

(2018) 10 CAL CK 0054

In the Calcutta High Court

Case No : Writ Petition No.29678 (W) Of 2017

Jiban Kumar Sarkar @APPELLANT@Hash Union of India and Others

Date of Decision : 10-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0054

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Arup Kumar Lahiri, Udayan Datta, Chandrayi Alam

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.

The short question that falls for consideration in the writ petition is whether the respondents were justified in refusing senior time scale to the

petitioner. The petitioner joined the Central Reserve Police Force (CRPF, for short) in the year 1983 as an Assistant Sub-Inspector (M). Since then he

got three promotions and became an Office Superintendent (M). In the year 2007, a disciplinary proceeding was initiated against the petitioner and on

July 31, 2009 he was dismissed from service. The petitioner challenged the same by way of a writ petition. A Division Bench of this Court quashed

the charge-sheet and the order of punishment as well as the entire disciplinary proceeding.

The respondents were directed to reinstate the petitioner in service and to release the entire consequential admissible service benefits without any

delay. Against that order the respondents filed an appeal. The Supreme Court by an order, dated February 18, 2016 partly allowed the appeal to the

extent that the order passed by the High Court directing reinstatement of the petitioner stood confirmed. The High Court's order in connection

with the payment of arrear of emoluments and allowances was modified to the extent that instead of full arrears towards back wages, the petitioner herein would be entitled to 25% of such wages and for all other purposes the respondents shall be deemed to have been reinstated with continuity of service.

On April 5, 2016 the petitioner was reinstated in service. On September 8, 2016 he was promoted to the rank of Assistant Commandant and after 22

days he retired from service on September 30, 2016. The petitioner says that he was assessed fit by the Departmental Promotion Committee for the

Year 2008-09. But the same was kept in a sealed cover as the departmental proceeding was contemplated against him. It is his further case that the

petitioner was found fit by the said Committee and his seniority in the gradation list was fixed below Malkhan Singh and above Pradip Kumar Biswas

as on April 1, 2009. He alleges that Sri Pradip Kumar Biswas who was junior to him was given the benefit of senior time scale in the post of Assistant

Commandant but the petitioner had been denied the said benefit. The petitioner made a representation to the superior authority. He received a

communication, dated February 28, 2017, from the respondents informing him that he was promoted to the rank of Assistant Commandant only 22

days before his retirement. As per the Government circular an officer in the rank of Assistant Commandant is required to serve on regular basis for

four years. Therefore, the petitioner is not eligible for the senior time scale.

By this writ petition, the petitioner has inter alia prayed for a writ in the nature of mandamus commanding the respondents to forthwith revoke and

cancel the memo, dated February 28, 2017 and to grant senior time scale of pay to the petitioner from the date when his junior was granted the said

scale, and for other reliefs. In support of his contention, the petitioner relied on the case of Ramesh Kumar Vs. Union of India and Others, reported in

2015 (5) Supreme 658. In that case the appellant was wrongly not considered for promotion which was finally given to him in the year 2000 with

retrospective seniority. The Supreme Court observed that the petitioner was entitled to pay and allowance from the date of the first Departmental

Promotion Committee till the date of his actual promotion on November 13, 2000.

In Netram Sahu Vs. State of Chhattisgarh and Another, reported in 2018 (3) Supreme 41, the appellant was a daily wager. Subsequently his services

were regularized on work charge establishment in the year 2008. The appellant was not paid the gratuity amount by the State. The Supreme Court

held that on regularization the period of service rendered as daily wager would be counted as continuous service for Payment of Gratuity Act. The

petitioner also relied on the case of Mrs. Raj Kanta Vs. The Financial Commissioner, Punjab and Another, reported in AIR 1980 SC 1464 for a proper

appreciation of the meaning of the word 'regular'. The Supreme Court after considering various lexicons held that the word means 'in a

regular manner', 'methodically', 'in due order' etc.

The petitioner lastly relied on the case of Union of India and Others Vs. K. B. Rajoria, reported in AIR 2000 SC 1819. This judgment has also been

relied on for understanding the exact meaning of the word 'regular'. There the Supreme Court held that the word 'regular' does not mean

actual. The expression 'on a regular basis' would be the appointment to the post on a regular basis in contradistinction to appointment on ad hoc

or stopgap or purely temporary basis.

The respondents have used an affidavit-in-opposition inter alia stating that the recommendation of the Departmental Promotion Committee was kept in

a sealed cover as he was not free from the vigilance angle as the departmental enquiry was contemplated or pending against him. After his dismissal

from service his name was not considered for promotion to the next rank by the subsequent Departmental Promotion Committees from the year 2009-

10 onwards as he was not in service. After his reinstatement the sealed cover proceeding was acted upon by the competent authority in accordance

with the rules. He was found fit for the promotion to the rank of Administrative Officer for the year 2008-09. Therefore, the promotion was granted to

him by an order, dated July 27, 2016 to the rank of Administrative Officer with reference to the Departmental Promotion Committee's

recommendation for the year 2008-09 by reassigning his seniority at an appropriate place. He was placed above Sri Pradip Kumar Biswas and below

Malkhan Singh.

The respondents say that the concerned Ministry by an order, dated February 25, 2011 had accorded approval for creation of certain posts against the

abolition of some others. The Ministry had accorded approval for combatization/appointment of 15 willing and eligible Administrative Officers as one

time measure subject to their fitness. The name of the petitioner could not be found in the proposal as he was not in service due to award of

punishment. After being promoted to the post of Administrative Officer the petitioner expressed his willingness for combatization of Assistant

Commandant. He was combatized as Assistant Commandant (Mean) with the condition that the combatization would take effect from the date of

assuming the charge of Assistant Commandant (Mean) and he would be entitled to grade pay from the date of taking over the charge of combatized

posts. Accepting the terms and conditions he took over the charge of Assistant Commandant (Mean) on September 8, 2016.

As per the guideline issued by the concerned Ministry four years' regular service in the grade of junior time scale, i.e., in the rank of Assistant

Commandant, is mandatory for the grant of senior time scale in the grade pay. Therefore, the petitioner is not eligible for the senior time scale. The

seniority of the petitioner, however, was fixed at par with the officials assessed as fit by the Departmental Promotion Committee for the vacancy year

of 2008- 9. His pay was also fixed with reference to the pay of his junior Sri Pradip Kumar Biswas. Therefore, the claim of the petitioner for sanction

of senior time scale is not covered by the scope of the relevant Rules and Regulations as he was combatized only 22 days before his superannuation.

That apart, the post of Administrative Officer is a Group-B gazetted post and Assistant Commandant (Mean) is a Group- A are different groups and

cannot be clubbed together.

The petitioner has filed an affidavit-in-reply largely reiterating his stand in the writ petition. He, however, has denied that at the time of combatization

apart from the medical fitness there was no other condition as alleged. Such condition cannot also get precedence over the order of the court.

Therefore, the respondents cannot deprive the petitioner of the benefits which had been accrued in his favour. The alleged condition cannot be

resorted to by the respondents to take away the effect of the orders passed by the courts, particularly when the court directed the respondents to

confer upon him all the service benefits and to reinstate him in the service. From this, the petitioner alleged that he was entitled to be promoted from

the date when his juniors were given promotion.

As mentioned earlier the High Court's direction for reinstatement of the

petitioner herein with continuity of service and other benefits were affirmed by the Supreme Court. Only the direction for payment of arrears of emoluments and allowances were modified to the extent that instead of full arrears towards the back wages the petitioner herein was found to be entitled to only 25% of the said wages. It cannot be disputed that the reinstatement of the petitioner was allowed by the respondents with continuity of service. The Deputy Inspecting General of Police had passed an order directing that the intervening period from July 31, 2009 to the date he resumed the service has been treated as spent on duty and during this period he was paid 25% of the wages. Again the seniority of the petitioner was fixed at par with the officials assessed as fit by the Departmental Promotion Committee for the vacancy year 2008-09. The respondents have specifically mentioned that he was combatized as an Assistant Commandant (Mean) with the condition that it would take effect from the date of assuming the charge and he would be entitled to grade pay from the date of taking over the charge of combatized post. According to them, the petitioner had accepted those terms and conditions and took over as an Assistant Commandant (Mean) on September 8, 2016.

It appears that the Deputy Inspector General (Organization) by an order, dated September 8, 2016 proved the combatization of the petitioner. It was specifically provided that on combatization no pay fixation benefits would be admissible to him. The concerned was directed to ensure that he was in SHAPE-I medical category on the date of assuming the charge of Assistant Commandant.

The respondents have specifically taken a point that the petitioner was aware of this condition and he had assumed the charge on this condition alone.

It may be mentioned that in the affidavit-in-reply this very specific allegation of the respondents made in paragraph 10 of the affidavit-in-opposition has not been controverted at all. The case of the respondents appears to be probable inasmuch as the petitioner claimed that the only condition that was imposed was with regard to his medical fitness.

It seems to be a matter of surprise that the petitioner is aware of condition relating to his medical fitness, but not the other condition when both of them were contained in the same order. From this the Court has to hold that the petitioner had accepted the position after knowing the condition for

promoting him to the post of Assistant Commandant.

It is no good arguing that the order of the respondents cannot get precedence over the orders of the Supreme Court. The order of the Supreme Court

has not been violated. Benefit of the past service has been given to him undoubtedly. But at the time of his promotion, he had accepted the same

subject to the condition mentioned in the order. It cannot be that an employee will take advantage of an order but not the condition attached to it.

Undoubtedly, the promotion of the petitioner was a conditional order.

If the petitioner had informed the respondents that he was not willing to accept the terms of the order they might not have given him the promotion for

only 22 days before his retirement. In such view of it I do not find any merit in this writ petition and the same is dismissed. There shall be no order as

to the costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite

formalities.