

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.07.2012

+ **W.P.(C) 11684/2009**

CHIRANJI LAL ... Petitioner

versus

DELHI DEVELOPMENT AUTHORITY ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Apurb Lal, Ms Kumari Alka

For the Respondent : Mr Arun Birbal, Mr Paramhans

AND

+ **W.P.(C) 12564/2009**

DELHI DEVELOPMENT AUTHORITY ... Petitioner

versus

CHIRANJI LAL ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Arun Birbal, Mr Paramhans

For the Respondent : Mr Apurb Lal, Ms Kumari Alka

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These writ petitions, one filed by Chiranji Lal and the other filed by the Delhi Development Authority (DDA) are both directed against the same order

dated 15.04.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. 34/2008.

2. Chiranji Lal, who is the petitioner in W.P. (C) No. 11684/2009, is aggrieved by the impugned order on account of the fact that he has not been given arrears of pay and only notional promotion was given with effect from 28.1.1993 till 31.08.1995, the date on which he retired. He is claiming arrears of pay for that duration and since the Tribunal did not grant him the prayer with regard to the arrears of pay for that period, he has filed this writ petition before us.

3. Insofar as the DDA is concerned, it is aggrieved by the impugned order on account of the fact that the Tribunal has allowed interest on gratuity, commutation of pension and leave encashment at the GPF rate of interest. According to the DDA, interest was not payable on any of those items. Insofar as the question of grant of arrears of pay for the duration of 28.1.1993 to 31.08.1995 is concerned, the learned counsel for the DDA supported the view taken by the Tribunal.

4. We have heard the learned counsel for the parties on all the aspects mentioned above. Insofar as the question of payment of interest on gratuity, commutation of pension and leave encashment is concerned, the issue stands settled by several decisions of this court and particularly the decision of this court in the case of **Government of NCT of Delhi v. S.K. Srivastava- W.P. (C) No.**

1186/2012 decided on 29.02.2012 as also in the case of Delhi Police v. Balwant

Singh- W.P. (C) No. 1227/2012 decided on 13.03.2012.

5. In **S.K. Srivastava** (*supra*) this court had observed as under:-

“4. The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has been filed. We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee. The government has retained the money from the year 2000 till 2011, which, in any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury suffered by the respondent. It may, in fact, actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000.”

6. In **Delhi Police v. Balwant Singh** (*supra*) this court had placed reliance on the decision of **S.K. Srivastava** (*supra*) as also upon a decision of the Supreme

Court in the case of **Vijay L. Mehrotra v. State of U.P. & Ors:** JT 2000 (5) SC 171, where the Supreme Court had granted interest, inter alia, on the delayed payment of the leave encashment, gratuity and commuted pension @ 18% per annum. Therefore, the question of grant of interest on the delayed payment of gratuity, commutation of pension and leave encashment is settled and the DDA is liable to pay the same. The Supreme Court had even gone to the extent of granting interest @ 18%. However, we feel that in the present case the Tribunal's direction of granting interest at the GPF rate interest would be appropriate and need not be disturbed.

7. Insofar as the question of grant of arrears of pay is concerned, we find that there is merit in what the learned counsel for Chiranji Lal has submitted that his case is covered by the decision of the Supreme Court in the case of **Union of India Ors . v. K.V. Jankiraman Ors.:** (1991) 4 SCC 109. The relevant passages from the said decision are as under:-

“23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was no blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which reads as follows:-

“F.R. 17 (1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and

allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.”

24. It was further contended on their behalf that the normal rule is “no work no pay”. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is 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 pointed out on behalf of the concerned employees, that on many occasion even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

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.”

We find that departmental proceedings were in contemplation and therefore when the DPC convened in 1993, the sealed cover procedure was adopted insofar as Chiranjil Lal was concerned. Subsequently, the charge sheet was furnished to

Chiranji Lal three days prior to his retirement on 28.08.1995. After protracted proceedings the said Chiranji Lal was exonerated on 15.09.2000. In the meanwhile, Chiranji Lal had retired on 31.08.1995. The question was of promotion from the post of Assistant Director to Deputy Director. Ultimately after his exoneration the following establishment order was issued to Chiranji Lal:-

“DELHI DEVELOPMENT AUTHORITY
(CONFIDENTIAL BRANCH)

Estt. Order No. 239
Dated 20.2.2001

On the recommendations of the Departmental Promotion Committee and on opening of Sealed Cover, the Vice-Chairman, DDA is pleased to promote Shri Chiranji Lal, Asstt. Director (since retired) to the post of Deputy Director notionally in the pay scale of Rs. 3000-100-3500-125-4500/- (pre-revised) plus usual allowances as admissible from time to time.

2. The promotion of Shri Chiranji Lal will be with reference to the date on which his junior viz. Sh. Umed Singh Rawat was promoted as Deputy Director vide E.O. No. 276 dt. 28.1.93 and his pay will be fixed accordingly on this account. However, he will not be entitled to any arrears of pay and allowances for the period from 28.01.93 to 31.8.95 i.e. the date of his retirement on superannuation.

3. He will retain his seniority above Shri Umed Singh Rawat in the cadre of Deputy Director.

(ISHWAR CHAND)
JT. DIRECTOR (C.R.).
D.D.A
Dated: 20.2.2001”

No. F.10 (25)/02/CC/429

It will be clear that since Chiranji Lal was exonerated he was given notional promotion with effect from 28.01.1993. However, he was denied any arrears of

pay and allowances from that date till his retirement i.e., for the period 28.01.1993 to 31.08.1995. In view of the decision of the Supreme court in the case of **K.V. Jankiraman Ors.** (*supra*), the petitioner is entitled to arrears of pay. Therefore, we find that the Tribunal has erred in this aspect of the matter by not granting him the arrears of pay. Consequently, we modify the order passed by the Tribunal by directing that arrears of pay for the period from 28.1.1993 to 31.08.1995 be also paid to the said Chiranjilal along with interest thereon at the GPF rate. However, the payments already made shall be adjusted. These payments be made within four weeks from today.

8. Both the writ petitions are disposed of accordingly.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 25, 2012

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