

**(2009) 12 DEL CK 0323**

**In the Delhi High Court**

**Case No :** Writ Petition (C.) No. 13725 of 2009

Lt. Governor of Delhi and Others

APPELLANT

Vs

Shri J.P. Gupta

RESPONDENT

**Date of Decision :** 09-12-2009

**Acts Referred:**

**Citation :** (2009) 12 DEL CK 0323

**Hon'ble Judges :** Vipin Sanghi, J;Anil Kumar, J

**Bench :** Division Bench

**Advocate :** Avnish Ahlawat and Latika Chaudhary, for the Appellant; Nemo, for the Respondent

**Final Decision :** Dismissed

## Judgement

ANIL KUMAR, J.—The petitioner has impugned the order dated 29th July, 2009 in OA No. 1846 of 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi titled Shri J.P. Gupta v. GNCT of Delhi and Ors. allowing the plea of the respondent to grant him promotion with effect from 25th September, 2001 when he was relieved to join the ex cadre post in DANICS and to pay all the difference of arrears of the pay with effect from 25th September, 2001 till he was actually promoted on ad hoc basis on 30th January, 2008.

2. The respondent had claimed promotion on ad hoc basis on an ex cadre post in DANICS with effect from 11th September, 2001 which was denied to him on the ground that he was placed under suspension and was also facing a disciplinary proceeding.

3. The respondent was exonerated from the disciplinary proceedings and the promotion was given to him from 2008 before his retirement. The suspension of the respondent was also revoked, however, retrospective promotion was not given to him on the ground that it would not apply in case of a retiree.

4. The Tribunal relied on (2004) 11 SCC 210 Mohd. Ahmad v. Nizam Sugar Factory and Ors. wherein an employee was granted promotion though the

employee had retired and it was held that on account of wrongful denial of promotion, the relief to the applicant could not be set at naught merely because the employee had retired in the meantime later on. The Tribunal had also relied on *Gopi Chand Bishnoi v. State of U.P.* (2006) 9 SCC 694 holding that retrospective promotion of a government servant who had a right of promotion cannot be denied on account of retirement of such employee.

5. Reliance has also been placed on the circular of DoPT. dated 14th September, 1992 Clause 7 whereof contemplates that in case of pendency of disciplinary proceedings sealed cover procedure should be employed. It is no more *res integra* that sealed cover procedure is to be resorted after chargesheet is issued. And when an employee is completely exonerated, meaning thereby that he is not found blameworthy and is not visited with the penalty even of censure, he has to be given the benefit of the salary of higher post along with other benefits from the date of which he would have normally been promoted but for the disciplinary proceedings. The Supreme Court in case of *Union of India Vs. K.V. Jankiraman, etc. etc.*, , relied on by the Tribunal, held that benefits to the employee from the date he would have normally been promoted cannot be denied on the principle of "no work no pay" as the normal rule of "no work no pay" is not applicable to such case. The reason given was that in such cases an employee although is willing to work is kept away from the work by the authorities for no fault of his and basing a case where the employee remains away from work for no reason, although the work is offered to him and in the circumstances applying fundamental rules 17(1), the emoluments cannot be denied in such cases. The Supreme Court had held in paras 25 and 26 of *K.V. Janaki Raman (supra)* is 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 jeopardize 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.

6. The learned Counsel for the petitioner is unable to show as to how these principles will not be applicable even in case of ad hoc promotion in the facts and circumstances. The respondent had been completely exonerated of any of the consequences of disciplinary proceedings and had the disciplinary proceedings been not there, the respondent would have been entitled for ad hoc promotion in ex cadre post in DANICS. The counsel is unable to make out any tangible ground for interference with the order of the Tribunal dated 29th July, 2009 in OA No. 1846 of 2008. There are no grounds to interfere with the order of the Tribunal, the writ petition is, therefore, dismissed.