

Unreportable

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) Nos. 5416–5418/2006 & CM No. 4444/2006

Reserved on : April 11, 2008
Pronounced on : May 30, 2008

Govt. of NCT of Delhi & Ors.

... Petitioners

through :

Ms. Avnish Ahlawat with
Ms. Latika Chaudhary and
Ms. Nidhi Gupta, Advocates

VERSUS

Chander Bhan

... Respondent

through :

Mr. S.K. Gupta, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondent herein, who belongs to the Scheduled Caste (for short, 'SC') category and entered the service with the petitioners on that basis as Lower Division Clerk, was to be considered for promotion to the post of Grade-III DASS/Upper Division Clerk. Promotions were made to these posts on 22.9.1992 on the basis of seniority list finalized on 31.1.1991. The respondent was not given any promotion as in the said seniority list his name was wrongly included in the General Category candidates. The persons junior to the respondent in the SC category were promoted because of the aforesaid omission, ignoring the respondent. The respondent was promoted as Grade-III DASS/UDC as belonging to the

General Category because of the aforesaid mistake crept in the seniority list. The respondent pointed out the aforesaid mistake. The petitioners, realizing that this mistake had been committed, issued corrigendum in the seniority list by inserting the word '*Scheduled Caste (SC)*' against his name. On that basis, his case was considered by the DPC held on 26.2.1998 i.e. treating the respondent as belonging to SC category. Orders dated 12.3.1998 were passed giving him promotion to the post of Grade-III DASS/UDC with effect from 22.9.1992 when his juniors were promoted in the SC category. Though the respondent was given the notional promotion from the back date and his pay was also fixed accordingly, he was denied the arrears of pay with effect from 22.9.1992. Aggrieved against non-payment of the arrears, the respondent filed OA before the Central Administrative Tribunal in the year 2004, which was disposed of vide orders dated 24.11.2004 directing the petitioners to consider his representation and pass appropriate orders thereupon. This resulted in passing of orders dated 11.2.2005 by the petitioners denying him the benefit of arrears of pay once again. Not satisfied with the reasons given therein, the respondent filed another OA No. 771/2005 which has been allowed by the Tribunal vide judgment dated 21.11.2005 directing the petitioners to pay arrears of pay attached to the post of UDC to the respondent from 11.9.1992 to 14.11.1996. The attempt of the petitioners to seek review of the said order also failed as the review petition was dismissed vide orders dated 3.2.2006. The petitioners have, thus, approached this Court by way of present petition under Article 226 of the Constitution of India challenging the aforesaid orders passed by the Tribunal in the OA as well as the review application.

2. The moot question which needs to be decided in the present case, thus, is as to whether the respondent would be entitled to the arrears of pay for the past period once he is given promotion from the back date. Such a question has come up for hearing before the Apex Court number of times and through various judgments principles are laid down. We find that in some cases such arrears are allowed by the Supreme Court, whereas in other cases, the Supreme Court has rejected this kind of relief to the concerned employees. The Division Bench of this Court, of which one of us (A.K. Sikri, J.) was a Member, in *Union of India & Ors. v. G.D. Goel* (WP (C) No. 4657/2005 decided on 14.3.2008) after taking note of the following judgments of the Apex Court: *Paluru Ramkrishnaiah & Ors. v. Union of India & Anr.*, (1989) 2 SCC 541; *Union of India & Ors. v. K.V. Jankiraman & Ors.*, (1991) 4 SCC 109; *State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors.*, (1999) 4 SCC 181; *State of Haryana & Ors. v. O.P. Gupta & Ors.*, (1996) 7 SCC 533; *Union of India & Ors. v. Rejinder Singh Rawat*, (1999) 9 SCC 173; and *State of Uttaranchal & Anr. v. Dinesh Kumar Sharma*, (2007) 1 SCC 683, culled out the principles of law in the following terms :-

“13. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see *State of Kerala and Others v. E.K. Bhaskaran Pillai - JT 2007 (6) SC 83*; *Mohd. Ahmed v. Nizam Sugar Factory and Others - (2004) 11 SCC 210*; *Nalini Kant Sinha v. State of Bihar and Others - 1993 Supp (4) SCC 748*. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found

that it was not fault or mistake of the administration because of which the promotion was delayed.

14. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.”

It is, thus, the aforesaid principle which is applied to the facts of this case to determine as to whether the approach of the learned Tribunal in giving relief to the respondent is justified.

3. The basic facts have already been noted above. Error occurred because of the reason that in the seniority list of the LDCs, prepared by the petitioners, the respondent was shown as belonging to General category. Had the seniority list been correctly prepared and the respondent been shown as a member of the SC category, mistake could not have occurred. In the first blush, therefore, it is clear that it is because of the mistake on the part of department that the respondent is denied his legitimate promotion in time, which is given subsequently from back date. However, the reason to deny the benefit of arrears of pay for the past period is that no fault could be found with the petitioners/department inasmuch as tentative seniority list was circulated on 18.7.1990 and in this list also the name of the respondent was shown in the General category. Though objections were invited in respect of the said tentative seniority list, the respondent did not raise any such objection. The final seniority list was circulated on 31.1.1991 and even after the circulation of the final seniority list, the respondent did not point out the mistake. This is clear from the following operative portion of the order dated 11.2.2005 vide

which his representation was rejected and the petitioners decided not to give him the arrears of pay :-

“....In the present case on comparison with above noted cases it is gathered that Sh Chander Bhan failed to raise any objection at appropriate time of circulation of tentative seniority list issued on 18.7.1990 wherein objections were specifically invited within 30 days. Even after finalization of seniority list on 31.1.1991, he failed to bring the matter in the notice of the competent authorities at a very belated stage when the discrepancies were brought to notice, he was duly placed at the appropriate place well before his juniors.”

4. The question would be as to whether the petitioners can absolve themselves of the mistake which they committed, only because the respondent failed to point out the same. The answer has to be in the negative. No doubt, when the tentative seniority list was circulated and objections invited, the respondent did not raise any objection. It could be because of the reason that as far as seniority position of the respondent in the said seniority list is concerned, there was no fault with that. He was rightly assigned his seniority. Problem arose because of the reason that the petitioner was not shown as a member of the SC category. This has happened due to the mistake of the petitioners. Not only this, even when there was such an omission in the seniority list, when the promotion process for the post of UDC started, it was the bounden duty of the department to see that all persons belonging to this category are duly considered. Merely because in the seniority list issued by the department, against the name of the respondent it was not mentioned that he belongs to SC category, that would not mean that the petitioners/department shall commit a lapse in not treating him as a candidate belonging to SC category and, therefore, ignore him in promotion. This too is a mistake on the part of the petitioners.

5. In this context, it would be necessary to refer to the judgment of the Supreme Court in the case of *State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors.*, JT 1999 (3) SC 205, wherein the Supreme Court held that in normal circumstances, when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. It was not a case where the respondent was not willing to work on a higher post. On the contrary, he was prevented from doing so as he was not promoted earlier. But for the aforesaid omission, which was on the part of the petitioners, there was no impediment in promoting the respondent in the year 1992 when juniors to him belonging to the SC category were promoted. Position would have been different if there were certain *bona fide* reasons because of which such an exercise for considering the cases for promotions could not be done. These could be the cases where, for example, there is a dispute about the seniority generally vis-à-vis the employee pending in the department or in the court. It was not a case where seniority list had not been finalized but was issued by the department in a wrongful manner insofar as the respondent is concerned. In these circumstances, we are of the opinion that the learned Tribunal rightly observed as under :-

“14. In O.P. Gupta’s case on a direction by the Apex Court seniority had been finalized but in the present case the seniority list had been issued in a wrongful manner in respect of the applicant by showing him as a general category candidate whereas he belongs to SC category. The relegation of the applicant in the seniority list has deprived him of his rightful promotion from due date, as because of this he could not come within the zone of consideration as a SC candidate. One has a right to be considered against the requisite quota meant for reserved categories under the Constitution of India depriving a SC candidate for promotion at the due date when his juniors and colleagues had been promoted, mainly, because he had been shown to be in a different category is certainly not an inadvertent error. It is an error which had caused a great prejudice to the applicant as he had been deprived of his due promotion in year 1992.”

6. We, therefore, are of the opinion that the impugned judgment of the Tribunal does not suffer from any infirmity and in the facts of this case, the Tribunal rightly granted benefit of arrears of pay to the respondent herein. Accordingly, we dismiss this writ petition with costs quantified at Rs.5,000/-.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

May 30, 2008
nsk