
(2007) 09 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 106 of 2006 and G.A. No"s. 1233 and 2159 of 2006

Ashok Kr. Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Sept. 18, 2007

Citation: (2008) 1 ILR (Cal) 191

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Malay Bose and Arabinda Sen, for the Appellant; Kishore Dutta and Joydeep Kar, for the Respondent

Judgement

Debasish Kar Gupta, J.

The Petitioner files this writ application for a direction upon the Respondent authority to promote him to the supernumerary post of Industrial Relations Officer/Senior Labour Officer, Labour Department of Calcutta, Port Trust with retrospective effect from February 17, 1994. During the pendency of this writ application by way of an amendment of the writ application a further prayer is added to quash and set aside the promotion of the Respondent No. 5 to the post of Senior Labour Officer.

2. According to the Petitioner in the year 1983 he had participated in all India competition for management trainee organised by the Calcutta Port Trust and got appointment under the Calcutta Port Trust (subsequently renamed as Kolkata Port Trust). The Petitioner being a post graduate degree holder in chemistry obtained diploma in social work (labour welfare) on being sponsored by the Kolkata Port Trust in the year 1984. The seniority position of the Petitioner was fourth among seven management trainees who were appointed in the year 1983 as management trainees who were appointed in the year 1983 as management trainees in Kolkata dock complex and Haldia dock of Kolkata Port Trust. The Petitioner was absorbed in the rank of labour officer with the effect from January 1, 1984.

3. It was decided by an order dated January 14, 1994 that three supernumerary posts of senior labour officer would be created in the scale of pay of Rs. 3350/- to 5150/- to accommodate three officers of 1983 batch namely Shri Mrinal Kanti Das, Ashok Kumar Singh (The Petitioner) and Goutam Mukhopadhyay and those supernumerary posts would be abolished as soon as the above incumbents would be adjusted against the regular posts of senior labour officer/ Industrial Relations Officer.

4. In the meeting of Departmental Promotion Committee dated February 4, 1994 two officers namely Shri Mrinal Kanti Das and Shri Goutam Mukhopadhyay were selected for promotion to the post of senior Labour Officer/Industrial Relations Officer against two vacancies out of three supernumerary post created as aforesaid. The committee decided to review the case of promotion of the Petitioner to the post of senior Labour officer/Industrial relations Officer against the remain vacancy of the supernumerary posts after receiving annual confidential report of 1993-94.

5. On April 29, 1994 the case of the Petitioner was further taken up by the Departmental Promotion Committee for consideration to promote him to the post supernumerary of senior Labour Officer/Industrial relations Officer. In view of the poor performance of the Petitioner during year 1993-94 as revealed from the annual confidential report dossier (hereinafter referred to a ACR Dossier) of the Petitioner for the year 1993-94 as also due to the pendency of the disciplinary proceedings against the Petitioner the Departmental Promotion Committee observed that the Petitioner should not be promoted to the remaining supernumerary post of senior Labour Officer.

6. The Petitioner moved the instant writ application on January 25, 2006. During the pendency of this writ application, the case of promotion of the Petitioner to the post of Senior Labour/Industrial Relations Officer was taken up along with four other officers in the meeting of the Departmental Promotion Committee dated April 18, 2006. After considering the ACR Dossier of the candidates for previous three years and their general performance the Departmental Promotion Committee selected the Respondent No. 5, namely Smt. M. Ghosh, for promotion to the post of senior labour officer. The committee did not recommend the name of the Petitioner for promotion. By way of amendment of this writ application, the Respondent No. 5 was added as party Respondent to this writ application and her promotion to the post of Senior Labour Officer, Labour Department, Kolkata Port Trust was challenged by the Petitioner in this writ application.

7. Appearing on behalf of the Petitioner Shri Maloy Kr. Bose Learned Senior Advocates first submits the there supernumerary posts were created by the Respondent authority on the basis of the decision taken by the Respondent authority as per order dated January 14, 1994 to promote three officers of 1983 batch of management trainees who were to get their first promotion till that time for the purpose of removing the disparity to the extent possible. The Petitioner

being one of those three officers, was entitled to be promoted to the post of Senior Labour Officer/Industrial Relations Officer as a matter of right. Though two other similarly circumstanced officers namely Shri Mrinal Kanti Das and Shri Goutam Mukhopadhyay were promoted to the aforesaid posts, the Petitioner was deprived of the benefit of getting first promotion against the supernumerary post created for that purpose. Mr. Bose further submits that without giving promotion to the Petitioner further steps should not be taken by the Respondent authority to fill up the remaining supernumerary post by promoting any officer other than the Petitioner.

8. The second submission of Shri Moloy Kumar Bose, learned Senior Advocate for the Petitioner is this the selection committee considered the case of the Petitioner in the meeting dated February 4, 1994, on the basis of the ACR Dossier of the Petitioner which was not permissible in view of the fact that three supernumerary posts were created to accommodate three officers of 1983 batch of management trainees including the Petitioner who were to get their first promotion till then. Relying upon the provisions of Clause (2)(1) (ii) of Regulation 24 of Kolkata Port Trust employees (other than Haldia Dock Complex) Recruitment, Seniority and Promotion Regulations, 1985, Mr. Bose submits that assuming that the ACR Dossier were required to be considered! for promotion of the Petitioner to the post in question, the remarks "Average" was not a bar for such promotion. But such remarks was taken into consideration by the Departmental Promotion Committee in its meeting dated April 29, 1994 for rejecting the case of the Petitioner for promotion to the post in question. Mr. Bose further submits that assuming that a department proceeding was pending against the Petitioner at that material point of time, i.e. on April 29, 1994, the action on the part of the departmental selection committee cannot be sustained in law due to failure to adopt the "sealed covered policy" in case of the Petitioner.

9. Thirdly, Mr. Bose submits that though no vacancy was available other than those created as supernumerary post, the promotion of the Respondent No. 5 to the next higher post without promoting the Petitioner is liable to be quashed and set aside.

10. According to Mr. Bose the fourth grievance of the Petitioner is the arbitrary action of one Shri Pankaj Ray in the matter rejecting case of the Petitioner for promotion to the post in question all the time. In the capacity of Labour and Industrial Relations Officer, Kolkata Port Trust, the aforesaid Shri Ray lodged complaint dated November 22, 1993 against the Petitioner. On the basis of that complaint the Respondent authority issued the charge-sheet under memo No. Vig/22/94/479 against the Petitioner on April 23, 1994. Though the Petitioner was exonerated from all the charges levelled against him by an order passed by the disciplinary authority under his memo No. vig/22/ 94/511 (in) dated October 11/96, the case of the Petitioner for promotion against the supernumerary post had been rejected by the Departmental Promotion Committee in its meetings dated April 29,

1994. Mr. Bose points out that the aforesaid Shri Ray was a Labour and Industrial Relations Officer at that point of time and he being one of the members of the selection committee pointed out the fact of pendency of the proceeding against the Petitioner on that meeting. Mr. Bose further points out that the ACR Dossier of the Petitioner for the period ending March 31, 1996 was corrected by the aforesaid P. Ray and he being the review officer prepared the remarks of the above annual confidential report of the Petitioner as "average".

11. On the basis of the above submission, according to Mr. Bose, the deprivation of the Petitioner for promotion to the post in question cannot be sustained in law.

Appearing on behalf of the Respondent authority Mr. Joydip Kar, Learned Advocate, raises a point of inordinate delay in filing this writ application. According to Mr. Kar the supernumerary posts were created on the basis of the decision of the Respondent authority on January 14, 1994. The names of two other officers were recommended by the Departmental Promotion Committee for promotion in its meeting date February 4, 1994. The case of the Petitioner was considered on February 4, 1994 and April 29, 1994. The Departmental Promotion Committee did not recommend the name of the Petitioner for promotion. Consequent thereupon the remaining supernumerary post was abolished. But this writ application was filed in the year 2006. Therefore, it is liable to be dismissed on the ground of inordinate delay in filing this writ application.

12. With regard to the merits of this case Mr. Kar submits that the promotion to the next of higher post is not a matter of right and the same is restricted to consideration only. Mr. Kar relies upon the provisions of Clause 2(a) (ii) of regulation 24 of the Kolkata Port Trust Employees" (Other than the Haldia Dock Complex) Recruitment, Seniority and Promotion Regulations 1985 in support of his above submission.

13. Drawing the attention of this Court towards the decision of the Respondent authority dated January 14, 1994, Mr. Kar submits that three supernumerary posts were created by the Respondent authorities to consider the cases of three officers of management trainees of 1983 batch at least for giving one promotion. Two offices were promoted against two such posts. When the case of the Petitioner was considered for promotion against the remaining vacancy of supernumerary post by the departmental Promotion committee in its meeting date February 4, 1994, his performance was below average on the basis of the annual confidential report. As a result his name was not recommended for promotion:

14. Though, the Petitioner was not promoted to the post in question, authority decided to give him another chance for consideration to be promoted to the post in question. As a result after preparation of the ACR Dossier in the year 1993-94, the case of the Petitioner for promotion to the post in question was taken up once again on April 29, 1994. But in the ACR Dossier of the Petitioner he was graded as

"average officer" with many other adverse remarks. Taking in consideration those aspects as also in view of pendency of a disciplinary proceeding his case for promotion was rejected by the Respondent authority. So, the decisions of the committee in its meetings date February 4, 1994 and April 29, 1994 to reject the case of the Petitioner for promotion to the post in question were backed by reasons.

15. According to Mr. Kar as a consequence of rejection of the case of the Petitioner for promotion to the post in question the aforesaid supernumerary post stood abolished in terms of the order dated January 14, 1994.

16. Drawing the attention of this Court toward the statements made in the affidavit-in-opposition affirmed on February 23, 2007 (paragraph 3 (j) at page 11), Mr. Kar submits that the case of the Petitioner for promotion was further taken up for consideration in the year 1998. But after considering the ACR Dossier of the Petitioner with those of other eligible candidates, the Departmental Promotion Committee found him ineligible for promotion. According to Mr. Kar such consideration was against a regular vacancy and the supernumerary post in question was not in existence at that point of time.

17. With regard to the decision of the Departmental Promotion Committee dated April 18, 2006. Mr. Kar submits that the committee took up the case of the Petitioner for consideration along with other eligible officers in respect of a regular vacancy and not against the supernumerary post while one A. K. Sarkar was selected for transfer to the post of Industrial Relations Officer. The Respondent No. 5 was selected for promotion to the post of senior Labour Officer by the Department Promotion Committee on consideration of the ACR Dossiers for previous three years and on the basis of the general performances of the eligible candidates. The case of the Petitioner was not recommended by the Departmental Promotion Committee for promotion to the next higher post on the basis of the ACR Dossier.

18. With regard to the allegation against one P. Ray, Mr. Kar submits the case of the Petitioner for promotion was considered on the basis of the ACR Dossier. Therefore, rejection of the case of the Petitioner at the instance of the aforesaid P. Ray is baseless. According to Mr. Kar the Respondent authority adopted a three tier system for preparation of "ACR Dossier of its officers. Firstly, reports are recorded by reporting officer. It is normally done by the immediate superior officer under whose direct supervision/guidance the officer reported upon works. Secondly, such reported annual confidential report is placed before the next superior officer (normally the head of the department) who reviews it. He is called reviewing officer. Finally, this reviewed annual confidential report is placed before the next higher officer (Chairman or the Deputy Chairman as the case may be) who countersigns it on acceptance. He is called counter signing officer. It appears from the materials on record that the aforesaid Sri P. Ray lodged the complaint in question against the Petitioner but no irregularity was proved in respect of such action of the aforesaid P. Ray. In the meeting of the selection committee dated April 29, 1994 the above Mr. P.

Ray drew the attention of the other members of the committee to the fact of pendency of the proceeding against the Petitioner. Shri P. Ray was not the only person to take a decision in the matter of promotion of the Petitioner to the post in question. The number of the members of the selection committee was five. With regard to the correction of the annual confidential report of the Petitioner for the period ending March 31, 1996 and recording of the remarks "average" by the aforesaid Shri P. Ray, Mr. Kar submits that it was normally done by a reviewing officer when he disagrees with the opinion of the reporting officer. Mr. Kar further draws the attention of this Court towards the remarks of the reviewing officer in the above ACR Dossier to submit that several remarks except column numbers 10 and 11(iv) the above Shri P. Ray being the reviewing officer agreed with the reporting officer most of which were in favour of the Petitioner. According to Mr. Kar the allegation against the aforesaid P. Ray is thus baseless.

19. Relying upon the decisions of reported in [State of Madhya Pradesh Vs. Srikant Chaphekar](#), Mr. Kar submits that this writ application is liable to be dismissed on the ground of inordinate delay in filing the same. Relying upon the decisions of Syed Khalid Rizvi v. Union of India (1993) 3 S.C.C. 576, and [B.H.E.L. and Another Vs. B.K. Vijay and Others](#), Mr. Kar submits that an officer can not claim promotion as a matter of right. Mr. Kar relies upon the decisions of High Court Judicature of [The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another](#), and [Smt. Nutan Arvind Vs. Union of India and another](#), to submit that the allegations against an officer of the Respondent authority, namely Shri Pankaj Roy is neither sustainable in law nor any relief can be granted to the Petitioner on the basis of such allegations.

20. I have heard the counsels appearing for the respective parties and I have given my anxious considerations to the materials on record.

21. The first issue to be decided in this writ application is whether the supernumerary post in question was in existence at least at the time of filing this writ application. It is an admitted fact that three supernumerary posts were created by an order dated January 14, 1994 passed by the Respondent authority. In order to adjudicate this issue, the aforesaid order dated January 14, 1994 is quoted below:

Sub: Promotional avenue for the first batch of Management Trainees.

The first batch of management Trainees joined on 1.1.83 and on completion of 1 year training they were posted against Glass I entry post in different departments/divisions at CDS and HDC from 1.1.84. Recently, at the time of promotion of Mrs. S. Pradhan of that batch from the post of Asstt. Secretary to that of Dy. Secretary, it was decided in a discussion in Dy. Chairman's room (on 29.12.93) that a study could be undertaken to find out if there was any Management Trainee of her batch still due to get the first promotion and that the matter would be further examined to find out a way to open promotional avenue for such ex Management

Trainees.

2. Of the 1983 batch of Management Trainees, the following officers excluding Smt. S. Pradhan, Dy. Secretary are still continuing in this post:

CDS

(1) Shri Minal Kanti Das, Personnel Officer, Labour Deptt.

(2) Sri Ashoke Kumar Singh, Personnel Officer Labour Deptt.

(3) Shri Gautam Mukhopadhyay, Personnel Officer, Labour Deptt.

HDC

(1) Shri Jishu Roy, Jr. Asstt. Manager (Adman)

(2) Shri Subhasish Bagchi, Jr. Asstt. Manager (Finance)

(3) Shri Damodar Nayek, Jr. Asstt. Manager (Shipping)

3. The three officers at Haldia had joined as Administrative Officer, Accounts Officer and Traffic Officer; all being in the class I entry scale of Rs. 2350-100-2550-120-4230 and they have by this time got their first promotion to the rank of Jr. Asstt. Manager in their respective divisions in the scale of pay of Rs. 3350-120-5150.

4. But the three officers of 1983 batch of Management Trainees who joined in the Labour Deptt. of CDS on completion of training as Personnel Officer in the Class I entry scale of Rs. 2350-100-2550-120-4230, are yet to get their first promotion. To remove the disparity to the extent possible, it seems that the three ex management Trainees of 1983 batch of CDS who are now posted at Labour Deptt. should also get their first promotion.

5. In the chain of retirement of Shri D. K. Mukherjee, the present LA&IRO from 1.3.94 and with the posting of Shri P. Roy, Dy. LA&IRO as HOD, one of the Industrial Relations Officers is likely to get promotion to the post of Dy. LA&IRO. This vacancy of IRO will be filled by horizontal transfer from the rank of Sr. Labour Officer. The post of Sr. Labour Officer which is in the scale of pay of R. 3350-120-5150 will then be filled up from the existing Labour Officers and Personnel Officers in the department. The present seniority position of the personnel Offices and Labour Officers in the department are as follows:?

(1) Shri Sukumar Sutradhar, Labour Officer

(2) Shri Mrinal Kanti Das, Personnel Officer.

(3) Shri Ashoke Kumar Singh, Personnel Officer.

(4) Sri Goutam Mukhopadhyay, Personnel Officer.

6. Therefore, one of the ex Management Trainees of the 1983 batch may expect promotion at this juncture provide Shri Sutradhar is found not fit for promotion by the appropriate authority. But this may not happen also.

7. Therefore, in the normal course the three Management Trainees of 1993 batch will get their first promotion in the Labour Deptt. In 1995 (with the retirement of Shri Sunil Nandy), in 1997 (with the retirement of Shri P. K. Majumder) and in 20Q6 (with the retirement of Shri M. B. Minz) respectively.

8. In view of the situation narrated above and also considering the fact that all other Management Trainees of 1983 batch or the first batch have by now got at least one promotion, it may be appropriate if 3 supernumerary posts of Sr. Labour Officer are created in the scale of pay of Rs. 3350-120-5150 to accommodate the said 3 officers with the stipulation that the supernumerary posts will stand abolished as soon as the incumbents will be adjusted against the regular posts of Sr. Labour Officer/Industrial Relations Officer. To do this, 3 vacant posts of Commander, D & D service which are in the scale of pay of Rs. 4650-175-6575 may be operated at the level of Sr. Labour Officer.

Secretary

Dy. Secretary-I

22. From the aforesaid order it is an admitted position that three supernumerary posts of Senior Labour Officers/Industrial Relations Officer were created to accommodate three management Trainees of 1983 batch who had not got their first promotion. It is also not in dispute that those supernumerary posts were created with the stipulation that those posts would stand abolished as soon as the incumbents would be adjusted against the regular post of Senior Labour Officer/Industrial Relations Officer. The Petitioner was one of the claimants in respect of an aforesaid supernumerary posts. Therefore, that supernumerary post could be abolished only after the adjustment of the Petitioner against the regular post of Senior Labour Officer/Industrial Relations officer. Such adjustment could be done after the promotion of the Petitioner to that supernumerary post. The Petitioner was not promoted to that supernumerary post due to non-recommendations of his name for such promotion by the Departmental Promotion Committee. The validity of such action on the part of the Respondent authorities will be considered at the later part of the decision but nothing is available on record in support of the claim that a decision was taken at any point of time by the Respondent authority to abolish the remaining supernumerary post on the occurrence of any eventuality other than the promotion of the Petitioner to the post of Senior Labour Officer/Industrial Relations Officer and his subsequent absorption against a regular vacancy. Therefore, it does not lie on the mouth of the answering Respondents that the supernumerary post in question was abolished or that no relief could be granted to the Petitioner on the ground of delay in filing this

writ application. I cannot agree with the submission of Joydip Kar Learned Advocate appearing for the Respondent authority that the ratio laid down in the matter State of Madhya Pradesh v. Srikanth Chapheker (Supra) is applicable in this case. In that case the action of the employer was challenged after a period of more than a decade but in the instant case the Petitioner approached the Court challenging the action on part of the Respondent authority relating to the promotion of the Petitioner to a supernumerary post during the existence of that post. And the supernumerary post in question is still in existence. Therefore, this writ application is maintainable with regard to any dispute raised in considering the case of the Petitioner for promotion to that supernumerary post.

23. With regard to the merits of this case, the first ground set-forth in this application is this the Petitioner was entitled for promotion in the supernumerary post in question as a matter of right. It is not in dispute that three supernumerary posts of labour Officer/ Industrial Relations Officer were created by the Respondent authority and the Petitioner was one of the claimants of an aforesaid supernumerary post. In order to adjudicate this issue on the basis of the settled principles of law the relevant portions of the decision of Syed Khalid Rizvi (Supra) relied upon by Mr. Joydeep Kar, learned Advocate, are quoted below:

31. No employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Take an illustration that the Promotion Regulations envisage maintaining integrity and good record by Dr. S. P. of State Police Service as eligibility condition for inclusion in the select-list for recruitment by promotion to Indian Police Service. Inclusion and approval of the name in the select-list by the UPSC, after considering the objections if any by the Central Government is also a condition precedent. Suppose if "B" is far junior to "A" in State Services was found more meritorious and suitable and was put in a select-list of 1980 and accordingly "B" was appointed to the Indian Police Service after following the procedure. "A" was thereby superseded by "B". Two years later "A" was found fit and suitable in 1984 and was accordingly appointed according to rules. Can "A" thereafter say that "B" being far junior to him in State Service, "A" should become senior to "B" in the Indian Police Service. The answer is obviously no because "B" had stolen a march over "A" and became senior to "A". Here maintaining integrity and good record and conditions of recruitment and seniority is an incidence of service. Take another illustration that the State Service Provides - rule of reservation to the scheduled casts and scheduled tribes. "A" is a general candidate holding No. 1 rank according to the roster as he was most meritorious in the State service among general candidates. "B" scheduled casts candidate hold No. 3 point in the roster and "C, Scheduled Tribe holds No. 5 in the roster. Suppose Indian Police Service Recruitment Rules also provide reservation to the Scheduled Castes and Scheduled Tribes as well. By operation of the equality of opportunity by Articles 14, 16(1), 16(4) and 335, "B" and "C" were recruited by promotion from State services to Central

Services and were appointed earlier to "A" in 1980. "A" thereafter in the next year was found suitable as a general candidate and was appointed to the Indian Police Service. Can "A" thereafter contend that since "B" and "C" were appointed by virtue of reservation, though were less meritorious and junior to him in the State service and gradation list would not become senior to him in the cadre as IPS officer. Undoubtedly "B" and "C", by rule of reservation, had stolen a march over "A" from the State Service. By operation of rule of reservation "B" and "C" became senior and "A" became junior in the Central Services. Reservation and roster were conditions of recruitment and seniority was only an incidence of service. The eligibility for recruitment to the Indian Police Service, thus, is a condition of recruitment and not a condition of service. Accordingly we hold that seniority, though, normally an incidence of service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable.

24. I further find substance in the submissions of Mr. Kar that decision of Bhe (Supra) is also applicable in this case.

25. On the basis of the above settled principles of law the Petitioner was entitled only to be considered for promotion against the supernumerary post in question in accordance with the provisions of Clause 2(1)(ii) of Regulation 24 of the Kolkata Post Trust Employees (Other than Haldia Dock Complex) Recruitment, Seniority and Promotion Regulation, 1985. In accordance with the provisions of the above regulation the overall performances of the Petitioner as also the ACR dossier of the Petitioner was required to be considered by the Departmental Promotion Committee for promotion to the supernumerary post. I cannot accept the submission of Mr. Moloy Kr. Bose, Learned Senior Advocate appearing for the Petitioner that the Petitioner was entitled to be promoted in one of the supernumerary post of Senior Labour Officer/Industrial Relations Officer without adhering to the above formalities.

26. With regard to the next submission of Mr. Moloy Kr. Bose, Learned Senior Advocate appearing for the Petitioner I find that in the meeting dated April 29, 1994 the Departmental Promotion Committee rejected the proposal for recommendation of the name of the Petitioner for promotion to the post in question not only on the ground of adverse remarks recorded in his ACR. It further reveals from the minutes of the above meeting that the committee took into consideration "many other adverse remarks" apart from the remarks "average" and the initiation of the departmental proceeding against the Petitioner. Therefore, no relief can be granted to the Petitioner in this writ application on the basis of the above submission of Mr. Bose.

27. Regarding the third ground of promotion of the Respondent No. 5 to the next higher post without availability of any vacancy other than the supernumerary post in

question, it reveals from the order dated January 14, 1994 (Annexure "C" at page 41 of the affidavit-in-opposition affirmed on behalf of the Respondent Nos. 2 and 3 on February 23, 2007 that a regular vacancy would occurred in the year 2006. It is revealed that the above regular vacancy occurred in the year 2006 due to retirement of one officer namely Shri M. B. Minz. It further appears from the resolution adopted in the meeting of the Departmental Selection Committee dated April 18, 2006 that the committee took up the case of selection for the post of Senior Labour Officer/Industrial relations Officers with administrative approval for filling up the above regular vacancy. In doing so the candidatures of five eligible candidates coming within the zone of consideration including the Petitioner and the Respondent No. 5 were considered. The committee after consideration of the ACR Dossier of those eligible candidates for preceding three years and their general performances recommended the name of the Respondent No 5 for promotion to that post. Therefore, it was an admitted fact that the Respondent No. 5 was promoted against a regular vacancy and as a result, the case of promotion of the Respondent No. 5 to that post cannot be interfered with.

28. With regard to the allegations raised against Shri Pankaj Roy a higher, officer I find substance in the submissions made by Mr. Joydeep Kar, Learned Advocate appearing for the answering Respondents, that the aforesaid Pankaj Roy alone could not determine the fate of the Petitioner in the matter of promotion to the supernumerary post in question. The case of the Petitioner was considered by the Departmental Promotion Committee on a number of occasions. On February 4, 1994 and on April 29, 1994 the case of the Petitioner was considered by the Departmental Promotion Committee on the basis of ACR Dossier of the Petitioner, for the preceding three years as also his overall performances. From the ACR Dossier prepared by the Reporting Officer, reviewed by the Reviewing Officer and countersigned by the Deputy Chairman, the Petitioner was found to be ineligible for promotion. It further reveals from the record that from the year 1990 onwards ACR Dossier of the Petitioner remained almost same. It also appears from the minutes of the above meetings of the Departmental Promotion Committee that all the five members of the committee took the decision unanimously. Therefore, I do not find any illegality or irregularity with regard to the decision making process in the matter rejecting the case of the Petitioner for promotion to the post in question. Therefore, the Petitioner is not entitled to any relief on the ground of the allegations raised against the aforesaid Pankaj Roy, a higher officer of the Petitioner and in particular his role in initiation of disciplinary proceeding against the Petitioner. I fully agree with the submission of Mr. Kar that the decision of Natan Arvind (SMT)(Supra) and that of High Court Judicature of Bombay(Supra) are applicable in this case.

29. The only question which is to be answered now, is whether the case of the Petitioner is required to be considered further for promotion to the supernumerary post in question? It has been observed hereinabove that the supernumerary post in question was not abolished at any point of time on the basis of a decision taken by

the Respondent authority. It has been discussed hereinabove that though the Petitioner had no right to promotion but he had the right to be considered to promotion according to rules during the existence of the supernumerary post in question.

30. In that view of the matter the Petitioner is entitled to be considered for promotion to the supernumerary post in question adhering to the provisions of Kolkata Post Trust Employees" (Other than Haldia Dock Complex) Recruitment Seniority and Promotion Regulation, 1985 on consideration of his ACR/Dossier and overall performances for the periods subsequent to the meeting of the Departmental Promotion Committee dated April 29, 1994 so long as the supernumerary post is not abolished by the Respondent authority.

31. I, therefore, direct the Respondent authority to consider the case of the Petitioner for promotion to the supernumerary post in question within a period of six weeks from the date of communication of this order in accordance with the provisions of Kolkata Post Trust Employees" (Other than Haldia Dock Complex) Recruitment, Seniority and Promotion Regulations, 1985 on consideration of his ACR Dossier and overall performances for the period subsequent to the meeting of the Departmental Promotion Committee dated April 29, 1994. It is made clear that it is always open to the Respondent authority to abolish of the supernumerary post in question with effect from the of taking a decision for that purpose.

32. This writ application along with other pending applications relating thereto are, thus, disposed of. There will be, however, no order as to costs.

33. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.