

(2013) 05 DEL CK 0553

In the Delhi High Court

Case No : Writ Petition (C) 7026 of 2012

Union of India and Others

APPELLANT

Vs

R.C. Nangia

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0553

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

Bench : Division Bench

Advocate : Rajeeve Mehra, ASG and Mr. Ashish Virmani, for the Appellant; V.P.S. Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in the Writ Petition by the Union of India is to the order dated May 02, 2011 passed in O.A. No. 57/2008, whereby the Tribunal had allowed the O.A. by quashing the order dated January 10, 2008 and directed the respondents to work out the arrears of pay and allowances payable to the petitioner on his promotion to successful grades and to pay the same to him with simply yearly interest of 6% within three months from the receipt of copy of the order. Few of the facts necessary are that the petitioner was promoted to the post of Assistant Surveyor of Works, Surveyor of Works and Senior Surveyor of Works w.e.f. July 14, 1982, October 15, 1987 and January 27, 1996, respectively vide order dated March 16, 2000, pursuant to the directions of the Tribunal in O.A. No. 3126/1991 and O.A. No. 1954/1993 decided on 14.07.1998. Pursuant to his promotions as referred above, the petitioner was denied the arrears of pay vide order dated January 10, 2008 by stating as under:

Please refer your representation dated September 24, 2007.

The representation has been considered with the over-all perspective of judgment dated July 14, 1999 in O.A. No. 1954/1993 and this HQ speaking order No. A/41033/RCN/E1B dated March 16, 2000. A review DPC has been held in

order to implement judgment and your name has been interpolated suitably in the Review DPC bearing No. A/41031/95-96/E1R(O) dated February 02, 2001 for ASW to SW.

Pay fixation in both the above posts were fixed as per existing orders. Accordingly, arrears were paid. As such judgment is implemented fully.

2. The petitioner challenged the order dated January 10, 2008, before the Tribunal in O.A. No. 57/2008, wherein he had sought the following reliefs:

(a) Direct the respondents to refix the pay of applicant as SSW w.e.f. January 27, 1996 and SW w.e.f. October 15, 1987 in terms of the speaking order dated March 16, 2000 (A-5) and quash order dated January 10, 2008 impugned which is annexed as A-2(a).

(b) To direct the respondents to pay the arrears of pay and allowances consequent to promotion and refixation of difference of Pay & Allowances as SW & SSW from January 27, 1996 to September 30, 1997 not notionally but giving financial effect actually, which need to be done within time bound period.

(c) Award interest @ 18% p.a. on the amount of arrears of pay and allowances from the date it fell due till the date of actual payment including the gratuity and commuted value of pension delayed payment made on the basis of Notional fixation in SSW grade.

3. During the arguments, the only ground taken by the respondent herein is that the O.A. is barred by limitation as the pay has been fixed on notional basis and the representation of the petitioner in 2007 is belated. The Tribunal as relying upon the judgment of the Supreme Court reported as M.R. Gupta Vs. Union of India and others, Union of India & Ors. vs. Tarsem Singh, had allowed the claim by holding that the claim is not barred by limitation as the issue raised by the petitioner is a continuing cause of action.

4. During the submissions before us, learned counsel for the petitioner Mr. Rajeev Mehra, ASG assisted by Mr. Ashish Virmani, Advocate has reiterated the submissions as taken by the respondent before the Tribunal. Per contra, learned counsel appearing for the respondent Mr. V.P.S. Tyagi would contend that the case in hand is a case of discrimination inasmuch as the respondent has got information on RTI application, that one Mr. S.K. Gulati, who was promoted as Surveyor of Works on August 31, 1997, has been given arrears of pay and fixation, as such, the respondents could not have denied the same benefit to his client i.e. the respondent herein. He submitted for our perusal a letter dated October 22, 2007 written by one Mr. Saurabh Kala, Lieutenant Colonel in the office of Chief Engineer, Navy, 26, Assaye Building, Colaba, Mumbai-5 to PCDA SC Pune. The said letter has enclosures attached to it, which shows due drawn statement w.e.f. July, 1984. It is seen that the total net payable to Mr. Gulati is Rs. 1,74,720/-. A perusal of the communication referred to above would clearly show that Mr. Gulati, who also retired as a Surveyor of Works on August 31,

1997 has been paid arrears of salary. We see no reason why the same benefit should not be accorded to the respondent herein. We find no infirmity in the ultimate direction of the Tribunal and the Writ Petition is, accordingly, dismissed. No costs.

C.M No.18212/2012(Stay)

Dismissed as infructuous.