

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.11/2023

Date of order: 31.07.2023

Union of India & ors

Vs.

Binoy Chettri

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Dr. N. Mozika, DSG with
Ms. K. Gurung, Adv

For the Respondent : Mr. D. Dkhar, Adv
Mr. L.M. Sangma, Adv

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The Union is in appeal against a judgment and order of August 30, 2022 by which a Single Bench of this Court has allowed the writ petition carried by the respondent herein and granted certain financial benefits to the writ petitioner upon holding that the delay in obtaining the requisite criteria for being entitled to such benefits could not be attributed to the writ petitioner.

2. The facts are not much in dispute and have been clearly indicated in the impugned judgment and order.

3. The writ petitioner joined as an Assistant Commandant in the Central Reserve Police Force on April 24, 1999. However, before the writ petitioner could be promoted to the post of Deputy Commandant, for which he became eligible in the year 2006, disciplinary proceedings had commenced against him. Accordingly, the writ petitioner's case for promotion was considered by the departmental promotion committee on May 24, 2006 and the result was kept in a sealed cover.

4. On May 7, 2008, the disciplinary proceedings against the writ petitioner culminated in a minor punishment of censure together with the recovery of a paltry sum of about Rs.3000/- from the writ petitioner. On December 12, 2008, the writ petitioner was promoted to the post of Deputy Commandant and on December 21, 2016, he was promoted to the post of Second-in-Command.

5. However, in the year 2008 the writ petitioner instituted the previous round of proceedings complaining that his promotion had been delayed and that the punishment meted out to him together with his delayed promotion amounted to double jeopardy. Such writ petition was disposed of by an order of March 14, 2011. The part of such order which is relevant for the present purpose is that the employer was directed to consider the writ petitioner's promotion, in the sense that

whether the writ petitioner ought to have been granted notional promotion with retrospective effect.

6. Accordingly, a review DPC was held on April 17, 2017 whereat the writ petitioner was notionally promoted to the post of Deputy Commandant with effect from July 22, 2006 and the writ petitioner was notionally promoted to the post of Second-in-Command with effect from December 31, 2012.

7. Thus, by the end of the year 2012, the writ petitioner became eligible to be considered for the post of Commandant. The appellants claim that for the purpose of obtaining financial benefits under the non-functional financial upgradation scheme, an employee had to undergo a specialised training. According to the appellants, without the successful completion of such training, an employee could not be considered to be granted the financial benefits under the non-functional financial upgradation scheme. The appellants say that since the writ petitioner completed such promotional training between November 6, 2013 and November 27, 2013, he was eligible only thereupon to obtain the NFFU.

8. According to the appellants, the writ petitioner was granted the NFFU with effect from April 1, 2014 and, subsequently the writ

petitioner was granted the non-functional selection grade with effect from May 22, 2017.

9. The writ petitioner's grievance in the present round of proceedings under Article 226 of the Constitution was that notwithstanding the notional promotion with retrospective effect given to the writ petitioner to the post of Deputy Commandant and, thereafter, to the post of Second-in-Command, it was not the writ petitioner's fault that he was required to undergo the training in November, 2013, when the writ petitioner ought to have been afforded such opportunity along with the writ petitioner's contemporaneous colleagues in the Force much earlier.

10. It appears from the impugned judgment that the writ court discovered that the immediate junior colleague of the writ petitioner had been granted the NFFU with effect from April 1, 2011 and NFSG with effect from January 1, 2014. The writ court provided that since there was no impediment to the writ petitioner to be granted the financial upgradation and the selection grade, as the earlier disciplinary proceedings against the writ petitioner culminated only in a minor punishment, the delay in the writ petitioner being granted the financial upgradation and the selection grade was due to no fault on the part of the writ petitioner.

11. It is the contention of the appellants herein that things followed in the usual course. The appellants suggest that before the writ petitioner could obtain a promotion, there was no question of the writ petitioner being sent for the requisite training. The appellants contend that in the usual course of things, the writ petitioner was afforded the first available opportunity to complete the training and, immediately after the training was completed successfully, the writ petitioner has been afforded the financial upgradation within four months thereof.

12. The writ court reasoned that since the entire delay in requiring the writ petitioner to undergo the training was on account of the employer and not due to any fault on the part of the writ petitioner, the writ petitioner could not be prejudiced by a junior colleague obtaining the financial upgradation or the selection grade prior to the writ petitioner obtaining the same. The writ court, thus, required the appellants herein to extend the financial upgradation under the NFFU scheme to the writ petitioner with effect from the date on which the writ petitioner's immediate junior obtained such benefits. Similarly, the other direction was that the writ petitioner should be granted the selection grade with effect from the date on which the immediate junior of the writ petitioner obtained the same.

13. There does not appear to be any anomaly in the judgment and order impugned. The entire delay in the career progress of the writ petitioner was on account of the disciplinary proceedings which were instituted prior to 2006 and culminated in the minor punishment being awarded to the writ petitioner on May 7, 2008. As a consequence of the three-year hiatus, during which the writ petitioner's promotion could not be taken up, the writ petitioner suffered serious prejudice. Since the punishment inflicted was a minor punishment and did not amount to reduction in rank or reduction to a lesser scale of pay, the effective delay in the promotion granted to the writ petitioner and the higher pay scale offered to the writ petitioner would amount to double jeopardy in the sense that in addition to the censure and recovery that the writ petitioner suffered, the period during which the disciplinary proceedings remained pending was counted against the writ petitioner for both his promotion and his financial upgradation.

14. All that the writ court has done is to correct the wrong that had been done to the writ petitioner. Indeed, the writ court reasoned that since there was no reduction in rank or reduction in pay that the writ petitioner suffered, the writ petitioner could not be worse off than his immediate junior and that is the basis of the impugned order and the writ petitioner being required to be granted the financial upgradation

under the NFFU with effect from April 1, 2011 and the selection grade under the NFSG with effect from January 1, 2014.

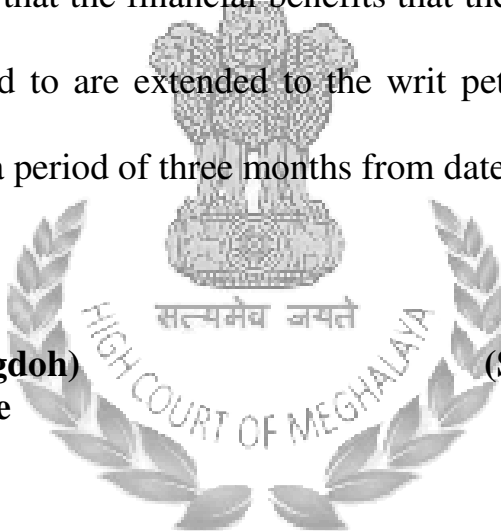
15. The well-reasoned order of the writ court does not call for any interference. Justice has been done by restoring to the writ petitioner what the writ petitioner was entitled to.

16. As a consequence, WA No.11 of 2023 is dismissed. There will, however, be no order as to costs.

17. It is hoped that the financial benefits that the writ petitioner had been found entitled to are extended to the writ petitioner, particularly the arrears within a period of three months from date.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice



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