

**IN THE HIGH COURT AT CALCUTTA
IN APPEAL FROM ITS CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO 50 of 2024
WPO 1348 of 2023
IA No. GA 1 of 2024
DIBYAJYOTI GHOSH
VS.**

THE COAL INDIA LIMITED & ORS.

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : Mr. Soumya Majumder, Adv.
Mr. Partha Ghosh, Adv.
Mr. Amal Kumar Datta, Adv.
Ms. Simran Sureka, Adv.
Mr. Debashis Das, Adv.

For the Respondents : Mr. Varun Kedia, Adv.

Hearing concluded on : August 1, 2024
Judgment on : August 08, 2024

DEBANGSU BASAK, J. :-

1. Appellant has assailed the order dated March 5, 2024 passed by the learned Single Judge in WPO 1348 of 2023.

2. By the impugned order, learned single judge has dismissed the writ petition filed by the appellant assailing an order dated November 16, 2022 passed by the Chairman and Managing Director of the respondent No. 1 pursuant to the order dated September 27, 2022 passed in WPA 24815 of 2016.

- 3.** Learned advocate appearing for the appellant has submitted that a disciplinary proceeding as against the appellant culminated into an order of censure. He has submitted that the appellant was entitled to a promotion during the pendency of the disciplinary proceedings. Appellant had been recommended for promotion but such promotion was kept in abeyance due to the pendency of the disciplinary proceeding. On the conclusion of the disciplinary proceeding appellant should have been granted the promotion to the post for which he was recommended to during the pendency of the disciplinary proceeding. However, appellant had been granted promotion subsequent to the conclusion of the disciplinary proceeding without being granted the promotion to which he was recommended, during the pendency of the disciplinary proceeding.
- 4.** Learned advocate appearing for the appellant has drawn the attention of the Court to the circular dated October 5, 2007 on the basis of which, the authorities purported to deny promotion to the post which the appellant was entitled to during the pendency of the proceedings. He has submitted that the circular dated October 5, 2007 was not framed by the board of the respondent No. 1. Therefore, according to him, the circular dated October 5, 2007

cannot be mobilized for the purpose of denying promotion to the appellant during the pendency of the disciplinary proceeding.

5. Learned advocate appearing for the appellant has submitted that, the only punishment imposed as against the appellant in the disciplinary proceeding is one of censure. Respondent No. 1 is reading another punishment into the order of the disciplinary authority namely denial of promotion or withholding of promotion which cannot be done in law.
6. Learned advocate appearing for the appellant has drawn the attention of the Court to the Conduct Discipline and Appeal Rules, 1978 (CDA) of the respondent No. 1. He has submitted that, such rules enumerated the penalties that can be imposed in a disciplinary proceeding. Penalties that can be imposed have been divided into two parts, namely, minor and major penalties. Withholding of promotion has been enumerated in the list of minor penalties that may be imposed in a disciplinary proceeding. Appellant has suffered a disciplinary proceeding where, the disciplinary authority did not impose the punishment of withholding of promotion. Therefore, the circular dated October 5, 2007 cannot be deployed for the purpose of adding to the

punishment that has been already imposed in the disciplinary proceeding.

7. Learned advocate appearing for the appellant has drawn the attention of the Court to the maxim “expression unius est exclusion alterius” and contended that, since CDA enumerates withholding of promotion as one of the minor penalties, with the imposition of the penalty of censure, no further punishment can be imposed on the appellant.
8. Relying upon **2012 Volume 5 Supreme Court Cases 242 (Vijay Singh vs. State of Uttar Pradesh and Others)** learned advocate appearing for the appellant has submitted that, withholding of promotion when the only punishment imposed is censure, will lead to imposition of un-prescribed punishment which is impermissible in law.
9. Learned advocate appearing for the respondent authorities has submitted that the appellant suffered a punishment of censure in a disciplinary proceeding. He has referred to the circular dated October 5, 2007 and contended that, such circular permits withholding of the promotion during the pendency of the disciplinary proceeding. He has referred to the contents of the

circular dated October 5, 2007. He has contended that, the appellant was well aware of the circular dated October 5, 2007. The same had been discussed in the earlier round of litigation.

10. Learned advocate appearing for the respondents has contended that, during the pendency of the disciplinary proceeding, although, the appellant was considered for promotion the same could not be given effect to in view of the provisions of the circular dated October 5, 2007. Immediately upon the disciplinary proceeding concluded resulting in the order of censure being passed, appellant was considered for promotion and granted.
11. Learned advocate appearing for the respondents has relied upon **2007 Volume 5 Supreme Court Cases 425 (Union of India and others versus A N Mohanan)** in support of his contention that, promotion was rightfully denied to the appellant during the pendency of the Departmental proceeding.
12. Appellant had suffered a departmental proceeding initiated by a chargesheet dated November 27, 2013. Appellant had replied to the charge sheet on December 13, 2013. During the pendency of the departmental proceedings, the Departmental Promotion Committee (DPC) had recommended promotion to the appellant.

Such order of promotion had been kept in abeyance due to the pendency of the departmental proceedings. Departmental proceedings had culminated into imposition of a minor penalty of withholding increment for the period of 2 years without cumulative effect, on February 3, 2014.

13. Appellant had preferred an appeal from the order of the disciplinary authority dated February 3, 2014. During the pendency of the appeal, next meeting of the DPC had been held on July 24, 2014 and it recommended promotion to the appellant. On March 23, 2015 appellate authority had modified the order of punishment of the disciplinary authority and imposed an order of censure on the appellant.

14. By a letter dated April 6, 2015 the appellant had written to the respondent authorities demanding release of promotion with effect from December 24, 2013. Respondent authorities however had accepted granting the appellant promotion from August 14, 2014 and not from December 24, 2013. Appellant had made a further representation on January 5, 2016.

15. Appellant had filed a writ petition being WPA 2514 of 2016 challenging the order of penalty imposed in the disciplinary

proceeding. Such writ petition had been disposed of by an order dated September 27, 2022 by directing the respondent authorities to consider the representation of the appellant on the basis of the guidelines issued in such order. None of the parties before us has filed any appeal against the order dated September 27, 2022.

16. Respondent authorities had passed a reasoned order dated November 16, 2022 on the representation made by the appellant and as directed by the order dated September 27, 2022 passed in WPA 2514 of 2016. This reasoned order has been challenged by the appellant in the writ petition resulting in the impugned order.

17. In the writ petition resulting in the impugned order, as well as in this appeal, the issue that has been raised by the appellant is that, he is entitled to promotion during the pendency of the disciplinary proceeding in view of the order of punishment imposed being only of censure and not of withholding of punishment.

18. Such an issue had been raised between the parties in the earlier writ petition being WPA 24815 of 2016 and decided as would appear from the relevant portion thereof which is as follows: –

“Once a penalty has been imposed, the sealed cover containing the recommendations could not have been given effect to during the pendency of the proceedings and the employee could only be considered for promotion on a

prospective basis from a date after the conclusion of the departmental proceedings. The law laid down by the Apex Court on the question of whether an employee can be considered for promotion during the pendency of departmental proceedings which resulted in the minor penalty of "Censure" is clear and unambiguous. Therefore, no legal right of the petitioner was violated in considering his promotion in July 2015 with effect from August 2014."

- 19.** The parties had accepted such judgement and order dated September 27, 2022 passed in WPA 24815 of 2016 and acted thereon. Parties had implemented such judgement and order. No appeal had been preferred. Therefore, the parties are not entitled to raise the same issue as has been decided earlier between them.
- 20.** In the earlier round of litigation, Court had by the judgement and order dated September 27, 2022 held that the respondents were entitled to withhold and not grant promotion to the appellant, during the pendency of the disciplinary proceeding, in view of the circular dated October 5, 2007.
- 21.** Therefore, the appellant is not entitled to raise the issue of non-applicability or legality of the circular dated October 5, 2007 with regard to his promotion during the pendency of the disciplinary proceeding.

22. In such circumstances, we find no merit in the present appeal.

Other points raised in the appeal are kept open.

23. APO 50 of 2024 is dismissed without any orders to cost.

[DEBANGSU BASAK, J.]

24. I agree.

[MD. SHABBAR RASHIDI, J.]