
(2007) 07 DEL CK 0124

In the Delhi High Court

Case No : WP (C) No's. 2747-48 of 2004

Joint Commissioner of Police and Another

APPELLANT

Vs

Dayanand Tyagi

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2007) 07 DEL CK 0124

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Saleem Ahmed, for the Appellant; Amit Anand, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioners Joint Commissioner of Police and Deputy Commissioner of Police by this Writ Petition, assail the judgment dated 29.9.2003 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal, by the impugned order, had directed that the respondent be considered for regular promotion from 29.3.1994. Further, that he would be entitled to arrears of pay as a consequence to the promotion if accorded and also in case, further regular promotion, if accorded. Petitioners were also given the liberty to seek modification of the earlier order of the Tribunal dated 6.8.2002, if considered appropriate by the petitioners.

2. For appreciation of the grounds in the present writ petition and the matter in controversy, the relevant facts are being set out hereinafter.

(i) Respondent was appointed as a Constable on 11.12.1961. In due course, he was promoted to the rank of Assistant Sub-Inspector (Executive) on 6.6.1986. He was confirmed as Assistant Sub-Inspector (Executive) on 9.11.1989. Respondent was promoted to the rank of Sub-Inspector (Executive) on ad hoc and temporary basis w.e.f. 2.5.1991. He was enrolled to undergo Upper School Course w.e.f. 25.2.1992, which he completed in May, 1993. Consequently, his

name was brought in the promotion list E-2 Executive w.e.f. 20.10.1993. However, fate ordained otherwise. Respondent was implicated in a case (Crime No. 55) punishable u/s 7 read with Section 13 of the Prevention of Corruption Act on 6.9.1993 when he was allegedly arrested and placed under suspension. Respondent was accused of demanding and taking bribe of Rs. 1,000/- for giving copies of M.L.C. in a case being investigated by him and a trap had been laid by the Central Bureau of Investigation.

(ii) Following the above corruption case, respondent's name was brought on the secret list of persons of doubtful integrity vide an order dated 12.12.1993. A departmental enquiry was initiated against the respondent by DCP (South) on 5.4.1994. Respondent's name in the doubtful integrity list was extended on 29.6.1999 for a further period of one year or till finalization of the criminal case. In the event, charges against the respondent were not proved in the departmental enquiry and he was exonerated therein on 20.6.2000. The period of suspension from 6.9.1993 to 3.8.1995 was treated as period spent on duty for all intents and purposes.

(iii) It may be noted that from 1993 to 2000, CBI neither filed the closure report nor the charge sheet. Even though as far back as May, 1995, the Superintendent of Police, CBI while intimating that challan had not been filed, had referred the case for regular departmental enquiry for a major penalty. It was only on 15.5.2003, i.e. after a gap of nearly 10 years and after the superannuation of the respondent on 30.4.2002, that the charge sheet was filed. In the event, vide judgment of 10.7.2006, the Special Judge CBI held that the defense of the respondent stood reasonably established and it had rendered the prosecution case highly doubtful, consequently, he acquitted the respondent bringing the curtain down finally.

(iv) Following the exoneration of the respondent in the departmental enquiry on 20.6.2000, he claimed that he was entitled to be promoted with all consequential benefits w.e.f. March, 1993. Petitioners did not acceded to the same resulting in the respondent filing OA No. 2954/2001. The Tribunal disposed of the said OA holding that the respondent's name would have to be removed from the secret list from inception, i.e., from 9.9.1993 and his claim for promotion was to be considered from the date his next junior was promoted. Notwithstanding that his name was in the Agreed List, directions to promote the respondent and grant of consequential benefits were given. On the petitioners not complying with the order of Tribunal, a Contempt Petition was filed and the Tribunal directed the petitioners to re-consider the matter in the light of the decision in the case of Union of India Vs. K.V. Jankiraman, etc. etc., Petitioners thereupon passed an order granting proforma promotion to the respondent from 29.3.1994 to 30.4.1994 instead of regular promotion. Petitioners also rejected the respondent's claim under Fundamental Rule 17. Respondent's attempt to file another Contempt Petition failed and he was permitted to challenge the above order by filing a fresh OA. This led to the respondent filing OA No. 3074/2002

wherein the impugned order referred to earlier was passed.

3. Learned Counsel for the petitioners in support of the writ petition in assailing the impugned order passed submitted that a criminal case was pending against the respondent following the filing of the charge sheet. The subsequent filing of the charge sheet by C.B.I. had been ignored while passing the impugned order. This plea is not of any avail to the petitioner as already noted vide judgment dated 10.7.2006, the respondent has been acquitted and the Court has held that the respondent has been able to establish his defense making the prosecution version highly doubtful. Learned Counsel for the petitioner next attempted to urge that though the Tribunal had relied on the judgment in Union of India v. K.V. Jankiraman (supra). The said case would not come to the rescue of the respondent inasmuch as in Jankiraman's case no criminal proceedings were pending against the delinquent employee while in the present case, at the relevant time, criminal prosecution was pending. Counsel for the petitioner further relied on Baldev Singh Vs. Union of India (UOI) and Others, wherein the Court held that simply because there had been acquittal, the same would not automatically entitle the employee to get salary for the concerned period especially when he was not in actual service. It relied on the rationale of "no work no pay". Reliance was also placed on Union of India (UOI) and Others Vs. Jaipal Singh, , which reiterated the above position. Lastly, counsel relied on fundamental Rule 17(2), whereunder "an officer shall begin to draw the pay and allowances attached to his tenure a post w.e.f. the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties" relying on the above, it was said that as the respondent had been performing the duties, he was not entitled to the pay and allowances for the period in question and proforma promotion had been rightly awarded to him.

4. We have considered the submissions made by learned Counsel for the petitioner. Before we deal with the merit of the case, certain salient features which emerge from the factual position as noted earlier need to be recapitulated.

5. The incident in question is of 6.9.1993. No charge sheet had been filed or criminal prosecution launched till 15.5.2003 i.e. for a period of nearly 10 years. In these circumstances, it cannot be said that simply because criminal prosecution is launched in 2003 respondent is to be denied promotion prior thereto especially when he was completely exonerated in the departmental enquiry dated 20.6.2000. Moreover, as noticed above, even in the criminal case, he has been acquitted with the Court holding that the defense of the respondent stood established and prosecution case was highly doubtful.

6. Accordingly, this is not a case where the respondent can be said to be held guilty or where he has been visited with any penalty even of censure. The principles laid down in Jankiraman's case would clearly apply. The Supreme Court in the case of K.V. Jankiraman held "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." It was further held "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 proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

7. We find that the Tribunal has correctly appreciated the legal position and decided the matter in accordance with law by noticing the factual position of the case. Baldev Singh's case (supra) on which reliance is placed, is distinguishable as in the said case, the employee's services were terminated following the arrest and conviction in the criminal case. In appeal, he was acquitted. The army personnel neither worked nor offered to work during the relevant period and it was even a case of failure to resume duty. Hence, the Court declined the arrears. Similarly, Union of India v. Jaipal Singh would not advance the petitioner's case as the same is distinguishable. This was a case where services had been terminated on account of being charged for criminal offences and conviction by Trial Court. The High Court had acquitted him. However, the Government did not reinstate him despite the acquittal. The High Court had directed reinstatement with full back wages. The Court held in the circumstances that the employee was entitled to back wages only from the date of acquittal and not from the earlier period. This case again is distinguishable. On the other hand, in the present case, respondent has been duly granted the promotions and the name appearing in the agreed list was not a bar to the grant of promotion as it was the result of the petitioners' own action that the respondent was not permitted to work on the promotion post and it was on account of no fault of the respondent that he was denied the benefit of promotion.

In these facts and circumstances and following the ratio of Jankiraman's case, respondent has been rightly granted the benefit of all consequential benefits from the date of his promotion. The writ petition has no merit and is dismissed.