

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 117 of 2023

Saha Institute of Nuclear Physics & Ors.
Versus
Supriya Gangopadhyay

WITH
COT 90 of 2024

Supriya Gangopadhyay
Versus
Saha Institute of Nuclear Physics & Ors.

<i>For the Appellants</i>	:	<i>Mr. Sabyasachi Chatterjee,</i>
<i>[In MAT 117 of 2023</i>	:	<i>Mr. Kiran SK.,</i>
<i>& for the respondents</i>	:	<i>Ms. Monalisha Sinha.</i>
<i>in COT 90 of 2024]</i>		

<i>For the Respondent</i>	:	<i>Mr. Vivekananda Bose,</i>
<i>[In MAT 117 of 2023</i>	:	<i>Mr. Sumitava Chakraborty,</i>
<i>& for the Appellant in</i>	:	<i>Ms. Bratati Pramanick.</i>
<i>COT 90 of 2024]</i>		

<i>Hearing is concluded on</i>	:	<i>25th July, 2025.</i>
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Judgment On	:	8th August, 2025
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Tapabrata Chakraborty, J.

1. The present appeal being MAT 117 of 2023 has been preferred by Saha Institute of Nuclear Physics (hereinafter referred to as SINP) and its functionaries challenging an order dated 21.12.2022 passed by the learned Judge in the writ petition being WPA 20066 of 2022. A cross objection being COT 90 of 2024 challenging the self-same order has also been preferred by the writ petitioner, namely, Supriya Gangopadhyay (in short, Supriya). Both the appeal and the cross objection have been heard analogously. By the order impugned the learned Judge directed the authorities of SINP to grant notional benefits of the pay scale of Rs. 10,000/- to 15200/- with the grade pay of Rs.6600/- from 17.05.2012 to Supriya.

2. Supriya was initially appointed to the post of Assistant Security Officer on 15.07.1991 under the Department of Atomic Energy. Subsequent thereto, he applied for the post of Security Officer at SINP and upon qualifying in a selection process, he was appointed to the said post by a letter dated 09.09.2004 in the grade pay of Rs. 4,600/- pertaining to the pay scale of Rs. 6,500/- to 10,500/- subject to the rules and bye-laws of SINP. Thereafter *vide* memo dated 17.05.2012, he was promoted to the post of Senior Security Officer in the revised pay band (PB-2) of Rs.9300-34800/- with corresponding grade pay of Rs. 5,400/- in the pay scale of Rs. 8,000/- to 13,500/- with effect from 01.07.2011. Sometimes in the year 2018, he came to learn that one Mr. Joydev Maity (hereinafter referred to as Joydev) upon promotion to the post of Senior Security Officer was granted the grade

pay of Rs. 6,600/- in the pay scale of Rs. 10,000/- to 15,200/-. Accordingly, Supriya submitted repeated representations claiming the grade pay of Rs. 6,600/- in the pay scale of Rs. 10,000/- to 15,200/- as granted to Joydev. As the said representations were not considered, Supriya was constrained to prefer a writ petition being WPA 6094 of 2022 which was disposed of by an order dated 04.05.2022 directing the Director of SINP to consider Supriya's representation and to pass a reasoned order. Pursuant thereto, Supriya was communicated an order dated 29.07.2022. Challenging the said order, Supriya preferred the writ petition being WPA 20066 of 2022. Upon exchange of affidavits and contested hearing, the said writ petition was disposed of by the order impugned in the present appeal and the cross objection.

3. Mr. Chatterjee, learned advocate appearing for the appellants in MAT 117 of 2023 being SINP and its functionaries argues that on the basis of a simplistic assessment and without delving into the details, the learned Judge erroneously directed the SINP authorities to grant the grade pay of Rs.6600/-to Supriya with effect from the date of his promotion to the post of Senior Security Officer at par with Joydev failing to appreciate that the grant of designation and grade to Joydev *'are personal and valid for the present incumbent only'*, as would be explicit from Joydev's letter of promotion dated 01.02.2001.

4. Drawing our attention to clause 2.4 of the Norms and Procedure for Promotion: Administrative Auxiliary Category of Employees (hereinafter referred to as the 2019 Norms), Mr. Chatterjee argues that an employee is

required to mandatorily serve for a minimum period of ten years in the salary grade of Rs. 6,500/- to 10,500/- before he can be considered for promotion to the next higher scale of Rs. 8,000/- to 13,500/-. The fact that Supriya did not complete such tenure as Security Officer would be explicit from his letter of appointment as Security Officer and the letter of promotion to the post of Senior Security Officer. No mandamus can be issued directing the authorities to act in derogation to their own rules. Such argument, as urged, was glossed over by the learned Judge and no finding was returned on the same.

5. He contends that Supriya was not entitled to the grade pay of Rs. 6,600/- and such erroneous conferment of benefit was objected to by the Chairman of the Governing Council of SINP and a disciplinary proceeding was initiated against the then director, namely, Milan Kumar Sanyal. Such illegal fixation of pay cannot create any right in favour of Supriya to claim the same benefit. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law and it cannot be invoked to enforce a claim having no sanctity in law. Reliance has been placed upon the judgment delivered in the case of *Tinku versus State of Haryana and others*, reported in 2024 SCC on Line SC 3292.

6. He argues that questions relating to the constitution, pattern, nomenclature and other conditions of service including avenues of promotion pertain to the field of policy and is within the exclusive discretion of the employer and as such the learned Judge had no jurisdiction to intervene in such matter moreso when no *mala fide* was alleged or pleaded.

Reliance has been placed upon the judgment delivered in the case of *P.U. Joshi and Others vs. Accountant General, Ahmedabad and Others*, reported in (2003) 2 SCC 632.

7. According to Mr. Chatterjee, there was no reason to suspect misbehaviour or misconduct in the sphere of activity of the decision maker warranting interference by the writ Court. The learned Judge erred in law in applying the principle of equal pay for equal work since Supriya has not been able to discharge the burden of establishing equivalence between the work rendered by him and his regular counterparts in terms of qualification and mode of recruitment moreso when the name given to a post does not inextricably bind the same with any particular grade pay. Reliance has been placed upon the judgments delivered in the cases of *Union of India versus Indian Navy Civilian Design Officers Association and Another*, reported in 2023 SCC OnLine SC 173 and *Godrej Sara Lee Limited versus Excise and Taxation Officer-cum-Assessing Authority and Others*, reported in 2023 SCC OnLine SC 95.

8. Mr. Bose learned advocate appearing for Supriya denies and disputes the contention of Mr. Chatterjee and submits that a perusal of the order dated 29.07.2022 would reveal that Supriya's claim was rejected placing reliance upon the 2019 Norms. The said Norms are not in any manner applicable to Supriya since he entered into service and obtained promotion prior to promulgation of the same.

9. He argues that SINP and its authorities have always made an endeavour to differentiate among Joydev and Supriya though the records

would reveal that Joydev was the predecessor in office of Supriya and he was granted the grade pay of Rs. 6,600/- upon promotion to the post of Senior Security Officer. Having extracted service from Supriya, in the post of Senior Security Officer, the SINP authorities took a purported stand that Supriya was not similarly situated with Joydev. However, they miserably failed to establish such contention and as such the learned Judge rightly exercised discretion in favour of Supriya.

10. Drawing our attention to the Norms, he argues that it would be explicit from clause 1.1 that the said norms were applicable to four categories of employees being Scientific, Technical, Administrative and Auxiliary and more particularly the posts detailed in annexure 1 of the said Norms wherefrom it would appear that the said Norms had no manner of application in respect of the post of Security Officer and Senior Security Officer. Thus, the contention of Mr. Chatterjee as regards applicability of clause 2.4 of the same, is misconceived.

11. According to Mr. Bose the fact of initiation of a disciplinary proceeding against the director for grant of promotion to Supriya does not feature in the order dated 29.07.2022. It is well settled that an order needs to be tested only on the basis of the reasons contained in the same. Such reasoning cannot be supplemented by SINP drawing reference to a disciplinary proceeding initiated against the director. Reliance has been placed upon the judgment delivered in the case of *Mohinder Singh Gill and another versus The Chief Election Commissioner, New Delhi and others*, reported in (1978) 1 SCC 405.

12. Mr. Bose further argues that the extraction of service from Supriya in the post of Senior Security Officer with effect from 01.07.2011 having not been disputed by the SINP authorities, the learned Judge erred in law in refusing to grant actual benefits from the date of issuance of the order of promotion being 01.07.2011. Challenging such denial of actual benefits from the date of promotion and the erroneous recording of the date of promotion and the name of the post, the cross objection has been filed. Reliance has been placed upon the judgments delivered in the cases of *Jayantibhai Raojibhai Patel versus Municipal Council, Narkhed and Others.*, reported in (2019) 17 SCC 184.

13. According to Mr. Bose, the SINP authorities cannot urge that Supriya had not promptly challenged the denial of the grade pay of Rs. 6,600/- and that as such the writ petition is liable to be dismissed on the ground of delay, since his claim was not struck down on the ground of delay at the time the first writ petition was entertained and direction was issued towards consideration of his claim.

14. He argues that the order dated 29.07.2022 impugned in the writ petition was passed placing reliance upon the 2019 Norms which could not have been applied since Supriya was promoted in the year 2012. There is no provision as regards promotion to the post of Senior Security Officer in the bye-laws of SINP and Clause XII of the bye-laws provides that '*in the absence of provisions in the Bye-Laws, the Corresponding Government of India orders shall apply*'. In view thereof, the security manual adopted by the Department of Atomic Energy becomes applicable in which the pay scale Rs. 10,000-325-

15,200/- has been provided to be the promotional scale from the scale of Rs. 8000-275-13500/-.

15. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

16. An appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine. Fairness and reasonableness are paramount issues for administrative action. As a model employer, a State instrumentality must conduct itself with high probity and candour and ensure that its employees do not succumb to any discriminatory practice in the procedural rigmarole.

17. The argument of Mr. Chatterjee that the writ petition was liable to be dismissed on the ground of delay is not acceptable to us inasmuch as no such ground was agitated by the SINP authorities when the first writ petition was entertained. The delay is also not directly attributable to any negligence or laches on the part of Supriya and it is also not a case that no benefit can be granted to him since third party right had been created.

18. In the order impugned, the learned Judge arrived at findings that no explanation had been furnished as to why a Senior Security Officer, namely, Joydev, who was the predecessor-in-interest of Supriya, had been given a higher scale of pay for the same work. It was also observed that SINP authorities could not produce any rule or bye-laws evidencing the fact that only people in ten years of service could be considered for a higher scale of pay and that the authorities also could not raise any dispute with regard to the fact that the duties discharged by Supriya were at par with his

predecessor-in-interest. It was also observed that the SINP authorities could not even produce any document to show that Joydev had completed ten years of service. In the wake of such discrimination practised by the SINP authorities, the learned Judge directed grant of the pay scale of Rs. 10,000-325-15,200/- with the grade pay of Rs. 6600/-, as enjoyed by Joydev, to Supriya from 17.05.2012/-. The reasoning given in the order impugned is a plausible one moreso when service jurisprudence evolved by this Court from time-to-time postulates that all persons similarly situated should be treated similarly. In view thereof, we do not find any reason to interfere with the order impugned.

19. It is well-known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment delivered in the case of *P.U. Joshi and Ors. (supra)*, the Hon'ble Court was dealing with bifurcation and restructuring of different offices. The judgment delivered in the case of *Tinku (supra)* pertaining to negative equality is distinguishable since no document could be produced by the SINP authorities to show that Joydev got promotion to the post of Senior Security Officer after working for ten years in the post of Security Officer. In the case of *Godrej Sara Lee Ltd. (supra)*, the Court was considering the issue of maintainability since an alternative remedy was available against the order impugned. The judgment delivered in the case of *Union of India (supra)* pertaining to the principle of equal pay for equal work is also distinguishable since it could not be disputed by the SINP authorities that Supriya manned

the post of Senior Security Officer and Joydev was his predecessor in interest. The judgment delivered in the case of *Jayantibhai (supra)*, as cited on behalf of Supriya, pertains to the grant of back wages and is thus, distinguishable.

20. Supriya was promoted to the post of Senior Security Officer by a memo dated 17.05.2012. However, since then he was being paid the grade pay of Rs. 5400/- though his predecessor in interest, Joydev, was granted the grade pay of Rs. 6,600/-. The first writ petition was preferred by Supriya about ten years after getting promotion and he thereafter attained the age of superannuation on 31.12.2023. Such facts had been analogized with the stand of the SINP authorities that Joydev had worked for ten years before availing promotion to the post of Senior Security Officer and that such promotion from the post of Security Officer to the post of Senior Security Officer was subject to fulfilment of various other parameters including the length of service in the feeder post and was not automatic and that the SINP authorities did initiate a disciplinary proceeding against the director framing a charge that he had '*approved promotion of Shri. S. Gangopadhyay, Security Officer, from the pay scale of PB-2 GP 4600/- to the PB-2 grade pay of Rs. 5400/-, in violation of the prescribed promotion norms*'. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time. In the said conspectus, we are of the opinion that the learned Judge had rightly balanced the equities among the parties directing grant of notional benefits of the pay scale of Rs. 10000-325-15,200/- with

the grade pay of Rs. 6,600/- from 17.05.2012 to Supriya. However, in paragraph 14 of the impugned order the name of the post in which Supriya had been promoted appears to have been erroneously incorporated as '*Security Officer*', in place stead of '*Senior Security Officer*'. In view thereof, the post referred to in paragraph 14 of the impugned order shall be read as '*Senior Security Officer*'.

21. Accordingly, the appeal being MAT 117 of 2023 along with the connected application, if any, is dismissed and the cross objection being COT 90 of 2024 along with the connected application, if any, is disposed of.

22. There shall, however, be no order as to costs.

23. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)