

IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1

Present :-

The Hon'ble Mr. Justice S.K. Chakrabarti
Member (J)

-AND-

The Hon'ble Mr. Samar Ghosh
Member (A)

J U D G M E N T

-of-

Case No. : O.A. 763 of 2011.

RAM SANKAR HAZRA

.....Applicant

-versus-

The State of West Bengal & Others.

.....Respondent.

For the Applicant :-

Mr. S. Sen,
Mr. T. Singha Roy,
Mr. S.N. Sardar,
Ld. Advocates.

For the Respondent :-

Mr. S.K. Mondal,
Mr. G.P. Banerjee,
Ld. Advocates.

Judgment delivered on : 12.12.2012.

The judgment of the Tribunal was delivered by :

The Hon'ble Mr. Samar Ghosh Member (A).

In this application the applicant Ram Sankar Hazra has prayed for a direction upon the respondent authorities to issue appropriate order for his promotion to the rank of Inspector of Police with effect from 25.09.2006, the date on which he was declared unfit by the Supplementary Board of DG & IGP for inclusion in the approved list for promotion to the rank of Inspector of Police on the ground of pendency of a criminal case against him, in modification of the promotion order issued in August 2010 giving such promotion with effect from 20.8.2010, in view of the fact that the criminal case against him ended in his acquittal under section 248(1) of CrPC by judgment dated 13.4.2010 of the Ld. Chief Judicial Magistrate, Hooghly, and that his juniors had already been promoted.

The facts of the case are as follows:

The applicant was appointed Sub-Inspector of Police by way of direct recruitment on 3.7.1983. In the Board conference held on 27.7.2004 for considering the eligibility of promotion of Sub-Inspectors of Police to the rank of Inspector of Police, he was considered unfit for promotion on the ground of imposition of two major punishments in 2002 and pendency of criminal case being Chinsurah P.S. case no. 218 dt 18.6.1997 u/s 342/466/471 IPC. The applicant was again asked to appear before the Range Board on 7.4.05 but he was not enlisted for promotion as he was considered unfit. He made a prayer to respondent no. 2, the DG & IGP, for consideration of his case for promotion on the ground that the period of punishment imposed in proceeding no. 3/2001 against the applicant was over and that pendency of criminal case could not be a ground for withholding promotion. As he did not get any relief, he made further representation to the DG & IGP on 26.5.2006 and 11.8.2006, giving the names of the Sub-Inspectors of Police who were promoted despite pendency of criminal cases against them. In the Supplementary Board meeting held on 25.9.2006, the applicant was again declared unfit for promotion with the observation that criminal case was pending against him. Challenging the refusal on the part of the respondent authority to give promotion to the rank of Inspector of Police, he filed an application before this Tribunal being O.A. No. 4453 of 2006, which was dismissed by judgment dated 10.12.2009 of the Tribunal.

The criminal case against the applicant was disposed of by the Ld. Chief Judicial Magistrate, Hooghly by delivering a judgment on 13.4.2010 on conclusion of trial, wherein the applicant was found not guilty of the charges brought against him, and he was accordingly acquitted under section 248(1) of CrPC. The applicant was promoted to the rank of Inspector of police and was posted as Circle Inspector of Police in Goalpokher Circle of Uttar Dinajpur district under order dated 20.8.2010 of the West Bengal Police Directorate. The promotion was effective from the date of issue of the order. Against this order, the applicant made a representation on 19.01.2011 to respondent no. 2, praying for promotion with retrospective effect from the date of promotion of his juniors, i.e. from the year 2004, on the ground, inter alia, that some junior officers similarly circumstanced as the applicant, were awarded promotion. The applicant also mentioned in the same representation that the criminal case against him ended in his acquittal as he was not found guilty on conclusion of trial and that he was entitled to promotion in the year 2006. The respondents have not granted any relief. Hence the application.

In the final relief as sought in para 10 of the instant O.A., the applicant has prayed for an order directing the respondent authorities to give retrospective effect to applicant's promotion to the post of Inspector of Police from 25.9.2006 when it fell due on the ground that the applicant has been acquitted of all the charges in the criminal case, and to grant all consequential benefits arising out of such retrospective promotion.

The question before this Tribunal is whether the applicant is entitled to promotion to the rank of Inspector of Police with all consequential benefits with effect from 25.09.2006 when he was declared unfit for promotion, with the remark that a criminal case against him was pending, on the ground that he has been found not guilty and has been acquitted.

Ld. Lawyer for the state respondents has contended that the question has already been decided in O.A. No. 4453 of 2006 by judgment dated 10.12.2009 delivered by this Hon'ble Tribunal at the instance of the present petitioner against which no appeal has been preferred before higher authority and as such reached its finality and shall operate as res judicata over same

issue between the same parties. From the said order it appears that said O.A. 4453 of 2006 was filed by the present applicant while the criminal proceedings being G.R. Case No. 872/1996 u/secs. 341/177/193/196 I.P.C. was pending seeking same reliefs. But after his acquittal on merit following disposal of the said proceedings on 13.04.2010, fresh cause of action arose in his favour for adjudication as to whether he is entitled to promotion with retrospective effect from the date of promotion of his immediate junior following acquittal of a Government servant on merit from all the charges. So, we are unable to accept such contention of Ld. Advocate for the respondents and hold that the present application resting on a new cause of action is maintainable in its present form.

The Ld. Adv. for the applicant has referred to a judgement of the Calcutta High Court in Durgadas Pandey Vs. State of West Bengal and others reported in (2008) 2 WBLR (Cal) 350, wherein it was held that as the applicant was acquitted in the criminal case, the applicant was entitled to get promotion with effect from date on which it had fallen due. The Court observed that the promotion claimed in that case was on 1:1 basis, and there was no selection process involved. The applicant was expected to get promotion from the date his junior was promoted. The Court also held that the applicant would not be entitled to get any pecuniary benefit because he did not work.

We, however, find that in the instant case, there was a selection process and the fitness of the candidates for promotion had to be adjudged by a Board. Mere acquittal of the employee cannot, therefore, lead us to conclude that the applicant was expected to get promotion unless it is established that but for the pendency of the criminal case, the applicant would have been otherwise entitled to promotion at the time of consideration of his case.

Ld. Adv. for the State Respondent stated that the respondent was right in not giving promotion with retrospective effect. He referred to circular no. 224-P&AR (Vig) dated 12.6.1980 of the State Government which stipulated that promotion to higher post is to be held up in a case where the Government servant has been placed under suspension pending disciplinary

proceeding or the Government has stated criminal proceeding against such Government servant in a court of law.

We are of the view that this circular is also not relevant at this stage as the question now is whether the applicant is entitled to promotion with effect from the date it was due in view of acquittal of the applicant on merit.

In the order of the Supreme Court in Sulekh Chand and Salek Chand Vs. Commissioner of Police and others as reported in 1994 Supp (3) SCC 674, it was held that once the acquittal was on merit, and the denial of promotion to an employee was on the sole ground of prosecution, the employee is entitled to the promotion with effect from the date his immediate junior was promoted.

With regard to the benefit of salary of higher post consequent on promotion with retrospective effect from the date on which it fell due, the Supreme Court in the case of Union of India –vs.- Janaki Raman as reported in (1991) 4 SCC 109 held that it would not be correct to lay down an inflexible law and the question should be decided after taking into account the facts and circumstances of the disciplinary proceeding or the criminal proceeding including the role, if any, played by the employee in delaying such proceeding or prosecution.

It is a settled principle that if disciplinary or criminal proceeding is pending against an employee who is eligible to be considered for promotion to the next higher post, he cannot be excluded from consideration merely because of pendency of disciplinary or criminal proceeding. The remedy lies in consideration of such employee for promotion and keeping the result in sealed cover, so that he may be promoted immediately to the next higher post if he is found not guilty of the charges in the proceeding, if he was found otherwise fit.

Let us now look more closely at the minutes of the Board meeting held on 25.9.2006. It has been stated in para 4 of the minutes (Annexure H to the Original Application) that “ the members of the Board also examined the relevant records of the following S.Is of Police (UB) and they unanimously

declared them 'unfit' for inclusion in the State Approved list for promotion to the rank of Inspector of Police (UB) on various grounds, such as:-

- i) Some of the officers did not attend the Range Board,
- ii) Some had bad service records including pendency of departmental proceeding/criminal case/vigilance enquiry, etc.
- iii) Some were awarded major punishments during the last five years and currency of punishment is on.
- iv) Some were retired during the intervening period between Range Board and DGs Board.
- v) Some failed in the Pre-Promotional Training.
- vi) Some failed to secure minimum qualifying marks in the ACRs as per Govt. Order.”

The name of the applicant was included in the 'unfit' category. Against his name, the following remarks were made:

“Unfit. Criminal case is pending in the Court.”

It cannot be inferred from the minutes of the Board meeting whether pendency of the criminal case was the sole ground for denial of promotion to the applicant for the time being or but for the pendency of the case, he would have been otherwise considered fit.

In the case of State of U.P. and Anr. vs Krishna Lal Sehgal as reported in (2005) 12 SCC 193, The Supreme Court observed that “the High Court could not have directed that the respondent should be promoted with retrospective effect. It is well-settled principle and has been clearly enunciated in the case of State of Mysore vs Syed Mahmood that the High Court ought not to issue any writ directing promotion without giving the State Government an opportunity in the first instance to consider the candidate's fitness for promotion. We may note that in that case, as in this, promotion to the post of Executive Engineer was on the basis of seniority-cum-fitness. This Court, in that case, had directed that the State Government should consider the candidate in that case for promotion and if found fit, all the consequential monetary benefits should be allowed to him. This exposition of law has been subsequently followed in a series of decisions which are not necessary to be adverted to.”

Having regard to the facts and circumstances of the case and the ratio of the judgments in the cases referred to, we are of the view that the applicants fitness for promotion on 25.9.2006 should be adjudged afresh by the respondent authority ignoring the pendency of any criminal case against him and in the event he is found fit for promotion on that date, he should get promotion with effect from that date with all consequential benefits except that he will not get any arrears of pay for the period from that date to the date of his actual promotion on account of fixation of pay on promotion with effect from 25.09.2006.

We accordingly dispose of this O.A. by directing the respondent authorities to adjudge the applicant's fitness for promotion on 25.9.2006 ignoring the existence of the criminal case within a period of three months from the date of judgment and in the event he is found fit for such promotion, he should be promoted with effect from that date and given all consequential benefits except the arrears of pay for the period from 25.9.2006 to the date of actual promotion on account of fixation of pay on promotion with effect from 25.09.2006, within three months thereafter.

In the result the application succeeds to the above extent.

There will be no order as to costs.

Plain copy to both sides.

Sd/-

(SAMAR GHOSH)
MEMBER (A)

Sd/-

(S.K. CHAKRABARTI)
MEMBER (J)