
(2006) 06 DEL CK 0028
In the Delhi High Court
Case No : LPA 811 of 2003

Airport Authority of India

APPELLANT

Vs

S.K. Verma

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 130 DLT 594

Hon'ble Judges : T.S. Thakur, J;S.N. Dhingra, J

Bench : Division Bench

Advocate : Raj Birbal, Sr, Rajan Sabharwal and Rajeev, for the Appellant; S.C. Luthra, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J

1. This Letters Patent Appeal has been preferred against the order of the learned Single Judge of this Court dated 22.09.2003 whereby the appellant was directed to pay arrears of salary to the respondent from the date he was given notional seniority.

2. The facts relevant for purpose of deciding this appeal are that respondent Mr. S. K. Verma, was working as Junior Engineer (Civil) at I.G.I Airport, New Delhi. A meeting of Departmental Promotion Committee was held on 19.04.1993 to consider the promotion of Junior Engineer to the post of Assistant Manager(Civil). A sealed cover procedure was adopted in respect of the respondent and as a result of this the recommendations of DPC in respect of respondent were kept in a sealed cover. Serious allegations of corruption were being inquired into against the respondent although no charge-sheet had been issued to him. The allegations against the respondent were that as Junior Engineer he, acting prejudicially and against the business interest of International Airport Authority of India (hereinafter referred to as "I.A.A.I"), passed undue financial benefits to

the contractor and failed to maintain absolute integrity. Charge-sheet was issued to the respondent in November, 1994. While the Departmental proceedings were going on against the respondent he filed a writ petition under Article 226 of Constitution being CW No. 3505/1994 challenging keeping of his promotion result by DPC in sealed cover. This writ petition was allowed by this Court vide order dated 24.04.2002. The operative part of this order is:

I quash the order of the respondent to keep the result of the DPC held in 1993 in sealed cover. In the consequences, writ petition is allowed. Petitioner is entitled to promotion from 1993 on the basis of the result of the DPC which met on 19.04.1993. Petitioner is also entitled to cost of the petition.

3. No directions were given to the appellant to give consequential financial benefits. As a result of the above writ, the sealed cover was opened and the respondent was given promotion vide order dated 8.7.2002. The said order reads as under:

1. In accordance with the order dated 24.4.2002 passed by the Hon''ble Delhi High Court, promotion in respect of Sh. S.K. Verma to the post of Asstt. Manager Engg. (Civil), IGI Airport will be effective w.e.f. 24.8.1993 on the basis of the DPC held in 1993.

2. In the all India seniority list of Asstt. Manager Engg. (C), the name of Shri S.K. Verma name will appear below the name of Sh. Surender Singh and above the name of Shri V.M. Raj.

3. His pay will be fixed notionally as on 24.08.1993 and monetary benefit will be admissible from the date of his assuming the charge of the post of Asstt. Manager Engg. (C) i.e. 29.02.2000.

4. This issues with approval of the Competent Authority.

4. The respondent thereafter filed a contempt petition in this Court since he was granted notional promotion w.e.f 24.08.1993 and financial benefits were given to him only from 29.2.2000. His contempt petition was dismissed vide order dated 09.08.2002 which reads as under:

The only direction given by the court in its order dated 24.05.2002, was that the respondents should open the sealed cover which contain the minutes of the DPC meeting held in 1993 and grant relief to the petitioner on the basis of the result of the said DPC. Counsel for the petitioner concede that the sealed cover has been opened and he has been given notional promotion, however, the arrears have not been given. In exercise of its jurisdiction under the Contempt Act, this Court will not widen the scope of this petition and investigate as to whether or not arrears have been paid to the petitioner. In case the petitioner has not been paid the arrears allegedly payable to him, he may file appropriate proceedings as may be permissible in law, however, the same cannot be claimed in this petition. The petition is dismissed.

5. The petitioner then filed a writ petition claiming arrears/ financial benefits w.e.f 24.08.1993 when his juniors were promoted and the learned Single Judge allowed the writ petition giving direction to the appellant to pay financial benefits to the petitioner from the date he had been given notional promotion. It is this order which is challenged by the appellant.

6. It is argued by the appellant that at the time when first writ of the respondent was decided and directions were given for opening the sealed cover to implement the result of DPC and give promotion, charges against the respondent had already been proved and this fact was in the knowledge of the court and the court did not give any direction to give consequential financial benefits for that reason only. It is submitted that an employee whose conduct is blameworthy and against whom serious charges of corruption were made and proved, was not entitled to the arrears of pay difference for the period between date of notional promotion and the date of actual promotion. The question of financial benefits has to be decided by the Authority by taking into consideration all facts and circumstances. The authority was within its right to deny the arrears of pay. It is further argued that the respondent was awarded major penalty of stoppage of two future increments with cumulative effect. The order dated 08.07.2002 was passed by the Competent Authority under these circumstances.

7. It is further argued that the learned Single Judge has not taken into consideration all those facts and circumstances of the case which necessitated the passing of order dated 08.07.2002. Awarding of monetary benefits to the respondent would mean that the respondent had been rewarded notwithstanding his misconduct for which he suffered major penalty. Another argument of the counsel for the appellant is that the learned Single Judge should have remanded the matter back to the Appellate Authority to give reasons for not giving the monetary benefits w.e.f 24.08.1993 instead of giving directions to the appellant to pay the monetary benefits since the order of Competent Authority does not specify reasons.

8. On the other hand, the counsel for the respondent has vehemently argued that at the time when DPC met, no charge-sheet and no disciplinary proceeding were pending against the respondent. The procedure followed by the respondent of keeping the result of DPC in respect of respondent in a sealed cover was illegal and the respondent was entitled to promotion from the date his juniors were promoted. This Court allowed his writ petition and no challenge was made to the order passed in his writ petition granting him promotion. The petitioner could not deny the consequential benefits and arrears of pay to him. It is further submitted that his case was squarely covered by the judgments of Hon'ble Supreme Court in Union of India and Others Vs. Dr. (Smt) Sudha Salhan, and Bank of India and Another Vs. Degala Suryanarayana, as well as Union of India Vs. K.V. Jankiraman, etc. etc., .

9. It is submitted by the respondent that all above judgments have laid down law clearly that sealed cover procedure cannot be followed where department

enquiry has not been initiated and charge-sheet has not been served. An employee would be entitled for consideration for promotion and if found fit for promotion, he shall be entitled for consequential benefits. The respondent has placed reliance on paragraph 10 of judgment in K.V. Jankiraman case (supra) wherein the Hon"ble Supreme Court observed as under:

In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent / employee should not go on. We see no reason to interfere with this order. The appeal, Therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

10. The appellant has placed reliance upon paragraph 7 of this very judgment which reads as under:

We are, Therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which the he would have normally been promoted but for the disciplinary /criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power of decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary / criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, Therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, Therefore, we do not approve of the said last sentence in the first sub- paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual

promotion, we direct that in place of the said sentence the following sentence be read in the Memorandum:

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding / criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

To this extent we set aside the conclusion of the Tribunal on the said point.

11. In Jankiraman, Dr. Sudha Salhan and Bank of India cases Supreme Court was seized of the question of "sealed cover" procedure which was followed by the department in case of individuals. The issue of grant of wages for the period from notional promotion to the actual promotion was before the Hon'ble Supreme Court and Supreme Court categorically made above observations. This appeal also raises the question as to whether the respondent who at the time of opening of the "sealed cover" had already been held guilty, was entitled to financial benefits for the period from notional promotion to the actual date of promotion. The respondent has claimed financial benefits and arrears of salary of the promoted post from 23.8.1993 onward till the date of actual promotion. The appellant had ordered only for grant of seniority and notional promotion and had not ordered for the grant of financial benefits for this part.

12. Learned counsel for the respondent argued that had the promotion result not been kept in sealed cover and had the respondent been given promotion on 24.08.1993 along with his juniors, he would have been working on the post and would have faced the enquiry proceedings and the charge-sheet even while holding that post. Therefore, it was none of his fault and Therefore, monetary benefits and salary admissible to the post cannot be denied to him on the ground that he has not worked for that period on the post of Assistant Manager Engineer (Civil). He submitted that the learned Single Judge has considered this question and rightly held in his favor.

13. We consider that had the respondent not been involved in the misconduct and had the department not been inquiring into his misconduct, the promotion of the respondent would not have been kept in a sealed cover and he would have been granted promotion like his juniors in August, 1993. What prevented the appellant from immediately declaring the promotion of the respondent was, in fact, the conduct of the respondent and not the conduct of the department. The charges against the respondent were that of corruption. The respondent had allowed financial benefits in excess, to a contractor for obvious reasons. It was this conduct which stood in his way of getting promotion on 24.08.1993, when his juniors were promoted. It cannot be said that it was not his fault that he was not working on next post. The ratio of Jankiraman and other cases is that if disciplinary or criminal proceedings are pending at the time when DPC is held

and promotion of an employee withheld is due to the pending proceedings, the employee cannot claim back wages as a matter of right even if he is exonerated later on. The question of back wages for period of notional promotion is to be decided by the Authority taking into account all circumstances.

14. The plea raised by respondent that no disciplinary proceedings were pending against him when DPC met and Therefore, he was entitled for promotion with consequential financial benefits must fail. Whenever any misconduct is brought to the notice of Competent Authority either on a complaint of aggrieved person or from any other source, the Competent Authority is supposed to consider the allegations made and make a prima facie view, if it was a fit case to initiate departmental proceedings. Once this decision is taken, Competent Authority has to order a preliminary or fact finding enquiry about misconduct. After the fact finding enquiry is over and sufficient facts come on record to show that the delinquent employee was involved in misconduct, a charge sheet is served upon the employee and disciplinary proceedings start. After conclusion of disciplinary proceedings, the report of Disciplinary Authority is again sent to Competent Authority for award of penalty. There may be cases where holding of regular disciplinary proceedings after serving charge sheet may be considered impractical or not proper. In such cases Competent Authority may invoke special procedure and may dispense with issuing of charge sheet and may proceed against the employee without formal disciplinary enquiry. Such cases are envisaged under different rules of different organizations and in case of CCS (CCA) Rules, provisions are available under Rule 19 for such situations.

15. The circumstances and the facts that respondent was involved in a case of financial irregularity could not have been ignored by the authority while considering the grant of payment of consequential benefits of notional promotion. The appellant is vested with the power to decide whether respondent deserved salary for the intervening period on. In Janki Raman's case (supra) the Hon"ble Supreme Court had occasion to consider similar case. The observations of Hon"ble Supreme Court (para 20) are as under:

The order impugned in this appeal is an interim one whereby the Tribunal has directed the appellant-Union of India to open the sealed cover and if the result shows that the DPC has found the respondent-employee fit for promotion to the post of Commissioner of Income Tax, to give effect to the said recommendations. The admitted facts are that the DPC which met in 1988 had considered the respondent-employee's case for promotion to the post of Commissioner of Income Tax. However, since some departmental proceedings were pending against him, he was not given the said promotion. It was for the first time in 1990, that the appellants served on him a memorandum asking his Explanation in respect of certain alleged acts of misconduct to which he sent a reply on May 18, 1990. Till the date of the impugned order of the Tribunal, i.e., January 1, 1991, no charge-sheet was served upon the respondent-employee. However, 12 persons junior to him were promoted by an order dated April 16, 1990. The

Tribunal has, as stated above, Therefore, made the impugned order. There is no direction in the order to pay him the arrears of salary for the interregnum. In the circumstances of the case, we do not think it necessary to interfere with the impugned order. The appeal, Therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

16. The trend of granting full back wages to an employee, who remained out of service during disciplinary proceedings, on his exoneration has changed. The Supreme Court in recent judgments e.g. Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, ; Rajendra Prasad Arya Vs. State of Bihar, ; Haryana State Coop. Land Development Bank Vs. Neelam, ; Manager, R.B.I., Bangalore Vs. S. Mani and Others, has held that while earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. But the present view is that grant of back wages would depend upon several factors and the Court has to weigh the pros and cons of each case and take a pragmatic view.

17. In M.L. Binjolkar v. State of M.P. (2005) 6 SCC, the Supreme Court gave its view on back wages as under:

Though the High Court has not specifically dealt with the question as to what would be appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, Rajendra Prasad Arya v. State of Bihar, Sonapat Coop. Sugar Mills Ltd. v. Ajit Singh, Haryana State Coop. Land Development Bank v. Neelam, Manager, Reserve Bank of India v. S. Mani and Allahabad Jal Sansthan v. Daya Shankar Rai we do not find any scope for interference. The earlier view was that whenever there is a interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, we do not think it appropriate to interfere with the quantum of 50% fixed by the High Court.

18. We, consider that it is a case where the appellant's/Competent Authority could exercise discretion of paying or not paying financial benefits for the period of notional promotion to the respondent. However, while exercising this discretion the Competent Authority was supposed to give reasons for acting in a particular manner. The order dated 8.7.2002 of Competent Authority does not specify any reasons for not granting wages of the period of notional promotion. All administrative orders which affect the rights of a citizen should be reasoned. A reasoned decision prevents abuse of administrative discretion. Courts insist on administrative authorities to give reasons for their decisions so that such decisions can be reviewed meaningfully. In the present case the appellant/Competent Authority while making an order for not granting financial benefits to the respondent had not given any specific reasons for the same, in such a case the administrative Authority should have been asked to give reasons. We consider that the learned Single Judge instead of granting full wages to the

respondent should have asked the Competent Authority to examine whether the respondent employee was entitled to back wages and to pass a reasoned order on the subject in accordance with law.

19. We, Therefore, set aside the order dated 22.09.2003 of the learned Single Judge and allow the writ petition in part and to the extent that the Competent Authority shall pass a reasoned order on the question of payment of wages of the notional promotion period to the respondent. No costs.