

**(2008) 10 CAL CK 0006**

**Calcutta High Court**

**Case No:** Writ Petition No. 7389 (W) of 2008

Samir Kumar Ghosh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Oct. 1, 2008

**Citation:** (2009) 121 FLR 57

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Panchanan Hazra, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Jayanta Kumar Biswas, J.

The Petitioner in this writ petition dated April 22, 2008 is seeking a mandamus commanding the Respondents to promote him from the post of Electrician Tech. Gr. "C" to the post of Electrician Tech. Gr. "B".

2. As is known, no employee has any right to be promoted to any higher post, though he has a right to be considered for promotion to a higher post. Hence the Petitioner is not entitled to seek a mandamus commanding the Respondents to promote him to the next higher post. This being the position, I called upon advocate for the Petitioner to show me any statement made in the writ petition that though the Petitioner was eligible and entitled to be considered for promotion to the post of Electrician Tech. Gr. "B", his employer did not consider his case while considering the case of one Prabir Bhattacharjee.

3. Advocate has referred me to paras. 15 and 17. His submission is that both Prabir and the Petitioner, promoted in the year 2000 from the post of Electrician Cat. VI to the post of Asstt. Foreman Tech. Gr. "C", being similarly situated in every respect, the Petitioner was entitled to be promoted to the post of Foreman (Elect) Tech. Gr. "B" to which post Prabir was promoted by order dated December 13, 2007, Annexure P-13, p.48. He says that, as will appear from Annexure P-15, p.50, an office

order dated March 3, 2008, Prabir got further benefit of the upgraded post. According to him, the authorities discriminated against the Petitioner.

4. No case has been made out by the Petitioner that for promotion to the post of Foreman (Elect) Tech. Gr. "B" though he was eligible and entitled to be considered, while Prabir's case was considered by the Respondents, his case was not considered, or that though he was entitled to get the benefit of the upgraded post that was given to some employees by order dated March 3, 2008, his case for giving the benefit was not considered.

5. Advocate submits that stating his grievances the Petitioner made representations dated March 16, 2005, Annexure P-9, p.42, and January 17, 2007, Annexure P-12, p.46. In those representations no allegation was made that though the Petitioner was eligible and entitled to be considered for promotion to the post to which Prabir was promoted in December, 2007, his case was not considered by his employer. Rather in the representations, the Petitioner said that having possessed necessary qualifications and the vacancy being available, he was expecting that the authority would consider his case for promotion to the next higher grade.

6. There is nothing wrong on the part of an employee in expecting that his employer will consider the question of promoting him to the next higher post. But merely on the ground that his employer did not consider him for promotion, to the next higher grade, he cannot seek a mandamus commanding his employer to consider him. He can seek relief from Court only when his employer initiates necessary recruitment process, but does not consider his case, though he is eligible and entitled to be considered, or when any rules or executive or administrative order creates a right entitling him to be considered for promotion after a certain period, but his employer does not take any steps to consider his case in terms of provisions of such rules or executive or administrative order.

7. In the present case, the Petitioner has nowhere stated that he acquired a right to be considered for promotion, but his employer did not consider his case for the purpose. I therefore hold that the Petitioner has failed to make out a prima facie case for entertaining the writ petition.

8. For these reasons, the writ petition is dismissed. There shall be no order for costs.

9. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.