

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

% *Date of Decision: August 01, 2013*

+ **W.P.(C) 4743/2013**

GOVERNMENT OF NCT OF DELHI & ORS. Petitioners

Represented by: Ms.Avnish Ahlawat, Advocate

versus

KULDEEP SINGH

..... Respondent

Represented by: Mr.Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. A prolix decision spanning 25 pages out of which nearly half consists of cut, copy and paste has obviously missed the basic point which should have been considered by the Tribunal.
2. The relevant facts would be that the respondent was appointed as a Constable in Delhi Police in the year 1975 and earned promotion in the year 1982 to the post of Head Constable and therefrom to the post of Assistant Sub Inspector in the year 1982. As per his seniority and subject to being found fit to be promoted as a Sub Inspector the respondent would have earned promotion to the post of Sub Inspector on December 11, 2003 when a person immediately junior to him earned said promotion. The respondent was not promoted because recommendations of the DPC pertaining to him were kept in a sealed cover on account of petitioner facing a disciplinary

proceeding which ultimately culminated in a penalty of forfeiture of two years approved service being inflicted. Needless to state, on account of the penalty levied and since the misdemeanour for which the penalty was levied pertained to the appraisal period, the department did not bother to even open the sealed cover containing the recommendation pertaining to the respondent. The sealed cover had ultimately to be opened because OA No.3044/2004 filed by the respondent challenging the penalty and the report of the Inquiry Officer on the ground of there being no evidence to sustain the indictment was allowed on November 13, 2006, with a direction that all consequential benefits shall flow.

3. With slight hiccups the department opened the sealed cover and it was noted that the DPC had found the respondent fit to be promoted. Thus the department firstly promoted the respondent to the post of Sub Inspector with prospective effect but later on notionally with effect from the date when the person immediately junior to the petitioner was promoted i.e. December 11, 2003, meaning thereby, the respondent was given notional increments but actual salary was paid with effect from June 05, 2008 i.e. the date when he assumed duties to the post of Sub Inspector.

4. Vide impugned order dated January 21, 2013 the Tribunal has held that since the respondent was ultimately exonerated of the charge against him the department had to not only promote him from the date when persons junior to him was promoted but additionally pay him back wages.

5. The charge against the respondent at the domestic inquiry was of demanding and receiving money from the driver of Bus No.DL-1PA-2510. During preliminary inquiry the driver and the conductor of the bus make statements implicating the respondent, and suffice would it be to state that in

view of the statements made by the driver and the conductor of the bus the department was fully justified in initiating disciplinary proceedings. But as we find in India : witnesses being suborned; the two were won over and did not stand by their statements made during the preliminary inquiry. The taint with the indictment by the Inquiry Officer found by the Tribunal when OA No.3044/2004, which questioned the penalty inflicted was allowed, was that the statements made by witnesses during preliminary inquiry from which they resiled during regular inquiry formed the evidence to sustain the indictment. It was held that it was thus a case of no evidence.

6. In the decision reported as (1996) 11 SCC 603 Ranchhodji Chaturji Thakore vs. Supdt.Engineer, Gujarat Electricity Board, the Supreme Court held as under:-

“The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was lawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the

Division Bench have not committed any error of law warranting interference.”

(Emphasis supplied)

7. In the decision reported as (2007) 1 SCC 324 Banshi Dhar vs. State of Rajasthan & Anr. observed as under:-

“Grant of back wages, it is well settled, is not automatic Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension.”

8. What flows from the aforementioned decisions is that even though a departmental inquiry might ultimately result in a charged official being exonerated, that by itself would not mean that the charged official should be paid back wages if due to the disciplinary inquiry the promotion gets delayed. The reason is that being exonerated at an inquiry may not necessarily mean that the charged official did not indulge in the wrongful act alleged. As in the instant case, if private individuals make a complaint against a police official that he has extorted money from them and make statements to said effect at a preliminary inquiry, it is but obvious that the police official would be charge-sheeted. The decision to charge-sheet the police official has to be considered not with reference to the final result of the inquiry but with reference to the material which was before the disciplinary authority when the charge-sheet was issued. If the said material justified initiation of a disciplinary inquiry the decision cannot be held to be bad with reference to the outcome of the inquiry. Merely because the complainants do not support the department and resile from their earlier

statements and this being the cause of the charged official being ultimately exonerated and thereby requiring a sealed cover containing recommendations of the DPC to be opened and given effect to, would not automatically entitle the charged official to claim back wages; his limited entitlement as a consequential effect would be to notional promotion with effect from the date he would have otherwise earned a promotion in due course and receive wages for the higher post from the date he assumes the duties and responsibilities of the higher post.

9. The writ petition accordingly disposed of quashing the impugned order dated January 21, 2013 passed by the Tribunal and consequently we dismiss OA No.2140/2012 filed by the respondent.

10. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

AUGUST 01, 2013
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