

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 23.3.2012
Judgment pronounced on: 29.3.2012

+ W.P.(C) 1635/2012

Government of NCT of Delhi And Others ... **Petitioners**

versus

Satpal Singh ... **Respondent**

Advocates who appeared in this case:

For the Petitioner : Ms. Perna Kumari and Mr Sudhir Kumar
For Respondent : Mr. Ajesh Luthra

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 2.12.2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi, whereby OA No.2040/2010 filed by the respondent was allowed. The facts giving rise to the filing of the petition can be summarized as under:

The respondent before this Court was prosecuted under Sections 7 & 13 of the Prevention of Corruption Act, 1988 and was placed under deemed suspension, vide order dated 16.8.1993. The suspension order was later revoked vide order dated 31.10.1995. He was acquitted vide judgment dated 29.7.2005 wherein it was held that the case against the respondent did not stand proved beyond reasonable

doubt. It was noted that the complainant, who was the star witness had not supported the prosecution and the only independent witness had denied recovery of money from him. The trial Court was of the view that the recovery of money from the possession of the respondent was therefore doubtful. However, the petitioners decided to proceed departmentally against the respondent on the same set of charges. The Inquiry Officer reported that the charges had not been proved consequently and the respondent was exonerated of the charges vide order dated 27.12.2007. Thereafter, in terms of FR 54B the petitioners treated the period of suspension of the respondent as period 'spent on duty' for all purposes. In the meanwhile, a person junior to the respondent was promoted as UDC w.e.f. 27.5.1998. Consequent to exoneration of the respondent, the DPC considered his case and he was granted notional promotion w.e.f. 27.5.1998, the date from which his junior was promoted. However, pay and allowances for the period between 27.5.1998 till the date he joined against the promotional post were not paid to him. OA No. 2040/2010 was then filed by the respondent seeking grant of monetary benefit for the aforesaid period. The petitioners before this Court submitted before the Tribunal that since the respondent was not 'honourably' acquitted but was given benefit of doubt he was not entitled to monetary benefits from the date notional promotion was granted to him.

2. It has been contended by the learned Counsel for the petitioners before us that since the respondent did not work on the post of UDC during the period in question, he is not entitled to salary of the higher post. The learned Counsel for the respondent on the other hand submitted that since the petitioners themselves on account of acquittal of the respondent in the criminal trial and his exoneration in the departmental inquiry, treated the period of suspension to be on duty, there is no justification for denying the pay and allowances of the higher post to him. His contention is that since the respondent was denied promotion for no fault of his part and this was acknowledged by the petitioners by treating the period of suspension as period spent on duty, the respondent is entitled to pay and allowances for the higher post, despite his having actually not worked on that post.

3. The question as to whether an employee who is not granted promotion on account of pendency of disciplinary proceedings/criminal prosecution against him but is granted such promotion, on notional basis, as a result of his acquittal/exoneration, is entitled to arrears of pay for the period of notional promotion preceding the date of actual promotion or not, came up for consideration before Supreme Court in **Union of India And Others v. K.V.Jankiraman And Others**: AIR 1991 SC 2010. Before the Supreme Court, it was contended on behalf of the Government that the normal Rule being “no work no pay”, a person cannot be allowed to draw the benefits of a post, the duties of which he had not

discharged and to allow him to do so could be against the elementary Rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was submitted on behalf of the employees that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion and the employee concerned is made to suffer both mental agony and privations, which are multiplied when he is also placed under suspension and therefore, when he comes out with a clean chit, he has to be restored with all the benefits from which he was unjustly kept away. Dealing with the rival contention Supreme Court, inter alia, held as under:

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 subparagraph 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.

(emphasis supplied)

4. Consequent to the decision of Supreme Court in **K.V.Jankiraman** (supra), Government of India, Department of Personnel & Training (DoPT) vide OM No. 22011/4/91-Estt. (A) dated 14.9.1992 inter alia decided as under:

17.6.1 On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant

is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion to his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the juniormost officiating person. He may be promoted notionally with reference to the date of promotion of his junior. 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 appointing 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. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. 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. These are only some of the circumstances where such denial can be justified.

(emphasis supplied)

5. This issue also came up for consideration before Supreme Court in **State of Kerala And Others v. E.K.Bhaskaran Pillai** (2007) 6 SCC 524. After considering the case law on subject including its decision in **K.V. Jankiraman** (supra), the Supreme Court, inter alia, 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 sometime 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.

6. It would thus be seen that the question as to whether an employee is entitled to pay and allowances for the period of notional promotion, preceding the date of actual promotion or not is to be decided with reference to all the facts and circumstances of the case, including the grounds on which he was acquitted in the criminal prosecution and/or the grounds on which he was exonerated in the Departmental Inquiry. The OM issued by the Government also makes it clear that if the Competent Authority decides to withhold the pay and allowances of the higher post, for the period of notional promotion preceding the date of actual

promotion, whether wholly or partly, it is required to pass a speaking order in this regard. If a speaking order is passed, it would be open to the employee aggrieved by the order, to file an appeal against that order if such a remedy is available to him under the Service Rules applicable to him or to challenge the order before an appropriate forum such as the Tribunal. We also note from a perusal of OM dated 14.9.1992 that no speaking order is necessary in case the Disciplinary Authority decides to pay whole of the salary and allowances applicable to higher post, for the period of notional promotion preceding the date of actual promotion. In the case before us, no order passed by the Disciplinary Authority giving reasons for denying pay and allowances attached to the post of UDC, for the period of notional promotion preceding the actual date of promotion, has been filed by the petitioners. In fact, this was not the case of the petitioners before the Tribunal nor is the case before us that any such order was passed by the Disciplinary Authority giving reasons for denying pay and allowances applicable to the post of UDC to the respondent for the period of notional promotion preceding the date of actual promotion.

7. In the case before this Court, we note that vide judgment 29.7.2005 whereby the respondent was acquitted in the criminal proceedings, the trial Court inter alia held as under:

x x x x In these circumstances evidence of the raid officer cannot be said to be free from doubt. So, recovery of bribe money from the possession of the accused is doubtful. Nothing then remains in support of prosecution case.

x x x x

From the foregoing discussion the conclusion is that the prosecution cannot be said to have proved its case beyond reasonable doubt and so the accused has become entitled to be acquitted by giving him the benefit of doubt.

Vide order dated 27.12.2007, whereby the respondent was exonerated in the departmental proceedings, the Disciplinary Authority inter alia held as under:

During the departmental proceedings also, some prosecution witnesses including the punch witness in the ACB inquiry did not turn up despite a number of notices issued to them. The one who did turn up, did not support the prosecution side. Even the complainant Shri Kuldeep Kumar (PW-I) himself deposed that Shri Sat Pal Singh was not that Sardarji who had demanded bribe from him. The IO held the charge as 'unproved'. In these circumstances, the charges cannot be proved against Shri Sat Pal Singh beyond reasonable doubt and I agree with the findings of the inquiry officer.

Now, therefore, I, Sandeep Kumar, Director of Education being the disciplinary authority taking into consideration all facts and circumstances of the case, am of the view that he ends of justice would be met if charges leveled against Shri Satpal Singh, LDC vide chargesheet memo no. DE7/W-A/48/NGV/2005/6957 dated 10.8.2006 are dropped. I order accordingly.

It would thus be seen that the acquittal of the respondent was on account of benefit of doubt having been given to him by the Court, and in the Departmental Enquiry, the respondent was not exonerated as such but the Disciplinary Authority, considering the fact that some of the witnesses did not turn up and those who did not turn up did not support the department, decided to drop the disciplinary proceedings. We also note that acquittal giving benefit of doubt as well as non-availability of witnesses, if attributable to the employee, are the circumstances, which the Disciplinary Authority, has to take into consideration, while passing an order on the question of grant of pay and allowances for the period of notional promotion. In these circumstances, it was necessary for the Disciplinary Authority to take into consideration all the facts and circumstances including the grounds on which the respondent was acquitted in the criminal proceedings as well as the grounds on which the disciplinary proceedings against him were dropped and then pass a speaking order with respect to grant of the pay and allowances applicable to the post of UDC for the period of notional promotion, prior to the date of actual promotion, to the respondent.

8. The learned Counsel for the petitioners has relied upon **Union of India And Another v. Tarsem Lal And Others** (2006) 10 SCC 145 where the case of the appellants before the Supreme Court was based upon para 228 of the Indian Railway Establishment Manual (IREM), which reads as under:

228. Erroneous Promotions (I). Sometimes due to administrative errors, staff are over looked for promotion to higher grades could either be on account or wrong assignment of relative seniority of the eligible at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types:

- i. Where a person has not been promoted at all because of administrative error, and
- ii. Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts. (emphasis supplied)

Relying upon its earlier decision in Union of India v. P.P. Abraham CA No. **8904/1994** decided on 13.8.1997, a case involving applicability of the very said para of IREM, it was held that the High Court was not justified in granting pay and allowances from the date of notional promotion. However, in the case before this Court, the aforesaid para of IREM is not applicable and the OM dated 14.9.1992, which squarely applies to the case before this Court requires a speaking order to be passed by the Disciplinary Authority, in case, it is decided to deny, either wholly or

partly, the pay and allowances attached to the higher post, for the period of notional promotion prior to the date of the actual promotion. The learned Counsel for the petitioners has relied upon the decision of this Court in **Bhageloo v. Union of India And Others** WP(C) 1618/2007 decided on 22.10.2007. In that case, the petitioner before this Court had sought promotion from the date his juniors were promoted. This was resisted on the ground that the juniors of the petitioner who were granted promotion prior to him were from reserved category, whereas the petitioner, though falling in the reserved category had never disclosed the same ever since he had joined service. It was noted by this Court that in terms of Railway Board Instructions No. E(NG)I-2002/PMI/16 dated 2.7.2003, no arrears were payable to the petitioner on proforma promotion. The OA filed by the petitioner before the Tribunal was dismissed relying on para 228 of IREM. It was also noticed that the petitioner had slept over his rights for a long time since he had approached the Tribunal after 12 years. In these circumstances, the writ petition was dismissed. However, no such instructions are applicable to the case before this Court and there has been no delay on the part of the respondent in approaching the Tribunal. These judgments, therefore, do not apply to the case before us.

9. For the reasons stated hereinabove, we set aside the impugned order dated 2.12.2011 passed by the Tribunal and remand the matter to the Disciplinary Authority to pass a speaking order, with respect to grant of pay and allowances

attached to the post of UDC, to the respondent for the period from 27.5.1998 to 15.2.2009. The speaking order in terms of this direction will be passed within 04 weeks from today. In the facts and circumstances of the case, there shall be no order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MARCH 29, 2012

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