

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag,
Judicial Member

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member

J U D G M E N T

-of-

Case No. : O.A. 647 of 2016 : Tapas Kumar Nag & Others

..... Applicants.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicants:-

Mr. A. Roy,
Mrs. M. Bhowal,
Learned Advocates.

For the State Respondents:-

Mr. S.N. Ray,
Learned Advocate.

For the Private Respondents:-

Mr. B.R. Neogi,
Mr. A.K. Niyogi,
Learned Advocates.

Judgment delivered on: September 4, 2019

JUDGMENT

The applicants (8 applicants) joined as Night Guards/Peons in the Group-D cadre in the regional offices under the Directorate of Commercial Taxes within the administrative control of the Finance Department, Government of West Bengal. The private respondents (respondent numbers 3 to 7) joined as Group-D employees in the Head Office of the Directorate of Commercial Taxes under the administrative control of Finance Department, Government of West Bengal. The issue involved in this original application relates to promotion from Group-D to Group-C post.

2 The applicants earlier filed an application before this Tribunal being O.A. No. 4130 of 1998 when they challenged promotion order of the private respondents vide memo no. 16845-F dated September 20, 1997 from Group-D to LDC posts on the ground that by the said order the private respondents superseded the applicants. Their contention in the said application was that the Group-D employees of the regional offices of the Directorate and in the headquarters of the Directorate formed a single cadre and promotion to the posts of LDC should be made on the basis of a common and integrated seniority list of Group-D employees in the regional offices and in the headquarters of the Directorate. Their further contention was that they were appointed earlier than the private respondents and therefore the private respondents cannot be promoted superseding their claim for promotion. This Tribunal quashed the promotional order of the private respondents by an order dated November 29, 2004. Challenging this order, the private respondents filed a writ petition before the Hon'ble High Court, Calcutta being WPST No. 61 of 2005. By an order dated February 13, 2007, the Hon'ble High Court dismissed the said writ petition. The private respondents were reverted to their original posts by office order dated November 19, 2007.

3. The private respondents filed a Special Leave Petition before the Hon'ble Supreme Court being SLP number 1125 of 2008 challenging the Judgment of the Hon'ble High Court, Calcutta in WPST No. 61 of 2005. The SLP was admitted and an order of stay was granted. The Civil Appeal No. 3470 of 2009 arising out of SLP No. 1125 of 2008, was disposed of by the Hon'ble Apex Court by order dated May 4, 2009 setting aside the order passed by the Hon'ble High Court, Calcutta with the direction to the Hon'ble High Court to dispose the writ petition afresh.

4. Pursuant to the direction of the Hon'ble Supreme Court, the writ petition filed by the present respondents being WPST 61 of 2005 was reconsidered and finally disposed of by the Hon'ble High Court, Calcutta on August 2, 2011 with the observation that the promotions, already given by the state must not be recalled and the decision of the Tribunal would be complied prospectively with effect from August 2, 2011.

5. The Commissioner of Commercial Taxes issued an order dated March 20, 2012 reverting the private respondents to the posts of Farash (the Group-D posts from which they were promoted) with retrospective effect from August 2, 2011 citing Judgment of the Hon'ble High Court in WPST No. 61 of 2005 dated August 2, 2011. The private respondents challenged this order by filing OA-359 of 2012 on the ground that the order dated March 20, 2012 was issued by misinterpreting the Judgment of the Hon'ble High Court, Calcutta dated August 2, 2011 in WPST No. 61 of 2005. In this application, the private respondents prayed for an interim order restraining the respondents from giving effect to the order of the Commissioner of Commercial Taxes, which was refused by the Tribunal by its order dated May 2, 2012. Against this order of the Tribunal, the private respondents moved the Hon'ble High Court, Calcutta by filing WPST No. 164 of 2012. The Hon'ble High Court granted interim stay till final adjudication of the matter by the Tribunal. The Tribunal disposed of OA-359 of 2012 by order dated August 30, 2013, whereby the order of the Commissioner of Commercial Taxes dated March 20, 2012 was set aside with the observation that the said order is contrary to the clear direction of the Hon'ble High Court, Calcutta in WPST No. 61 of 2005 and directed the state respondents not to alter the order of promotion given to the private respondents and thereby allowed them to continue in their present rank as if the order of reversion had never been issued. The present applicants were not parties in OA-359 of 2012.

6. Challenging the Judgment of the Hon'ble High Court in WPST No. 61 of 2005, the applicants filed a Special Leave Petition before the Hon'ble Supreme Court being SLP No. 17321 of 2013 along with an application for condonation of delay. The Hon'ble Supreme Court dismissed the said applications on the ground of delay as well as on merits by order dated November 1, 2013.

7. Challenging the order of the Tribunal dated August 30, 2013, the applicants filed a writ petition being number WPST No. 160 of 2014 along with application

being CAN 5493 of 2014 before the Hon'ble High Court claiming that the applicants were adversely affected by the said order. The Hon'ble High Court by an order dated June 1, 2015 dismissed both the petitions as not pressed with the direction that the applicants are at liberty to initiate appropriate proceedings before appropriate forum. The applicants filed an SLP before the Hon'ble Supreme Court being SLP (Civil) No. 20935 – 20936 challenging the order of the Hon'ble High Court dated June 01, 2015 in CAN No. 5493 of 2014 and in WPST No. 160 of 2014. The said applications were disposed of as withdrawn by an order dated November 30, 2015 of the Supreme Court. At present the applicants have filed this OA 647 of 2016 before the Hon'ble Tribunal in pursuance of the order of the Hon'ble High Court dated June 01, 2015 in CAN No. 5493 of 2014 and in WPST No. 160 of 2014 whereby liberty was given to the applicants to ventilate their grievances before the appropriate forum.

8. The applicants also filed a CAN application being CAN No. 5108 of 2014 in WPST No. 61 of 2016 praying for clarification of the order of the Hon'ble High Court, Calcutta dated August 2, 2011 in WPST No. 61 of 2005, which was dismissed by the Hon'ble High Court by its order dated February 2, 2015.

9. Appearing on behalf of the applicants Mr. A. Roy, Learned Counsel submitted that the judgment and order dated August 30, 2013 passed by this Hon'ble Tribunal in OA 359 of 2012 should be reconsidered and that OA-359 of 2012 should be dismissed upholding the order of reversion of the private respondents to their original posts with effect from August 2, 2008 on the following grounds:

- (i) The applicants were not made parties in OA 359 of 2012 while they have been adversely affected as a consequence of the judgment and order of the Tribunal dated August 30, 2013 passed in OA 359 of 2012.
- (ii) The Division Bench of the Hon'ble High Court, Calcutta by its order dated June 1, 2015 granted liberty to the applicants to ventilate the grievances before the appropriate forum and directed that the said forum should decide the grievances of the applicants on merits in accordance with law.
- (iii) The Hon'ble Tribunal while passing the judgment in OA 359 of 2012 erred both in law and fact in misconstruing the findings arrived at by the Division Bench of the Hon'ble High Court, Calcutta in the judgment and order dated August 2, 2011 in WPST No. 61 of 2005.

- (iv) The views taken by the Hon'ble Tribunal in the judgment and order in OA 359 of 2012 in setting aside the order of reversion of the private respondents are erroneous and liable to be reconsidered afresh, otherwise the entire gamut of the judgment and order dated November 29, 2004 passed by the Tribunal in the OA 4130 of 1998 which has been virtually upheld by the Hon'ble High Court by the judgment dated August 2, 2011 in WPST No. 61 of 2005 would become redundant and frustrated.
- (v) The Hon'ble Tribunal erred both in law and fact in failing to appreciate that unless the order of reversion of the private respondents to the post of Farash with effect from August 1, 2011 is given effect to, the basic grievance of the applicants that they have been superseded by their juniors for promotion to Group-C post would not be redressed.
- (vi) The Tribunal erred both in law and fact in setting aside the order of reversion of the private respondents dated March 20, 2012 as the Division of the Hon'ble High Court, Calcutta by its judgment dated August 2, 2011 in WPST No. 61 of 2005 has upheld the judgment and order dated November 29, 2004 passed by the Hon'ble Tribunal in OA 4130 of 1998.

10. Appearing on behalf of the private respondents Mr. B.R. Neogi, Learned Counsel submitted that the application should be dismissed on the following grounds:

(i) This application is not maintainable as it has been filed after inordinate delay without making any application for condoning the delay. The issue involved in the original application has already been decided finally and as such this application is liable to be dismissed.

(ii) The Commissioner of Commercial Taxes misinterpreted order of the Hon'ble High Court in WPST No. 61 of 2005 while issuing the order of reversion of the private respondents dated March 20, 2012 to the post of Farash w.e.f. August 2, 2011. The said order was challenged by the private respondents by filing OA 359 of 2012 before the Hon'ble Tribunal praying for stay of the operation of the reversion, but the Tribunal rejected the prayer. Finally, the Tribunal by its order dated August 30, 2013 had set aside the order of reversion of the private respondents, which was in terms of the order of the Hon'ble High Court in WPST No. 61 of 2005.

(iii) The applicants filed the WPST No. 160/2014 and CAN No. 5493 of 2014, but withdrew both the writ petition and the CAN application as reflected in the

order of the Hon'ble High Court dated June 1, 2015. Significantly after withdrawal of the two applications, the applicants filed a Special Leave Petition before the Hon'ble Supreme Court against the order of the Hon'ble High Court and the said Special Leave Petition was also withdrawn and now the applicants have approached this Hon'ble Tribunal for clarification of the order which reached its finality long back.

(iv) The applicants approached the Hon'ble High Court seeking clarification of the order dated August 2, 2011 by filing CAN 5108 of 2014 and the Hon'ble High Court dismissed the said application.

(v) The applicants were duly represented at the time of hearing of WPST No. 61 of 2005 and the Division Bench was pleased to give a categorical finding that the promotion already given should not be disturbed.

(vi) The applicants at this stage cannot raise the issue of interpretation of the order and judgment of the Hon'ble High Court passed on August 2, 2011 in WPST No. 61 of 2005 particularly when the order dated August 2, 2011 was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the Special Leave Petition on merit.

11. Appearing on behalf of the state respondents Mr. S.N. Ray, Learned Counsel submitted that the application should be dismissed on the following grounds:

(i) The state respondents have acted as per order and direction of the Tribunal in OA 359 of 2012. In the said order, the Hon'ble Tribunal while setting aside the order of reversion of the private respondents dated March 20, 2012 directed the State respondents to keep the promotion given to the petitioners earlier i.e., prior to August 2, 2011 unaltered and allowed them to continue in their present rank as if order of reversion had never been issued.

(ii) The applicants have made this application on the basis of the order of the Hon'ble High Court in WPST No. 160 of 2014 and CAN 5490 of 2014 arising out of OA 359 of 2012 as they were given liberty to initiate the appropriate proceedings before the Hon'ble Tribunal. The said order was pronounced on June 01, 2015 and the applicants have approached this Tribunal after long delay without any explanation for condonation of the delay and as such the application is not maintainable in the eye of law.

12. Having heard Learned Counsel of all the parties and taking into consideration materials on record, we are of the view that the first issue we should examine is whether the Judgment of the Tribunal dated August 30, 2013 passed in OA-359 of

2012 is to be reconsidered. There is no dispute that the applicants were not impleaded as parties in OA-359 of 2012 and that they were necessary parties in the said original application. Learned Counsel for the applicants has submitted that the Tribunal should reconsider the Judgment passed on August 30, 2013 in OA-359 of 2012 as the Hon'ble Division Bench of the High Court Calcutta by its order dated June 01, 2015 granted liberty to the applicants to ventilate their grievances before the appropriate forum. On this issue, Learned Counsel for the private respondents has submitted that the present application is not maintainable because of long delay in filing the application and that the applicants challenged the Judgment in OA-359 of 2012 before the Hon'ble High Court and subsequently before the Hon'ble Supreme and have finally withdrawn all the applications and thus the order passed in OA-359 of 2012 has reached its finality. Learned Counsel for the state respondents has also submitted that the application is not maintainable as it has been filed long after the Judgment of the Hon'ble High Court on June 1, 2015. The period of time required for pursuing the remedy before the Hon'ble Apex Court may be excluded in computation of the period of limitation within which the applicants should have approached this Tribunal in terms of the provisions of Section 14 of the Limitation Act, 1983. Moreover, the principles of natural justice demands that the applicants should have been given opportunity of hearing before passing order in OA 359 of 2012. Accordingly, we are of the view that the Judgment of the Tribunal dated August 30, 2013 passed in OA-359 of 2012 should be reconsidered after giving opportunity to the applicants to present their case.

13. In reconsideration of the Judgment of the Tribunal dated August 30, 2013 passed in OA-359 of 2012, the only issue for our determination is whether the order of reversion of the private respondents of the present application issued by the

Commissioner of Commercial Taxes on March 20, 2013 is sustainable in law in terms of the Judgment of the Hon'ble High Court in WPST No. 61 of 2005,

14. Since the issue before us is to be decided by following the Judgment of the Hon'ble High Court in WPST No. 61 of 2005, which was finally disposed of on August 2, 2011, we would like to quote relevant portion of the judgment, which is reproduced below:

“To bring the controversy in a narrow campus, we find that both being the Head Office Group and Sub-Office Group do possess requisite qualification to come within the zone of consideration for upgradation and/or promotion to the post of Group ‘C’. They were all working as Group ‘D’ employees, hence the Tribunal was right in observing that there should be one single seniority list for them as they worked under the same Directorate being Director of Commercial Tax. If they come under the same Directorate, they should obviously be considered for promotion in a single promotional process. There could not be different promotional process for different offices. The Tribunal’s decision is not only apt but also corrects the wrong notion the State was having”. The Hon’ble High Court also observed as follows :– “we now find that the order of the Tribunal has been given effect to at least in case of four of the petitioners, they are being reverted back to their original post. Let the State comply with the decision of the Tribunal prospectively and start a fresh selection process considering all eligible candidates for promotion if they otherwise qualify for the same. Let the State give effect to the said letter dated December 03, 2010 as of date before it starts action in terms of the order of the Tribunal for holding fresh promotional process.

We, however, make it clear that the promotions, already given by the State earlier, must not be recalled and the decision of the Tribunal would be complied prospectively with effect from today.”

15. Learned Counsel for the applicants submitted that the Hon'ble High Court while delivering the judgment in WPST No. 61 of 2005 has categorically directed the State to comply with the decision of the Tribunal prospectively and to give effect to the letter of the PSC dated December 3, 2010 before it starts action in terms of the order of the Tribunal. On scrutiny of the letter, we find that in the said letter, the PSC asked for some report/clarification relating to the promotion of some of the private respondents from Group-D to Group-C posts while considering the proposal for promotion to the post of Assistant Commercial Tax Officer in the Directorate of Commercial Taxes, West Bengal. In this letter, the PSC requested the State Government for some clarification/report and sending a report will be enough to give effect to the said letter. No issue has been decided in the said letter. However, for resolution of the issues under consideration, we find that the most relevant observation of the Hon'ble Court is that "the promotions already given by the State earlier must not be recalled and the decision of the Tribunal would be complied prospectively with effect from today". It is crystal clear from the order dated August 02, 2011 in WPST No. 61 of 2005 that the promotion already given by the state prior to August 2, 2011 cannot be recalled.

16. The applicants filed WPST No. 160 of 2014 and also CAN 5493 of 2014 before the Hon'ble High Court challenging the order of the Tribunal dated August 30, 2013 in OA 359 of 2012. The Hon'ble High Court disposed the said two applications on June 1, 2015 as withdrawn by the applicants and with liberty to the applicants to ventilate their grievances before the appropriate forum. Challenging this order dated June 1, 2015 the applicants moved the Hon'ble Supreme Court by filing SLP, but the same were disposed of by the Hon'ble Supreme Court on November 30, 2015 as withdrawn by the applicants.

17. It is relevant to point out the observation made by the Hon'ble High court in WPST 164 of 2012 filed by the private respondents against the order of the Tribunal by which the Tribunal refused to grant stay of operation of the order of the Commissioner of Commercial Taxes dated March 20, 2012 reverting the private respondents to Group-D posts. The relevant portion of the said Judgment, which referred to the Judgment in WPST 61 of 2005, is reproduced below:

"While disposing the writ petition, the Court has directed that any promotions which were given effect to by the state earlier, should not be recalled and the decision of the Tribunal should be complied prospectively with effect from the date of the High Court's Judgment.

It appears prima facie from the record that the petitioners had been promoted earlier by the state and, therefore, in view of the observations of the High Court, the orders of promotion ought not to have been recalled."

It is amply clear from the above observation of the Hon'ble High Court that the promotions which were given earlier ,i.e. prior to August 2, 2011 cannot be recalled.

18. The applicants also filed a CAN application before the Hon'ble High Court, Calcutta being CAN 5108 of 2014 in WPST No. 61 of 2005 praying for clarification of the order dated August 2, 2011. The Hon'ble High Court dismissed the application on February 24, 2015 with the following observations that, "*the order of the Division Bench has now merged in the order of the Supreme Court there would be hardly any scope of review and/or clarification. Even on merit, we do not find any ambiguity in the paragraph quoted above that would deserve interference.*" In this Judgment, the Hon'ble High Court was referring to the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3470 of 2009 arising out of SLP No. 1125 of 2008

by which the reversion order of promotion of private respondents was stayed. This order of stay has merged with the order of the Hon'ble High Court dated August 2, 2011 in WPST No. 61 of 2005. The observation of the Hon'ble High Court clearly indicates that there is no ambiguity in the order in WPST No. 61 of 2005 that the promotion given earlier should not be recalled.

19. On the basis of analysis of the issues involved and in view of our observations in the preceding paragraphs, we would like to hold that the order dated March 20, 2012 of the Commissioner of Commercial Taxes is contrary to the clear direction of the High Court and is not sustainable in law. We, accordingly agree with the judgment of this Tribunal dated August 30, 2013 in OA-359 of 2012 setting aside the order dated March 20, 2012 issued by the Commissioner of Commercial Taxes, West Bengal reverting the private respondents to Group-D posts and to keep the promotions given to the private respondents earlier i.e. prior to August 2, 2011 unaltered and allow them to continue in their present ranks as if the order of reversion had never been issued.

20. As we are of the view that the Judgment dated August 30, 2013 in OA-359 of 2012 does not require any modification, no direction needs to be issued. The application is, thus, **disposed of**.

21. The urgent Xerox certified copy of the judgment and order may be supplied to the parties, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).