

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**MAT 1380 OF 2024
ANIRBAN PAL
VS.
PUNJAB NATIONAL BANK & ORS.
WITH**

**MAT 1381 OF 2024
IA NO. CAN 2 OF 2024
PUNJAB NATIONAL BANK & ORS.
VS.
ANIRBAN PAL**

Appearance:

For the Appellant	: Mr. Srijib Chakraborty, Adv.
In MAT 1380/2024	
&	Ms. Rupsa Sreemani, Adv.
For the Respondent	
in MAT 1381 of 2024	

For the PNB	: Mr. Saptansu Basu, Adv.
	Ms. Parna Roy Choudhury, Adv.

Heard On	: 11.08.2025
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Judgment On	: 14.08.2025
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Sujoy Paul, J.:

The Challenge:

1. In these *intra* Court appeals, the petitioner and the Bank are at logger heads on the legality, validity and propriety of the order passed by the learned Single Judge in **WPA 10195 of 2023** dated 20.06.2024 whereby learned Single Judge held that the petition is filed with a delay of 3 years

which extinguished petitioner's challenge to the refusal of the Bank to restore his promotion to Scale-IV. The relief is declined to the petitioner on yet another ground that after his reversion, he did not avail at least two promotional chances from 2020 till the date of filing of writ petition. The Bank is aggrieved by the portion of the order wherein certain findings are given against the Bank and also because of imposition of cost of Rs. 3 lakhs and further direction to grant increment to the petitioner and hold disciplinary proceedings against the officers of the Bank.

Brief facts:

2. To start the thread, the petitioner initially joined the respondent Bank in October, 2005. The petitioner remained posted in Head Office, Delhi between November, 2005 to January, 2008. The petitioner suffered a motor accident sometime in the year 2015 and sustained serious injuries. This resulted into disability of 70 per cent as per certificate issued by appropriate authority. When petitioner met with the accident, he was working as Scale-III officer and was posted in the United Bank of India, Kolkata which is now known as Punjab National Bank.
3. In the year 2016, in the promotion process, the petitioner did not participate with the fear of his transfer. However he noticed that his two colleagues *Anubhav Verma* and *Ajit Shribastava* who were also suffering from physical disabilities were promoted to Scale-IV post within Kolkata.

4. Accordingly, petitioner participated in promotion process of Scale-IV Grade and cleared it with flying colours. The result was declared in October, 2018.
5. Upon promotion as Scale-IV officer, the petitioner was transferred to Zonal office at Patna from Kolkata. The petitioner preferred representation on 8th October, 2018 pointing out his difficulty at Patna and highlighted his personal and family problems. He laid emphasis that in absence of family support, it is difficult for him with 70 per cent disability to perform his duties and take care of himself at Patna.
6. The Bank by communication dated 15th October, 2018 declined the request of the petitioner for retaining him in Kolkata. Then only petitioner joined at Patna on 12th November, 2018.
7. The petitioner preferred another representation dated 24th November, 2018 for his reposting at Kolkata because of difficulty being faced by him while staying alone in Patna. The disgruntled petitioner also stated that he may be reverted back to Scale-III and is ready to forgo his promotion.
8. Before preferring this representation dated 24th November, 2018, the petitioner preferred a complaint before Chief Commissioner of Persons with Disabilities under the **Rights of Persons with Disabilities Act, 2016** (hereinafter called '**Disabilities Act**') against the action of the Bank in not accommodating him in Kolkata after his promotion.
9. At the material time, the Bank had a policy/circular for accommodating the persons with disabilities at the same place subject to the

administrative exigencies. The petitioner's case is based on Clause 16 and 17 of the said Transfer Policy dated 15.03.2015 (Annexure "P-2").

10. By communication dated 6th December, 2018 the Authority under the Disabilities Act issued *interim* direction and advised the Bank to consider the claim of the petitioner and file a report. In the meantime, the petitioner preferred representations seeking reversion. The third representation was coincidentally preferred on the same date i.e. 06.12.2018, the day when the Chief Commissioner directed to consideration the claim of petitioner. The Bank first accepted the request of the petitioner for reversion and accordingly passed the order dated 29.12.2018 whereby his request for reversion has been accepted by making it clear that it is irrevocable and entails the debar for promotion for a period of 2 years.
11. The instant writ petition was filed against the letter dated 30.05.2020 (Annexure "P-13") whereby his request for restoration for promotion was declined. Meaning thereby, petitioner's claim that he be continued as Scale-IV officer in Kolkata was rejected.

Contention of Petitioner:

12. Mr. Srijib Chakraborty, learned counsel for the petitioner submits that the petitioner could not approach the Court by filing writ petition because after his reversion the Covid era came which remained in force between 15.03.2020 to 28.02.2022. The Apex Court by a general order directed that this period between the said two dates shall not be counted for the

purpose of counting limitation in any proceeding. Thus, these two years need to be deleted while considering the aspect of delay. Apart from this, petitioner's health condition and bereavement on account of death of his father, mother and father-in-law prevented him to knock the doors of this Court promptly. If Bank would have given him human and fair treatment by posting him in Kolkata itself upon promotion, he would not have preferred representation for reversion.

13. It was further highlighted by learned counsel for the petitioner that the learned Single Judge was kind enough in giving findings on merits in favour of the petitioner. Learned Single Judge found the breach of policy, unjustifiable treatment given to the petitioner but did not grant him relief solely on the grounds of delay and for not participating in subsequent two promotional processes from 2020 onwards. Thus, these two points which are coming in his way needs to be addressed.
14. To bolster this submission, it is submitted that delay is not a hurdle in a case of this nature. There is no limitation prescribed under the Constitution for filing the writ petition. In support of this submission reliance is placed on **(1985) 3 SCC 737 (Bhag Singh & Ors. vs. Union Territory of Chandigarh)**, **(2013) 1 SCC 353 (Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.)** and **1964 SCC OnLine SC 10 (State of Madhya Pradesh & Anr. Vs. Bhailal Bhai, State of Madhya Pradesh & Anr. Vs. Amarchand and State of Madhya Pradesh & Anr. Vs. Ambalal)**.

15. It is strenuously contended that policy relating to transfer/posting is binding in nature. More so, when the policy is made in pursuant to an enabling provision under the Disabilities Act of 2005. Interestingly, both the Acts of 2005 and 2016 are pregnant with enabling provision for issuance of circular to give effect to the object of the disabilities Act. For this purpose, learned counsel for the petitioner has also relied on the 'objects and reasons' of disabilities Act to establish that existing policy was binding. Learned counsel for the petitioner placed reliance on following judgments:

- a) 2006 SCC OnLine Guj 447 (Dipika Kantilal Shukla vs. State of Gujarat & Ors.**
- b) LPA 74 of 2005 (V.K. Bhasin vs. State Bank of Patiala & Ors.)**
- c) 2021 SCC OnLine HP 9084 (Sajal Kumar Negi vs. Indian Bank through its General Manager & Ors.**
- d) (2022) 15 SCC 81 (Net Ram Yadav vs. State of Rajasthan & Ors.)**

16. The next contention is that the Chief Commissioner was competent to issue the directions as contained in *interim* order dated 06.12.2018 and final order dated 06.03.2020. For this purpose, **(2013) 7 SCC 182 (Geetaben Ratilal Patel vs. District Primary Education Officer)** was relied upon.

17. No fault can be found in the order of learned Single Judge in directing initiation of disciplinary proceeding is the next contention of the learned counsel for the petitioner based on **(2011) 1 Gauhati Law Reports 671 (Utpal Kumar Das vs. Court of the Munsif No.1 Kamrup), 2018 SCC**

OnLine Bom 6366 (Eastern Machinery & Trading Company & Ors. vs. Sub-Divisional Officer Cum Administrator & Anr.) and (2012) 7 SCC 389 (Asha vs. Pt. B.D. Sharma University of Health Sciences & Ors.). Even otherwise, in view of **2024 SCC OnLine SC 2 (vashist Narayan Kumar vs. State of Bihar & Ors.)** the relief can be moulded while exercising writ jurisdiction.

18. Learned counsel for the petitioner, placed heavy reliance on the judgment of the Supreme Court reported in **(1976) 1 SCC 311 (Shri Krishnan vs. Kurukshetra University, Kurukshetra)**. It is argued that any admission made by a litigant in ignorance of legal rights or under duress cannot bind the maker. This argument is advanced to bolster the submission that a conjoint reading of the petitioner's representations would show that petitioner had submitted application for reversion under compelling circumstances. Since, as per the policy prevailing, he being a disabled person had a valuable right to be posted at Kolkata, he should not have been posted to Patna. More so, when his previous record was excellent and performance ratio was to the extent of 100 per cent. The posts were lying vacant at Kolkata at the time of his promotion/posting as well as when the writ petition came up for hearing before learned Single Judge.
19. Learned counsel for the petitioner has taken pains to contend that a conjoint reading of applications seeking reversion will show that the petitioner had to submit such applications having left with no option. With 70 per cent disability, he was not able to keep his body and soul together at Patna. The Bank rejected his application for posting him at

Kolkata. Under such compelling circumstances and pressure, the petitioner preferred applications for reversion which by no stretch of imagination can be said to be voluntary applications.

Contention of the Bank/respondent:

20. Mr. Saptansu Basu, learned Counsel for the respondent submits that there is an inordinate delay in filing the writ petition and learned Single Judge has rightly not granted relief to petitioner because of such delay. By taking this Court to rejection order dated 29.12.2018 Annexure 'P-9', it is submitted that the cause of action if at all had arisen, it had arisen from this date. However, this order dated 29.12.2018 was not called in question in the petition. The petitioner again preferred representations against the basic rejection order dated 29.12.2018 and when suffered with another rejection by order dated 30.05.2020 Annexure 'P-13', assailed it in the instant writ petition. The petitioner is projecting this order for explaining the delay whereas the time is to be counted from 29.09.2018. The petitioner placed reliance on the judgment of ***Bhailal Bhai (supra)***. The Bank also placed reliance on this judgment to contend that since no limitation is prescribed for filing petition under Article 226 of the Constitution, the ordinary time limit prescribed for civil suit can be treated to be the reasonable time limit for the purpose of filing a writ petition. Admittedly, the time limit for filing a suit for the purpose of assailing the order impugned would be 3 years. If 3 years are counted

from 29.12.2018 i.e. the date of the rejection order, writ petition is admittedly filed beyond 3 years from that date.

21. Furthermore, it is argued that there is no averment in the petition which explains the delay in filing the petition. Thus, learned Single Judge rightly declined relief on merits and opined that petition suffers from delay. Reliance is placed on **(1977) 2 SCC 584 (Naib Subedar Lachhman Dass vs. Union of India & Ors.)**, **(1986) 4 SCC 566 (State of M.P. & Ors. vs. Nandlal Jaiswal & Ors.)**, **(1995) 4 SCC 683 (State of Maharashtra vs. Digambar)**, **(2014) 4 SCC 108 (Chennai Metropolitan Water Supply & Sewerage Board & Ors. vs. T.T. Murali Babu)** and **(2021) 13 SCC 225 (Chairman/Managing Director, Uttar Pradesh Power Corporation Ltd. vs. Ram Gopal)**. In the light of these judgments, writ petitions should have been summarily dismissed by learned Single Judge.
22. The next contention of learned counsel for the Bank is that in the entire petition, no *mala fides* are alleged against any respondents. No violation of any statutory provision is pleaded. Because of violation of guidelines/circulars, no writ of mandamus can be issued. Reliance is placed on **(2004) 11 SCC 402 (State of U.P. & Ors. vs. Gobardhan Lal with D.B. Singh vs. D.K. Shukla & Ors.)**.
23. It is canvassed that that petitioner preferred 3 applications seeking reversion on his own volition. These applications were preferred on 08.10.2018, 24.11.2018 and 06.12.2018 respectively. In none of the representations aforesaid the petitioner pleaded that he is seeking reversion because of any threat, pressure or coercion on behalf of the

Bank. Thus, the request for reversion is made by the petitioner voluntarily and it cannot be said to be a reversion under compulsion or threat.

24. The *interim* order of Chief Commissioner dated 06.12.2018 was highlighted to show that the said statutory authority under the disabilities Act only advised to consider the grievance of the petitioner and filed report. The final order of said authority dated 06.03.2020 was highly relied upon to contend that there is no finding in this order about any violation of interim order dated 06.12.2018. There is no finding in the final direction about any violation of the provision of disabilities act by the Bank.

25. Section 3 of the Disabilities Act was referred by contending that it deals with equality in order to ensure that equal treatment with general people who are not suffering with any disability under the Act. Thus, the Act envisages that a person should not be discriminated merely because he suffers from any disability. The writ petitioner has not pleaded that he was subjected to any discrimination.

26. The next limb of argument assails the finding given in the operative portion of the impugned order passed by learned Single Judge. Para 37 to 40 of the same were read out by contending that there was no occasion for the learned Single Judge to impose exemplary cost once writ petition was found to be suffering from delay. The petition should have been summarily dismissed and no further relief could have been granted. More so, when petitioner has not prayed for any relief for grant of increments

and for conducting enquiry. The relief granted beyond pleadings and prayer is bad in law and runs contrary to law laid down in **(2008) 17 SCC 491 (Bachhaj Nahar vs. Nilima Mandal & Anr.)**. It is strenuously contended by learned counsel for the Bank that the finding given in Para 28 of the impugned order is based on surmises and conjectures and are perverse in nature.

27. The next contention is that the judgment of the **Shri Krishnan (supra)** cannot be pressed into service in this case because the petitioner is a highly educated Scale-IV officer and cannot plead ignorance about the consequences of his application seeking reversion. Thus, the judgment in **Shri Krishnan (supra)** has no application. In fact, the voluntarily reversion is covered by judgment of Supreme Court reported in **(2008) 2 SCC 653 (C.V. Satheeshchandran vs. General Manager, UCO Bank & Ors.)**.

28. In nutshell, learned counsel for the Bank submits that after having formed the opinion that petition suffers from delay, it was not open to learned Single Judge to give any finding on merits, impose cost and issue directions for holding disciplinary enquiry. Thus, his appeal may be allowed and order impugned may be set aside to the extent it operates against the Bank.

Rejoinder submission:-

29. Learned Counsel for the employee contended that in the affidavit-in-opposition filed before the learned Single Judge, the Bank has not taken

any plea about delay or maintainability of writ petition. Interestingly, in their appeal also before this Bench, no such ground of delay in filing the writ petition was raised. By placing reliance on Order 41 Rule 2 of CPC it is argued that in absence of raising any such objection of delay, the delay is not a hurdle for the employee. Reference is made to **AIR 1967 SC 1193 (M.P. Shreevastava vs. Mrs. Veena)** and **2022 (13) SCC 221 (State of Punjab and Ors. Vs. Dev Brat Sharma)** to contend that ground of delay must be taken before the first Court.

30. To meet the argument of Counsel for employer that cause of action had arisen on 29.12.2018, learned Counsel for employee contended that a plain reading of Order dated 29.12.2018 shows that by this order, the application of employee seeking reversion was accepted whereas order dated 30.05.2020 which was called in question before learned Single Bench was an order whereby his prayer for restoration of promotion was rejected. Thus, the cause of action has arisen from 30.05.2020 when prayer for restoration of promotion was rejected.

31. By placing reliance on paragraph 20 to 25 of writ petition and Para 18, 22 and 33 of rejoinder it is pointed out that allegations of *mala fide* were actually alleged against respondent Bank. Similarly, guidelines are binding were pleaded and judgment of Supreme Court in **Net Ram Yadav (Supra)** was relied upon. The Bank in its affidavit-in-opposition clearly stated that promotion and posting is indeed governed by the guidelines in question. Apart from this, the judgment of Supreme Court in **State of U.P. & Ors.**

Vs. Govordhan Lal reported in (2004) 11 SCC 402 is in relation to transfer matter and not about promotion and posting.

32. Heavy reliance is placed on Para 11 and 14 of writ petition wherein petitioner pleaded that how he was coerced to seek reversion and, therefore, such reversion must be treated to be a reversion under compulsion and it cannot be treated to be a voluntary reversion at the behest of the employee. In the affidavit-in-opposition, the respondents have not dealt with the aforesaid paragraphs of the writ petition and, therefore, said paragraphs were not denied and hence, must be treated to be admitted.
33. The finding in Para 28 of the impugned order of learned Single Bench is not based on surmises. Indeed, it is based on material available on record including petitioner's representation dated 24.11.2018 sent from Patna which was supported by a Doctor's Certificate.
34. The issue of discrimination was highlighted by taking assistance of Section 3 of disability act by contending that three persons were posted on promotion at Kolkata Zonal Office and pleading in this regard mentioned in Para 24 and 25 of writ petition were not denied. Thus, Section 3 can be pressed into service.
35. Lastly, it is submitted that Section 35A of CPC gives power to the Court to impose cost. Cost can also be imposed if false statement is made on oath. Learned Single Judge found such false statement being made before it by the Bank and, therefore, no fault can be found in the order of learned Single Judge directing imposition of cost and initiation of disciplinary

proceedings. The learned Counsel for petitioner has tried to distinguish the judgments cited by learned Counsel for the employer.

36. The parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

FINDINGS:-

Delay and non-participation in promotional process:

37. Since the question of delay goes to the root of the matter and relief of restoration of promotion was not granted by learned Single Judge on the ground of delay and for not participating in the promotional process, we deemed it proper to deal with these aspects at the outset.
38. As noticed above, the facts are not in dispute. The parties have taken a diametrically opposite stand for counting delay from a particular date. The employer submits that the delay must be counted from 29.12.2018, the date of first rejection order whereas employee urged that it is the order dated 30.05.2020 by which his prayer for restoration of promotion was rejected which gave him cause of action to assail the order.
39. A plain reading of order dated 29.12.2018 shows that petitioner's request for seeking reversion from SMG Scale-IV to MMG Scale-III was accepted and it was made clear that it will entail debar Clause as per promotion policy. The order dated 30.05.2020, on the other hand, makes it clear that by this order the petitioner's request for restoration of promotion to Scale-IV and posting at Kolkata was rejected. Thus, we find substance in the argument of learned counsel for the petitioner that the rejection order

dated 30.05.2020 can be treated to be the order by which petitioner was aggrieved.

40. It is also noteworthy that the learned counsel for the Bank could not point out any pleading from affidavit in opposition filed before learned Single Judge or from the pleadings of the *intra* Court appeal that Bank had raised any objection regarding delay in filing the petition.
41. In ***Tukaram Kana Joshi (supra)*** the Apex Court considered the aspect of the delay and laches and came to hold as under:

*“12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. **The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment.**”*

(Emphasis Supplied)

42. Thus, it is clear that the Court needs to apply its judicial mind and discretion which depends on the facts and circumstances of each case. Delay cannot be an absolute impediment as a rule of thumb.
43. Undisputedly, the Covid restrictions were prevailing from 15.03.2020 to 28.02.2022 and this period was directed not to be counted for the purpose of counting limitation by a general order passed by the Supreme Court. Petitioner could also point out that during this period, apart from his own pains and disabilities, there were bereavement in the family which also caused delay. Thus, delay is properly explained by the petitioner. In absence of any objection of delay being taken by the employer before learned Single Judge and in Appeal, in our view, it will not be proper to

non-suit the employee on the ground of delay in the facts and circumstances of the present case.

44. Interestingly, both the counsel during the course of hearing relied on the judgment of the Supreme Court in **Bhailal Bhai (supra)**. In this judgment, it was laid down that the limitation prescribed to file a civil suit can be safely taken to be a reasonable time for the purpose of filing writ petition. In our view, this judgment helps the employee because his prayer for restoration of promotion was rejected only in 2020 and he filed the instant writ petition within 3 years. For this reasons also, the writ petition cannot be thrown to winds on the ground of delay.
45. In the case of **Digambar (supra)** the delay was about 20 years. **T.T Murali Babu (supra)** was a case of unauthorized absence and delay was about 4 years. In **Ram Gopal (supra)**, the employee was dismissed in 1978 and he filed writ petition in 1990. In the peculiar fact situations of those cases, the Apex Court opined that the petitions suffered from delay and laches. Same is the case with **Naib Subedar Lachhman Dass (supra)** where delay was 4 years on the part of the petitioner. In **Nandlal Jaoswal & Ors. (supra)** interference was declined on the ground of delay because in the meantime, third party rights were created. In our opinion, these judgments cited by the Bank cannot be pressed into service in the case of this nature where there exists no such inordinate delay. Apart from this, no third party right is created in favour of anybody. In other words, if the writ petition is allowed it will not have any adverse impact on any third party.

46. So far depriving the petitioner for non-participation of subsequent promotional process is concerned, suffice it to say that petitioner cannot be held responsible for the same. While passing the rejection order dated 29.12.2018, the Bank made it crystal clear that due to debar clause of the promotional policy, the petitioner cannot participate in the future promotion process. This aspect has escaped notice of the learned Single Judge and we are constrained to hold that this non-participation of petitioner by no stretch of imagination can be a reason to deprive the petitioner from the fruits of litigation, if he is otherwise entitled to enjoy the same.

Binding effect of Policy:

47. Admittedly, since 2012 Bank has a policy for accommodating the persons with disabilities during transfer/promotion subject to administrative exigencies. The relevant portion of Clause 16 and 17 of said policy which also deals with promotion and posting reads thus:

“16. TRANSFER OF PHYSICALLY HANDICAPPED OFFICERS:

i. In terms of the Government guidelines, subject to administrative exigencies, a Physically Handicapped Employee in the Bank, in all cadres, whose relevant disability is to the extent of minimum 40% and who has been given disability Certificate by the competent authority, shall normally be exempt from routine periodic outstation transfers. Competent Authority to issue disability certificate, as per Government guidelines is a Medical Board duly constituted by the central or State Government. The Central/State Government may constitute Medical Board(s) consisting of at least 3 members, out of which at least one shall be a specialist in the particular field for assessing locomotor/cerebral/visual/hearing disability, as the case may be. Such medical certificate should specifically contain the nature of disability i.e. permanent. Where the Medical Board has indicated the period of validity of the certificate, in cases where there are chances of variation in the degree of disability, it must be ensured that the certificate held on record is within this validity period.

ii. Such Officers shall not normally be transferred even on promotion if a vacancy exists in the same Branch/Office/Town/City. If the transfer of a physically handicapped employee becomes inevitable on promotion to a place other than his original place of appointment due to non-availability of vacancy, it shall be ensured that such employee is kept close to his original place of posting and in no case is transferred to far off/remote places.

(Emphasis Supplied)

48. The employer has placed reliance on the judgment of the Supreme Court in case of **Gobardhan Lal (supra)**. No doubt, in catena of judgments, the Supreme Court opined that in transfer matters, interference cannot be made on breach of guidelines/policy. In the instant case, the policy is made under the enabling provision of the statute namely, Disabilities Act. Section 20 (5) of Disabilities Act reads as under:

“20. Non-discrimination in employment.— (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

49. Thus, policy has a statutory flavour and backing in this case. The Apex Court in **Net Ram Yadav (supra)** considered the UNCRPD and opined as under:

“27. UNCRPD has been ratified by India. The State is obliged to give effect to UNCRPD. All statutes, rules, regulations, bye-laws, orders and circulars for the benefit of the physically disabled necessarily have to be given a purposive interpretation in harmony with the principles of UNCRPD.

28. Even otherwise, human rights are rights inherent in civilized society, from the very inception of civilization, even though such rights may have been identified and enumerated in international instruments such as the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10-12-1948, or other international conventions and instruments including UNCRPD. Furthermore, the disabled are entitled to the fundamental right of equality enshrined in Articles 14 to 16 of the Constitution of India, the fundamental freedoms guaranteed under Article 19 including the right to carry out any occupation, profession, the right to life under Article 21, which has now been interpreted to mean the right to live with dignity, which has to be interpreted liberally in relation to the disabled.

29. One of the hindrances/disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said Notification/Circular dated 20-7-2000 for posting disabled persons to places of their choice, to the extent feasible. The object of this benefit to the physically disabled is to, inter alia, enable the physically disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/Government order cannot be taken away by subjecting the exercise of the right to avail of the benefit on such terms and conditions, as would render the benefit otiose.

31. With the greatest of respect, both the Single Bench as also the Division Bench of the High Court have overlooked the scope and ambit of the Explanation which has no application in the State to seniority. **In our view, the High Court should have been more sensitive and empathetic to the plight of a physically disabled. The High Court erred in law in overlooking the difference between physically disabled persons impaired in their movement and normal able-bodied persons.** The High Court failed to appreciate that treatment of unequals as equals ignoring their special needs violates Article 14 of the Constitution.”

(Emphasis Supplied)

50. India being signatory to UNCRPD is obliged to make its statutes, rules, guidelines, circulars etc. for the advantage of physically disabled persons. The disabled are entitled to the fundamental right of equality flowing from Article 14 and 16 of the Constitution. In ***Net Ram Yadav (supra)*** the State issued a notification/circular dated 20.07.2000 which was an executive instruction/guideline. While considering the said circular, the Apex Court opined that object is to enable physically disabled to be posted at a place where assistance is readily available. The judgment of High Court was overturned by Supreme Court with observation that the High Court should have been more sensitive and empathetic to the plight of a physically disabled. It was further observed that the High Court erred-in-law in overlooking the difference between physically disabled persons

impaired in their movement and normal able bodied person. The special need of such persons could not be noticed by the High Court.

51. Interestingly, a similar policy of State Bank of Patiala became subject matter of consideration before a Division Bench of Delhi High Court in the case of **V.K. Bhasin (supra)**. Sanjay Krishan Kaul, J. (as His Lordship then was) speaking for the Bench recorded as under:

“23. There is no doubt that the appellant is only to be considered for transfer to a proximate place to his native place, but the guidelines of 1988 make it clear that such request is to be accepted unless in case of administrative exigency otherwise.

24. The written synopsis also goes on to raise the issue of scope of judicial review. In matters of transfer, this Court does not sit as a court of appeal. However, where the very basis is erroneous, this Court is entitled to intervene. Totally irrelevant factors have been taken into account as stated above and the provisions of statutory enactment like the said Act, the said rules and the Office Memorandum issued in furtherance thereof are sought to be defeated. One cannot lose sight of the fact that the legislation is in furtherance of international commitments and to give an equal treatment to persons with disability. All this has been given a go-bye while rejecting the request of the appellant and the Bank insists on implementing the erroneous decision. In such a case, this Court cannot be powerless to remedy the situation.

25. Nothing has been brought on record to show us that it is not possible to accommodate the appellant at Dehradun. It is not a place of posting like Delhi or Mumbai. The appellant is a bachelor dependent on a sister residing there. The respondent Bank did not even agree when the appellant wanted to be relieved of the services and is obviously desirous of keeping the appellant as a serving officer. Normally, we would have left it to the respondent Bank to again take a fresh decision, but seeing the attitude, it would serve no purpose. Further, the appellant was posted in a supernumerary post even at the stage of transfer from Dehradun. We, thus, consider it appropriate to direct that the appellant should be posted and accommodated at Dehradun and would continue as such, but in case of administrative exigency of extreme nature arising (which at present looks implausible) posting in nearby place can always be given in terms of the circular dated 15.02.1988.”
(Emphasis Supplied)

52. A conjoint reading of ratio laid down in **Net Ram Yadav (supra)** and **V.K.**

Bhasin (supra) leaves no room for any doubt when a policy is made for the purpose of granting benefit to disabled persons under the Act or under

the UNCRPD, the same will have a binding force. Thus, we are unable to persuade ourselves with the line of argument of learned counsel for the employer that the policy aforesaid was not binding on the Bank. The similar was the view taken by Supreme Court in ***Dipika Kantilal Shukla (supra)*** and ***Sajal Kumar Negi (supra)***.

Whether Reversion was a voluntary Act:-

53. The learned Single Judge, in our considered judgment was correct in holding that petitioner admittedly suffered with disability. His performance in Kolkata was good. The promotional posts were lying vacant wherein he could have been accommodated. In this background, it was held that the Bank was not justified in posting the petitioner on promotion to Patna when posts were lying vacant at Kolkata. The finding of learned Single Judge that as many as 4, if not more officers in Scale-IV category upon promotion in October, 2018 have been transferred to Kolkata by the Bank from different parts of the country were not attacked by Bank at all. Learned counsel for the employee also relied on number of documents to establish that promotional post of Scale-IV was very much available at Kolkata where petitioner could have been accommodated and thus, the view taken by the learned Single Judge in Para 26 of impugned order is based on material on record and is a plausible view.

54. Pertinently, the writ petitioner in Affidavit-in-reply pleaded as under:

*“26. I say that without considering the first letter issued by the CCPD dated 06.12.2018, the respondent Bank started pressurizing the petitioner for reversion through the Zonal Office Patna and his immediate superior **Mr. G. Pradhan**,*

Chief Manager of Patna Zonal Office, called the petitioner at least 5 times over phone upto 18.12.2018 for fresh reversion seeking letter. Copies of the call list are annexed herewith and marked as “R-3”. The respondent Bank Authorities further requested CCPD to drop the case on 29.12.2018 mentioning that they accepted the petitioner’s request for reversion. A copy of the letter dated 29.12.2018 is annexed hereto and marked as “R-4”. Furthermore, if the inward Dak register of HRDD/HRMD and MD secretariat of H.O. for December 2018 is looked into to ascertain the receipt of the CCPD letter dated 6.12.2018 advising the respondent Bank to follow the guidelines for Handicapped employees and the petitioner’s letter requesting for reversion from Scale-IV to Scale-III under compelling circumstances, it would be evident that the letter of CCPD reached HO before the petitioner’s letter and still the respondent bank decided to ignore the letter of CCPD and demote the petitioner, implying discrimination against OH employees.”

(Emphasis Supplied)

55. The specific pleading of petitioner mentioned in para 26 and 27 aforesaid were not denied by the respondents in their affidavit-in-opposition. Thus, in view of judgment of Supreme Court in **Naseem Bano vs. State of UP, reported in 1993 Supp (4) SCC 46**, if specific pleadings are not denied, same may be presumed to be admitted. Thus, we find no difficulty in holding that the petitioner sought his reversion under compelling circumstances.
56. It is apt to consider the pain reflected in the representations of petitioner seeking posting at Kolkata. The relevant portion reads thus:

“Letter of Anirban Pal/Petitioner dated 06.12.2018 (Annexure ‘P-7’)

I want to reiterate that being orthopedically handicapped (spine related) with 70% variation to normal (MRI reports and medical evidences since 2013 were sent to CO/HO for recording Win HRMS in May 2017) I had applied for promotion as thought my posting would recording by PAD circular 253 of 2015 as I knew my physical state would not permit me to go far out of my residential area. After getting posting at ZO Patna I had sent three mails dated 6.10.2018, 8.10.2018 and 10.10.2018 stating my condition and requesting for consideration of posting which was rejected by the Authorities on 16.10.2018. Thereafter, I had no other option but applying for withdrawal from promotion process/reversion to scale-III and sent the mail dated 16.10.2018 to the concerned Authorities as mentioned above I need help of others and physiotherapeutic arrangements in many of my day to day activities particularly in the morning. I had many in evening of 12.11.2018 due to lack of proper bed and had suffered from bat hotel in Patna

Land also I could not undergo the exercises with physiotherapeutic equipments that I normally A undertake at my native place I had undergone MRI on 14.11.2018 in Kolkata (report Me attached) and the report reflects that my spinal condition have worsened since my last. MRI report of 23.01.2017 and I have become more susceptible to frequent back problems.

Apart from this final stage prostate cancer of my father with bone metastasis and mediastinal lymphadenopathy was detected in March 2018 i.e. after completion of the promotion process in February 2018 (evidences attached). My father is critically ill and mother is handicapped and my wife, my 12 year old daughter and myself (their only offspring) have to take care of them and no other family members can move to Patna to assist me.

*It is almost impossible for me to stay alone and work at such a distant place from my residence with my health problems **and the compelling circumstances mentioned above has forced me to apply for reversion and return to my native circle.***

Lastly on an emotional note I would like to mention that I thought of applying for promotion because I was one of the top performing managers in Kolkata circle for 3 consecutive years, particularly in terms of quality credit in own power and I felt I should get reward from the Bank in terms of promotion and my posting would be guided by PAD circular 253 of 2015. In 2017, I waited for the whole year as empanelled candidate and this year also I had a long wait as my handicappedness was queried in details by the interview board particularly on my ability to move extensively and I secured poor marks in interview.

Please consider my prayer and oblige.” (Emphasis Supplied)

57. The petitioner had a preferential right to be posted at Kolkata in view of binding policy of the Department. A suitable and meritorious officer was not posted at Kolkata for the reasons best known to the Department. No justifiable reason was spelt out in not posting the petitioner on promotion at Kolkata despite the mandate ingrained in the guidelines. We are convinced that the petitioner made efforts to work on promotional post at Patna but found it difficult and impossible to live alone at Patna with his 70 per cent disability. In this compelling circumstance, he had no option but to seek reversion. In **Shri Krishnan (supra)** the Apex Court opined as under:

“it is well settled that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are

clearly of the opinion that the letter written by the appellant does not put him out of court.”

(Emphasis Supplied)

58. The principle laid down in ***Shri Krishnan (supra)*** can be pressed into service in a case of this nature where employee was left with no option but to prefer an application seeking reversion.
59. The matter may be viewed from another angle. The petitioner had a legitimate expectation based on the promotion/transfer policy to remain posted on promotion at Kolkata. Failure to consider and give due weight to such a policy makes the decision arbitrary. It is settled law that the requirement of due consideration of a legitimate expectation forms part of principle of non-arbitrariness, which is a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process (See Para 42 judgment of Supreme Court in ***Ms. X vs. Registrar General, High Court of Madhya Pradesh & Anr., reported in (2022) 14 SCC 187***). Since legitimate expectation of petitioner is breached, we can safely treat the impugned action in not restoring the promotion as arbitrary. In the same judgment, the Apex Court opined that denial of legitimate expectation could lead to desperation, exasperation and frustration. The language used by the petitioner in the resignation letter therein was held to be evident when she tendered resignation.
60. The Supreme Court considered the aspect whether upon considering the nature of language used in a letter, it can be treated to be a voluntary resignation or not. It is apposite to quote the relevant Para from the

Judgment of **Ms. X vs. Registrar General, High Court of Madhya Pradesh and Anr. (supra):-**

“8. In **P.K.Ramachandras Iyer vs. Union of India** this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and

‘34. **“As such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates”.** (SCC p.172, para 34)

In the context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along marketing representations seeking justice to him and out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer (**P.K.Ramachandra Iyer case, SCC p.173, para 34.**)”

61. If language used by petitioner in his representations mentioned herein above is considered in the light of principle laid down in the case of **P.K. Ramachandra Iyer (supra)** it will be clear that the petitioner waited for sufficient time for redressal of his grievance by the Bank. Since, his genuine request could not fetch any result, he sought reversion. In our opinion, such reversion cannot be treated to be ‘voluntary’ in nature.
62. In **P.K. Ramchandra Iyer v. Union of India** reported in **(1984) 2 SCC 141** it was further held that it may amount to a threatened offer more on account of exasperation, to resign on account of a filling of frustration born out an idea that he/she was being harassed unnecessarily but not at any rate, amounting to resignation actual and simple. In tune with this principle, we are inclined to hold that petitioner sought reversion when his legitimate request for posting him to Kolkata went in vain and

he found himself unable to function at Patna without any family support and with 70% disability. He was left with no option but to seek reversion. The Apex Court in **Ms. X vs. Registrar General, High**

Court of Madhya Pradesh and Anr. (supra) poignantly held as under:-

“We are, therefore, of the considered view that in the peculiar facts and circumstances of the case, the petitioner’s resignation dated 15-7-2014, could not be construed to be voluntary. In any case, immediately in a fortnight, on 1-8-2014, the petitioner had made a representation to Hon’ble the President of India as well as the Chief Justice of India, with a copy to the Chief Justice of the M.P. High Court for reconsideration of the circumstances under which, she was left with no option but to resign. Though, it may not be possible to observe that the petitioner was forced to resign, however, the circumstances enumerated hereinabove, would clearly reveal that they were such, that out of frustration, the petitioner was left with no other alternative.”

(Emphasis Supplied)

63. As analyzed above, the petitioner did not voluntarily prefer application seeking reversion. Instead, he preferred it under compelling circumstances mentioned hereinabove. Thus, he cannot be deprived from the legitimate benefit of posting at Kolkata as Scale-IV officer. Pertinently, during the course of hearing, learned Counsel for the Bank did not dispute that at the time of promotion and posting and even at the time of final hearing of writ petition, the promotional post of Scale IV was very much available in Kolkata.

Other points:

64. We will be failing in our duty if other points raised by learned Counsel for the parties are not dealt with. One of the objection raised by learned Counsel for the Bank was based on the judgment of Supreme Court in the case of **C.V. Satheeshchandran v. General Manager, UCO Bank**

and Others reported in **(2008) 2 SCC 653**. A plain reading of the factual backdrop of the said case shows that the petitioner therein could not establish that he sought reversion under compelling circumstances. In this view of the matter said judgment is of no help to the Bank because in the present case we have already held that the application seeking reversion by the petitioner was tendered under compelling circumstances and it does not have 'voluntary' character.

65. Both the parties have relied the Judgments of Supreme Court in the case of **State Bank of Patiala and others (supra) and Geetaben Ratilal Patel (supra)**. Interestingly, the orders passed by Chief Commissioner under Disability Act were not assailed by anybody. As per the order of said authority, it was obligatory on the part of the Bank to adhere to their guidelines. The Bank has chosen to accept the reversion prayer of the petitioner and did not act with quite promptitude on the direction of Chief Commissioner to follow the guidelines. If guidelines would have been followed, there was no occasion for the petitioner to tender application seeking reversion.
66. On another aspect parties have taken diametrically opposite stand. The aspect is whether the Writ Court was justified in imposing cost and issuing direction to institute disciplinary proceeding. If we would have affirmed the order of learned Single Judge regarding delay in filing the petition, perhaps we would have agreed with the argument of learned Counsel for the Bank that once petition was held to be suffering from delay and laches, it should have been dismissed summarily and there

was no occasion for issuing direction for instituting enquiry and imposition of cost. However, we have held that delay was not a hurdle for the petitioner and, therefore, this argument of learned Counsel for the Bank cannot cut any ice.

67. The learned Counsel for petitioner has rightly relied on the various judgments to show that while exercising power under Article 226 of the Constitution, the High Court has inherent power to mould the relief and even issue direction for instituting enquiry and imposition of cost. More so when it was found that Bank has suppressed material facts. In view of judgments mentioned in Para 17 of this order, in our view, the learned Single Judge has taken a plausible view. Thus, impugned order does not require any interference on this aspects.
68. As a result, Para 35 of impugned order of learned Single Judge is **set aside**. It is held that the writ petition was filed within reasonable time. The petitioner was not responsible for not participating in the promotional process because of bar imposed by the Bank. Resultantly, impugned order before learned Single Judge dated 30.5.2020 is **set aside**. The respondent Bank shall restore the promotion of petitioner within 45 days from the date of production of copy of this order as Scale-IV from the date of reversion on *notional basis* by posting him at Kolkata. To clarify the petitioner shall not get the arrears of pay from the date of his restoration of promotion but his seniority and pay fixation shall be made on *notional basis* on the promotional post of Scale-IV. From the date of assumption of charge as Scale-IV Officer, he shall get the actual

salary attached to the said post. The remaining portion of the order of learned Single judge is upheld. The MAT No. 1380 of 2024 is **partly allowed**. MAT No. 1381 of 2024 of employer is **dismissed**. No cost.

69. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)