

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

MAT 1751 of 2024

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IA No. CAN 2 of 2024

Dibyajyoti Ghosh
Versus
The Coal India Ltd. & Ors.

For the Appellant : *Mr. Soumya Majumder, Ld. Sr. Adv.,*
Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Simran Sureka,
Mr. Debashis Das,
Mr. Bratin Suin.

For the Respondents : *Mr. Shiv Shankar Banerjee,*
Mr. Abhishek Chakraborty.

Hearing is concluded on : *21st April, 2025.*

Judgment On : **30th April, 2025.**

Tapabrata Chakraborty, J.

1. This appeal carried by the writ petitioner/appellant takes exception to the judgment dated 27.09.2022 passed by the learned single Judge in the writ petition being WPA 24815 of 2016.

2. Shorn of unnecessary details, the facts are that a disciplinary proceeding (hereinafter referred to as DP) was initiated against the appellant by a chargesheet dated 27.11.2013 to which the appellant replied on 10.12.2013. In the said DP, the disciplinary authority (hereinafter referred to as DA) passed an order of penalty of withholding increment for a period of two years without cumulative effect *vide* memo dated 03.02.2014. The appellant thereafter preferred a statutory appeal on 03.02.2014 which was disposed of by the appellate authority (hereinafter referred to as AA) *vide* memo dated 23.03.2015 ordering for moderation of the penalty imposed by the DA to Censure. The appellant thereafter submitted a representation dated 06.04.2015 demanding promotion with effect from 24.12.2013 in view of moderation of penalty to Censure without indicating any duration of time and as he was the second senior most in Grade E-4. Upon considering the said representation, the competent authority *vide* memo dated 08.04.2015 approved his promotion with effect from 24.08.2014 with notional seniority and notional fixation at par with those promoted in August, 2014. Aggrieved thereby, the appellant preferred a writ petition being WPA 24815 of 2016 challenging the chargesheet and claiming promotion with effect from 24.12.2013. The said writ petition was disposed of by a judgment dated 27.09.2022 without interfering with the chargesheet but directing the respondents to consider the appellant's claim for promotion as contained in his representation dated 05.01.2016. In the midst thereof, the appellant was promoted to E5 to E6 grade on 17.03.2018. The respondents thereafter considered the appellant's representation and passed an order on 16.11.2022. Challenging the said order the appellant again preferred a writ

petition being WPO 1348 of 2023 which was dismissed by an order dated 05.03.2024. Aggrieved thereby, the appellant preferred an appeal being APO 50 of 2024 which was also dismissed by a judgment dated 08.08.2024. Thereafter, the present appeal was preferred along with an application for condonation of delay and a co-ordinate Bench of this Court by an order dated 23.12.2024 condoned such delay.

3. Mr. Majumder, learned senior advocate appearing for the appellant submits that the contents of the judgment impugned in the present appeal are self-contradictory. Upon arriving at a finding that the appellant was entitled to be considered for promotion in view of the observations made by the AA in the order dated 23.03.2015, relegated the issue of promotion for consideration to the competent authority, as prayed for in the appellant's representation dated 05.01.2016, but surprisingly refused to interfere with the order of punishment of Censure.

4. He submits that the learned single Judge while relegating the issue of promotion for consideration to the competent authority categorically observed that the AA in its order had arrived at a finding that the delay in payment of gratuity to the ex-workman was not deliberate and that there was also no previous complaint against the appellant in his service record. It was further observed that the appellant '*was in fact considered for promotion and was second senior most in the list prepared in December, 2013*'. In view of such observations, the appellant waited for favourable consideration of his claim for promotion. However, by an order dated 16.11.2022 the competent

authority rejected his claim for promotion. The said order being violative of the directions contained in the judgment impugned is a nullity.

5. Mr. Majumder argues that the learned single Judge upon arriving at a finding that *'since there was a moderation of penalty to Censure by the Appellate Authority and since the Censure itself does not indicate any time bar for consideration of promotion'* erred in law in observing that no legal right of the appellant was violated *'in considering his promotion in July, 2015 with effect from August, 2014'*.

6. He submits that a co-ordinate Bench of this Court while deciding the appeal (APO 50 of 2024) preferred against the order of the learned single Judge dated 05.03.2024 affirming the order dated 16.11.2022 primarily on the ground that *'the appellant is not entitled to raise the issue of non-applicability or legality of the circular dated 05.10.2007'*, which was cited by the authorities while rejecting the appellant's representation claiming promotion from 24.12.2013, consciously observed that *'other points raised in the appeal are kept open'*. Such observation confers a right upon the appellant to assail the judgment dated 27.09.2022 passed in WPA 24815 of 2016.

7. Mr. Majumder argues that under the Conduct Discipline and Appeal Rules of Coal India Limited Censure is the lowest grade of penalty and withholding of promotion is higher than Censure. Upon imposing the penalty of Censure, the authorities have also deprived the appellant of promotion and such act tantamounts to imposition of two penalties.

8. He argues that it is also not a case that the appellant had been a fence sitter. What delay is inordinate must depend on the facts of the case. It is also not a case that the appellant without adequate reason, had approached this Court at his own leisure or pleasure.

9. Mr. Banerjee, learned advocate appearing for the respondents denies and disputes the contention of the appellant and submits that the appellant accepted the judgment impugned in the present appeal and appeared before the concerned authority for consideration of his representation for promotion in terms of the directions contained in the judgment impugned. Having accepted the judgment impugned in the present appeal delivered way back on 27.09.2022, the appellant cannot again turn back and challenge the same after the said judgment has been implemented. In view thereof, the Hon'ble Appeal Court in APO 50 of 2024 rightly observed that the '*parties had implemented such judgment and order. No appeal had been preferred. Therefore, the parties are not entitled to raise the issue as has been decided earlier between them*'.

10. He argues that the competent authority took the decision on 16.11.2022 considering the circulars in operation. An incumbent against who a DP has been initiated and he is also placed in the select list by a DPC, the promotion can be considered '*only after completion of the proceedings and his complete exoneration of the charges*' and that such an officer may be promoted '*with prospective effect*'. Thus, there is no infirmity in the order dated 16.11.2022. In support of such contention reliance has been placed upon the circulars dated 19/27 June, 1979 and 05.10.2007.

11. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

12. The sole contentious issue which arises for consideration is as to whether the appellant can reinvigorate his claim for promotion with effect from 24.12.2013, as refused by the order dated 16.11.2022, having accepted the judgment impugned in the present appeal by which the issue of promotion was relegated to the authorities for consideration.

13. The argument of Mr. Majumder that the appellant had been made to suffer two penalties is not acceptable to this Court since the entitlement of the appellant towards promotion was subject to the DP and the promotion process undertaken during pendency of DP would follow the sealed cover procedure, i.e., the result of the promotion process is kept undisclosed to the employer as well as the employee by the DPC.

14. Perusal of the judgment impugned would reveal that the Court did not find any fault in the decision-making process towards imposition of the penalty of Censure upon the appellant and while considering claim for promotion, the Court observed that once a penalty has been imposed, the sealed cover containing the recommendation of DPC could not have been given effect to during the pendency of the DP. It was further observed that the appellant can be considered for promotion on a prospective basis from a date after the conclusion of the DP and that as such the Court observed that *'no legal right of the petitioner was violated in considering his promotion in July, 2015 with effect from August, 2014'*. Such finding has attained finality

among the parties. No contemporaneous challenge was thrown against such finding and the appellant cannot claim for revival of the proceedings in respect of subsequent events after two years.

15. The appellant ventilated his claim for promotion from E4 to E5 grade with effect from 24.12.2013. Such prayer was rightly turned down by the competent authority on 16.11.2022 placing reliance upon a circular dated 05.10.2007 which provides that if Censure is awarded to an executive after holding of DPC and whose name was in the recommended panel by the said DPC, the recommendation in respect of the concerned executive cannot be given effect to but he will be considered for promotion by the next DPC when it meets next.

16. Indisputably, on the date of recommendation by DPC a DP was pending against the appellant. Pursuant to moderation of penalty dated 03.02.2014 to Censure *vide* memo dated 23.03.2015, the appellant's promotion was rightly recommended from August, 2014. Such explanation stands fortified by the circulars dated 19/27 June, 1979 and 05.10.2007. In view thereof, the order dated 16.11.2022 was rightly not interfered with by the learned single Judge in the writ petition being WPO 1348 of 2023 and in the appeal being APO 50 of 2024.

17. For the reasons discussed above, no interference is called for in the present appeal.

18. The appeal and the connected application are, accordingly, dismissed.

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

20. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)