

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

APO NO.35 of 2024
with
WPO/1428 of 2023
IA GA 1 of 2024

The Board of Trustees for the Shyama Prasad Mookerjee Port,
Kolkata & Ors.
Vs.
Sabyasachi Sengupta

For the Appellant : Mr. Kishore Datta, Sr. Adv.
Mr. Ashok Kumar Jena, Adv.

For the Respondent : Mr. Soumya Majumder, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Victor Chatterjee, Adv

Hearing concluded on : 14th May, 2024

Judgment on : 22nd May, 2024

Soumen Sen, J.:-

1. The appeal is arising out of an order passed by Justice Rajasekhar Mantha on 18th January, 2024 in a writ petition in which the writ petitioner/ respondent has challenged the order passed by the Sr. Deputy Manager (Administration) Haldia Dock Complex on 30th June, 2023 by which the competent authority approved Shri Indranil Hazra to be appointed as a Sr. Deputy Manager, under Administration Division.
2. The genesis of the dispute is non-consideration of the Annual Performance Appraisal Reports (APARs) of the writ petitioner for the last

five years by the Departmental Promotional Committee (DPC) as the administration had failed to complete the said process in relation to the writ petitioner. The DPC recommendation of 2018 would show that in August 2018 a process for promotion for the post of Sr. Deputy Manager, (Administration) at the Haldia Dock Complex (HDC) of the Kolkata Port Trust (KoPT) was initiated. The promotional process did not debar the person already holding the same scale and position from other department to participate in the promotional process to the post of Sr. Deputy Manager, (Administration) at the HDC of KoPT. The writ petitioner although participated in the said process but his candidature was not considered as his APARs for the last five years and prior thereto were not prepared by the KoPT.

3. Three candidates in order of merit were found most suitable for promotion to Senior Deputy Manager (Administration). In order of merit, they were: a) Indranil Hazra, b) Sasanka Sekhar Pandit and c) Ayan Kumar Nag in order of merit. Pandit and Nag were in the feeder post of Deputy Manager. Hazra was already holding the post of Senior Deputy Manager in the (P&IR) department. He participated in this process to switch departments.
4. One of the members of the DPC Shri A.K. Dutta, General Manager (MNS), in-charge of both the 'Administration' as well as the 'P & IR' Departments, of the HDC under the Port Trust refused to release Mr. Hazra.
5. Mr. A.K. Dutta was of the view that Mr. Indranil Hazra who was already promoted to the same post, that is, Sr. Deputy Manager in P&IR Department nine months ago is vitally required in the said department and could not be spared to the Administrative Department as crucial

human resources issues are claimed to be pending at the HDC. As a result whereof Hazra remained with his parent department i.e. P& IR and the next best candidate in the panel Sasanka Sekhar Pandit was thereupon given the post of Sr. Deputy Manger and continued to function until 2023.

6. The said appointment, in fact, benefited Sasanka Sekhar Pandit. Shri Indranil Hazra was the casualty. He appears to have been deprived of such appointment. However, Indranil did not challenge the said decision. The writ petitioner in the year 2018 filed a writ petition being WPA no. 24593 of 2018 challenging non consideration of his case in the promotion process for want of the five APARs.

7. The aforesaid writ petition was disposed of on 3rd May, 2023 by the Hon'ble Justice Lapita Banerjee as her ladyship then was with the following observation:

"The primary reason for not considering the petitioner 'eligible' for promotion was the non availability of APARs for the preceding five years and not only for preceding five years but for preceding ten years.

This Court is of the view that non-completion of available APARs was due to the inaction on the part of the respondent authorities/officers who were delegated with responsibility of writing the APARs. No employee should be penalised/made to suffer, because of inaction on the part of the respondent authorities/Employer.

This Court also finds that there is arbitrariness and/or capriciousness in failing to consider the provisions of the office memorandum dated March 10, 1989. Therefore, this Court is of the view that the decision making process of the authority concerned was perverse and the Impugned order dated September 10, 2018 is set aside and/or quashed.

Accordingly, the minutes of the meeting dated August 3, 2018 is also set aside and/or quashed.

The authorities concerned should constitute a Departmental Promotional Committee (DPC) within three weeks from date, considering the fact that

the petitioner is due to retire in July, 2023. If the petitioner is otherwise found 'eligible' to be considered for promotion to the post of Senior Deputy Manager, all the notional benefits that are corresponding to the said post will be given to the petitioner by fixation of his pay and computation of his retiral benefits. The fixation of the pay should be done from the date on which the second empanelled candidate was given the benefits of the promotional post. The DPC so constituted shall take into account the office memorandum dated March 10, 1989 for consideration of the petitioner's case.

The entire exercise is to be concluded by June 30, 2023.

With the directions aforesaid, WPA 24593 of 2018 is disposed of."
(emphasis supplied)

8. This order has been accepted by the appellant. In implementation of the said order DPC was reconstituted. Following the applicable rules and assessing the performance of candidates on 2018 afresh, in September 2023 the following persons in order of merit, were found suitable for promotion.
 - i) Indranil Hazra
 - ii) Sabyasachi Sengupta (the writ petitioner)
 - iii) Sasanka Sekhar Pandit
 - iv) Ayan Kumar Nag
9. On the basis of the aforesaid assessment it would appear that Sabyasachi Sengupta, the writ petitioner ought to have been given the appointment because of his position in the merit list in preference to Sasanka Sekhar Pandit as Indranil Hazra although was the best candidate for the post could not join the said post due to a "purely administrative decision" taken by Mr. A.K. Dutta, General Manager, one of the Members of the DPC, not to release him for the post of Sr. Deputy Manager (Administration) at HDC as his service in the P&IR Department

was indispensable. The writ petitioner therefore would become entitled to the post of Sr. Deputy Manager (Administration) as the 2nd best candidates.

10. Mr. Kishore Dutta, learned Advocate General appearing on behalf of the appellants has strenuously contended that the aforesaid office orders cannot be quashed as Mr. Indranil Hszra has been given appointment on the basis of the DPC, 2018. The Departmental Promotion Committee, on both occasions, i.e. in 2018 and 2023, found Shri Indranil Hazra to be the most suitable candidate. The writ petitioner could not demonstrate himself to be a better candidate than Shri Indranil Hazra. In paragraph 15 of the judgment under appeal, the learned Single Judge arrived at the conclusion that since, in 2018, Shri Indranil Hazra was not allowed to join, the writ petitioner would have become entitled to the post as the second best candidate. No such case made out or argued by the writ petitioner. The judgment under appeal amounts to review of the judgment passed in the first writ petition. The Hon'ble Supreme Court in the judgment delivered in the case of ***Union of India v. S.K. Goel***,¹ has held that there will ordinarily be no interference by the Courts of Law in the proceeding and recommendation of the Departmental Promotion Committee unless such Departmental Promotion Committee meetings are conducted illegally or in gross violation of Government Instructions or the Rules or where there is misgrading of confidential reports. No such case has been made out by the writ petitioner nor such findings have been arrived at in the judgment under appeal. The said view is reiterated in ***Imlikokla Longchar & ors. v. State of Nagaland & Ors.***²

¹ 2017 (14) SCC 641

² 2022 SCC OnLine SC 1384

11. We are unable to accept the said submission in view of the facts narrated above.
12. The fact remains that Mr. Indranil Hazra could not have joined the said post by reason of the “purely administrative decision” taken in the year 2018 and he continued in the said post without any demur. It is quite clear that by reason of non consideration of the performance record (APARs) of the writ petitioner his case was not considered in the DPC of 2018 and he was arbitrarily left out. If all the relevant record of the writ petitioner were available with the DPC then on the basis of the performance and other criteria Mr. Sengupta would have been placed immediately after Indranil Hazra. Sasakra Sekhar Pandit is benefited by reason of non consideration of the APARs of the writ petitioner and for such arbitrary conduct of the appellants the writ petitioner cannot suffer. The writ petition had challenged his non-consideration by the DPC immediately and secured in the earlier proceeding.
13. The case of the writ petitioner accordingly ought to have been considered on the basis of the revised DPC of 2018. Indranil Hazra was unable to join the post for the reasons stated above. As on date admittedly Indranil Hazra is no more in employment of the appellants and the situation existed in 2018 has remained the same excepting the reason for non-joining by Mr. Hazra is different.
14. In view thereof we do not find any reason to interfere with the order of the learned Single Judge.

15.The appeal and the application accordingly stand dismissed.

16.However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)