
(2008) 07 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 9098 (W) of 2007

Karendra Chandra Barman

APPELLANT

Vs

North Bengal State Transport Corporation and others

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Road Transport Corporations Act, 1950 — Section 5

Citation : (2009) 120 FLR 42

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Indranil Chakraborty, for the Appellant; Sandip Ghosh, for the Respondent

Judgement

Tapan Kumar Dutt, J.—Heard the learned Advocates for the respective parties. The affidavit-in-opposition filed on behalf of the respondent Nos. 1,2 and 3 be kept on record. The petitioner is aggrieved by an order dated 14th March, 2007 (annexure P-17 to the writ petition) passed by the respondent No. 3. The facts, very briefly, of the instant case are as follows.

2. The petitioner joined the service of the respondent No. 1 sometime in the year 1969 as a conductor and his service was regularized sometime in the year 1970. It appears from Annexure P-3 to the writ petition that the petitioner was transferred to the post of Office Assistant Grade-III sometime in the year 1973. It will appear from annexure P-3 that it was indicated in the said order by the respondent authorities that the petitioner will retain his existing seniority. It appears that by a subsequent order of the respondent authorities the seniority of the petitioner was made applicable from the date of joining the post of Office Assistant Grade-III. The petitioner made an appeal to the Chairman of the respondent No. 1 and a decision was taken by the Board of the respondent No. 1 to the effect that the petitioner's seniority should be considered from the date of joining as a conductor. It appears that on the basis of such decision of the Board of the respondent No. 1 the petitioner was further promoted to the post of Office

Assistant Grade-II with retrospective effect. In a subsequent Board meeting the petitioner's seniority from the date of joining as a conductor was cancelled. Fresh gradation list was prepared. The petitioner was subsequently promoted to the post of Upper Division Clerk and such Promotion to the post of Upper Division Clerk was also given retrospective effect. Subsequently, the matter was again referred to the Board of the respondent No. 1 and the said Board after reviewing the petitioner's case modified the earlier decision taken from time to time and resolved by a decision dated 31st December, 2003 to cancel the seniority of the petitioner from the date of his initial joining as conductor. Due to such loss of seniority for the post of Office Assistant Grade-III, the promotion of the petitioner to the post of Office Assistant Grade-II also stood cancelled. This led the respondent authorities to revise the promotion of the petitioner to the post of Upper Division Clerk from the date of 1st September, 1989 instead of 1st January, 1988.

3. The learned Advocate for the petitioner submits that pursuant to the resolution of the Board dated 31st December, 2003 the respondent authorities started making deductions from the petitioner's salary for the purpose of giving effect to such resolution. The learned Advocate for the petitioner submits that the respondent authorities are still continuing to make such deductions from the monthly salary of the petitioner.

4. It appears from the submissions of the learned Advocates for the respective parties and from copies of some of the orders which were passed by this Court on earlier occasions that the petitioners had earlier come up before this Hon'ble Court for redressal of his grievances and this Court had directed the authority concerned to consider the representation of the petitioner. In such background the impugned order has been passed by the respondent No. 3.

5. The learned Advocate for the petitioner submits that the petitioner is due to retire from his services on 31st October, 2008 and it is absolutely necessary that the dispute should be settled before the impending retirement. The respondent No. 3 by the impugned order has rejected the petitioner's prayer and has held that the respondent No. 1 being appointing authority can at any time on its own motion redesignate any post if it is considered necessary and no option is required to be invited. The respondent No. 3 proceeded on the basis that the petitioner had all along accepted the benefit of redesignation from the post of conductor to the post of Office Assistant Grade-III in his service tenure and he enjoyed the same without any objection till the Board of the respondent No. 1 went against his interest and reviewed it. The respondent No. 3 has held that the redesignation of the petitioner was valid and the decision taken by the Board of the respondent No. 1 in cancelling the seniority and promotion of the petitioner is also justified. With such findings and/or observations the respondent No. 3 rejected the representation of the petitioner.

6. The learned Advocate for the petitioner submitted that the respondent No. 3 acted illegally in taking into consideration the fact that the effect of seniority

computed from the date of joining in the post of conductor in the petitioner's case has created resentment of some other employees. The said learned Advocate submitted that this is an extraneous matter and the respondent No. 2 should not have taken into consideration such aspect of the matter. The said learned Advocate further submitted that the respondent authorities have acted illegally and whimsically in cancelling the seniority of the petitioner with effect from the date of joining the post of conductor since it had been earlier found by the respondent authorities itself that the petitioner was entitled to such seniority with effect from the date of his joining in the post of conductor. The said learned Advocate also submitted that the respondent authorities are illegally making deductions from the monthly salary of the petitioner pursuant to the said Board's resolution dated 31st December, 2003. The said learned Advocate also submitted that the respondent authorities should be directed to refund the aforesaid deductions to the petitioner which the Board had made so far pursuant to the said resolution dated 31st December, 2003.

7. The learned Advocate appearing for the respondent authorities submitted that it is true that the petitioner joined the service as conductor but his subsequent placement of Office Assistant Grade-III was only a redesignation and it was not a transfer. It appears from Annexure P-3, as indicated above, that it was clearly mentioned that the persons named in the said annexure were being transferred. The word "redesignation" does not appear at all in the said order of the respondent authorities. It was further clearly mentioned in the said order that the said persons, including the petitioner, will retain their existing seniority. On such basis the transfer took place. It appears from the impugned order also that the respondent No. 2 has proceeded on the basis that petitioner was redesignated as Office Assistant Grade-III. Such view is contrary to the records itself. Records say that the petitioner was transferred and such transfer was made by maintaining the existing seniority of the petitioner at that point of time. Therefore, the contention of the learned Advocate for the respondent authorities that it was a case of redesignation is not supported by records and is thus, not an acceptable argument.

8. The learned Advocate for the respondent next submitted by referring to paragraph 6 of the affidavit-in-opposition that the working pattern in the post of conductor followed by a promotional post is quite different from the working pattern in the post of Office Assistant Grade-III followed by its promotional post. The said learned Advocate submitted that seniority of the petitioner should be counted from the date of joining in the post of Office Assistant Grade-III. The respondent No. 3 in the impugned order, also observed that the promotions as were given to the petitioner should have been considered on the basis of his experiences as well as seniority in the post of the same nature i.e. to say the Office Assistant Grade-III and Office Assistant Grade-II which is a clerical job. As indicated above, the order passed by the respondent authorities as contained in annexure P-3 to the writ petition clearly shows that the petitioner was transferred from the post of conductor to the post of Office Assistant Grade-III

by retaining the existing seniority of the petitioner. On such basis the petitioner was transferred and subsequently also the respondent authorities have given effect to the seniority of the petitioner with effect from the date of his joining of his services in the post of conductor. The respondent authorities cannot now turn back and say that the said transfer was not really a transfer but a case of redesignation. The employee had been given to believe that his seniority shall be maintained and/or retained and on such basis he has rendered his services to his employer for such long number of years. If the employer decides just about one and half years before the petitioner is due to retire from his service that the cancellation of the seniority of the petitioner, as now done by the respondent authorities, is valid, it would tantamount to gross injustice. The respondent No. 3 took the view that the promotion given to the petitioner should have been considered on the basis of his experiences in the post of the same nature i.e. Office Assistant Grade-III, but in the facts and circumstances of the instant case such principle has not been followed by the respondent authorities themselves and it would be something new on the part of the respondent authorities to adopt in the case of the Petitioner a little before the petitioner is due to retire from his services. The respondent No. 2 has not cited any Rule and/or provision of law to come to the conclusion that the services rendered by the petitioner in the post of conductor has to be excluded while considering his seniority. Thus, the said view taken by the respondent No. 3 is also not acceptable to this Court.

9. The learned Advocate for the respondents further submitted that the respondent No. 1 being the appointing authority can take decisions for the purpose of management of the affairs of the Corporation. The said learned Advocate referred to section 5 of the Road Transport Corporation Act which indicates that the general superintendence, directions and management of the affairs and business of the Corporation shall vest in the Board of Directors. It is true that the Board of Directors have the power to take decision with regard to the management and supervision of the affairs of the Corporation but it is equally true that decisions have to be in accordance with law and will have to adhere to the principles of fairplay and justice. Such decision cannot be arbitrary and whimsical. This Court finds that the decision taken by the respondent No. 3 as reflected in the impugned order is not at all fair and proper. It appears that the impugned order suffers from arbitrariness and illegality. This Court is of the view that the impugned order should be set aside. The writ petition is thus disposed of by setting aside the impugned order and directing the respondent authorities to treat the seniority of the petitioner from the date when the petitioner's services were regularized in the post of conductor and the petitioner shall be entitled to the consequential benefits.

10. As prayed for by the learned Advocate for the respondents there shall be stay of operation of this order for a period of three weeks from this date.

Urgent Xerox Certified copy of this order, if applied for, be given to the parties after completion of all the formalities.