to address the same immediately thereafter. She has submitted that the writ petitioner had purportedly sat tight over the matter till the process was completed and only thereafter had come up to raise his grievance. Thus, the

responsibility of the period of notional promotion being expanded, has been cast upon the writ petitioner.

- 12.** Grant of notional benefit of the promotional post to the writ petitioner, with effect from November 1, 2006, is an admitted fact in this case. Very short conspectus requiring decision of this Court, in this writ petition would be if the petitioner who was also granted deemed promotion with effect from November 1, 2006, is entitled to the differential amount of cash benefits on account of salary and other emoluments commensurate to the promotional post during the period for which he was deemed to be promoted.
- 13.** Very naturally, it is conceivable that, but for the latches on part of the respondent authority, there is no other material to find that the writ petitioner was not willing to work in the promotional post, from the very inception. The reason for the petitioner having not been granted opportunity to participate in the selection process for promotion, was misplacement of his application, from the office of the respondent. For that however, he had no role to play and had no contribution thereto. This situation should be considered, to be beyond his control.
- 14.** The respondent has based its case on well applied principle of “no work and no pay” as it is argued that during the concerned period of time, the writ petitioner did not work in the said promotional posts. Application of the said principle of “no work and no pay” would, however, be subject to the condition that the petitioner’s own volition must have been involved, in his not doing work in the promotional post.

15. On this, a verdict of the Hon'ble Supreme Court dated July 24, 2014, may be referred to, that is, **State of U.P vs. B.B.S Rathore**, (Civil Appeal No. 3041/2010). Let the relevant portion be quoted there from, as follow:-

“The following principles emerge from the aforesaid judgments:

- (i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.*
- (ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.*
- (iii) The principle of “no work, no pay” is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is entitled to the arrears of salary.”*

16. A judgment of the same Court reported in **(1999) 4 SCC 181 (State of A.p vs. K.V.L Narasimha Rao)** may also be mentioned, in which the Court was held that:-

“In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier”.

17. The submissions made on behalf of the respondents regarding petitioner's alleged intentional delay in raising his grievance, is also not convincing. The process of selection is fundamentally to be conducted by the authorities only. Any and every person is not expected to follow the same, step by step unless participating into the same. The writ petitioner was not a participant in the selection process, hence it is also not improbable that only after completion of the process and publication

of the result, his knowledge had accrued. The responsibility to point out the respondent's latches, cannot be shoved upon the writ petitioner.

18. Another point is worth noting here. That is, grant of notional benefit of promotion to the writ petitioner, is not a benevolent act of a model employer as a curative measure of its latches, as it has been tried to be projected in this case, by the respondents. Instead, it is an act of compliance of this Court's order, that too in a contempt proceeding initiated against the said respondents.

19. For the reasons as mentioned above and following the ratio of the judgment as referred to above, the impugned order dated December 16, 2016, appears to be gross illegal and unsustainable.

20. To the mind of this Court the point raised on behalf of the respondent authority that the petitioner has not actually worked in the promotional post during that period or that the petitioner's notional promotion was not granted by following the due process of selection would not caused any impediment in the way of the petitioner to get the actual benefit too, of the promotion, though granted to him notionally. Notional promotion cannot be said to be bereft of monetary benefit. That should include the monetary benefit too, excepting for any sufficient reason, to disallow the same.

21. Under such circumstances the writ petitioner would be eligible for the actual amount of emoluments corresponding to the promotional post, with effect from the date of notional promotion, i.e, November 1, 2006. In view of this the impugned order dated December 16, 2016 appears to be bad in law illegal and not maintainable. Thus, the present writ petition merits success.

22. Writ Petition No. W.P.O 37 of 2017 is allowed.

23. The impugned order dated December 16, 2016 is set aside.

24. Respondent No.2 to 6 are directed to immediately release the differential arrear amount of pay and emoluments commensurate to the post of 'Superintendent-B' (for the period from November 1, 2006 to October 31, 2007), and 'Superintendent-A' (from November 1, 2007 to June 30, 2011). Let the same shall be paid to the writ petitioner, immediately.

25. The writ petition being W.P.O 37 of 2017 is disposed of. Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)

Tudu
(p.a)