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**(2009) 04 DEL CK 0038**

**In the Delhi High Court**

**Case No :** Writ Petition (Civil) No. 12124 of 2005

Central Bank of India

APPELLANT

Vs

Shri J.N. Dubey

RESPONDENT

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**Date of Decision :** 28-04-2009

**Acts Referred:**

**Citation :** (2009) 04 DEL CK 0038

**Hon'ble Judges :** V.K. Shali, J

**Bench :** Single Bench

**Advocate :** Rachna Gupta, for the Appellant; Harish Pandey and M.K. Tripathi, for the Respondent

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## **Judgement**

V.K. Shali, J.—The petitioner has challenged the award dated 15.7.2004 passed by Industrial Tribunal cum Labour Court-II in ID No. 85/1992 titled J.N. Dubey v. Central Bank of India. By virtue of the aforesaid award, the learned Industrial Tribunal had directed that the respondent/workman shall be deemed to have been promoted for all intents and purposes from 7th January, 1990 and he deserves to get due increments and due emoluments w.e.f. 07.1.1990 within a month after the publication of the award. It was further directed that in case of default, he is entitled to carry an interest @ 10% per annum.

2. The petitioner/Bank feeling aggrieved by the impugned award has challenged the same only with regard to the claim of wages for the period 07.1.1990 up to the date of his retirement as at the time of filing of the writ petition, the petitioner has already superannuated.

3. I have heard the learned Counsel for the parties and perused the record. The learned Counsel for the petitioner has contended that the impugned award with regard to the promotion and payment of wages especially from 7.1.1990 till the date of his superannuation that is 30.6.1997 ought not to have been given to the petitioner especially in the light of the fact that the respondent/workman had not actually worked on the promoted clerical post and therefore, the doctrine of "no

work no pay" ought to have governed the said period. In support of her contention, the learned Counsel has placed reliance on the case titled Union of India (UOI) Vs. B.M. Jha, , wherein the Supreme Court in the said case followed the principle of no work no pay. However, the judgment is very short and does not deal with the entire previous case law on the same subject.

4. This proposition of no work no pay was contested by the Counsel for the respondent/workman who placed reliance on State of Kerala and Others Vs. E.K. Bhaskaran Pillai, , wherein there is an elaborate examination of the entire case law with regard to the payment of back wages and the concept of no work no pay. Ultimately, after analyzing the entire gamut of case law, the Apex Court has observed that the principle of no work no pay cannot be accepted as a Rule of thumb. There are exceptions where the Courts have granted this monetary benefit also to a party. These are essentially the cases where the respondent/workman has been kept away from performing the duties on account of the acts of omission and commission which are directly attributable to the opposite party namely the employer. In all cases while balancing the equities, the Courts have granted the back wages which has roughly from 20% to 100%. It may be pertinent here to reproduce the observations passed by the Supreme Court in the said judgment given in para No. 4, which reads as under:

4. Learned Counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15-6-1972. In support thereof, the learned Counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah v. Union of India, Virender Kumar v. Avinash Chandra Chadha, State Haryana v. O.P. Gupta, A.K. Soumini v. State Bank of Travancore and Union of India v. Tarsem Lal. As against this, the learned Counsel for the respondent has invited our attention to the decisions given by this Court in Union of India v. K.V. Jankiraman, State of A.P. v. K.V.L. Narsimha Rao, Vasant Rao Roman v. Union of India and State of U.P. v. Vinod Kumar Srivatava. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law

or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a Rule of thumb. There are exceptions where courts have granted monetary benefits also.

5. Similar is the view expressed in case titled *The Commissioner, Karnataka Housing Board Vs. C. Muddaiah*, wherein it has been observed that the principle of no work no pay cannot be applied as an absolute proportion as it does not have any backing of a statute.

6. Coming back to the facts of the present case, the respondent/workman has not denied that he was working as a Security Guard and had obtained the requisite decree from a University in Varanasi, but he could not be promoted by the petitioners under a mistaken belief that the decree which has been obtained by the respondent/workman was from a fake University. This mistaken belief of the petitioner/employer was not without any basis but was based on the report/letters written by the UGC. It took some time to the petitioner to get the said confusion cleared and ultimately it was only after the entire fact situation was examined and the respondent/workman agitated his grievance in the Industrial Tribunal that he could earn his promotion w.e.f. 7.1.1990 in such a contingency. I feel that the equities ought to be balanced by at least reducing the back wages for the period 7.1.1990 to the date of retirement in 1997 to 50% because there was a genuine mistake on the part of the petitioner for not having given the promotion under a mistaken belief.

7. I, accordingly, modify the award dated 15.7.2004 to the effect so far as the payment of increments and due emoluments w.e.f. 7.1.1990 to the date of his retirement are concerned, the petitioner will be given 50% of the total emoluments after the fixation of his pay from 7.1.1990. The aforesaid monetary benefit will be given to the petitioner within six weeks from today. The aforesaid amount to be paid within six weeks from today failing which it will carry an interest @ 10% from the date of the award till the time of its realization.

8. With these directions, the award dated 15.7.2004 passed in ID No. 851992 by Industrial Tribunal-cum-Labour Court-II stands modified and the writ petition stands disposed of.