

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22388 of 2012

- =====
1. The Director, Power Project Engineer Division, Now Nuclear Power Corporation of India, Vikram Sarabhai Bhawan, Anushakti Nagar, Mumbai.
 2. The Chief Project Engineer, Now Site Director Rajasthan Atomic Power Station, P.O.- Anushakti, Via-Kota- 323303.
 3. The Union of India through the Secretary, Ministry of Atomic Energy, Government of India, C.S.M. Marg, Mumbai-39. Petitioners.

Versus

Saheb Dayal Srivastava, S/o Late S.B. Lala, Ex. Scientific Assistant Grade 'C', Rajasthan Atomic Power Station Anushakti, Chitoregarh, under the Department of Atomic Energy, Government of India, C.S.M. Margh, Mumbai-39, R/O House of Amar Kirana Merchant, Post Office Road, Raxaul, Bihar.

.... Respondent.

=====

Appearance :

For the Petitioners : Mr. Gopal Krishna Agrawal and Kumar Ravish, Advocates.

For the Respondent : Mr. Raj Kishore Prasad and Ravindra Kr. Shukla, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-02-2015

Heard learned counsel for the petitioners, learned counsel for the sole-respondent and with their consent this writ application is being disposed of at this stage itself.

2. On 22.07.1975 the sole-respondent was charge-sheeted in a departmental proceeding and put under suspension for

- 2 -

having unauthorisedly consumed heavy water from the nuclear reactor endangering his life and others. After departmental hearing on 22.02.1977 he was dismissed from service. He challenged his dismissal first before the Rajasthan High Court, which stood transferred to Jodhpur Bench of the Central Administrative Tribunal to file an appeal. The Central Administrative Tribunal of the Jodhpur Bench dismissed the appeal of the sole-respondent on 28.06.1993 and the dismissal order was confirmed. The sole-respondent then moved before the Central Administrative Tribunal, Jodhpur Bench by filing O.A. No.35 of 1994, which was then transferred in the year 1997 to the Central Administrative Tribunal, Patna Bench (hereinafter referred to as the 'Tribunal') as T.A. No.06 of 1997. On 07.01.2005 this transferred application was allowed by the Patna Bench of the Tribunal holding that the Nuclear Power Corporation of India (hereinafter referred to as the 'Corporation') had failed to prove the charge. It, accordingly, set aside the order of dismissal, in view of the fact that the sole-respondent would ordinarily have retired in the year 2003 and instead of reinstatement passed order that the dismissal order would be with all consequential benefits without specifying the consequential benefits. The Corporation and its authorities, who are the writ petitioners here, filed a writ petition before this Court

- 3 -



challenging the order of the Tribunal. The matter was heard by a Division Bench of this Court and by judgment and order dated 13.01.2006 the order of the Tribunal was modified by this Court and limited to 60% of back wages. In the meantime, while the writ petition was pending, the sole-respondent filed another original application before the Tribunal at Patna praying for pension and consequential promotions, house rent allowances and pension etc. The Tribunal this time confined the issues only to pension making it payable on the last pay certificate and disposed of the matter. It appears that the sole-respondent, being aggrieved by the order of the High Court by which back wages were restricted to 60%, filed an appeal to the Apex Court being S.L.P. No(s).15250 of 2005, which was dismissed on 11.01.2008. Again the sole-respondent filed O.A. No.26 of 2009 again claiming promotion and consequential benefits of H.R.A., C.C.A. and bonus with interest. It is the order by which this O.A. No.26 of 2009 has been disposed of by order dated 30.04.2012 that the present writ application has been filed challenging it.

3. By the order dated 30.04.2012, the Central Administrative Tribunal now has ordered that as the sole-respondent had been dismissed in the year 1977 and in course of his service he would be entitled to promotion which would,

- 4 -

accordingly, affect his last pay certificate. The Tribunal ordered that though the promotion would be notional. Meaning thereby that no benefit would accrue to the sole-respondent in terms of wages. The Tribunal directed that effect should be given of this notional promotion to the last pay certificate and accordingly the pension would stand enhanced. Thus, in effect the Tribunal only granted relief to the extent of enhancement of pension benefits but not benefits that would arise during the service period. In respect of pension, the Tribunal found that the sole-respondent would be deemed to be promoted when his immediate juniors were granted promotions in regular course. The Corporation challenges this order of the Tribunal which has the effect of enhancing the pension.

4. Learned counsel for the Corporation submits that promotion is not as a matter of right. It has to be earned. A person has a right to be considered for promotion but cannot claim promotion as such.

5. On the other hand, learned counsel for the sole-respondent submits that in view of the finding of the Tribunal that the charge could not be established the dismissal of the sole-respondent itself was wrong. If the dismissal was wrong, the Tribunal rightly ordered for reinstatement with all consequential

- 5 -

benefits though the wages were reduced by this Court in earlier round of litigation to 60%. The sole-respondent, who has earned his pension, could not be deprived of his pension. In fact, the Corporation, having paid full pension, cannot now make an issue that in the consequential relief notional promotion could not be given.

6. We have considered the rival submissions. There is no gainsaying that the Tribunal ordered for grant of all consequential reliefs. It could not order reinstatement because of which time the matter came up before the Tribunal and the sole-respondent has crossed the age of superannuation. The sole-respondent cannot be blamed for the misfortunes being visited upon him. The Tribunal has given protection by holding in the impugned order that the notional promotion would not enure to the benefit of the sole-respondent. So far as period of service is concerned, because payment of salary is in lieu of service tendered but that is not the case when we come to the retiral dues. Retiral dues monies that are earned by virtue of service rendered. It cannot be disputed that the consequential relief would ordinarily contain it.

7. Learned counsel for the respondent submits that all wage revision, bonus and pension, though restricted to 60%

- 6 -

then why not notional promotion. The sole-respondent cannot be deprived of his notional promotion and depriving him thereof, would be unjust because what the Corporation has done is the pay-scale on which the sole-respondent was at the time of his dismissal is the pay-scale on which he has been deemed to be retired after 26 years of service with of course annual increments and pay revision. This would highly unfair. It is in this perspective that the Tribunal for grant of notional promotion with effect being given only to pension. In our view, that would be consequence of the first order of the Tribunal when Tribunal directed while setting aside the order of dismissal with consequential benefits.

8. That being so, we find no reason to interfere with the order of the Tribunal. Accordingly, this writ application is dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/NAFR

U			
---	--	--	--