

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1428/2023
SABYASACHI SENGUPTA
VS
THE BOARD OF TRUSTEES FOR THE SYAMA PRASAD MOOKERJEE
PORT, KOLKATA AND ORS.

BEFORE :
HON'BLE JUSTICE RAJASEKHAR MANTHA
DATED : January 18, 2024.

Appearance :-
Mr. Soumya Majumder, Adv.
Mr. Victor Chatterjee, Adv.
...for petitioner
Mr. Probal Kumar Mukherjee, Adv.
Mr. Ashok Kumar Jena, Adv.
...for respondents

The Court :- 1. Pursuant to the last order passed by the Co-ordinate Bench dated 29.09.2023, a report in the form of instructions addressed to the learned Advocate for the Port Trust, dated 22.12.2023 has been placed.

2. This Court has heard detailed arguments advanced by Mr. Majumder, learned Advocate for the petitioner and Mr. Probal Kumar Mukherjee, learned Senior Advocate for the Port Trust.

3. A compilation of documents containing the DPC recommendation of 03.08.2018 and the fresh consideration effected on 25.05.2023 has

been carefully considered by this Court. The undisputed facts that emerge are as follows:-

4. In August 2018 a process for promotion to the post of Senior Deputy Manager (Administration) at the Haldia Dock Complex of the Kolkata Port Trust was undertaken.
5. The promotional process did not debar a person already holding the same scale and position from other department to participate in the promotional process to the post of Senior Deputy Manager, Administration at the HDC KoPT.
6. The petitioner also participated but was not considered since his Annual Performance Appraisal Reports (APARs) for the last 5 years and prior thereto were not prepared by the Port Trust.
7. 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.
8. The DPC's mandate should have come to an end at that point of time i.e. after recommending the three candidates in order of merit.
9. One of the members of the DPC was 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. He stated that Indranil Hazra, who was already promoted to the same post i.e. Senior Deputy Manager in the P&IR Department nine months ago, was vitally required in the said department and could not be spared to the Administrative Department. Vital H.R. issues are stated to be pending at the HDC. This must be deemed to be a separate Administrative Order outside the scope of the DPC.

10. Hazra, therefore, remained with his parent department i.e. P&IR. The next best candidate in the panel was Sasanka Sekhar Pandit, was thereupon given the post of Senior Deputy Manager and continued to function until 2023.
11. Indranil Hazra appears to have been prejudiced. S. S. Pandit appears to have benefitted.
12. Sabyasachi Sengupta, the petitioner herein had filed WPA No. 24593 of 2018 challenging non consideration of his case in the promotion process for want of the five APARs.
13. On 03.05.2023 the Coordinate Bench of this Court found that the petitioner was wrongfully deprived of an opportunity to be considered for promotion for no fault. It was held that the failure of the respondents to prepare his APARs cannot deprive him of the opportunity of participation in the promotion process. The promotion process of the year 2018 was quashed and set aside. Sasanka Sekhar Pandit, who was given the post of Senior Deputy Manager,

Administration was consequently reverted back to his feeder post and fresh consideration was directed to be effected.

14. The DPC was reconstituted. Following the applicable rules and assessing the performance of candidates of 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) Sasankar Sekhar Pandit;
- (iv) Ayan Kumar Nag.

15. As already indicated hereinabove, the General Manager (MNS) at the relevant point of time in 2018 A.K. Dutta by a purely administrative decision did not permit Indranil Hazra, the best candidate to join in the post of Senior Deputy Manager, (Administration) at HDC because his services were required in the P&IR Department. The writ petitioner therefore would have become entitled to the post of Senior Deputy Manager (Administration), as the second best candidate.

16. The impugned order dated 30th June 2023 is therefore quashed and set aside.

17. This Court directs the Port Trust to treat the writ petitioner Sabyasachi Sengupta as having been notionally promoted to the post

of Senior Deputy Manager, Administration, with effect from 11.09.2018.

18. His pay and allowances shall be refixed and recalculated from 11th September 2018 in the post of Senior Deputy Manager (Administration) and all benefits computable in money, including increments as also revision of pay and allowances, revised gratuity, pension and leave encashment and any other entitlements till his retirement must be paid.
19. The writ petitioner superannuated from service on 31.07.2023. If PPO has been issued to the petitioner let the same be kept in abeyance and a fresh PPO shall be issued to him immediately on the basis of his revised pay scale in the higher post of Senior Deputy Manager (Administration) along with all increments and revision in the post till his retirement.
20. Let all arrears that are computable in terms of money, be paid to the writ petitioner, by the Port Trust, within a period of two months from date.
21. The writ petition is allowed and disposed of.
22. There shall be no order as to costs.

(RAJASEKHAR MANTHA, J.)