

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Acting Chief Justice Sujoy Paul
And
The Hon'ble Justice Partha Sarathi Sen

WPCT 95 of 2018
With
CAN 1 of 2020 (Old No.CAN 1575 of 2020)

Noorul Hoda
-Vs-
The Union of India and others

For the petitioner : Mr. Pritam Choudhury

For the respondents/U.O.I. : Mr. Anirban Mitra

Heard on : 13.01.2026

Judgment on : 13.01.2026

SUJOY PAUL, A.C.J. : –

1. This petitioner filed under Article 226/227 of the Constitution of India challenges the order of Central Administrative Tribunal, Kolkata Bench (Tribunal) dated 05.09.2018 passed in O.A. 350/00836/2017 whereby the original application filed by the petitioner was dismissed.
2. For getting the Grade Pay of Rs.10000/- in Pay Band IV, the petitioner preferred a representation dated 19.09.2016 before the department. The said attempt could not fetch any result and therefore, he filed O.A. 127 of 2017 before the Tribunal, which was disposed of by the Tribunal by directing the department to pass a speaking order within stipulated

time. In turn, the department passed the speaking order dated 29th May, 2017 which became subject matter of challenge in O.A. 836 of 2017.

3. In a nutshell, the contention of learned counsel for the petitioner based on written notes is that he joined Civil Construction Wing of All India Radio as Assistant Engineer (Electrical) on 11.07.1988 as a Direct Recruit Engineer on the recommendation of UPSC. The petitioner was then promoted on ad hoc basis as Executive Engineer (Electrical) with effect from 23.12.1996 and on regular basis from 13.04.1998. As per petitioner's contention, he was further promoted as Superintending Engineer (Electrical) since 30.08.2010 on ad hoc basis. He retired on attaining the age of superannuation on 28th February, 2020.
4. The petitioner's contention was that he has not specifically prayed for any promotion before the Tribunal or before the department. Instead, he prayed that he should get next Grade Pay of Rs.10000/- in place of Rs.8700/- (GP) in the same Pay Band in view of his stagnation beyond the eligibility period. In support of his contention, learned counsel for the petitioner placed reliance on Constitution Bench judgment of Supreme Court in the case of **Lalit Mohan Deb and others vs. Union of India and others** reported in **(1973) 3 SCC 862**.
5. It is submitted that once the petitioner has completed eligibility as per Office Memorandum dated 18th January, 2011, and there exists a promotional post, petitioner is entitled to get the Pay Band of the promotional post of Senior Administrative Grade (SAG), the Tribunal

erred in not extending the said benefit to the petitioner. In the present writ petition, the petitioner has quoted examples where junior employees to the petitioner were given same benefits based on similar facts.

6. Mr. Mitra, learned counsel for the department supported the order of the Tribunal and urged that relevant aspects were gone into in the 'speaking order' and department rightly rejected the representation. In absence of availability of promotional post, Grade Pay demanded by petitioner cannot be granted merely because he has completed/served for a period which is equal to or above the eligibility period.
7. No other point is pressed by learned counsel for the parties.
8. We have heard the parties at length and perused the record.
9. Learned counsel for the petitioner has placed reliance on Office Memorandum (OM) dated 18th January, 2011. Relevant portion of the OM reads thus:

“

Dated 18th January, 2011

OFFICE MEMORANDUM

Subject:- Qualifying service for promotion to SAG/HAG Grades in Organised Group 'A' Engineering Services- regarding

This Department vide OM of even No. dated 15.12.2009 had issued guidelines for amendment of Service Rules for incorporating the eligibility requirements for promotion to SAG and HAG level in Organized Group A Services.

2. The matter has been examined in respect of the Organized Engineering Services where the functional SAG is at Grade Pay of Rs. 8700/- and the eligibility requirement for SAG level is 3 years in the JAG grade. Accordingly for promotion to SAG (PB 4 Grade

Pay Rs. 10000/-) level in Organized Engineering Services, the eligibility requirement shall be

“Officers in the grade of Superintending Engineer and equivalent (PB 4 Grade Pay of Rs.8700/-) with 3 years regular service in the grade or officers in the grade of Superintending Engineer / equivalent with 17 years regular service in Group A posts in the service out of which at least 1 year of regular service should be in the PB-4 Grade Pay of Rs.8700/-.”

10. Learned Tribunal also considered this OM and other judgments and came to hold as under:

*“In **N.G. Prabhu v. Chief Justice (Kerela), 1973 (2) SLR 251**, promotion has been distinguished from upgradation in the sense that main purpose of upgradation of a post is to confer financial benefits and promotion is an appointment to a different post carrying a higher scale of pay in the service.*

Relying on the above mentioned ratio, it is axiomatic that promotion being appointment to a different post, the post to which an incumbent is to be promoted has to exist in the first place, meaning thereby, that promotions are dependent on the availability of vacancies in the promotional post. The speaking order does not debar the applicant to be placed in the zone of consideration for promotion but only states that such promotions would be actuated on availability of vacancies.

In his pleadings, the applicant has stated as follows:-

“This application is preferred for challenging impugned Speaking Order No. V-11012/7/2017-BA(E) date 29.5.2017 passed in compliance of direction of Hon'ble CAT, Kolkata in O.A. No. 350/00127 of 2017 of the applicant, declining right of consideration to the promotion to SAG level i.e. Grade Pay of Rs. 10000/- even after fulfilment of all criteria by the applicant.”
(emphasis supplied)

The applicant has claimed the benefits in terms of the Office Memorandum dated 18.1.2011 which obviously refers to promotion to SAG/HAG grades. It has been admitted by the applicant that his basic prayer is for consideration for promotion to the post of SAG Grade and not upgradation to the SAG grade and logically, to merit promotion to the SAG level, a vacancy has to exist.

During his oral arguments, the applicant has produced the pay slip of the Chief Engineer, CCW, CDO, AIR for the month of May, 2018 proving thereby that the post of Chief Engineer, CCW, CDO, AIR is occupied confirming the contentions of the speaking order that no vacancy exists.

Accordingly, the applicant has to wait his turn according to seniority and service rules to be promoted to the post of Chief Engineer and thereafter to the SAG Grade Pay of Rs. 10000/-."

11. A careful reading of OM dated 18th January, 2011, makes it clear that it talks about "promotion" and not "financial upgradation". A particular Grade Pay (GP) is attached to a particular post. In the instant case, the GP of Rs.10000/- is attached to SAG level post of Chief Engineer. The petitioner has not disputed that till his retirement, no post of Chief Engineer was lying vacant. Thus pivotal question is whether an officer who had rendered services equal to or above the eligibility clause can claim the pay-scale/Pay Band attached to promotional post. In our opinion, the simple answer is "no". We say so because a particular Pay Band is attached to a promotional post. If promotional post is not lying vacant merely because officer has rendered certain years of service which makes him eligible for consideration for promotion, he cannot be treated to be promoted or getting a right to get Pay Band and Grade Pay attached to the promotional post.
12. The petitioner has only a right of consideration for promotion and not a right of promotion. The right of consideration of promotion depends upon certain factors such as fulfilling the eligibility conditions, availability of clear and vacant post, non-pendency of disciplinary proceedings/criminal case, etc. In the instant case, admittedly no

promotional post of Chief Engineer was available. Thus, the Tribunal has rightly held that in absence of the post, no right accrues in favour of the petitioner to get Grade Pay of Rs.10000/- which is attached to the promotional post.

13. So far judgment of Supreme Court in **Lalit Mohan Deb** (*supra*) is concerned, suffice it to say that the said judgment nowhere holds that an employee is entitled to get pay scale of promotional post without getting promoted on the said post.
14. The 'financial upgradation' in service law has a different facet. If an employee is stagnant and not getting promotion for a stipulated years of service, as per the ACP/MACP scheme etc., he may get the benefit of financial upgradation and not promotion. His service condition remains the same and he gets a upgraded pay-scale. This was not the case of the petitioner before the Tribunal that he was eligible but deprived of the benefit of ACP/MACP scheme.
15. So far the examples of junior who got the benefit is concerned, learned counsel for the petitioner fairly informed that there is no pleading, proof and foundation before the Tribunal in this regard. In judicial review under Article 226/227 of the Constitution, we are not inclined to examine these new facts on which Tribunal has no occasion to apply its mind and base its judgment. The Tribunal, in our opinion, has taken a plausible view which does not warrant any interference.

16. Accordingly, the petition is **dismissed**. With dismissal of the writ petition, the application being CAN 1 of 2020 (Old No.CAN 1575 of 2020) is also dismissed.
17. Urgent Photostat certified copy of this judgment, if applied for, be given the parties upon compliance of all necessary formalities.

(Sujoy Paul, A.C.J.)

I agree.

(Partha Sarathi Sen, J.)