
(2019) 04 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petitions (WP) 1522 (W) Of 2017, 1525, 1526, 1528 (W) Of 2018

Ruby Sinha

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Water (Prevention and Control Of Pollution) Act, 1974 — Section 4, 12
Central Excise Act, 1944 — Section 11A

Citation : (2019) 04 CAL CK 0050

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Arunava Ghosh, Tapas Kumar Bhattacharyya, Purnasis Bhuniya, T. M. Siddiqui, Parimal Kumar Dwari, Nilotpal Chatterjee, Ujani Pal (Samanta), Saptangsu Basu, Arjun Ray Mukherjee, Saheli Mukherjee

Judgement

Sambuddha Chakrabarti, J

The petitioner who is an employee of the West Bengal Pollution Control Board (the Board, for short) was promoted by an order, dated February 27, 2013 to the post of Senior Environmental Engineer. He says that his service conditions are guided by the West Bengal Pollution Control Board Employees' Service Regulation, 2009 which was framed in exercise of the powers conferred by Section 12 of the Water (Prevention and Control of Pollution) Act, 1974 (the Act, for short). In fact, the Board itself is a statutory body constituted under Section 4 of the Act. The promotion of the petitioner was sanctioned by the department of Environment, Government of West Bengal. His promotion was discussed and deliberated at the 156th meeting of the Board and in the 157th meeting of the Board held on September 30, 2013 the minutes of the previous meeting were confirmed.

The Board published a draft gradation list for the post of the Environmental Engineer and invited objections. By a subsequent memorandum, dated November 8, 2013, the gradation list was circulated as the final gradation list of

the Environmental Engineers as on November 4, 2013 in which the name of the petitioner appeared at serial number 19. At present he is eligible for promotion to the next higher post of Senior Environmental Engineer.

The petitioner alleges that he was served with a memorandum, dated December 12, 2017 issued by the Member Secretary of the Board by which he was reverted to the feeder post of Environmental Engineer with effect from February 27, 2013. Such exercise had been undertaken on the basis of a memorandum, dated September 13, 2017 issued by the respondent no. 1, on the ground that the promotion granted in favour of the petitioner was based on an alleged erroneous procedure. The petitioner made a representation on December 18, 2017 the fate of which he remains still uninformed.

It has been the case of the petitioner that while granting promotion his eligibility and other incidental issues were considered and examined by the selection committee in terms of Regulation 33 of the Service Regulations, 2009 and a conscious decision was taken upon application of mind which will be evident from the resolutions of the Board meetings mentioned above. His right to hold the post of Senior Environmental Engineer attained finality upon publication of the gradation list. Consequently, the order of reversion is bad and has the effect of setting aside the final gradation list without there being any challenge to it.

The petitioner has variously assailed the impugned memorandum, dated December 12, 2017 as issued by an authority lacking competence to do so, being perverse and arbitrary and that the same amounts to punishment by reduction in rank without holding any disciplinary proceeding against him. He has also assailed the impugned memo being barred by principle of estoppel as he had been reverted about five years after he was promoted.

The petitioner has inter alia prayed for a declaration that the impugned memorandum, dated December 12, 2017 and the memorandum, dated September 13, 2017 are bad in law and unsustainable, a writ in the nature of certiorari commanding the respondents to produce the records of the case so that conscionable justice may be done by quashing the impugned memoranda, a writ in the nature of mandamus commanding the respondents to withdraw, revoke and rescind the memorandum, dated December 12, 2017 and to allow the petitioner to continue in the post of the Environmental Engineer with the consequential benefits attached to the post and for other ancillary reliefs.

On behalf of the respondents nos. 2 and 3 the senior law officer affirmed an affidavit-in-opposition. The answering respondents have contended that on the basis of the recommendation of the selection committee the petitioner was promoted to the post of Senior Environmental Engineer from Environmental Engineer. Subsequently, Smt Bithika Goswami and Sri Samit Dutta, two Assistant Environmental Engineers made several complaints to the Chairman and Member Secretary of the Board alleging that the promotional order in favour of the petitioner had deprived them of their due promotion. Similarly, Smt Dipanjana

Moulik, a Senior Environmental Officer, Government of West Bengal, who was in deputation in the said department made a complaint to the Chairman alleging her supersession by some of the officers of the Board.

The Environment Department, Government of West Bengal by an order dated May 6, 2015 directed the Board to examine the issues raised by Smt. Dipanjana Maulik. The officer on special duty of the Board submitted a report on June 5, 2015 to the effect that on examination of records it had been found that Smt. Dipanjana Maulik had been denied promotion in view of an erroneous method adopted by the selection committee ignoring the relevant seniority of the officers and ranked them based on their Annual Confidential Report (ACR, for short) ratings. This was not in conformity with the State of West Bengal promotional norms which the Board accepted to follow.

The Member Secretary of the Board by an order, dated November 16, 2016 constituted a three-member committee to suggest the necessary action to be taken. The said committee submitted a report in which it was found that the selection committee did not follow the State Government norms while ranking the Environmental Engineers for promotion, ignored their relevant seniority and ranked them based on their ACR ratings.

The report was subsequently referred to the Principal Secretary of the concerned department of the Government of West Bengal with a note that in order to redress the grievance of Smt. Dipanjana Maulik the Board would have to modify its order, dated February 27, 2013 and the Environmental Engineers promoted by order, dated February, 27, 2013 would have to be reverted to the feeder post. Since the other complaints have also been received, the Board constituted a committee to enquire into the complaints. As the matter related to promotion and had financial implications the department of Environment was requested to give their opinion in the matter.

This time another three-member committee was constituted to ascertain the veracity of the complaints made by other engineers and scientists and the report submitted by this committee was in the same line with the one submitted by the previous committee. The committee proposed to cancel or modify the earlier orders. The report of the committee was again forwarded to the Principal Secretary of the concerned department who by a letter, dated September 13, 2017 informed the Member Secretary of the Board that the matter had been examined by the department and it was inter alia found that selection had been done erroneously and flouting government norms and the Board's own service regulations. The opinion of the department was communicated that the Board should cancel the earlier promotion based on erroneous procedure. After this the Member Secretary of the Board issued the impugned order, dated December 12, 2017.

It has been the stand of the respondents that by a memorandum, dated January 29, 1986 the Deputy Secretary, Government of West Bengal informed the

Member Secretary of the Board that the employees of the Board would be guided by the provisions laid down in the West Bengal Service Rules. At present the Employee's Service Regulations, 2009 is in force. The Board is bound to accept all the directives and instructions of the State Government under the Act and since its inception it had carried out the same without reservation or modification. Even the pay scales cannot be prescribed by the Board without the approval of the State Government. Since Smt. Dipanjana Maulik, an employee of the Board was in deputation in the department of Environment, involvement of the department was inevitable. Since it had financial implication the opinion of the department was sought for. The respondents have specifically mentioned that before seeking any opinion from the department of Environment it was decided to modify/cancel the order, dated February 27, 2013. The order of promotion was rightly cancelled and the impugned orders do not suffer from any impropriety or infirmity.

The answering respondents have further contended that no legally protected right of the petitioner which can be judicially enforced has been infringed. They have prayed for dismissal of the writ petition.

The respondent nos. 2 and 3 have also filed a supplementary affidavit-in-opposition seeking to bring on record certain facts which were not mentioned inadvertently in the earlier affidavit. By this affidavit, the respondents contended that Regulation 33(1) of the Service Regulations of the Employees of the Board says that all cases of promotion shall be considered by the appointing authority on the basis of seniority-cum-merit after due consideration of the relevant criteria as mentioned in the affidavit. In case of category A employees the ACR and in case of categories B, C and D employees annual performance report shall be considered. In the case of seniority-cum-merit the seniors in the feeder grade are selected subject to their suitability. In that case a benchmark for merit should be prescribed and then making promotions according to the seniority out of the candidates achieving the requisite benchmark. In the present case the settled procedure was not followed. In the gradation list several senior officers were ignored for promotion in spite of their eligibility.

In the affidavit-in-reply the petitioner has largely reiterated his stand in the writ petition. He has denied the allegations contained in various sub-paragraphs of paragraph 6 of the affidavit-in-opposition. He has particularly mentioned that he had not been informed of any complaint being made by anyone alleging supersession. Smt. Dipanjana Maulik alleged that she had been superseded in view of the promotional order, dated February 27, 2013 for the post of Senior Environmental Engineer and not for the post of Environmental Engineer. The officer-on-special-duty gave his findings behind the back of the concerned employees who were not served with any notice before he came to a finding that the procedure adopted by the Member Secretary while granting promotion on February 27, 2013 was not in conformity with the State Government's promotional norms which the Board was expected to follow. The petitioner has

reiterated that the Principal Secretary, department of Environment, is not the employer and has no power and jurisdiction to redress the grievance of Smt. Dipanjana Maulik. The Board has no authority to seek opinion from the Principal Secretary for modification of the order, dated February 27, 2013 and to revert the promotees to the feeder posts. The Committee constituted to enquire into the complaints violated the principles of natural justice. More than two years after the date of promotion complaints were lodged and the Board passed the order of reversion about 5 years after the date of promotion.

The petitioner has repeated that since the Board has its own service rules, the Government norms are not applicable with regard to his promotion. It was solely on the direction of the department of Environment that the petitioner had been demoted. The Board did not take any independent decision and acted on the dictation or direction of the State Government. Prior to coming to the finding that the selection committee had ignored the relative seniority of the candidates and ranked them based on their ACR ratings or the earlier promotional order was required to be cancelled no notice was given to the petitioner and the whole thing was sent to the Principal Secretary behind his back. The State Government cannot dictate the Board to cancel the order of promotion passed about 5 years before and to revert the petitioner to the post of the Assistant Environmental Engineer.

So far as the supplementary affidavit-in-opposition is concerned Mr. Ghosh, the learned Advocate for the petitioner, considering the contents of the same did not wish to file any rejoinder.

The respondent no. 1 i.e. the State of West Bengal has filed an affidavit-in-opposition affirmed by the Senior Law Officer, department of Environment, Government of West Bengal. The affidavit is in same line and almost same language with that of the affidavit-in-opposition as well as the supplementary affidavit-in-opposition of the respondent nos. 2 and 3.

It is unfortunate that the senior law officer, department of Environment has affirmed an affidavit which linguistically and contentwise so closely resembles the affidavits of the respondent nos. 2 and 3 that the conclusion is obvious and inescapable for this the deponent may not be responsible as he might not be in a position to know what the Board had stated in its affidavit. But it is not understood why the learned Advocate for the State prepared such an affidavit in his office without appreciating that what could be stated by the respondent nos. 2 and 3 could not be stated by the respondent no. 1 and the method of affirmation of the paragraphs were bound to be different.

The primary challenge of the petitioner is the order issued by the Member Secretary of the Board cancelling the promotion given to the petitioner by order, dated February 27, 2013. The petitioner was reverted to the feeder post with effect from the date of promotion. Apart from the said order he has also assailed the memo, dated September 13, 2017 containing the direction of the department

of Environment, Government of West Bengal, as pursuant to the same the order of reversion was passed by the Board.

The first document has been amended to the writ petition and the second has been disclosed by the respondent nos. 2 and 3 in their affidavit-in-opposition. We take the second-mentioned document first as it is chronologically earlier than the first-mentioned one.

By a communication, dated September 13, 2017 the Principal Secretary, Environment department, informed the Member Secretary of the Board that the three-member committee found that the selection did not follow the State Government's norms while ranking the holders of the feeder post for promotion. The department's opinion was that the Board should cancel the earlier promotion based on erroneous procedures after conducting selection process afresh considering the Service Rule of the State of Government as well as the Board. Till new promotions are decided no one might be reverted to an inferior post.

The petitioner has assailed the memo, dated December 12, 2017 as passed at the dictate of the state government which in the present case was palpably impermissible. The Board being a statutory body must enjoy a certain degree of autonomy which cannot be compromised in any manner whatsoever.

The petitioner has further challenged the impugned decision of the Board as violative of principle of natural justice as before passing the final order of reversion no hearing was given to him.

To the first point, Mr. Basu, the learned Senior Counsel for the Board, submitted that the decision had been taken by the Board before the state government had communicated its decision. That apart, Mr. Basu submitted that since the government is the funding authority it has a complete control over the Board and that is why the matter was referred to them.

The first submission of Mr. Basu is factually incorrect. The Board itself has admitted in the affidavit that after receiving the report of the three-member committee the Member Secretary of the Board referred the matter to the Principal Secretary of the concerned department requesting him to give his opinion in the matter. To this the Principal Secretary expressed his opinion by a letter, dated September 13, 2017 and the memorandum of the Board, dated December 12, 2017 makes reference to the opinion expressed by the Principal Secretary of the concerned department as the direction of the Government. Thus, even if there was a finding of a committee, the decision of the Board was taken only after receiving the opinion of the Principal Secretary, department of Environment, which was treated by the Board as a directive.

The effort to justify the action of the Board has been made with reference to the alleged impropriety of the previous selection committee in not adhering to the norms of promotion and for violating the principle followed in the case of seniority-cum-merit rule. From this, Mr. Basu tried to establish that since the

earlier selection committee committed the mistake no purpose would have been served by giving the petitioner an opportunity of hearing.

In support of his contention, Mr. Basu relied on the case of *A. Janardhana vs. Union of India and Others*, reported in AIR 1983 SC 769, *State of Punjab vs. Jagdip Singh and Others*, reported in AIR 1964 SC 521 and *Indian Oil Corporation Ltd. and Others vs. Jharna Sarkar and Others*, reported in 2004 (2) CHN 606. These three are primarily judgments on service jurisprudence laying down different principles of law pertaining to that particular branch. For example, *A. Janardhana* (supra) reiterates the principle that any rule of seniority has to satisfy the test of equality of opportunity in public service. In the absence of any other valid rule for determining inter se seniority of members belonging to the same service the rule of continuous officiation or the length of service etc. would be valid.

In *State of Punjab* (supra) the Supreme Court inter alia decided that where a Government servant has no right to a post or to a particular status he will not in law be deemed to have been validly appointed. Since these persons could not be confirmed to their post they could not be regarded as holding that status. They were merely officiating to those posts. The ratio in the case of *Indian Oil Corporation Ltd. and Others* (supra) is that if a person enjoys a benefit de hors his right conferred by statute or by agreement he cannot claim continuation of the same and the other party is entitled to rectify such mistake or the wrong.

These judgments lay down very well-settled principles service law which, however, have no application to the facts of the present case. The petitioner has not challenged the breach of any service rule for determination of seniority or the injustice done to him in not considering his length of service or whether he has any right to hold the post and to any declaration to that effect or he can claim any continuation to the post he had been promoted, so on and so forth.

These could have been valid considerations had the petitioner been reverted to the feeder post after complying with the rule of law and the principles of natural justice. Then the point of challenge would have been very different and the respondents might have some degree of justification in relying on them judgments in support of the action taken by them.

The petitioner did not raise any issue on the points which have been addressed by Mr. Basu seeking to establish the reasons for the decision taken by the respondents to revert the petitioner to the original post. The petitioner had no occasion to make any allegation of the sort in makebelieve response to which Mr. Basu made his submissions. To the extent indicated above, the submission of Mr. Basu must be held to have been made in vacuum.

The effort of Mr. Basu to justify the action of the respondents to an unpleaded and extraneous challenge seems to establish that in the facts of the case compliance with the principles of natural justice would not have served any purpose. To that effect he relied on the judgment in the case of *Escorts Farms*

Ltd., previously known as M/s. Escorts Farms (Ramgarh) Ltd. vs. Commissioner, Kumaum Division, Nainital, U.P. and Others, reported in (2004) 4 SCC 281 for a proposition that rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in decision of the case on merits.

To the same effect is the judgment in the case of Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise, Gauhati and Others, reported in (2015) 8 SCC 519 which has been relied on by Mr. Basu for a proposition that when a fair hearing would make no difference no legal duty to provide a hearing arises. Every violation of a facet of natural justice may not lead to the conclusion that the impugned order is always null and void.

Undoubtedly, these are well carved-out exceptions, recognized for the last half-a-century or thereabout, to the principle of natural justice. It is true that in some cases courts felt that the action of the respondents could still be held even if it was not preceded by an opportunity of hearing. It was in this genre of cases that courts have held that hearing would make no difference justifying - remanding the matter to the respondents for a fresh decision.

But such an exception can be resorted to by courts when the facts are indisputable and the failure to comply with the principles of natural justice cause no prejudice to the party complaining. These are the cases where the facts speak for themselves and the conclusion based on that must be inflexibly far too obvious to admit of any doubt. It is only in these cases that the courts have held that natural justice cannot be stretched to an absurd point of empty formality.

This, however, has to be decided by the courts upon an adjudication of the lis between the parties. It is the court which has to come to this conclusion after considering the effects of failure to comply with the principle of natural justice. From the facts of a given case the court will have to draw this conclusion. For example, in the case of Escorts Farms Ltd. (Supra) the Supreme Court found that the transfer was effected contrary to the terms of government grant and were impermissible. Upon such a finding the Supreme Court held that remanding the case would be of no legal consequence.

In Dharampal Satyapal Limited (Supra) the appellant attached the recovery orders passed by the respondents without a show-cause notice under Section 11A of the Excise Act. On facts the Supreme Court held that there was a requirement of issuing show-cause notice before passing the order of recovery, irrespective of the fact whether Section 11A of the Act was attracted in that case or not.

That apart, it is not understood why Mr. Basu relied on this judgment which, if read carefully, is bound to go against the contention of the respondents. The Supreme Court laid down that an administrative authority cannot dispense with the requirement of issuing notice by itself deciding that no prejudice would be caused to the person against whom an action is contemplated. It is not

permissible for the authority to skip over the compliance of the principles of natural justice on the ground that even if hearing would have been provided it would have served no useful purpose. That has to be considered at a later stage and cannot be presumed by the authority. The Supreme Court relied on the case of Board of High School and Intermediate Education Vs. Chitra Srivastava, reported in AIR 1970 SC 1039 where the Supreme Court held whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalized has no defence, but on the nature of the order proposed to be passed.

Judged from that perspective reliance on a part of Dharampal Satyapal Limited (Supra) is a self-defeating exercise. In a properly instituted case where the court is called upon to decide on the merits of the case coupled with a lack of notice of hearing, the court can conclude that in a given situation non-compliance with the principles of natural justice would not have an adverse effect on the fact of the case. This is a prerogative of the court and not of the administration. Otherwise, there would be a constant effort on the part of the administration to come up with the plea of empty formality to cover up their laches and in the process foreboding consequential doom to the settled requirements of law. As mentioned earlier, the introduction of the self-imposed justification or the alleged violation of law five years before by the Board itself was not in response to any challenge to that effect by the petitioner. The scope of the dispute raised by the petitioner was very different and did not call for any explanation how the principle of seniority-cum-merit had been allegedly violated by the Board. The respondents were not required to make any submission on issues not pleaded and then claim that their act was so aboveboard and unimpeachable that compliance with the principles of natural justice was not required.

After the publication of the final gradation list, the petitioner had acquired a right to hold a post. That could never be unsettled by the Board more than five and a half years after a date of promotion without giving him an opportunity of being heard. The entire exercise by the Board was taken behind the back of the petitioner and that by itself constitute sufficient grounds for setting aside the order of the Board.

A bare reading of the order, dated December 12, 2017 carries an impression that the department of Environment, by its letter, dated September 20, 2017 had directed the Board to cancel the promotions given by the order, dated February 27, 2013 which was allegedly based on erroneous procedure. In pursuance of the said direction, the promotion orders were treated as cancelled and the petitioner was reverted to his feeder post.

One thing stands out quite clearly that the Principal Secretary, department of Environment gave his opinion which was accepted by the Board as the direction. The Board never communicated to the petitioner that the Principal Secretary had conveyed his opinion as the opinion was treated as a direction and the same was followed unhesitatingly.

As mentioned earlier for Mr. Basu this all but natural as the State Government was the funding agency, the Court cannot buy such view as the accepted norm to be expected of a statutory body like the Board. The government is the funding authority of umpteen number of statutory bodies which does not mean that the government has the ultimate control over their internal affairs. A very unusual statement has been made in the affidavit-in-opposition by the respondent nos. 2 and 3 that the Board is bound to accept all the directives and instructions in verbatim of the government under the Act and since the very inception the Board had carried out the same without any reservation. The other reason cited for obeying the opinion of the Principal Secretary is that alteration in the gradation list involved financial implication and, therefore, the opinion of the government became necessary.

It is one thing to say that the Board is required to follow the policies of the government under the Act and it is another thing to entirely act on the opinion of the State Government treating the same as a direction in respect of a matter falling within the internal administration of the Board. The Board is a statutory body and, therefore, it derives its powers and functions from the Act and not from the individual opinion of the Principal Secretary of any department.

The law has always recognized a very fundamental difference between a subordinate official and an independent statutory body. While a subordinate official is bound to carry out the directives of a superior officer such is not the position with an independent body constituted under an Act. In its internal functioning it is entirely independent of the government and should not feel bound by its directives merely because funds are provided by the government. It's time that the autonomy of a statutory body irrespective of whether it is funded by the government or not, should be highlighted. The mere fact that the Government funds a statutory body does not give it any right to be the final arbiter in respect of the internal matters of a statutory body. The manner in which the Board treated an opinion as a direction goes a long way to show how and to what extent it had abdicated its authority in favour of the government. This has given a significant space to the petitioner to complain that the order of the Board has been passed the dictate of the government. This seems to have been admitted by the Member Secretary himself.

The power is to be exercised by the very authority upon whom it has been conferred by the statute. When a statutory authority exercises the powers vested in it by an Act under the dictate from a different authority, the authority must be held to have totally failed to exercise the power which was not only vested in it but which was, in fact, was its duty to exercise. An authority is always required to act according to its own discretion and to take a decision of its own. The moment it feels that some external authority has directed it to do certain thing and, therefore, it has to be done, it is not the decision of the statutory body but of an external authority. Such an act is always vitiated by non-application of mind. This makes the administration vulnerable to any criticism.

In the case of *Anirudhsinghji Karansinji Jadeja Vs. State of Gujarat*, reported in AIR 1995 SC 2390, the Supreme Court observed that the discretion exercised under the direction of some higher authority is a failure to exercise discretion all together.

Whether a certain number of officials should be promoted or not is a decision to be taken by the Board itself consistent with its requirement and the recommendation of the selection committee. If there was any mistake committed by the Board at any stage earlier and if the Board wanted to rectify the same the decision has to be taken by the Board itself in accordance with law. This principle has been explained by the Supreme Court in the case of *State of Uttar Pradesh Vs. Maharaja Dharmander Prosad Singh*, reported in AIR 1989 SC 997 that an authority cannot permit its decision to be influenced by the dictates of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. The Supreme Court was unambiguous in striking down such a decision when it held that such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred on the authority.

When under the relevant Act under which the Board has been constituted contains no provision for acting under the dictates of the government, the Member Secretary of the Board had no reason to feel himself bound by the opinion expressed by the Principal Secretary treating the same as a direction. That is a situation when an external authority takes a decision and communicates it to another authority which feels itself bound by it. An independent application of mind is missing. In the case of *Chandrika Jha Vs. State of Bihar*, reported in AIR 1984 SC 322, the Supreme Court held when a discretionary power is vested in a designated official it is he alone who must exercise the power according to his own judgment and discretion and none else. In that case, the Supreme Court set aside the order of the Registrar of co-operative societies as the order was passed and dictated by the Chief Minister.

Reference may also be made to the case of *Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others Vs. Director General of Civil Aviation and Others*, reported in 2011 (5) SCC 435 where the Supreme Court had held that in a democratic set up persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give away to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play the same would be patently illegal.

This has exactly happened in the present case. The Board sought for opinion which in the first place was not necessary as the Board was the ultimate authority to take decision in its internal matters. When the opinion was communicated the Board interpreted it to be a direction and thought itself to be completely bound by it without even considering that in matters of internal

administration it has to survive or perish on its own decision which is in tune with the cherished concept of the autonomy. The Member Secretary had no occasion to apply his mind once he felt himself bound by direction of the Principal Secretary of the government rendering the order liable to be set aside.

For the reasons stated above, the Court considers the order, dated December 12, 2017 to be not sustainable in law and it is set aside. However, the communication, dated December 20, 2017 is not set aside as it is in the nature of an opinion. The Board is directed to restore the petitioner to the promotional post within two weeks. The financial benefit of the post which the petitioner would have enjoyed but for the order impugned should also be restored to him within a period of four weeks.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.