

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 682 of 2009

With

CAN 1 of 2018 (Old CAN 5682 of 2018)

Partha Sen

Vs.

The State of West Bengal & Ors.

For the Petitioner	: Mr. Debashis Banerjee, Mr. Rakesh Jana
For the State Respondents	: Mr. Tapan Kr. Mukherjee, Id. AGP, Mr. Somnath Naskar
For the Respondent No.3	: Mr. Suman Basu
Heard on	: 30 th June, 2025
Judgment on	: 5 th August, 2025

Madhuresh Prasad, J..:

1. Heard the learned counsel for the petitioner and the learned A.G.P. Mr. Suman Basu, learned counsel appears on behalf of the Principal Accountant General.
2. The short issue raised by the learned counsel for the petitioner is that he has not been given benefit of the fixation of his pay on account of his promotion as Superintendent from post of Additional Superintendent by an order dated 31.03.1995. The benefit which was granted has later been withdrawn giving rise to recovery of an amount paid in excess to the tune of ₹ 78,166/-.

3. The West Bengal Administrative Tribunal (hereinafter referred to as the 'S.A.T.') considering the petitioner's claim has directed for refund of the amount recovered from the petitioner's gratuity. The order of the S.A.T. dated 18.08.2008 passed in O.A. No. 2349 of 2006 is assailed by the writ petitioner in the present proceedings.
4. It is submitted by the learned counsel for the petitioner that the petitioner ought to have been given the pay fixation benefit in terms of Rule 42A(1) of the West Bengal Service Rules, 1971.
5. The learned counsel for the petitioner has tried to convince the Court that the petitioner's posting as a Superintendent in the office of the Legal Remembrancer & Ex-officio, Secretary to the Government of West Bengal was a promotion as the posting was on a post carrying duties and responsibilities of greater importance, than attached to the post held by him.
6. The learned counsel for the respondents on the other hand have submitted that earlier there was a distinction between the post of Additional Superintendent and Superintendent which after an exercise of rationalisation was combined in a single scale of pay. As a result prior to the West Bengal Revision of Pay & Allowances Rules, 1981, the two posts were carrying a scale of ₹ 435-615/- for Additional Superintendent and ₹ 450-675/- for Superintendent. Post 1981 ROPA Rules, the distinction between the two posts was maintained only by allowing a differential initial start and the same principle was followed during the West Bengal Revision of Pay Rules, 1990 wherein the scale of ₹425-1050/- being a scale common to Additional Superintendent as well as Superintendent, was revised to ₹ 1390-2970/-. The two posts,

therefore, were carrying the same scale of pay ₹425-1050/- with effect from ROPA 1981 subsequently placed in the replacement scale of ₹1390-2970/- under the ROPA 1990.

7. It is the specific stand of the State that the movement from the post of Additional Superintendent to this post of Superintendent was a lateral movement neither involving posting on a post carrying higher scale or duties or responsibilities.
8. We have considered the submission of the rival parties. The Rule 42A(1) is being relied upon by the petitioner's learned counsel and therefore, we consider it apposite to quote the same which reads as under:

“42A.(1) Notwithstanding anything contained in any rule elsewhere, where a Government employee holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, the initial pay of such Government employee in the scale of pay of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:

Provided that the provisions of this sub-rule shall not apply where a Government employee holding a Group A post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Group A post:

Provided further that the provisions of sub-rule (2) of rule 55 shall not be applicable in any case where the initial pay is fixed under this sub-rule:

Provided also that where a Government employee was, immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the scale of pay of the lower post, the initial pay of such Government employee in the scale of pay of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing such pay in respect of the lower post, by an amount equal to the last increment in the scale of pay of the lower post:

Provided also that if a Government employee—

(a) has previously held substantively or officiated in—

(i) the same post, or

(ii) a permanent or temporary post on the same scale of pay, or

(iii) a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical scale of pay; or

(b) is appointed substantively to a tenure post on a scale of pay, identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then, proviso to rule 42 shall apply in the matter of the initial fixation of pay and counting of previous service for increment.”

9. The Rule 42A(1) is clear in its intent and applies to promotion of a Government employee in a substantive, temporary or officiating

capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him.

10. It is under such circumstance that the Rule 42A(1) contemplates that initial pay of such an employee is to be fixed in the scale of pay of the higher post at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. The Rule clearly contemplates a promotion or movement from a lower post to a post carrying a higher duty and responsibility to be a pre-requisite for grant of the benefit contemplated under the Rule, which we do not find in the case of the present petitioner. The same is apparent from the order dated 31.03.1995 issued by the Legal Remembrancer & Ex-officio, Secretary to the Government of West Bengal in the judicial department. The order dated 31.03.1995 is the order by which the petitioner was posted to the post of Superintendent. Paragraph 1 of this order reveals the nature of petitioner's movement from the post of Additional Superintendent to the post of Superintendent.
11. We, therefore, consider it apposite to reproduce paragraph 1 of the order dated 31.03.1995 which reads:

“(1) Shri Partha Sen, working temporarily as Additional Superintendent in the Office of the undersigned is hereby temporarily appointed to the post of Superintendent in the Scale of Pay of Rs.1390-45-1615-55-2055-65-2445-75-2970/- plus usual allowances with effect from 01-04-95 (F.N.) and until further order vice Shri Chandu Bera, Superintendent, who retires on superannuation on 31-03-1995 (A.N.).”

12. A plain reading of the order reveals that the petitioner was temporarily appointed to the post of Superintendent, which was in the common scale which he was already getting, while working as an Additional Superintendent. Plain reading of the order reveals that it is an order of posting and not an order of promotion.
13. It is also specific case of the respondents that the post does not involve a higher duty or responsibility. This position is disputed by the learned counsel for the petitioner by placing reliance on a communication written by the Legal Remembrancer dated 28.05.2004.
14. We do not find any force in such submission. The petitioner was posted on the post of Superintendent by virtue of the order dated 31.03.1995, relevant extract of which has been quoted above.
15. It clearly shows that there was no promotion. The order also does not show that posting was to a post carrying a higher duty or responsibility. In this connection, the view of the Finance Department as well as office of the Accountant General are also on the same lines that the posting was not to a post carrying a higher duty or responsibility.
16. The petitioner also has not referred to any cadre structure to show that the post of Superintendent was a promotional post in the line of promotion from the post of Additional Superintendent, or that it was carrying any duty or responsibility higher than the post of Additional Superintendent.
17. We, therefore do not find any merit in the petitioner's claim to benefit as contemplated under Rule 42A(1) of the West Bengal Service Rules 1971.

18. The order of the S.A.T., therefore, in our opinion does not occasion any miscarriage of justice requiring interference by this Court in exercise of extraordinary and discretionary jurisdiction of judicial review Article 226 of the Constitution of India.
19. We refuse to interfere with the order dated 18.08.2008 passed by the S.A.T. in O.A. No. 2349 of 2006.
20. The Writ Petition being W.P.S.T. No. 682 of 2009 is dismissed.
21. There will be no order as to costs.
22. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Supratim Bhattacharya, J.)

(Madhuresh Prasad, J.)