

(2015) 07 SC CK 0119
In the Supreme Court Of India
Case No : Civil Appeal No. 811 of 2007

Ramesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Army Act, 1950 — Section 164, 39, 41, 54, 63

Citation : (2015) 9 AD (SC) 495 : AIR 2015 SC 2904 : (2015) 5 AWC 4559 : (2015) 3 ESC 537 : (2015) 147 FLR 211 : (2015) 3 JLJR 511 : (2015) LabIC 3517 : (2015) 6 MLJ 243 : (2015) 4 PLJR 1 : (2015) 8 SCALE 426 : (2015) 8 SCJ 11 : (2015) 3 SCT 704 : (2016) 1 SLJ 42

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J

Bench : Division Bench

Advocate : Rameshwar Prasad Goyal, for the Appellant; A.K. Panda, Sr. Adv., Sanjeev Kumar Das, Anil Katiyar, Manjula Gupta and B.V. Balram Das, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J—Challenge in this appeal is the order of the High Court of Delhi in W.P. (C) No. 6466 of 2002 dated 02.12.2004, whereby the High Court dismissed the writ petition filed against the order of denial of pay and allowances to the Appellant for the period from 01.08.1997 till the date of his actual promotion i.e. 13.11.2000 and also the order dated 18.03.2005 dismissing the Review Application No. 55 of 2005.

2. Background facts which led to the filing of this appeal are as under:- The Appellant got enrolled in the Indian Army on the post of Store Keeper Technical/ Sepoy on 19.03.1983 and was subsequently promoted to the rank of Havildar on 01.08.1989. While the Appellant was so working, a Summary Court Martial (SCM) for the offences Under Sections 41(i), 39(a) and 63 of the Army Act was initiated against him. After completion of the inquiry and on proved charges by an order dated 03.06.1992, the Appellant was sentenced to:- (i) reduction in

rank; (ii) dismissal from service and (iii) rigorous imprisonment for one year in civil prison. Aggrieved by the Order passed in Summary Court Martial, the Appellant preferred a statutory complaint Under Section 164 of the Army Act. The Central Government vide Order dated 17.08.1994 commuted the punishment modifying it to one of severe reprimand and further remitted the sentence of dismissal from service directing reinstatement in service. However, it was held that the Appellant was not entitled to any pay and allowances for the period between the date of dismissal and the date of reinstatement in service. In compliance with the Order passed by the Central Government, the Appellant was reinstated in service w.e.f. 29.10.1994. The Appellant was again put to Summary Court Martial for committing offence Under Section 54(b) of the Army Act and by an Order dated 18.02.1995; the Appellant was awarded severe reprimand/red ink entry for the offence of loosing identity card.

3. Case of the Appellant for promotion to the rank of Naib Subedar came up for consideration before Departmental Promotion Committee (DPC) on 01.08.1997; but the Appellant was not considered for promotion and according to the Respondents, the Appellant did not meet the discipline criteria for promotion as the Appellant was having two red ink entries during preceding five years. On Appellant's repeated representations for his promotion as per his seniority, finally his claim was considered by the DPC held on 15.03.2000 and he was granted promotion w.e.f. 01.01.2000 with ante-dated seniority w.e.f. 01.08.1997 alongwith his batchmates. However, no direction was issued regarding any pay and allowances to the Appellant in the higher rank of Naib Subedar from the back date; but his seniority was maintained from 01.08.1997 when his batchmates have been promoted.

4. Aggrieved by the order of the DPC, denying pay and allowances in the promotional post for the period between 01.08.1997 to 13.11.2000, the Appellant filed W.P. (C) No. 6466 of 2002 before the High Court of Delhi. Vide impugned order dated 02.12.2004, the High Court dismissed the writ petition observing that the Appellant has no legitimate claim for payment of pay and allowances from a retrospective date on the principle of "no work no pay". The Review Application No. 55 of 2005 also came to be dismissed on 18.03.2005. This appeal assails the correctness of the above orders passed in the writ petition and also the review application.

5. Contention of the Appellant is that subsequently when the fresh DPC was held on 15.03.2000, the Appellant was declared fit for promotion to the rank of Naib Subedar w.e.f. 01.01.2000 with ante-dated seniority w.e.f. 01.08.1997 and while so, the Appellant was arbitrarily deprived from getting pay and allowances and other benefits from 01.08.1997 and hence the Appellant is entitled to get his pay and allowances for the period from 01.08.1997 till the date of his actual promotion on 13.11.2000. It was submitted that the Respondents erroneously denied pay and allowances to the Appellant when they themselves have granted him ante-dated seniority w.e.f. 01.08.1997.

6. Learned Senior Counsel for the Respondents Mr. A.K. Panda contended that although the order imposing punishment on the Appellant was passed by the Summary Court Martial on 03.06.1992 but the same was commuted only on 17.08.1994 and therefore the period of five years was rightly counted w.e.f. 17.08.1994 and therefore the Appellant was not eligible to be considered for promotion prior to 17.08.1999. It was further submitted that on 01.08.1997, when the Appellant's case came up for promotion to the rank of Naib Subedar, he did not meet the criteria for promotion as he had incurred two red ink entries during preceding five years and rightly the Appellant was not given the pay and allowances from 01.08.1997 which benefit was given to him w.e.f. 13.11.2000 when he actually joined the said rank of Naib Subedar, but to avoid any injustice, his seniority was maintained from 01.08.1997 alongwith his batchmates.

7. We have carefully considered the rival contentions of the parties and perused the impugned judgment and the materials on record.

8. By perusal of the records it is seen that considering the petition dated 31.08.1992 submitted by the Appellant against the order dated 03.06.1992 passed in the SCM, the Central Government vide its order dated 17.08.1994 commuted the punishment of reduction of rank and one year rigorous imprisonment to severe reprimand and remitted the sentence of dismissal directing reinstatement of the Appellant. However, it was mentioned in the said order dated 17.08.1994 the period between the date of dismissal and date of reinstatement in service will not be treated as duty and the Appellant will not be paid pay and allowances due to him for the said period. Order dated 17.08.1994 does not specifically state the date from which the commutation of punishment shall take effect. The Appellant rejoined the duty on 29.10.1994 and from that date he is taken to have been reinstated. In the ASC records (Sup.), letter No. 6442/TB3/ST12 dated 23.07.1997, it is clearly mentioned that the punishment was set aside by the Court and was reinstated into service and his name was again placed in the original place in the seniority list. In the said letter it was further stated that the award of punishment for the second time for loss of temporary identity card will not affect the Appellant's promotion to the rank of Naib Subedar. However, as noticed earlier, in the DPC held on 01.08.1997, the Appellant's case was not considered, observing that he was having two red ink entries during the last five years and the Appellant was denied promotion to the rank of Naib Subedar w.e.f. 01.08.1997.

9. It is pertinent to note that the case of the Appellant was again examined in consultation with Judge Advocate General (JAG) Department and vide letter No. 77701/DPC/Q/II/ST-12 dated 17.05.2000 of the DPC proceedings, the Department opined that the date of commutation of punishment would only be from 03.06.1992, the date on which punishment was announced and not from 17.08.1994. We may usefully refer to the relevant portion of the said DPC proceedings which reads as under:

The case was examined in consultation with JAG Deptt. this HQ. JAG Deptt. has

opined that Govt. order dated 17 Aug 94 does not specifically spell out the date from which the commutation of punishment shall take effect. In the absence of any specific date, the order of the Govt. would be deemed to have been taken from the date of original sentence was passed. Therefore, the date of commutation of punishment would be from 03 June 92 (the date on which punishment was announced) and not 17 Aug 94.

From above referred proceedings, it is clear that the Respondents took the view that the date of commutation of punishment would be from 03.06.1992, the date on which the punishment was awarded and not on 17.08.1994, the date on which the punishment was commuted.

10. As per the policy of the Respondents, an individual cannot be considered for promotion to the rank of Naib Subedar, if he has earned more than three red ink entries during the entire service and more than one red ink entry in the preceding five years of service. It is noticeable that when the case of the Appellant came up for consideration on 01.08.1997, the first punishment/red ink entry had already expired i.e. on 03.06.1997 and only one red ink entry made on 18.02.1995 was on the record; but the DPC appears to have erred in ignoring the same. Considering the genuineness of the representations made by the Appellant, DPC again considered the claim of the Appellant and granted him promotion w.e.f. 01.01.2000 to the rank of Naib Subedar with a further direction that the seniority of the Appellant will be maintained alongwith his batchmates from 01.08.1997. When Appellant was granted ante-dated seniority w.e.f. 01.08.1997 alongwith his batchmates, we find no reason as to why he should be denied pay and allowances in the promotional post as Naib Subedar w.e.f. 01.08.1997 till the date of his actual promotion on 13.11.2000. The High Court has not properly appreciated these aspects and erred in holding that on 01.08.1997, the Appellant was not eligible to be considered for promotion. When the Respondents themselves have taken the view that the Order of the Government would be deemed to have taken from the date of original sentence was passed i.e. 03.06.1992 and not from 17.08.1994, the date on which commutation/remission was granted by the Government, the High Court was not right in holding that the Appellant was not eligible to be considered for promotion on 01.08.1997 and the impugned order cannot be sustained.

11. The Respondents have advanced the argument that the denial of pay and allowances is on the principle of "no work no pay" and no injustice has been done to the Appellant since he has not actually worked in the promotional post of Naib Subedar during the aforesaid period. It was submitted that the benefit of pay and allowances was rightly awarded w.e.f. 13.11.2000, the date on which the Appellant actually assumed the rank of Naib Subedar but his seniority was maintained so as to protect his interest in his further promotions.

12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits

with regard to retrospective promotion is concerned that depends upon case to case. In *State of Kerala and Others Vs. E.K. Bhaskaran Pillai*, AIR 2007 SC 2645 : (2007) 6 JT 83 : (2007) 5 SCALE 740 : (2007) 6 SCC 524 : (2007) 2 SCC(L&S) 487 : (2007) 5 SCR 251 : (2008) 1 SLJ 164 : (2007) AIRSCW 4766 , this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

...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.

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the Respondents were in fault in not considering the case of the Appellant for promotion and not allowing the Appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the Appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

14. The impugned orders passed by the High Court are set aside and this appeal is allowed. The Respondents shall release the arrears of pay and allowances to the Appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs.