

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**WP.ST 200 of 2016
IA NO: CAN/1/2023**

**Debasis Pradhan & ors.
Vs.
The State of West Bengal & ors.**

For the writ petitioners : Mr. Pratik Bhattacharyya, Advocate,
Mr. Manoranjan Karmakar, Advocate

For the State : Mr. Tapan Kr. Mukherjee,
Senior Advocate & Ld. A.G.P.
Mr. Somnath Naskar, Advocate

Hearing on : 25.09.2023

Judgment on : 25.09.2023

DEBANGSU BASAK, J.:-

1. **In Re: CAN/1/2023**

CAN/1/2023 is an application for restoration.

2. For the ends of justice and in view of the pleadings made in the application for restoration, the order dated July 28, 2023 is recalled.

3. CAN/1/2023 is allowed.

4. WP.ST 200 of 2016 is restored to its file and number.

5. **In Re: WP.ST 200 of 2016**

The writ petitioners are aggrieved by an order dated July 8, 2016 passed by the West Bengal Administrative Tribunal in O.A.701 of 2015.

6. Learned advocate appearing for the writ petitioners submits that, the writ petitioners were entitled to promotion from 1998. They made representations to the authorities which were never considered. The writ petitioners approached the Tribunal on at least two occasions. The last is the impugned order, where, the writ petitioners were found to be entitled to promotion and were granted such promotion with retrospective effect from March 27, 2007.

7. Learned advocate appearing for the writ petitioners submits that, there was no basis for the Tribunal granting promotion to the writ petitioners from March 27, 2007. The writ petitioners are entitled to promotion from the respective dates of the writ petitioners attaining the requisite qualification for consideration of the promotion. The authorities sat tight over the request for grant of promotion for no reason at all. None of the writ petitioners were recommended to the Public Service Commission (PSC) for promotion, for the Public Service Commission to decide thereon. The plea taken by the State that, no recommendation was made by the P.S.C is misplaced.

8. Relying upon **(2014) 3 Supreme Court Cases 670 (Major General H.M. Singh, VSM versus Union of India and another)**, learned advocate appearing for the writ petitioners submits that, there, the Supreme Court found that the petitioner therein was entitled to promotion and was granted promotion from the date when the post became vacant. In the facts of the present case, the writ petitioners should also be granted promotion from the dates when the respective posts became vacant or from the respective writ petitioners attaining the requisite qualification for grant of promotion, whichever is earlier.

9. Learned Senior Advocate appearing for the State submits that, the promotional avenue of the writ petitioners are governed by the notification dated May 17, 1957 which was subsequently modified on May 15, 1980. According to the modified rules for promotion, a candidate must be found to be fit for the higher post. He submits that, subsequent to the direction passed by the Tribunal, the writ petitioners were considered for the grant of promotion and was granted the same from 2009. However, the Tribunal fixed the date as March 27, 2007 from which date, State is willing to grant promotion to the writ petitioners.

10. The writ petitioners were working as Research Assistant (Hydraulic), Group-A of River Research Institute. The next promotional post of the writ petitioners is Assistant Research Officer (Hydraulic) Group-A.

11. The writ petitioners made several representations for promotion to the next higher post of Assistant Research Officer (Hydraulic), Group-A as will appear from the documents annexed to the writ petition. The writ petitioners claimed that they put in the requisite five years of service on the date of their application for promotion and that they were eligible to be considered for grant of promotion.

12. We find from the records that, by a writing dated February 4, 2000, the Directorate of River Research Institute wrote to the Chief Engineer (D & R) Irrigation and Waterways Directorate for filling up the post of Assistant Research Officer (Hydraulic) 'Group-A' by promotion from Research Assistant (Hydraulic) of the River Research Institute. The writing dated February 4, 2000 contains the names of the writ petitioners before us.

13. Neither the representations of the writ petitioners made from August 11, 1998 nor was the writing dated February 4, 2000 were considered by the authorities.

14. The rules governing the post of Assistant Research Officer Group-A allow it to be filled up either by direct promotion from the feeder post or by selection through recruitment wherein, departmental candidates were also allowed to apply.

15. The authorities did not fill up the vacant posts through the process prescribed. Instead, the authorities issued a memo prescribing 50% post to be filled up by direct recruitment and balance by promotion.

16. The writ petitioners approached the Tribunal by way of O.A.105 of 2004 challenging the memo and praying for promotion. Such original application was disposed of by an order dated March 27, 2007 by the Tribunal. By such order, the Tribunal quashed the memo of the authorities directing filling up of the post of Assistant Research Officer in Group-A by 50% direct recruitment and 50% by way of promotion. The authorities were directed to take urgent step for the purpose of filling up of such post in terms of the rules either by promotion from Research Assistant or by selection through direct recruitment where departmental candidate along with present petitioners were to be given an opportunity to apply.

17. No steps were taken by the authorities either for direct recruitment or for the purpose of promotion.

18. The writ petitioners thereafter approached the Tribunal by the second Original Application being O.A.3296 of 2008 which was disposed of by the order dated April 24, 2008. By such order, the Chief Engineer (Designer and Research) Irrigation and Waterways Directorate, Government of West Bengal was directed to consider the application along with its annexures treating it as representation and dispose it of by reasoned and speaking order.

19. Before the representation was disposed of in terms of the order of the Tribunal, by a notification dated August 20, 2009 corrected by the

notification dated October 30, 2009, nine Research Assistants were directed to officiate as temporary Assistant Research Officer.

20. These two notifications were assailed by the writ petitioners by way of a third Original Application being O.A.602 of 2010 which was disposed of by an order dated July 22, 2011 directing the Secretary, Irrigation and Waterways Department to consider the pending representations of the writ petitioners and to take a decision thereon.

21. No decision being taken in terms of the order dated July 22, 2011, the writ petitioners applied under the Contempt of Courts Act, 1971 being CCP 124 of 2012 before the Tribunal. Such contempt petition was disposed of by an order dated September 27, 2013.

22. During the pendency of the contempt proceedings a compliance report was submitted where, the authorities granted promotion to the writ petitioners with effect from August 20, 2009.

23. Aggrieved by such decision, the writ petitioners approached the Tribunal for the fourth time by way of O.A.701 of 2015 which was disposed of by the impugned order directing the authorities to grant promotion to the writ petitioners with effect from March 27, 2007.

24. As noted above, the writ petitioners are concerned with regard to the promotion to the post of Assistant Research Officer (Hydraulic), Group-A. Again, as noted above, two avenues, were prescribed for filling up the post. One by of direct recruitment and the other through promotion. Although vacancies occurred in the post of Assistant

Research Officer (Hydraulic) Group-A, they were not filled up either by promotion or by direct recruitment.

25. The writ petitioners as noted above applied for promotion in 1998. Their applications for promotion were never considered.

26. There was a recommendation dated February 4, 2000 for promoting the Research Assistants including the writ petitioners to the post of Assistant Research Officer (Hydraulic), Group-A. Such recommendation was not implemented.

27. By an order dated March 27, 2007, the Tribunal directed filling up the vacant post of Assistant Research Officer (Hydraulic) either by promotion or by direct recruitment. Even thereafter, no steps were taken for filling up the vacancies by direct recruitment or by promotion.

28. Thereafter, a temporary promotion was sought to be granted which was impugned before the Tribunal. The Tribunal directed consideration of the pending representations of the writ petitioners.

29. Ultimately, the authorities decided to promote the writ petitioners to the post of Assistant Research Officer (Hydraulic), Group-A with effect from 2009.

30. **Major General H.M. Singh, VSM (Supra)** is of the view that, where the query as to non-consideration of the claim of the writ petitioners for promotion would violate the fundamental rights vested under Articles 14 and 16 of the Constitution of India is raised and if the answer to such query is in the affirmative then, relief should be granted.

31. In the facts of that case the incumbent concerned was granted promotion with retrospective effect from January 1, 2007 since, it was found that, the incumbent was entitled to such promotion from such date and that he was found suitable for grant of such promotion, although, such promotion was granted two days before his superannuation.

32. In the facts of the present case, although the writ petitioners were found to be suitable for grant of promotion, however, as in **Major General H.M. Singh (Supra)**, the writ petitioners were granted promotion from 2009 by the authorities and from March 27, 2007 by the Tribunal.

33. The Tribunal proceeded on the basis that, the writ petitioners were entitled to promotion with retrospective effect. While finding what should be the retrospective date of the promotion, the Tribunal decided that, the earlier order of the Tribunal dated March 27, 2007 should be the date from which, the writ petitioners should be granted promotion.

34. In our view, the Tribunal overlooked the fact that there were vacancies in the higher post and that, the recommendation to fill up the vacancies to the post of Assistant Research Officer (Hydraulic), Group-A by promotion was made on February 4, 2000. Since then such writ petitioners were not promoted for no fault of theirs. Moreover, the authorities did not undertake the exercise of filling up the higher post through direct recruitment despite an opportunity being granted to them to do so. The vacancies to the higher post occurred prior to February 4,

2000 when the writ petitioners were recommended for appointment as promotion. They were not promoted for no fault of theirs. Consequently, the writ petitioners should be entitled to promotion from February 4, 2000. As in **Major General H.M. Singh (Supra)**, the writ petitioners were also found suitable for grant of promotion by the authorities as appearing from their compliance report filed before Tribunal in the contempt proceeding. Therefore, suitability of their candidature for promotion also stood established factually.

35. In such circumstance, we modify the impugned order to the extent that, the authorities are directed to grant promotion to the writ petitioners to the post of Assistant Research Officer (Hydraulic), Group-A with retrospective effect from February 4, 2000 and grant all consequential financial and other service benefits accordingly. This direction is to be completed within 16 (sixteen) weeks from the date of communication of this order.

36. WP.ST 200 of 2016 is **disposed of** without any order as to costs.

(Debangsu Basak, J.)

37. I agree.

(Md. Shabbar Rashidi, J.)

