

## Arabinda Ghosh and Others Vs Union of India and Others

**Court:** Calcutta High Court

**Date of Decision:** Dec. 20, 2011

**Hon'ble Judges:** Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** ; Md. Mokaram Hossain and Ms. Dalia Bhattacharyya, for the Respondent

### Judgement

Ashim Kumar Banerjee, J.

The petitioner was working in Cossipore Gun and Shell factory under the Ministry of Ordinance, Union of

India. He was promoted as high skill workman with effect from June 18, 1979 in the scale of Rs. 380/- - 760/-. In 1992 a review DPC was held

and the petitioner was considered for promotion in the post of Chargeman, Grade-II with retrospective effect from May 7, 1980. Accordingly, the

promotion order was notified on March 12, 1992. The subject promotional process became a subject matter of challenge in a litigation before the

Administrative Tribunal, Jabalpur Branch and subsequently before the Apex Court. On or about September 13, 2000 the Apex Court cancelled

the promotional process. The Apex Court upheld the decision of the Tribunal that the service conditions of the concerned employees were

governed by statutory rules and the statutory rules not having put any additional benefit for the 8th category of people for the purpose of promotion

to Chargeman, Grade-II, the additional benefit conferred had to be struck down. The Apex Court observed, ""the Tribunal was wholly justified in

striking down the aforesaid Government Memorandum and we see no justification for our interference with the said order of the Tribunal."" The

Tribunal however observed at the end, ""undoubtedly the power lies with the employer and if the employer can re-adjust these reverted people

within the promoted category after implementing the earlier direction of the Tribunal, then the employer can do so, but the reverted persons cannot

claim any right to the promoted post."" The authority complied with the order of the Tribunal so affirmed by the Apex Court and reverted the

petitioner back to the feeder post along with others that became the subject matter of challenge before the Tribunal by the petitioner. Pertinent to

note, petitioner was a party neither before the Administrative Tribunal nor the Apex Court. According to the petitioner, the factory manager

promoted him as Chargeman, Grade-I in the scale of Rs. 5000/- - Rs. 9000/-. On March 15, 2005 petitioner filed application before the Tribunal

being O.A. No. 507 of 2005 challenging the fixation of pay. He retired from service with effect from October 31, 2005, last pay drawn was Rs.

7950/- (Basic) whereas according to him, his junior batch mates were getting Rs. 8500/- at that time. The Tribunal expressed their inability to

accede to his prayer. The Tribunal dismissed of his application vide order dated April 26, 2010. He was not happy. He approached us by filing the

present application.

2. We heard the petitioner in person in support of his application. We also heard Md. Mokaram Hossain being assisted by Ms. Dalia Bhattacharya

for the respondent.

3. From the judgment and order of the Tribunal we find that Tribunal noted the fact that the promotion earlier given to the petitioner was called

back in view of the order of the Apex Court. The petitioners contended that his subsequent promotion that attracted lesser pay than his juniors,

could not be proved. He could not furnish details to support his contention that his juniors had superseded him. The instances given by petitioners

were considered by the Tribunal and the Tribunal found that those promotions were factory based promotions having a different channel and could

not be equated with the petitioner.

4. We have considered the rival contentions. On a close look to the appeal made to the authority on April 29, 2004 we find that he was making a

grievance of higher pay being received by the persons having been promoted after him. He referred to his promotion of 1992 that was annulled by

the Apex Court. If we look to his written notes of submission we would find that he prayed for restoration of the scale that was given to him with

retrospective effect from May 7, 1980. Such extension of benefit was recalled in terms of the order of the Apex Court. He also prayed for

compensation for Rs. 500000/- for his prolonged agony after retirement followed by his ailment. At the end he prayed for special pay in terms of a

Circular dated November 1, 1977 wherein the Director General observed that cases of individuals so far affected adversely consequent on

previous arrangement of their seniority position in the matter of promotion to Superintendent-A (Technical) would be reviewed. The petitioner

contended that since he reached the pay point of Rs. 175/- per month as per the said Circular on or January 1, 1977 he should get benefit of such

Circular. We are not sure whether the Circular was still not vogue or not. More over, that was not the case before the Tribunal or before us. His

definite assertion before the Tribunal as also before us, was for restoration of his pay that he got in terms of the 1992 promotion, by protecting his

pay. His claim that his juniors got better pay, could not be substantiated by evidence. On such issue there was no improvement before us. Hence,

we do not find any scope to differ with what the Tribunal had held in his case.

5. We however observe that the petitioner fought this long standing battle relentlessly. The authority should extend him the actual retiral benefit that

is yet to be given to him. The authority should not have waited for disposal of the instant case.

6. We direct the authority to finalize his retiral benefit as well as pension and extend the same as per entitlement, if not already done. The entire

process must be completed within a period of two months from the date of communication of this order.

7. With the above direction, the order of the Tribunal is upheld and affirmed.

8. W.P.C.T. No. 261 of 2010 is disposed of without any order as to costs.

8. Urgent Photostat copy will be given to the parties, if applied for.

Shukla Kabir (Sinha), J.

9. I agree.