

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE

WPA 13120 of 2019

SWAGATA BOSE

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner

::

Mr. Swagata Bose

.... Petitioner-in-person.

For the State

:

Manas Kundu,

Mr. Nizanur Rahaman

For the DPL

.....Advocates

: Mr. Sujit Sankar Koley

.....Advocate

Heard on

:

21.05.2025

Judgment on

:

2nd July, 2025

Arindam Mukherjee, J.:**Petitioner's Case:-**

- 1) Pursuant to an advertisement issued by Durgapur Projects Limited (in short 'DPL'), the petitioner applied for being appointed as a Management Trainee (Computer Science) in DPL. On being successful, the petitioner was appointed as a management trainee vide an appointment letter dated 18th December, 2001 (annexure P-1 at page 45 A of the writ petition). On satisfactory completion of the training period as a management trainee, the petitioner was appointed to the post of Assistant Engineer (System) in the accounts department of DPL on a basic pay of Rs.8,000/- per month in the scale of Rs.8,000 – 13,500/- plus other admissible allowances with effect from 27th December, 2002. The appointment letter was issued on 2nd January, 2003 (annexure P-2 at page-46 of the writ petition). The post was subsequently re-designated as Assistant Manager (System) The petitioner was promoted to the post of Manager (System) on 25th June, 2007 (the Offer Letter is on annexure P-3 at page 47 of the writ petition).

- 2) The writ petitioner says that at the time of his joining, there was two promotional avenues which were functioning in parallel, on being the normal panel promotion and the other being Assured Promotion Scheme (APS) introduced in 2001 at DPL. A new promotional policy

under the name and style Career Progression Scheme (CPS) was introduced in DPL on 27th July, 2010 with retrospective effect from 1st April, 2009 by replacing APS. The CPS is annexed at pages 66-72 of the writ petition. According to the petitioner under Clause B(d) of the CPS (at page 68 of the writ petition), the petitioner having received a promotion prior to the CPS coming into the effect is deemed to have got the first promotion as per DPL and was entitled to move the next promotional post on completion of continuous and satisfactory service of 16 years reckoned from the first entry in DPL's regular service. As the petitioner as he had 3 years of continuous and satisfactory service in the post of Assistant Manager (System) the 16 years period was calculated by DPL from the first promotion under CPS. The 16 years period was calculated from 27th December, 2002 and as such was given promotion to the next post with effect from 27th December, 2018 ignoring the provisions contained in Clause 14 of CPS at page 70 of the writ petition. The petitioner says that he had joined as Assistant Engineer (System) and was promoted to the post of Assistant Manager (System) with effect from 25th June, 2007. Having continuous and satisfactory service in the post of Manager (System), the petitioner became entitled to a promotion on completion of 8 years in the said post as per clause 14. The petitioner, therefor, became entitled to promotion on expiry of 8 years from 25th June, 2007. The petitioner, however, was not given such promotion after 8 years from 25th June,

2007 but was promoted as Senior Manager (IT Cell) with effect from 27th December, 2018 by following clause B(d) which is not applicable to the petitioner. According to the petitioner, the DPL applied the wrong promotional method by giving him promotion on completion of 16 years from the entry into the DPL's regular service with effect from 27th December, 2018 instead of 27th June, 2015.

- 3) The petitioner then by referring to Clause C (14) of the CPS also contends that the petitioner is entitled to relaxation of Clause B (d) as he fulfils all other conditions for such relaxation. The petitioner says that under Clause C (14), the petitioner received the first promotion "by any other procedure other than APS" (on being promoted from the Assistant Engineer (System) to Manager (System) under general promotional policy. The petitioner had 3 years experience in the promotional post when CPS was introduced as such is entitled to the second promotion i.e. Senior Manager (IT Cell) on completion of 8 years from the date of first promotion i.e., 27th June, 2015. The petitioner was, therefor, required to be promoted to the post of Senior Manager (IT Cell) immediately after completion 8 years from 25th June, 2007 i.e. sometimes in June, 2015 instead being promoted as Senior Manager (IT Cell) on 21st December, 2018. The petitioner says that DPL on his query had informed him that the petitioner is not entitled to promotion on completion of 8 years from his first promotional post but is entitled

to promotion on completion of 16 years from the date of entry into DPLs regular service because the petitioner is a Class-I Officer.

- 4) The petitioner says that his entry in the service of DPL is not as a Class-I Officer but as a Management Trainee and was absorbed as Assistant Engineer (System) which post was re-designated as Assistant Manager (System) after successful completion of the training period of one year. The petitioner's service is, therefore, reckoned from 27th December, 2002 and not from 2001 when he was selected as Management Trainee. The petitioner says that only those who have been recruited directly as Assistant Engineer (System) can be said to have entered the services of DPL as a Class-I Officer. The petitioner in this context refers to an advertisement published by DPL inviting applications for Assistant Manager (System). In the said advertisement, a person was entitled to apply for the post of Assistant Manager (System) only on having 3 years experience out of which 2 years are in a responsible post in the field. At the time when the petitioner was appointed as Assistant Engineer (System), the petition did not have such experience but had only completed one year training as a Management Trainee and as such the petitioner should not be considered as a Class-I Officer for which the relaxation to the provisions of Clause B (d) of CPS as mentioned in Clause C (14) thereof could not be denied to the writ petitioner. The petitioner has also tried to demonstrate other anomalies in the promotional policy of DPL by citing the instance of the respondent No.8

and to other persons. The petitioner, therefor, claims that he should be treated to have been promoted to the post of Senior Manager (IT Cell) with effect from 2015 instead of 27th December, 2018.

Submission by the Respondents:-

- A. The respondent (DPL) says that petitioner joined the services of DPL as Class I Officer and as such he is to get promotion as per Clause B(d) of CPS. The petitioner's seniority should have to be considered from the petitioner's initial joining on 27th December, 2002 upon successful completion of his training. Considering 16 years from 27th December, 2002, the petitioner has been promoted to the post of Senior Manager (IT Cell) on 27th December, 2018. The petitioner had received one promotion prior to CPS coming into operation and as such is entitled to further two promotions on completion of 16 years and 25 years. The petitioner is, therefor, not entitled to promotion on completion of 8 years from 2007 when the petitioner got his first promotion. The writ petitioner was to have six years experience as Assistant Manager (System) when CPS came into operation in July, 2010 since the petitioner was a Class I Officer but only had 3 years experience at that time. The six years experience was, however, five years for engineering degree holders in other Division or Stream. Petitioner, therefore, fell in the category of 16 years from the initial appointment to get the first promotion under CPS. The reason therefore which the petitioner has been declined promotion on

completion of 8 years from 2007 as claimed by the petitioner has been clearly explained in the reply given by DPL to the petitioner's query. Despite such reply the petitioner had been making reputed endeavour to get promotion from 2015 as per his calculation. The petitioner by his acts and conduct was spoiling the wrongly environment in DPL by accumulating employees to revolt against the employer. DPL, therefore, was compelled to issue show cause to the petitioner seeking explanation of his conduct.

Analysis and Conclusions:-

- B. The petitioner joined services of APS as Management Trainee (Computer Science) on 27th December, 2001, pursuant to an offer letter dated 18th December, 2001. The petitioner was to undergo a training for one year. The petitioner reported for his training on and from 27th December, 2001 and successfully completed the training on 27th December, 2002. On his successful completion of the training, the petitioner was absorbed in the post of Assistant Engineer (System), on 27th December, 2002. At the time when the petitioner joined services two channels of promotion was operational in parallel. The Assured Promotion Scheme (in short "APS") was enforced in 2001. APS was operational with the normal promotions scheme which was in operation even prior to 2001. The object of APS was to give assured promotion to a person, who, despite completion of 8 years of service, did not get the first promotion.

The petitioner was normally promoted on 25th June, 2007 and became Assistant Manager (System). By an office order dated 27th July, 2010, The petitioner got the first promotion after about 5 years of service and as such it was not under APS even otherwise the DPL introduced the Career Progression Scheme (in short “CPS”) with effect from 1st April, 2009 replacing APS. Under the CPS, the qualifying service is reckoned from the date of induction of the employee. The hierarchy in establishment of the DPL manned by employees belonging to a composite cadre under the CPS was reckoned strictly on the basis of seniority on the date of issuance of the order i.e. 27th July, 2010.

- C. The petitioner, on the induction of the CPS scheme, claims to have become entitled to the promotion after completion of 8 years of service in the post of Manager (System). The next promotional post was Senior Manager (IT Cell). The petitioner’s case is that he was supposed to get that promotion in the year 2015 but was deprived of the same and had been ultimately promoted on 9th March, 2019 with effect from 27th December, 2018. The petitioner’s contention is that he was promoted under normal promotional avenue in 2007 and did not get the benefit of APS which on analysis of facts is found to be correct.
- D. On being induction of CPS, the petitioner became entitled to get the first promotion on successful completion of 8 years of service from 25th

June, 2007 with three years' experience between June, 2007 and July, 2010 when CPS was introduced in such promotional post. The petitioner, therefor, says that he was entitled to receive promotion on 25th June, 2015 instead of 27th December, 2018. The DPL considered 16 years' period from the date of initial induction of the petitioner i.e., 27th December, 2002 as a consequence whereof, the petitioner received the first promotion under the CPS scheme on completion of 16 years of service from such date i.e. on 27th December, 2018.

- E. On a scrutiny of the provisions of the CPS scheme, I find that the petitioner, having received promotion under the normal promotion policy and not under the APS, should be considered to have become entitled to the promotion from the post of his first promotion i.e., Manger (System) to the next post i.e. Senior Manager (IT Cell). On completion of 8 years of service in the post of Manager (System), i.e., on 25th June, 2015. DPL, on misreading of the provisions of CPS, has considered 16 years of service from the date of induction of the petitioner to the service and, therefor, has given promotion to the petitioner on 27th December, 2018 when the petitioner completed 16 years of service in the post of Manager (System).

- F. On a plain reading of Clause of 14 of CPS, it is clear that those employees after adoption of APS at the DPL in 2001 had received one or

two promotions on panelled seniority basis or by any other procedures other than APS will get two more CPS promotions after completion of 8 years or 16 years of service from his last promotion. The petitioner, therefore, became entitled to the promotion on completion of 8 years period from 25th June, 2007 and not from 16 years from 27th December, 2002.

- G. On a conjoint reading of the provisions of CPS, it is apparent that the petitioner is entitled to the benefit of clause 14 under the heading “The other features of Career Progressive Scheme (CPS)” which has been referred to as C-14 instead of clause (d) under the heading “The salient features of Career Progression Scheme (CPS)” referred to as clause B(d) by the parties, this is because the petitioner did not join in the post of Class I Officer Grade. Management Trainee is completely a different class of employees. ON being selected as Management Trainee a person like the petitioner has to undergo one year training. Only after successful completion of such training a Management Trainee is appointed in the Class I post. There may be incidents where a Management Trainee leaves before completion of one year successful training or may not be able to complete such training within one year. That is the reason the petitioner was considered to be in service from 2001 when he was selected as Management Trainee and 27th December, 2002 when he successfully completed the training. The petitioner was, therefore, not considered in the post of Class I Officer from 2001. On

the other hand, a person who is selected directly in a Class I post apart from having different qualification and experience is considered to be employed in such post from his/her date of joining even if such service contention provides for a protection period on successful completion thereof. In the second case, the period of probation is not deducted but is inclined in his/her seniority. The petitioner, therefore, did not join as Class I Officer and is entitled to be considered under C-14 or should be given benefit of such clause instead of being treated under Clause B (d).

- H. On the basis of such stipulation, the petitioner is also entitled to receive promotion to the next higher post from Manager (System) on completion of 16 years of service from 25th June, 2007. The DPL wrongly deprived the petitioner from promotion for 3 years between 25th June, 2015 and 27th December, 2018. The petitioner, therefor, is entitled to the notional benefits for the said period i.e. from 26th June, 2015 till 26th December, 2018. Although, an employee cannot claim promotion as matter of right but can only seek for being considered to be promoted under the normal promotion scheme but the same principle is not applicable to a Career Progression Scheme where such scheme is introduced to assure an employee on successful completion of 8 years and 16 years of service in a promotion
- I. In the instant case, the petitioner is granted notional benefit since he has not actually worked in the post of Manager (IT Cell) for the period

between 26th June, 2015 and 26th December, 2018. The petitioner is entitled to get all other benefits except the actual salary between the period 26th June, 2015 and 26th December, 2018. The 16 years' period for the purpose of next promotion under the CPS available to the petitioner shall be considered from 25th June, 2015. The petitioner, therefor, has become entitled to the second promotion on completion of 25th June, 2023, this date is arrived at by adding 8 years from 25th June, 2015 or 16 years from 25th June, 2007.

The analogy given by the DPL by computing 8 years or 16 years from 2010, in the case of the petitioner is, therefor, unsustainable and is held so. The petitioner, therefor, should be given all notional benefits from 27th June, 2023 till actual grant of promotion for his next promotional post and should be promoted to the next promotional post with effect from 1st September, 2025, failing which the petitioner shall be paid the salary and emoluments of the next higher post with effect from 3rd July, 2025. The petitioner shall also get all other benefits under the CPS as he is entitled to till he reaches the age of superannuation.

- J. It also appears that the DPL authorities have issued show-cause notice against the petitioner and have attempted to initiate the proceedings only for the reasons that the petitioner had asked for promotion on completion of 8 years or 16 years from 25th June, 2007 and had protested against other employees having given such promotion depriving

the petitioner. The DPL authorities shall not take any coercive step or further coercive steps against the petitioner on the basis of the show-cause notice dated 21st May, 2019 or in correction of petitioner's protest against being deprived of promotion.

- K. Although, the judgment is delivered in the presence of the Advocate for DPL but by way of abundant caution a server copy of this order shall be served by the petitioner on DPL and DPL shall act on the basis of the server copy without insisting on production of a certified copy.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)