

(2009) 02 CAL CK 0069
In the Calcutta High Court
Case No : C.O.S.T. No. 18 of 2007

Somenath Sinha Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2009) 02 CAL CK 0069

Hon'ble Judges : Prasenjit Mandal, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Surajit Samanta, Biswajit Samanta, for the Appellant;Chameli Majumdar for the State, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is directed against the judgment and order dated 12.05.2006 passed by the learned West Bengal Administrative Tribunal in O.A. No. 159 of 1997 whereby the learned Tribunal has dismissed the application u/s 19 of the Administrative Tribunals Act, 1985.

2. The applicant joined West Bengal Health Service in 1975 on ad hoc basis and his appointment was regularised by the Public Service Commission, West Bengal in 1978. After rendering services in different hospitals in West Bengal, he was transferred to R. G. Kar Medical College and Hospital, Calcutta in 1984 as Registrar and he worked in such capacity till May, 1990. Thereafter, he was transferred to Dr. B. C. Roy Polio Clinic and Hospital for Crippled Children as general surgeon in 1990. In 1987, he applied for empanelment of his name in the academic panel of lectureship but no action was taken. In 1990, the said health service was bifurcated into two-one being the West Bengal Health Service and the other the West Bengal Medical Education Service. So options of all the members of these services were invited within certain time. Litigations started. After end of the litigation, the last date of exercising option was extended to 21.03.1992. The applicant exercised option on 20.03.1992 in prescribed form

desiring to join West Bengal Medical Education Service. Thereafter he sent representation on 25.11.1992 but his representation was not considered. Then he filed the writ application being No. 4395 of 1993. The applicant retired from services on superannuation on 31.10.1994 after attaining the age of 58 years.

3. In the case of West Bengal Medical Education Service, the age of retirement is 60 years. Apparently in terms of an interim order dated 20.12.1994 passed by Justice Samaresh Banerjea (as His Lordship then was) in the matter No.4395 of 1993, the respondent authority passed an order dated 16.03.1995 whereby the applicant was permitted to act as R.M.O.-cum-Clinical Tutor in the Department of Surgery, Medical College, Calcutta with effect from 30.10.1994. Ultimately, the application of the applicant before the Hon"ble High Court was transferred to the learned Tribunal and the same was disposed of directing the respondent authority to treat the application as representation of the applicant by an order dated 17.10.1996 in T. A. No. 1526 of 1996. Thereafter the respondent authority passed the order dated 20.12.1996 and such order was communicated to the applicant by the Memo dated 23.12.1996. Being dissatisfied with the speaking order of the respondent authority appointing him as RM.O.-cum-Clinical Tutor, the applicant filed the application before the learned Tribunal and the learned Tribunal passed the impugned order dated 12.05.2006.

4. We have read respective pleadings and heard contentions of the Learned Counsels. The question arising in this case is whether the State Government has granted suitable posting to the applicant commensurate with the status and seniority and consequential monetary benefit, consequent upon acceptance of his option of joining the medical services in terms of the order dated 20th December, 1994 passed by His Lordship, the Hon"ble Mr. Justice Samaresh Banerjea (as His Lordship then was) in the writ petition that ultimately stood transferred to the learned Tribunal.

5. By the speaking order, mentioned above. Director of Health Services did not think fit to give any benefit other than what had been given earlier by the Government by order dated 16th March, 1995 regarding his status. By order dated 16th March, 1995 the Government in terms of the order of Justice Banerjea has placed the applicant as R.M.O.-cum-Clinical Tutor on supernumerary duty in the Department of Surgery, Medical College, Calcutta with effect from 30th October, 1994. Significantly, he retired on 31st October, 1994 from his service. Therefore, there was no occasion for the applicant to join the said post factually. In our considered view, the Government has not granted due and legitimate status of the applicant consequent upon his option having been exercised by him in terms of the order of Justice Banerjea. In the speaking order it has been admitted that the applicant has duly exercised option on 23rd March, 1992. Despite admission the Government has given effect to such option on and from 30th October, 1994 on the plea that the aforesaid option did not reach the department concerned within 23rd March, 1992 and further absence of subsequent persuasion and representation. The effect of the option could not be

given from 23rd March, 1992 as the same was accepted pursuant to the order of the Court which was passed on 20th December, 1994. We do not find rationality of any degree in these reasonings. We fail to understand why the date, 30th October, 1994 has been chosen as the date of giving effect and why not earlier date although the order was passed on 20th December, 1994. Choice of this date does not appear to be logical or rational in any sense. One could have understood the effect of the option is given on and from the date of passing of the order of the High Court dated 20th December, 1994, there could have been some sort of justification. Thus, it is clear when the effect of the exercise of option could be given retrospectively by their own admission we fail to understand why it was not given from 23rd March, 1992.

6. Nothing has been shown before us to legitimately justify such effect of option being given on reaching of the same to the department or on any other subsequent date; rather it appears from the said order of Justice Banerjea there has been clear observation that once his option is exercised, absorption or the date of exercise is automatic. Justice Banerjea found in clear terms, inaction on the part of the respondents. The judgement and order of Justice Banerjea has not been appealed against and admittedly this has been accepted. We think that the said judgement and order and the contents of the same has not been carried out in true spirit. The said application was finally disposed of by the learned Tribunal without variation or modification of the same, rather accepting the said judgement directed to place the applicant to the actual position and status. We, therefore, hold that the applicant is deemed to have been absorbed in the West Bengal Medical Education Service on and from 23rd March, 1992 and in terms of the Rules he should be given to the equivalent status and post which was holding on the date of exercise of option. The learned Tribunal has failed to take note of the aforesaid admitted position and has gone in a mechanical way and refused relief, which the applicant deserves in the facts and circumstances of this case. The applicant, however, claimed that he should have been posted by this time to the position of Associate Professor as he applied for the post of Lecturers in the year, 1987 by dint of his qualification and experience. We have noted that this grievance and statement was made in his earlier writ petition. Hon"ble Justice Banerjea, by His Lordship's interim order, did not grant such relief in the interim stage and His Lordship only dwelt upon the question of non-implementation of his option and in His Lordship's judgement the aforesaid point was remaining silent. Ultimately, the said writ petition stood transferred to and the same was disposed of finally by the learned Tribunal. It has been contended by the respondent that he was not selected by the appropriate committee at that stage. When this relief was not adjudged and decided by the learned Tribunal and further the applicant did not approach the higher forum against the aforesaid order we do not think fit to reopen that question. But we add in the event on acceptance of option being exercised on 23rd March, 1992 in usual course he gets such elevation, he must be given.

7. We therefore direct, consequent upon his absorption in the West Bengal

Medical Education Service on and from 23rd March, 1992, the Government is to treat the applicant having retired from his services on 31st October, 1996 in stead of 31st October, 1994 as on absorption of his medical service the retirement age stood increased by two years. Therefore, he is entitled to the usual elevation in accordance with law from the post of Medical Education Service equivalent to the post he was holding on the date of exercise of his option. He, therefore, with this process, is entitled to get any higher post and he must be placed such post following the Rules. He shall also be entitled to the notional upgraded pay and his pension shall also be refixed after having considered his upgraded pay scale and other benefits. We think that the judgement and order of the learned Tribunal is to be substantially modified and we do so allowing the application substantially. Thus, the application is disposed of without any order as to costs.

Prasenjit Mandai, J.

8. I agree.