

(2013) 09 DEL CK 0103
In the Delhi High Court
Case No : Writ Petition (C) 7711 of 2012

Harpal Singh Jatav

APPELLANT

Vs

Delhi High Court and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0103

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Vikram Saini, for the Appellant; Abhishek Vikram, Advocate for Mr. Viraj R. Datar, Advocate for R-1 and R-3 and Ms. Avnish Ahlawat, Advocate for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—In this writ petition the petitioner has sought a writ of certiorari for quashing letter dated September 26, 2011, letter dated August 29, 2012 and Minutes dated May 14, 2012 and letter dated July 05, 2012, whereby the request of the petitioner for grant of arrears of pay and allowances from the date his immediate junior was promoted to the date of his actual promotion was rejected so also for review and consideration of that rejection. Brief facts to be noted are that while working as a Senior Assistant, on January 06, 2009, the petitioner was served with a charge sheet wherein it was alleged that during the month of March 1993 while working as Ahlmad in the Court of Shri M.S. Rohilla the then Additional District & Sessions Judge, Delhi, the petitioner has manipulated and tampered with the judicial record in respect of a case State v. Ramesh Chand Khanna FIR No. 94/1996 P.S. Jahangirpuri.

2. Pursuant to the enquiry, the Inquiry Officer submitted a report on July 19, 2010 wherein she concluded that the charges levelled against the petitioner were not proved. It was the conclusion of the Inquiry Officer that it was the police officials who had made the changes in the original documents and records relating to the said case. The Disciplinary Authority accepted the report of the

Inquiry Officer and vide order dated January 09, 2010 absolved the petitioner of the charges.

3. During the pendency of the inquiry proceedings, the name of the petitioner was considered for promotion to the post of Superintendent by a Selection Committee once on September 08, 2009 and again on August 13, 2010. On both the occasions, the findings of the Selection Committee were placed in the sealed cover. After the inquiry proceedings against the petitioner were concluded, the sealed covers dated September 08, 2009 and August 13, 2010 were opened wherein he was found "fit" for promotion to the post of Superintendent. Pursuant thereto, it was decided to grant promotion to the petitioner notionally to the post of Superintendent on ad-hoc basis with effect from the date his immediate junior was promoted as Superintendent.

4. In so far as the grant of arrears of pay and allowances to the petitioner from the date his immediate junior was promoted to the date of his actual promotion it was decided that he is not entitled to the same. This decision was communicated to the petitioner vide one of the impugned orders dated September 26, 2011.

5. The petitioner addressed a letter dated November 15, 2011 seeking review of the decision dated September 26, 2011. The petitioner retired on June 30, 2012 on attaining the age of superannuation. It appears that the petitioner was informed vide a letter dated July 05, 2012 regarding his representation having being rejected for grant of arrears of pay and allowances.

6. The petitioner makes an application under Right to Information Act wherein he sought information relating to the Minutes of the Meeting held and order passed regarding his representation dated November 15, 2011 wherein he had requested for grant of arrears of pay and allowances from the date his immediate junior was promoted. The said information was provided vide the second impugned order dated August 29, 2012.

7. It is contended by the learned counsel for the petitioner that the petitioner could not have been denied the arrears of pay when the Disciplinary Authority, on the basis of the conclusion arrived at by the Inquiry Officer had absolved him of all the charges. According to the learned counsel, the Inquiry Officer has clearly held that it is the police officials who have made changes in the original documents and records relating to the case. He would show the charge sheet issued to the petitioner was without substance and the petitioner could not be made to suffer for no fault of his.

8. The issue of grant of arrears of pay is no more res integra. As the said issue has come for the consideration of the Supreme Court and this Court on many occasions. In State of Kerala and Others Vs. E.K. Bhaskaran Pillai, has held grant of monetary benefits depend upon facts of each case. The relevant observations of the Supreme Court in this regard is reproduced hereunder:

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 of Haryana v. O.P. Gupta*, *A.K. Soumini v. State Bank of Travancore and Union of India v. Tarsem*. 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. Narasimha Rao*, *Vasant Rao Roman v. Union of India* and *State of U.P. v. Vinod Kumar Srivastava*. 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 sometime 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.

9. In a subsequent judgment reported as *Union of India (UOI) Vs. B.M. Jha*, the Supreme Court has disallowed back wages on the principle of no work no pay.

10. This Court in a recent judgment decided on May 20, 2013 in *W.P. (C) 7334/2012 Union of India vs. Thanglalmuon* denied the back wages keeping in view the facts of the said case.

11. It is noted from the reply given to the petitioner, a reference is made to a case decided by this Court on September 15, 2010 titled as *Union of India & Anr. v. Chhedi Lal* in *WP (C) No. 810/2010*, as the basis for denying the arrears of pay and allowances to the petitioner. We have seen the judgment of this Court in *Chhedi Lal's* case (supra). The same is not applicable in the facts of this case. In that case, this Court had dismissed the writ petition filed by the Union of India and granted relief to Chhedi Lal primarily on the ground that in an earlier Original Application No. 2770/2002 decided on September 18, 2004, wherein the Tribunal directed review DPC and if Shri Chhedi Lal is found eligible for promotion

consequential benefits have to be granted to him which direction have not been challenged nor got set aside by the Union of India.

12. In the case in hand there is a clear conclusion of the Inquiry Officer that it were the police officials who have made the changes in the judicial records/documents. The petitioner was completely exonerated. He was not found blameworthy. It is not a case where he is absolved because of lack of evidence or otherwise. But for the charge-sheet he would have got promotion.

13. The Supreme Court as far back as in the year 1991 in the case reported as Union of India Vs. K.V. Jankiraman, etc. etc., has in almost identical facts has held as under:

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. 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 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 to 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 in 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.

14. The commonality between the case in hand and K.V. Janakiraman's case (supra) is, there also pending inquiry proceedings, recommendations pertaining to the promotion were kept in a sealed cover. Inquiry proceedings have resulted in the exoneration of the employee. Pursuant to the opening of the sealed cover the employee was promoted. The Court held under the circumstances the rule of no work no pay was inapplicable.

15. In view of the above, we set aside letter dated September 26, 2011, letter dated August 29, 2012, Minutes dated May 14, 2012 and letter dated July 05, 2012. We hold that the petitioner Shri Harpal Singh Jatav is entitled to the relief of pay and arrears from the date his junior was promoted to the date he was actually given promotion i.e. September 24, 2009 to April 27, 2011. The same be released to him with interest @ 9% per annum within a period of three months from the date of receipt of copy of this order.

16. The writ petition accordingly stands disposed of. No costs.