(2008) 09 CAL CK 0035

In the Calcutta High Court

Case No : W.P.S.T. No. 1014 of 2001

State of West Bengal and another — APPELLANT

Vs

Barindra Nath Saha and others — RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2009) 120 FLR 642

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

Bench : Division Bench

Advocate : Joydip Kar and Siddartha Ghosh, for the Appellant; Sahasrangshu Bhattacharjee and Ms. Runu Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is directed against the judgment and order dated 16.1.2001 passed by the learned West Bengal Administrative Tribunal in O.A. No. 1659 of 1998 whereby the learned Tribunal has directed the respondent authority to consider the case of the applicant/ respondent herein for inclusion in the cadre of West Bengal Audit and Accounts Service with effect from the date of his joining the service after taking concurrence of the Public Service Commission, West Bengal and consequently to give all service benefits within a period of 90 days from the date of communication of the orders.

2. The short fact leading to the filing of the present application is that the Government of West Bengal issued a notification dated 27.3.1971 prescribing three categories of Audit and Accounts Services and the lowest category of such services is the West Bengal Junior Audit and Accounts Service having the scale of pay of Rs. 425-825/- under the ROPA Rules, 1970. In respect of that Junior Audit and Accounts Service, certain categories of service such as, Senior Accountants, Junior Accountants, Inspector of Accounts, etc. were included as categories for recruitment, on promotion, to the extent of 50% of the vacancies therein. The rest 50% of the vacancies would be filled up by direct recruit. There was a

provision that the list of inclusion of the Senior Accountant, Junior Accountant, etc. in the said Junior Audit and Accounts Service was not exhaustive but the list might be enlarged in consultation with the Public Service Commission, West Bengal, if necessary. The applicant/respondent herein, Sri B.N. Saha, was appointed as Assistant Accounts Officer with effect from 4.7.1973 in the scale of pay of Rs. 400- 750/- under the Animal Husbandry, Department of Government of West Bengal. Thereafter, he submitted a representation on 26.4.1974 for inclusion of his name in the West Bengal Junior Audit and Accounts Service. The Finance Department expressed the opinion that the applicant could not be absorbed in the said service in terms of the Recruitment Rules. So his prayer in the representation was refused. Thereafter, the applicant made other representations to the State Government for a direction of his absorption in the West Bengal Junior Audit and Accounts Service with effect from the date of his appointment, i.e. from 4.7.1973 and to re-fix his scale of pay accordingly. The applicant has contended that other similarly circumstanced employees were absorbed in the said West Bengal Junior Audit and Accounts Service. But his case was not considered in spite of repeated representations. Under the compelling circumstances, he filed a writ petition being C.O. No. 10000 (W) of 1987 before the Hon''ble High Court, Calcutta and that petition was transferred to the West Bengal Administrative Tribunal and numbered as T.A. No. 23 of 1997. The learned Tribunal disposed of the said petition on 6.8.1997 directing the Principal Secretary, Finance Department, Government of West Bengal to dispose of the matter by passing a speaking order. Pursuant to the order of the learned Tribunal, the Finance Department passed the speaking order dated 26.2.1998 rejecting the claim of the applicant. Being aggrieved by such order of the Finance Department, the applicant preferred the O.A. No. 1659 of 1998 which was disposed of by passing the impugned order. Being aggrieved by the impugned order, the respondent authority has preferred the present application.

3. After hearing submission of the learned Advocate for the applicant and perusing the materials on record, we find that it is not disputed that the applicant/respondent herein was appointed as Assistant Accounts Officer on 4.7.1973 in the West Bengal General Service under the Directorate of Animal Husbandry, West Bengal in connection with the scheme for improvement of milk production by cross breeding dairy cattle at Haringhata on temporary basis in the scale of pay of Rs. 400-750/-. It is also not in dispute that by the notification dated 27.3.1971, Finance Department of the Government in exercise of the power conferred by the provision to Article 309 of the Constitution of India made rules for recruitment of three categories of services, namely the West Bengal Higher Audit and Accounts Service, the West Bengal Audit and Accounts Service and the West Bengal Junior Audit and Accounts Service. So far as we are concerned in the matter, the West Bengal Junior Audit and Accounts Service is involved. According to the guidelines of the said notification as made in Annexure-II, Senior Accountant, Junior Accountant, Inspector of Accounts, etc., appointed prior to the date of notification that is on 27.3.1971 have been included for

absorption in the West Bengal Junior Audit and Account Service, on promotion, in respect of 50% of the posts and the rest 50% posts in that service shall be filled up by direct recruitment on the basis of the results of a combined competitive examination to be conducted by the Public Service Commission, West Bengal. There is a stipulation in the notification that the list of the feeder post for promotion may be enlarged in consultation with the Public Service Commission, West Bengal, if necessary. The applicant having been appointed in 1973 did not, come within the purview of the said notification of 1971. He submitted representations again and again and those representations had been turned down by the respondent authority. Ultimately, the applicant filed the writ application being C.O. No. 10000 (W) of 1987 for absorption in the said service. That application was transferred to the learned Tribunal being numbered as T.A. No. 23 of 1997. While disposing of the said application, the learned Tribunal directed the Finance Department to pass a speaking order and then the Principal Secretary, Finance Department passed the order dated 26.2.1998 impugned in the learned Tribunal. Thereafter, the applicant filed the O.A. Case No. 1659 of 1998 which was virtually allowed by the learned Tribunal directing the respondent authority to absorb the applicant in the West Bengal Audit and Accounts Service with effect from the date of his appointment on 4.7.1973. It is pertinent to mention here that the applicant has retired from service in the meantime. So the question of preparation of the seniority list is not involved in the matter before us. The question of notional fixation of pay is the matter of consideration at present in the application. By the order dated 26.2.1998 the Finance Department has practically admitted the fact that if the applicant desires he can be included in the cadre of the West Bengal Junior Audit and Accounts Service from the date of issue of the order dated 26.2.1998. So the respondent authority has virtually admitted that the applicant may be absorbed in the said service with effect from the date of 26.2.1998 for determination of retrial benefits.

4. Mr. Kar, learned Advocate for the respondent authority/applicant herein, has pointed out that the claim of the applicant/respondent herein for absorption in the West Bengal Junior Audit and Accounts Service is of two-fold grounds; firstly, by the notification dated 27.3.1971. In this regard, we find that as per rules, the appointment of the applicant/respondent herein having been made in 1973, he did not come within the purview of the notification dated 27.3.1971. Secondly, Mr. Kar has taken us to the contention of the applicant/respondent herein that he (respondent herein) has placed a comparison of certain employees who were appointed after the notification of 1971; but absorbed to the West Bengal Junior Audit and Accounts Service later on. He has pointed out three categories of such persons. Those persons have been clearly described in the speaking order dated 26.2.1998 passed by the Finance Department. As per observation, we find that the first category of such persons are the 5 employees of Health Directorate of West Bengal who were absorbed in the West Bengal Junior Audit and Accounts Service in obedience of the order of the Hon''ble High Court, Calcutta and that

the case of Sri Saha (respondent herein) is not similarly circumstanced. In this respect, we also find that the order of the Hon''ble High Court in respect of those 5 employees of the Health Department is not before us for consideration at all. There is no mention of the case number and the fact of the case. We are in dark about the order of the Hon''ble Court in respect of those 5 employees. So, we are not in a position to determine whether Sri Saha is similarly circumstanced with those 5 employees of the Health Directorate.

5. As regards the second category of person, the contention of the applicant/ respondent herein that Sri Ardhendu Kumar Bose, an employee of S.B. Dey Sanatorium, Kurseong was considered and absorbed in the West Bengal Junior Audit and Accounts Service with effect from 2.10.1979. His case has been, we find, rightly distinguished from that of the applicant/respondent herein on the basis that Sri Bose was absorbed in the said service under the provisions of the S.B. Dey Sanatorium Acquisitions Act, 1979 for running a hospital as a State institution. So the applicant/respondent herein is not similarly circumstanced with Sri Bose.

6. Similarly, as to third category of person the contention of the applicant that one Sri P.K. Banerjee was appointed as a member of the West Bengal Junior Audit and Accounts Service. Here, we find that Sri Banerjee was initially appointed as Assistant Accounts Officer with effect from 1.8.1967 that is prior to the date of the notification dated 27.3.1971 of the Government of West Bengal. So he having the requisite criteria, was absorbed as per rules of the said notification. So the case of the applicant/respondent herein is quite distinguishable from those persons mentioned above under the three categories. However, the respondent authority/applicant herein has made an observation that if Sri Saha desires he can be included in the cadre of the West Bengal Junior Audit and Accounts Service from the date of issue of order dated 26.2.1998. There is no material before us that the applicant/respondent herein while in service filed any representation to avail himself of such opportunity. So after retirement there is hardly any scope to renew any prayer by him in this regard. Therefore, his prayer for entry in the cadre with retrospective effect is not permissible under the relevant Rules. The learned Tribunal did not consider this aspect properly and so the impugned order have been passed directing the respondent authority to consider the appointment of the applicant with effect from the date of his appointment in the West Bengal Junior Audit and Accounts Service. So such order of the learned Tribunal cannot be supported at all. Therefore, the applicant/respondent herein is not entitled to get notional benefits in respect of fixation of pay at this stage after the retirement. Hence the impugned judgment and order must be set aside.

7. In view of our above decision, we are of the view that the learned Tribunal has failed to address the issue properly and that the impugned order cannot be sustained. Accordingly, the order of the learned Tribunal stands set aside. The application of the applicant/respondent herein u/s 19 of the Administrative

Tribunals Act, 1985 stands dismissed.

8. The present application under Article 227 of the Constitution of India stands allowed.

Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.

Kalyan Jyoti Sengupta, J.

9. I agree.

