

Samir Kumar Ghosh Vs Union of India and Others

Court: Calcutta High Court

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

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.