

(1984) 12 CAL CK 0025

Calcutta High Court

Case No: C.O. No. 11535 (W) of 1982

Animesh Halder

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 14, 1984

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 16

Citation: 89 CWN 868

Hon'ble Judges: B.C. Ray, J

Bench: Single Bench

Advocate: A.L. Bose, for the Appellant; Tapas Roy and S.K. Panja, for the Respondent

Final Decision: Allowed

Judgement

B.C. Ray, J.

The petitioner, an employee of the Calcutta Metropolitan Development Authority, has assailed in the instant Writ application, the impugned orders being no. 405/CMDA/2E-48/ 81 dated February 24, 1981, Order No. 397/CMDA/2E-41/81 dated February 24, 1981 issued by the respondent no. 3 promoting the respondents nos. 6 and 7 to the posts of Deputy Director (Area Planning and Development Control) and respondent no. 9 to the post of Deputy Director (Transportation) in violation of all norms of promotion set by the Authority as well as the advertisement published in Amrita Bazar Patrika dated March 7, 1982, inviting applications for appointment to the posts of Director and Deputy Director (Socio Economic Planning, Appraisal, Monitoring and Evaluation) annexed as Annexures "E", "H" and "G" respectively to the Writ petition on the ground that the petitioner though the Senior most Urban Economist in the C.M.D.A. was denied arbitrarily promotion to the next higher post of Deputy Director of Planning (Area Planning and Development Control) as well as to the post of Deputy Director of Planning (Socio Economic Planning Appraisal, Monitoring and Evaluation) though he was holding the feeder post of Special Officer, Small Enterprise Programme and he was appointed and worked as Special

Officer in economic and social support programme cell from its very inception and thus he has been arbitrarily discriminated upon by the authorities concerned. The salient facts of the case in brief are as follows:

The petitioner who is an M.A. in Economics from Calcutta University and a Ph.D. of the University of Wales, U.K. was appointed against a permanent vacancy as an Urban Economist under the C.M.D.A. on the 6th of January, 1975 on being duly selected by the Selection Committee. The petitioner was confirmed in the said post by Order dated March 13, 1980 being Order no. 555/CMDA/2E-66/79 with effect from January 6, 1977. After he assumed his duties as an Urban Economist the authority concerned by Order dated November 3rd|4th, 1976 constituted a Cell in the name of Economic and Social Support Programme Cell (hereinafter referred to as ESSP Cell) within the Planning Directorate and the petitioner was appointed as Officer-in-Charge of the said Cell, by Order No. 30-77|67 dated July, 22, 1977 by the Director General of Planning and Directorate, C.M.D.A., the respondent no. 5. It has been stated that the duties and responsibilities of the Officer-in-Charge of ESSP Cell are identical with those of the Deputy Director of Planning of other streams of the said Directorate. The petitioner however, was not provided with any extra financial benefits for the additional responsibility and work attached to the said post. After some time the post of Deputy Director (Economic Planning) was created by the authorities and the same was lying vacant. The petitioner made a representation to the authority concerned to elevate him to the said post of Deputy Director of Planning and his representation was duly forwarded by the respondent no. 5 on May 22, 1978 with a note being U.O. No. 810 (PL), dated May 25, 1978, inter alia to the following effect :

I forward herewith a memorandum from Dr. A. Haider, Urban Economist, Directorate of Planning, CMDA which will speak for itself. It is true that Dr. A. Halder is shouldering greater responsibility compared to other Urban Economists. It may also be pointed out, in this connection, that a post of Deputy Director (Economic Planning) is lying vacant for quite sometime. It is necessary to fill up the post for effecting desired co-ordination and supervision in our economic planning aspects particularly in view of our involvement in the programme for Small Scale Enterprise.

In spite of this recommendation by the Respondent no. 5 he was not considered for promotion to the said post.

2. The petitioner made another representation to the authority concerned for consideration of his case on merits for promotion to the said post of Deputy Director. It has been further stated that the credible performance of additional duties by the petitioner as Officer-in-Charge of the ESSP Cell, can be evident from the office note of the Director of Planning vide U. O. No. 163 (PL) dated 26.7.78 and a note of the then Deputy Secretary of the C.M.D.A. dated October 5, 1978 (vide File No. PL-2:56 Note Sheet Page No. 24-25). It has been further stated that in order to minimise the importance of the Cell and to cripple its activities the respondent no. 5

withdrew gradually the necessary support like manpower, vehicle etc. from the Cell and to denigrate his position as Officer-in-Charge of the Cell and more particularly as Officer-in-Charge of the Small Scale Enterprise Programme. It has also been submitted that inspite of giving over all responsibilities of the Socio Economic Planning and Allied tasks to the petitioner, who is the seniormost amongst the Urban Economists working in the C.M.D.A. and the only Economist holding Doctorate Degree, one Dr. S.B. Mukherjee, an outsider, who was going to retire on superannuation was appointed as an Economic Adviser and thereby prejudicially affecting the interest of the petitioner. It has been further stated that the petitioner while working as an Officer-in-Charge of the SSP Cell, Organised and developed an economic development programme, known as Small Scale Enterprise Programme (hereinafter referred to as SSE Programme). The said programme was exclusively run under the supervision and control of the petitioner since the inception of the said programme i.e. from 1976. The authorities concerned with an ulterior motive arbitrarily and in colourable exercise of their executive fiat withdrew the said programme from the supervision and control of the petitioner on the plea that the expertised knowledge of the petitioner would be more effectively utilised in the Social and Economic Planning Field and Project Appraisal Unit. The service rendered by the petitioner for developing the said SSE Programme was well appreciated by the then Officer-in-Charge on special duty and Chief Executive Officer, C.M.D.A. It has been stated that the petitioner is the only legitimate claimant to the post of Deputy Director (Area Planning and Development Control) as he was holding the absolute charge of the SSE Programme (Feeder Post) according to the recommendation of the Service Committee as approved by the 63rd meeting of the C.M.D.A. It has been further stated that to deprive him from his legitimate claim for promotion to the said post of Deputy Director, the feeder post of which the petitioner was holding, the authority concerned arbitrarily took away the responsibility of the said programme from the petitioner for a collateral purpose, on the so called plea that the petitioner's expertised knowledge will be better utilised in the Socio- economic Planning, Project, Appraisal and Evolution work under C.M.D.A. and the responsibility of the said programme was assigned to a W.B.C.S. Officer as additional charge, by Order No. 3064/CMDA/ 2E-31/79 dated December 17, 1980. It has been stated that the work of the ESSP Cell is synonymous with that of the work of SSE Programme which will be evident from the order of the Director of Planning dated March 19, 1979 annexed as Annexure "D" to the writ application. The authority concerned in order to victimise the petitioner somehow or other denied him promotion to the said post of Deputy Director (Area Planning and Development Control) though he was holding the feeder post (i.e. Special Officer SSE Programme) and on the other hand, promoted the respondents no. 6 and 7 to the post of (Deputy Director of Planning (Area Planning and Development Control), although the said respondents did not hold the Feeder post of the Deputy Director of Planning (Area Planning and Development Control) in utter violation of the Rules of promotion as recommended by the Service Committee and accepted at the 63rd

Meeting of the Board It has been further stated that the respondent no. 6 was holding the post of Associated Planner (Land Use) (Feeder Post), the promotional post of which was Deputy Director of Planning (Land Use). The respondent no. 7 was holding the post of Associated Planner (Architect) (feeder post) the promotional post of which is Deputy Director of Planning (Urban Design). The authority concerned malafide and in violation of all norms of promotion and without observing the principles of fair play, equity and justice thus promoted the respondents no. 6 and 7 to the said post of Deputy Director of Planning (Area Planning & Development Control) by order No. 405/ CMDA/2E-48/81 dated February 24, 1981, issued by the respondent no. 3. without at all considering the claim of the petitioner to the said post. It has been further stated in this connection that the feeder post for promotion to the post of Deputy Director of Planning (Area Planning & Development Control) is the post of your petitioner, as will be evident from the recommendation of the Service Committee which was duly approved and rectified by 63rd meeting of the C.M.D.A. Thus to seal the promotional avenue of the petitioner the respondent no. 6 and 7 have illegally been promoted to the said post of Deputy Director in violation of the Rules of promotion. A copy of this order has been annexed as Annexure "E" to the writ petition. The petitioner made a representation on the 3rd March, 1981 to the appropriate authority. against this injustice, but nothing has been done in this respect It has been further stated that on the 7th March, 1982 an advertisement was published in the Amrita" Bazar Patrika inviting applications for direct recruitment to the post of Director and Deputy Director (Socio-Economic Planning, Appraisal, Monitoring and Evaluation) etc. under the C.M.D.A. contrary to the Government Circular being. No. 5120 (60) LW dated 17th October, 1977 issued by the Chief Secretary, Government of West Bengal. But no interview or appointment has yet been made on the basis of the said advertisement. The petitioner has stated that he is the seniormost experienced economist and the only employee holding the Doctorate Degree amongst the workers working under C. M. D. A. still the respondent no. 3 without considering his expertised service for 8 years in the Socio-Economic Planning Field under C.M.D.A. was going to recruit some persons in the post of Director and Deputy Director in the Socio-Economic Directorate, in order to deprive the petitioner from getting his promotion at least to the post of Deputy Director. This advertisement has been annexed as Annexure "G" to the petition. It has also been stated that the authority concerned in order to recruit the respondent no. 8, who is less qualified than the petitioner, to the post of Director Deputy Director (Socio-Economic Planning Appraisal, Monitoring and Evaluation) inserted the aforesaid advertisement. It has been further stated that the authorities concerned have illegally, arbitrarily and in utter contravention of the norms of promotion as adopted 63rd meeting of the C.M.D.A. promoted the respondents nos. 6, 7 and 8 who are junior to the petitioner in service and holding the same and similar cadre to the post of Deputy Director, in contravention of the norms of promotion laid down by the C.M.D.A. It has been further submitted that at the 67th meeting of the C. M. D. A. the norms of promotion was specified as strictly on the

basis of seniority. The respondent no. 3 has also promoted the respondent no. 9 to the post of Deputy Director, T & T Circle though he was much junior to the petitioner in service having joined in 1975 by order dated February 24, 1981, a copy of which has been annexed as Annexure "H" to the petition.

3. On these allegations the instant application has been moved before this Court on August 27, 1982. On hearing the learned Advocate for the petitioner the application was directed to be listed two weeks hence and an interim order was made to the effect that no letter of appointment would be issued to the post of Deputy Director (Socio-Economic and Planning, Appraisal, Monitoring and Evaluation) as mentioned in item no. 2 of the advertisement, annexed as Annexure "G" to the petition. If any appointment had been made or any selection had been made, no appointment letter would be issued on the basis of such selection without the leave of this Court. The interim order was for a period of three weeks from that date. The appointment made and or given to the respondents no. 6 and 7 shall also be subject to the decision of this application.

4. On 13th September, 1982 after hearing the learned Advocate of both the parties the interim order was directed to continue till the disposal of the application.

5. An affidavit-in-opposition sworn by one Manas Gobinda Chowdhury, Assistant Administrative Officer of C.M.D.A. on behalf of the respondents nos. 3, 4 and 5 has been filed on 24th September, 1982. In paragraph 5 of the said affidavit it has been stated that the petitioner was the seniormost Urban Economist in the employment when the Economic and Social Support Programme Cell was created, and as such he was made Officer-in-Charge of the said Cell. This appointment of the petitioner as Officer-in-Charge of the said Cell was solely on consideration of his seniority amongst the Urban Economists. As an Officer-in-Charge the petitioner was not required to perform any higher duty or responsibilities than what is expected to be done as by way of normal duty of the seniormost Urban Economist in the Cell. As such the recommendation of the subordinate authority, the respondent no. 5, on the prayer of the petitioner to grant special pay on account of his assumption of higher responsibility and duty was not acceded to by the C.M.D.A. It has been further stated that at no point of time the petitioner was appointed as Special Officer of ESSP Cell. The C.M.D.A. came into existence in the year, 1970. There are four principal wings disciplines in C.M.D.A. namely, viz., Administration. Finance, Engineering and Planning and there are several sub-disciplines within the Planning Wing. It has been further stated that the appointments and promotions are always made discipline-wise in C.M.D.A. In sub-paragraph (c) of the said paragraph, it has been further stated that in order to lay down the general formula regarding promotion of persons in different disciplines in C.M.D.A. a service committee was formed to go into those questions and to make recommendations. The service committee recommended that the post of Special Officer Small Enterprise Programme would be the feeder post to the post of Deputy Director of Planning

(Area Planning and Development Control). It has been further stated that basing his claim on the recommendation and alleging to be Special Officer, Small Enterprise Programme, the petitioner is trying to lay a claim for the promotion. It has been stated that the recommendation of the Service Committee has not been accepted by the C.M.D.A. fully. It has been further stated that the C.M.D.A. has not accepted that Special Officer, Small Enterprise Programme, should be the feeder post of Deputy Director, Area Planning and Development Control. That apart, at no point of time the petitioner was promoted or posted as Special Officer of Small Enterprise Programme. So on both counts the petitioner cannot claim any right for his promotion to that post of Deputy Director of Planning (Area Planning & Development Control). It has further been stated that the Respondent no. 7 being the Associated Architect Planner which is the feeder post to the promotional post of Deputy Director of Planning (Area Planning & Development Control) was given promotion to the said post. The same is the case with the respondent no. 9, who is the Associated Planner (Traffic & Transportation) which is the feeder post for the promotional post of Deputy Director of Planning, Traffic and Transportation. The petitioner is not holding either of the said feeder post for the promotional post of Deputy Director of Planning (Area Planning & Development Control) and Deputy Director (Traffic and Transportation). It has been further stated that up till now there is no promotional avenue for Urban Economists and it is expected that in due course steps will be taken for expansion of those disciplines and consequent providing of promotional avenues to those Associated Planners including the discipline to which the petitioner belongs.

6. The statements made in paragraph 5 of sub-paragraphs (a) and (b) and first paragraph of sub-paragraph (c) have been affirmed as true to knowledge of the deponent and those contained in paragraphs 5(c), 5(d), 5(e) (second paragraph only) and 5(f) and 5(g) have been affirmed as true to information derived from the records of this case.

7. The supplementary affidavit-in-opposition sworn by one Manash Gobinda Chowdhury, "one behalf of the respondents no. 3, 4 and 5 have been filed on 10th August, 1983. In paragraph 4(b) it has been stated that under Order No. 2341/CMDA/2E-38/76 dated 30.10.76 a Cell being Economic and Social Support Programme was created under the Planning Directorate C.M.D.A. In this Directorate by an Office Order being No. 8-76|29 dated 3|8.11.76, it was directed inter alia that Dr. A. Haider, Urban Economist, would act as Officer-in-charge of the Economic and Social Support Programme Cell. Under Planning Directorate Office Order dated 22nd July, 1977, it was decided in the interest of work to place Sri R. Bandopadhyay, Associate Community Facilities Planner, Sri Kalyan Roy, Urban Economist and Sri Nabendu Mustafi, Urban Economist to the ESSP Cell on full time basis. In sub-paragraph (c) it has been further stated that according to the organisational structure of the Planning Directorate a Circle is headed by a Deputy Director, while a Cell is headed on her by an Associated Planner or Executive Engineer or an Urban

Economist. Initially the ESSP Cell was headed by the Officer-in-Charge under the over all guidance of a Deputy Director, Subsequently the Cell was allowed to function independently under the Officer-in-Charge similar to the Engineering Design Cell, which was headed by the Executive Engineer. It has been further stated that an Executive Engineer was in charge of the Engineering Design Cell of the Planning Directorate and he was not granted any remuneration for working as in charge of the Cell. In sub-paragraph (ee) it has been stated that a Memorandum of Dr. A. Halder was forwarded by the Director of Planning by order dated 22.5.78 stating that a post of Deputy Director (Economic Planning) was lying vacant and steps should be taken to fill up the said post for effecting co-ordination and supervision in the Economic Planning aspects, particularly in view of C.M.D.A.'s involvement programme for Small Scale Enterprise. After examination it was found that no post of Deputy Director (Economic Planning) was ever sanctioned by the authority. So the question for filling up the said post did not arise. It has been further stated in sub-paragraph (h) of the said paragraph that in the year, 1980 it was considered that the nature and definition of the programme of Small Scale Enterprise undertaken by the ESSP Cell did not call for to be handled by a technical person whose services might better be utilised in other planning fields. Accordingly, an order dated December 17, 1980 was issued transferring the responsibilities of Small scale Enterprise Programme from Dr. Haider, Urban Economist, to the Deputy Secretary of the Authority. Subsequently, another order was issued by the Director of Planning instructing Dr. Halder to make over charge to the Deputy Secretary and to work as an Urban Economist in the Directorate of Planning. This has been annexed as Annexure "X" to the affidavit-in-opposition. It has been further stated in subparagraph (i) that the Service Committee in his report submitted in June, 1979 recommended inter alia, under the heading "Planning" that Special Officer (Small Scale Enterprise Programme) is the Feeder post of the promotion post of Deputy Director of Planning (Area Planning & Development Control). In the 67th meeting of the authority held on March 28, 1981 the promotion principles in respect of the different categories of posts in C.M.D.A. were approved. In the said promotional principle it has been indicated that the posts of Associate Planner, Urban Economist, Demographer Statistician, Executive Engineer are the feeder posts for filling up the promotion posts of Deputy Director of Planning, disciplinewise, in the Planning Directorate of C.M.D.A. It is not a fact that the post of officer-in-Charge, SSE programme is the feeder post of Deputy Director (Area Planning & Development Control). In sub-paragraph (j) it has been further stated that later on in view of increasing work load of the SSE programme it was decided by the Planning Directorate that ESSP, should remain, exclusively concerned with the SSE programme and other programmes relating to Economic Planning necessary for Metropolitan Task Group and other allied works were put under the charge of other Economists of the Department of Planning. It has been denied that the work of ESSP Cell is synonymous with that of SSE Programme. In sub-paragraph (k) it has been stated that sanction was accorded by an order dated 14/20.2.79 for the creation of

three posts of Special Officer namely, Special Officer, Small Enterprise Programme, Special Officer Project Appraisal and Evaluation Cell and Special Officer, Planning, Programming and Co-ordination. It has been further Stated that in the Planning Directorate Sri Kalyan Roy, Urban Economist, ESSP Cell was directed to work as Special Officer, Project Appraisal and Evaluation Cell until further orders. It has been further stated in sub-paragraph (n) that Dr. Halder after release from SSE Programme was assigned with the work of Project, Appraisal and Evaluation by order dated 17.12.80. Dr. Halder, Urban Economist, was entrusted only with planning activities in the field of Social and/or Economic Planning of the Planning Directorate. In sub-paragraph (p) it has been stated that the respondents no. 6, 7 and 9 were the senior most officers in the respective disciplines. Accordingly, they were promoted to the post of Deputy Director of Planning in conformity with the promotion principle of the 67th meeting of the authority and the petitioner being a member of the different discipline could not claim promotion to the post of Deputy Director of Planning. In sub-paragraph (S) it has been stated that deviation from the Government Circular in promoting the respondents nos. 6, 7 and 9 has been made in the exigencies of work and for a bonafide purpose. It has been further stated in sub-paragraph (y) that promotion to the post of Deputy Director (Planning) in the Planning Directorate being discipline wise, Sri R.N. Ganguly though joined C.M.D.A. later than Dr. Halder, but in view of his being the seniormost as Associate Architect his promotion to the post of Deputy Director (Architecture & Lay out Planning) cannot be treated as a case of supersession of the seniority of Dr. Halder, who belongs to a separate discipline. It has been further stated that in the document annexed as Annexure P3 and P4 of the affidavit-in-reply the petitioner was wrongly described as an Urban Economist and Special Officer of ESSP Cell. It has been further stated in sub-paragraph (y) that by order dated January 15, 1983 sanction was accorded to the creation of a post of Deputy Director (Architecture & Layout Planning). It was also decided to fill up the post by the Associate Architect Planner and Associated Land Use Planner to which posts the basic qualification is the B. Arch. Sri Ramendra Nath Ganguly being the seniormost Associate Architect Land Use Planner in the Planning Directorate was promoted to the post of Deputy Director (Architecture & Layout Planning). It has also been stated that in the 67th meeting of the authority held on March 28, 1981, posts of De-Director (Planning) in the Planning Directorate is the promotion post of Associate Planner, Urban Economist etc. As there is no sanctioned post of Deputy Director (Economic Planning) in the Planning Directorate, the question of the petitioner's getting promotion to the post of Deputy Director in the Planning Directorate does not arise. It has been further stated in paragraph 6 that my mistake Dr. A. Halder was described as "Urban Economist & Special Officer ESSP Cell." The mistake crept in the endorsement of the Administrative Officer (Personnel) Head Quarters, C.M.D.A. in the documents Annexures P3 and P4 through oversight. At no point of time Dr. A. Halder was appointed as Special Officer, ESSP Cell but he was called Urban Economist and Officer-in-Charge of the said Section and after his withdrawal from

the said Cell he was designated as only Urban Economist and not Special Officer. This statement has been affirmed as submission of the deponent before this Court. It has been also stated that by order dated March 1, 1982 a Director of Socio Economic Planning, Appraisal, Monitoring and Evaluation was created and sanction was accorded to the creation of one post of Director and one post of Deputy Director in that directorate with the approval of the Vice-Chairman of the C.M.D.A. and the same was placed before the authority in its 71st meeting held on 23.2.82. In the said meeting the authority ratified the said proposal but directed that of the two posts of Director and Deputy Director, only one should be filled up for the present. The qualification of the post of Director was specified as an economist as has been mentioned in the advertisement. Subsequently the qualification has been changed and the method of recruitment was also changed by providing that it should be filled up in the following way i.e. (1) by promotion of Additional Director in Engineering Stream in C.M.D.A. with adequate experience of Appraisal|Monitoring|Evaluation or (2) by direct recruitment through advertisement as follows :

1st Class M.A. in Economics, or 1st Class Degree in Civil Engineering with adequate experience of Appraisal|Monitoring|Evaluation in the field of Urban Planning and Development.

8. An affidavit-in-reply sworn by the petitioner on October 11, 1982 has been filed denying the allegations made in the affidavit-in-opposition as well as in the supplementary affidavit-in-opposition and reiterating the statements made in the petition. It has been stated in paragraph 4(d) of the said affidavit-in-reply that the fictitious feeder posts with recruitment qualification contrary to the Service Committee's recommendation and resolutions of the 63rd and 67th Board Meetings of C.M.D.A. was annexed as Annexure "X" to this affidavit-in-opposition. This document is a different one and the same was not signed by any of the authority. It has been further stated in sub-paragraph (e) of the said paragraph that promotional rules and policy of C.M.D.A. were framed in the 63rd and 67th meeting of C.M.D.A. held on 3rd September, 1979 and 28th March, 1981 respectively and the said rules and polciy are supreme and have bindings on each and every promotion being effected in C.M.D.A. for any amendment of the said Rules and Policy, it is the C.M.D.A. Board alone which is competent to do so. It has been further stated that the petitioner was at the material time of creation of ESSP Cell, the only Urban Economist in C.M.D.A. and being the seniormost in Socio-Economic Strem he was appointed as Officer-in-Charge of the said Cell which was primarily engaged in Socio-Economic Planning necessary for C.M.D.A.'s present and future development programme. It has been further stated that as an Officer-in-charge of the said Cell the petitioner has been performing additional duties and has been shouldering responsibilities as will be evident from the notice dated 20.7.78 issued by the respondent no. 5 which have been annexed as annexures P1 and P2 respectively to the affidavit-in-reply. It has been further stated that the petitioner has been

appointed as Special Officer ESSP Cell which will be evident from the letters annexed as Annexures P3 and P4 to the affidavit-in-reply. It has been denied that the appointments and promotions are always made discipline wise in C.M.D.A. as alleged by the respondents. In making promotions to the respondents no. 6, 7 and 9 no norms were followed nor the seniority was considered nor the recommendation of the service committee, which became mandatory on approval by C.M.D.A. at its 63rd meeting held on 3.9.79 were adhered to. The said promotions were made arbitrarily and in a discriminatory manner to serve some vested interest. It has been also stated that the respondent no. 6 being a Civil Engineer and the Respondent no. 7 being an Architect belonging to completely separate disciplines have been promoted to the post of Deputy Director of Planning (Area Planning and Development Control) on 24.2.81 though there is only one post of the said Deputy Director and it is only the petitioner who has held the feeder post of Deputy Director of Planning (Area Planning & Development Control) is entitled to be promoted to the same. It has been further stated in paragraph 7 of the said affidavit that the petitioner is the seniormost Economist in C.M.D.A. and in order to deprive him from getting promotion to the post of Deputy Director (Socio-Economic Planning, Appraisal, Monitoring and Evaluation) the feeder post of which the petitioner was holding, the authority concerned inserted an advertisement for recruitment to the said post. The other portion of the affidavit being not relevant are not stated herein.

9. The only question that poses itself for consideration in the instant writ application is whether the respondents more particularly the respondents no. 2 to 5 have acted in accordance with the norms of promotion as recommended by the Service Committee and approved in the 63rd meeting of the C.M.D.A. and in the 67th meeting of the C.M.D.A. in promoting the respondents no. 6, 7 and 9 to the post of Deputy Dir. Planning (Area Planning & Development Control). Undoubtedly the petitioner is an economist having master degree in Economics and also a Doctorate Degree in Economics obtained from the University of Wales. The petitioner was appointed as an Urban Economist after being duly selected by the Selection Committee of the C.M.D.A. in January, 1975 and he was confirmed in the said with effect from January 6, 1977, by an order dated 13th March, 1980 Immediately after his joining the said post the authority concerned constituted a Cell named "Economic and Social Support Programme Cell" in short "ESSP Cell" within the planning Directorate and the petitioner was appointed as Officer-in-Charge of the said Cell vide order dated July 22, 1977 issued by the respondent no. 5. The said Cell was concerned with undertaking and co-ordination of the Socio-Economic Planning Task necessary for C.M.D.A.'s present and future development programme. The petitioner was to perform the duties and responsibilities as Officer-in-Charge of ESSP Cell which are akin to those of the Deputy Director of Planning of the said Directorate. The respondent no. 5 Director of Planning, also placed the respondent no. 8, Sri Kalyan Roy and one Sri N. Mustafi, both Urban Economists along with others in the said Cell. But for this additional work the Petitioner was not paid any

extra remuneration or financial benefits. After sometime a post of Deputy Director (Economic Planning) was created by the authority concerned and the same was vacant. The petitioner made a representation to the respondent no. 5 the Director of Planning for promoting him to the said post of Deputy Director (Economic Planning) in consideration of his shouldering the additional duties and responsibilities as Officer-in-Charge of the said Sell. The said application was duly recommended and forwarded by the respondent no. 5 by his note dated May 25, 1978 and he recommended for promoting the petitioner to the said post in consideration of his efficient and sincere work as Officer-in-Charge of ESSP Cell. Unfortunately this was not accepted and the petitioner was not at all considered by the higher authorities. It appears that the petitioner while working as Officer-in-Charge of ESSP Cell also developed and organised a Socio-Economic Programme known as Small Enterprise Programme in short "SSE Programme". The said programme was exclusively run under the supervision and control of the petitioner since its inception (i.e. in 1976). The authorities concerned, however, with an ulterior motive withdrew the said SSE Programme from the supervision and control of the petitioner on the mere plea that the expertised knowledge of the petitioner would be more effectively utilized in Socio-Economic Planning Appraisal Unit, though the service rendered by the petitioner in developing the programme was well praised and commanded, as would be evident from the office note dated 1st December, 1980, by the then officer on Special duty, C.M.D.A. and Chief Executive Officer, C.M.D.A. The respondent authority particularly the respondent no. 3 without considering the claim of the petitioner to be promoted to the post of Deputy Director of Planning (Area Planning & Development Control), the feeder post of which the petitioner was holding, arbitrarily and illegally and in utter violation of the norms of promotion evolved by the C.M.D.A. at its 63rd and 67th meeting promoted and or appointed the respondents no. 6 and 7 to the post of Deputy Director of Planning (Area Planning and Development Control), although the said respondents did not ever held the feeder post of Deputy Director of Planning (Area Planning and Development Control). The Calcutta Metropolitan Development Authority at its 56th meeting held on 21st January, 1978 set up a service committee to examine, some aspects of service conditions of employees of the authority and to make recommendations regarding norms to be followed by the authority in the matter of promotions to the higher posts. One of the terms of reference is as follows :
Classify the post to be included in different cadres and to recommend the names of the feeder cadre/cadres from which promotions will be made in a particular cadre. The Service Committee accordingly made recommendations to the C.M.D.A. by its report submitted on June 20, 1979. It is evident from the said report that the Committee recommended that the Selection of employees for promotion should be on grounds of seniority-cum-merit and in some particular discipline suitability of promotion was made also one of the criteria.

10. It has been further recommended that the minimum number of years to be spent on base posts before earning eligibility to first promotion will normally be 8 years both for technical and non-technical posts. The committee also recommended the feeder posts for promotion to higher posts in Group (A) under the caption planning in item no. 1(B) Deputy Director of Planning (Area Planning and Development Control) the feeder post was described as Special Officer (Small Enterprise Programme). This recommendation of the Service Committee was considered at the 63rd meeting of the authority held on 3rd September, 1979 and the recommendations were accepted in the following manner:

1) The recommendation of the committee were accepted with the modification that State Government norms for different categories of service should be followed regarding minimum number of years for earning eligibility to promotion.

2. The recommendations of the Committee were accepted, for cases where no promotional line was in existence in the organisation the recommendation as given by the Committee should be examined expeditiously and finalised within the next three months.

11. Therefore, the promotional norms that have been recommended by the Service Committee appointed on the basis of the resolution adopted at the 58th meeting of the Calcutta Metropolitan Development Authority held on January 25, 1978 was accepted. It is pertinent to mention here that at the 67th meeting of the C.M.D.A. held on 28th March, 1981, the following modification were made regarding the principle and procedure of promotion.

Except for the cadres of Technical Assistants and stenographers for which the norm of 5 years and 4 years respectively had already been accepted by the authority, the norm of a minimum number of years to be spent in base posts for the purpose of earning eligibility for first promotion should be six years instead of eight years. The decision of the authority taken in this regard in its 63rd meeting would stand modified to this extent. In all cases, promotion would, be subject to availability of vacancies.

The petitioner is undoubtedly the seniormost of the Urban Economists employed under the C.M.D.A. and he is the only, economist having the Doctorate Degree. It is also quite clear and evident that the petitioner was appointed as Officer-in-Charge of ESSP Cell since its inception and the respondent no. 8, Kalyan Roy along with some other Urban Economist were placed under his supervision to work as an Urban Economists in the ESSP Cell under the Planning Directorate. It is also an admitted position that the petitioner was responsible for organising and developing the economic development programme known as Small Scale Enterprise Programme (SSE Programme) which was run exclusively under his supervision and control since its inception i.e. from 1976. It is also clear and apparent that the petitioner rendered valuable service in developing this programme and this would

appear from the office note dated December 11, 1980 given by the then Officer-on-Special Duty, C.M.D.A. and Chief Executive Officer, C.M.D.A. which has been stated in paragraph 10 of the writ application and not controverted either in the affidavit-in-opposition or in the supplementary affidavit-in-Opposition sworn on behalf of the respondents no. 3, 4 and 5. It is also evident that the authorities concerned arbitrarily and in colourable exercise of their power withdrew the SSE Programme from the supervision and control of the petitioner will be effectively utilised in the Socio-Economic Planning Appraisal Unit and the same was assigned to a W.B.C.S. Officer as Additional Charge by Order No. 3064/C.M.D.A./2E-31/79 dated December 17, 1980, in order to deprive the petitioner from the promotional benefits provided under the promotional rules framed by the Service Committee and approved in its 63rd meeting of the C.M.D.A. The petitioner has been holding the post of Officer-in-Charge of ESSP Cell and was also appointed as Special Officer of the said Cell as would be evident from the letters of the Chief Executive Officer, the respondent no. 3, dated May 27, 1980 and August 5, 1980 annexed as Annexures P3 and P4 of the affidavit-in-reply sworn by the petitioner on October 11, 1980. It has been tried to be stated in the affidavit-in-opposition in paragraph 5(c) sworn on behalf of the respondents no. 3, 4 and 5 by one Sri Manash Gobinda Chowdhury, Assistant Administrative Officer, C.M.D.A. that though the service committee recommended that the post of Special Officer, Small Enterprise Programme, would be the feeder post to the post of Deputy Director of Planning (Area Planning and Development Control), it seems that basing his claim on the recommendation and alleging to be the Special Officer, Small Enterprise Programme, the petitioner tried to lay his claim to the post of Deputy Director of Planning (Area Planning and Development Control). It has been further stated in sub-paragraph (d) of the said paragraph that the C.M.D.A. did not accept that recommendation. It has also been stated that at no point of time the petitioner was appointed or promoted or posted as Special Officer of Small Enterprise Programme and as such his claim to be considered for promotion to that post could not be entertained. In the supplementary affidavit-in-opposition, sworn on behalf of the respondents no. 3, 4 and 5 in paragraph 4(h) it has been stated that through inadvertence the petitioner was wrongly described as Special Officer SSE Cell as well as SSE Programme. It has also been stated that the feeder post of Deputy Director Planning (Area Planning and Development Control) was not Special Officer, Small Enterprise Programme but associated land use Planner and Associated Architect Planner and a document has been annexed as Annexure "X" to the said affidavit-in-Opposition. This document, Annexure "X" has been seriously challenged by the petitioner as a fabricated one it does not bear the signature of any of the concerned authorities and as such it is an un-authenticated document. There is no affidavit forthcoming from the side of the respondent to controvert this statement. Moreover, it appears that the recommendation of the Service Committee was duly accepted by the C.M.D.A. in its 63rd Meeting held on 3rd December 1979 wherefrom it appears that the feeder post of Deputy Director of Planning (Area Planning and Development Control) has been

described as Special Officer (Small Enterprise Programme). Undoubtedly the respondents no. 6 and 7 did not hold the post of Special Officer, Small Enterprise Programme. On the other hand as has been stated clearly and which has not been controverted by the respondents in their affidavit-in-opposition that the respondents no. 6 and 7 were holding the posts of Associated Planner (Land Use) and Associated Planner (Architect) respectively which are the feeder post of Deputy Director (Land Design) respectively. In these circumstances, I am constrained to hold that the order of promotion that has been given on the 24th February, 1981 by the respondent no. 3, Chief Executive Officer, C.M.D.A. to the respondents no. 6 and 7 are wholly illegal and bad being in utter contravention of the promotional norms laid down by the C.M.D.A. at its 63rd meeting held on 3rd September, 1979. The question of modification of the said resolution at the 67th meeting of the C.M.D.A. does not at all arise inasmuch as the 67th meeting of the C.M.D.A. was held on March 28, 1981 i.e. after the aforesaid two promotions were given by the impugned order which has been annexed as Annexure "E" to the writ petition. I am also unable to hold that the petitioner was not appointed as Special Officer SSE Programme, as it is clear from the letters written to the respondent no. 3, the then Chief Executive Officer, S.B. Roy, that the petitioner was the Special Officer to the said programme. This is also evident from the subsequent letter dated 5th August, 1980 of the respondent no. 3. These letters have been annexed as Annexures P3 and P4 to the said affidavit-in-reply. It is also curious to note in this connection that the authority concerned arbitrarily and in a most malafide manner and in colourable exercise of power took away the work of SSE Programme from the petitioner who organised and developed this programme and gave it to a W. B. C. S. Officer by an order dated 17.12.1980. It is also apparent from the letter Annexure "D" issued by the Respondent no 5, Director of Planning, that the work of Small Enterprise Programme is synonymous with the work of ESSP Cell. The petitioner is undoubtedly associated with this ESSP Cell from its inception and he efficiently discharged his duties as Officer-in-Charge of the said Cell. It is also evident that the petitioner's name was recommended by the then Director of Planning for appointment to the post of Deputy Director (Economic Planning). The recommendation was not at all considered and the petitioner inspite of his (sic)d and efficient service rendered was not considered for promotion to the said post of Deputy Director (Economic Planning) on the mere plea that the post was not approved. This plea, however was repudiated in paragraph 10 of the affidavit-in-reply to the supplementary affidavit-in-opposition sworn by the petitioner on 12th September 1983 where it has been specifically stated that the post of Deputy Director was created and the same was sanctioned and approved by the then Chairman of the C.M.D.A. Sri Bholanath Sen and the then Joint Secretary, Government of West Bengal and (Ex-Officio Vice-Chairman, Sri B.R. Ganguli which will be evident from the note dated January 27, 1977. The authorities were asked to produce this note before this Court. This, was not produced before this Hon"ble Court. Therefore, the plea that the recommendation of the respondent no. 5 for promotion of the petitioner to the post

of Deputy Director of Planning (Area Planning and Development Programme) was not considered and the petitioner was illegally and arbitrarily deprived promotion to the said post. I am constrained to hold that the petitioner's case was not at all considered and he has been arbitrarily deprived from getting promotion to the said post. Not only that the respondents no. 6 and 7, who did not ever held the feeder post of Special Officer, Small Enterprise Programme and who were junior in service to the petitioner and who did not possess the Doctorate Degree in Economics were promoted to the post of Deputy Director of Planning (Area Planning and Development Control). This is a clear case of malafide exercise of power and arbitrary discrimination and victimisation of the petitioner for being considered for promotion to the said post as well as a complete norms that have been set down by the C.M.D.A. at its 63rd meeting on 3rd September, 1979.

12. It is also evident that the promotion of the respondents no. 6 and 7 to the post of Deputy Director was made on the basis of seniority in service and as I have said already hereinbefore that both these respondents no. 6 and 7 are junior to the petitioner in service and as such on this ground also the impugned order of promotion, as made by the respondent no. 3, vide impugned order as Annexure "E", amounts to flagrant contravention of the promotional norms fixed by the C.M.D.A. at its 63rd meeting.

13. The C.M.D.A. in spite of the norms laid down in the 63rd meeting of the C.M.D.A. which were also not varied at the 67th meeting of the C.M.D.A. held on 28th March, 1981, that the post of Director and Deputy Director are to be filled up by promotion. The authorities concerned made an advertisement in the Amrita Bazar Patrika dated 7th March, 1982 inviting applications for promotion to the post of Deputy Director without considering the legitimate claim of the petitioner for being considered for promotion to the said post, for direct recruitment to the said post of Director and Deputy Director (Socio Economic Planning, Appraisal, Monitoring and Evaluation) under the C.M.D.A. in utter contravention of Government Circular No. 5120 (60) LW dated 17th October, 1977 issued by the Chief Secretary, Government of West Bengal. In the said advertisement the qualification for both the posts of Director and Deputy Director were laid down as Post Graduate in Economics preferably with a Ph. D. Degree for the post of Director and for the post of Deputy Director the qualification laid down was a Post Graduate Degree in Economics with experience of 8(eight) years. The petitioner possesses the requisite qualifications for being promoted to the said post of Deputy Director but to deny him the promotion to which he is entitled to under the extant rules of C.M.D.A., the advertisement was made. It has been said in paragraph 4(2) of the Supplementary affidavit sworn on 10.8.83 that persons possessing such high qualification might not be available so the advertisement has been made. It appears that to make room for respondent no. 8, who is less qualified than petitioner as well as much junior to him the authority concerned has modified the method for filling up the post by the subsequently revising the procedure to the effect that the post of Director will be filled up by a

promotion of Additional Director in the Engineering stream or by, direct recruitment and the qualification is either first class M.A. in Economics or first class degree in Civil Engineering. The allegations as made by the petitioner in this regard are, in my opinion, well founded inasmuch the charge has been made solely with the object to deprive the petitioner for promotion to the said post of Deputy Director, even though the petitioner has not only a post-graduate degree but also is a Ph.D. in Economics from the University of Wales and he has also acquired experience in the particular field by working there since 1975 in the ESSE Cell. It has been tried to be contended that there is no promotional post for the petitioner as he is a mere Urban Economist, but in accordance with the resolution of the C.M.D.A. steps will be taken to the open promotional channel of the Urban Economist without at all considering that the promotional channel of the Urban Economist to the post of Deputy Director (Socio Economic Planning Appraisal, Monitoring and Evaluation) are from Urban Economist, Economic Geographer and Statistician. The petitioner being the seniormost Urban Economist is entitled to be promoted to the post of Deputy Director (Socio Economic Planning Appraisal, Monitoring and Evaluation). This will be evident from the Annexure "I" to Annexure "P-8" of the affidavit-in-reply sworn on 11th December, 1982 by the petitioner.

14. It is relevant to mention in this connection that the Calcutta Metropolitan Development Authority is a statutory body created by the Calcutta Metropolitan Development Authority Act 1972 (West Bengal Act XI of 1972) and it has been vested with powers to carry on business of public importance which is fundamental to the life of the community. It is therefore State within the meaning of Article 12 of the Constitution and it is subject to same constitutional limitations as State is under Articles 14 and 16 of the Constitution. In other words, the authority cannot act arbitrarily and capriciously and in contravention of the promotional norms set down by the authority at its 63rd and 67th meeting in promoting its employees to the higher post. The concept of equal opportunity in Article 16 in respect of public employment permeates the whole spectrum of an individuals' employment through promotion and termination to the payment of gratuity and pension and gives expression to the ideal of equality of opportunity which is one of the great socio-economic objectives set out in the Preamble to the Constitution. The above observations have been made by Bhagawati J. in the case of [Mohammad Shujat Ali and Others Vs. Union of India \(UOI\) and Others](#), . In the circumstances aforesaid, all the submissions made on behalf of the petitioner having succeeded, this application is allowed. There will be a writ in the nature of Mandamus commanding the respondents to forbear from giving effect to the impugned orders contained in Annexures "E" and "H" as well as to the advertisement in Annexure "G" to the petition. A writ in the nature of Certiorari be issued directing the respondents to cancel, quash and set aside the impugned orders mentioned in Annexures "E", "G" and "H" to the writ petition and they are directed to consider the case of the petitioner for promotion to the post of Deputy Director of Planning (Area Planning

and Development Control) and/or for the post of Deputy Director (Socio-Economic Appraisal, Monitoring and Evaluation Unit).

There will be no order as to costs.