

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.807 of 2014

Date of Decision: 17.03.2015

Natha Singh

.....Appellant

Vs.

**Principal Secretary Irrigation Department, Government of Punjab,
and Others**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B.BAJANTHRI**

Present:- Appellant in person.

Mr.Aman Bahri, Addl.A.G.Punjab.

SURYA KANT, J. (ORAL)

(1) The order dated March 14, 2014, whereby learned Single Judge has after accepting the appellant's claim for promotion to the post of Project Foreman Special w.e.f. 01.11.1991, restricted the arrears of salary to 1/3rd only, is under challenge by the appellant who seeks full amount of arrears of pay as a consequence to his retrospective promotion.

(2) A brief reference to the facts is essential to appreciate the appellant's claim.

(3) The appellant joined Thein Dam Project as a Gauge Reader on 06.08.1974 on work-charged basis. He was promoted as Work Mistry on 01.11.1978. He was elected as President of Thein Dam Workers Union (Registered) on 01.09.1979. He claims that soon thereafter his services were terminated on 01.01.1980 as an act of victimisation for trade union

activities. Appellant challenged the order of termination of his services and the matter was finally decided in his favour by the Hon'ble Supreme Court of India vide judgment dated March 24, 1988 (Annexure P-1) thereby directing his reinstatement in service with continuity in service but with 25% backwages.

(4) Appellant was permitted to join duties on 19.12.1988. He was then placed under suspension on 28.08.1991 on the allegations of misplacement of some office records. The matter was referred to the police for investigation. FIR was also registered and, according to the appellant, an untraceable report was filed within 4-5 months. The authorities took more than 3 years in re-instating the appellant as the order was passed on 20.10.1994 though with all consequential benefits. The fact of the matter is that neither any charge-sheet was issued regarding the alleged lapse nor any inquiry held against the appellant.

(5) The appellant then came to know that while he was out of service, his juniors were promoted during the period 1989-1994. He represented for promotion on 25.06.1996 to the Chief Engineer. His claim was not accepted. That prompted the Trade Union to raise an industrial dispute vide Reference No.24 of 1998 which was answered in favour of the appellant by the Industrial Tribunal vide Award dated 04.11.1999 (Annexure P-2), holding him entitled to promotion as Assistant Foreman Special w.e.f. 01.05.1989 with benefit of seniority though the higher wages were ordered to be paid from 01.01.1993 only, with a further direction for his promotion to the next higher grade/category/scale.

(6) The aforesaid award was challenged before this Court and the writ petition was finally disposed of on 22.09.2009 after taking notice of the

fact that the authorities had already granted promotion and seniority etc. pursuant to that award.

(7) The appellant was however, dissatisfied as according to him the award was not implemented in its true letter and spirit, namely, the direction to consider him for further promotion was not complied with. The appellant consequently filed a complaint under Section 29 of the Industrial Disputes Act(for short 'the Act') which was registered as a criminal complaint at the instance of Labour Inspector under Section 34 of the Act.

(8) The Judicial Magistrate Ist Class, Pathankot vide order dated 22.10.2009 held both the accused officers guilty of deliberate non-compliance of the award passed by the Industrial Tribunal. They were convicted and sentenced with a fine of Rs.2000/- failing which they were to undergo rigorous imprisonment for one month.

(9) The appellant was, thereafter, granted some relief but not to his satisfaction. The relentless appellant then raised another industrial dispute through the Workers Union which was registered as Reference No.66 of 2009 before the Industrial Tribunal, Gurdaspur. The Tribunal on 25.10.2011 passed the following award:-

“In view of my discussions and findings on the above issues, particularly on issue No.1, the reference is answered in favour of the workman with direction to the respondent that the name of the workman should be considered for promotion to the post of Project Foreman Special w.e.f. 1/11/91, when junior to him, Sh.Bishan Dass was promoted as Project Foreman Special and

Management of RSD shall take necessary steps to give effect to the aforesaid direction and pass formal orders within a period of 3 months from the date of publication of the award.”

(emphasis by us)

(10) Notwithstanding the aforesaid award, Chief Engineer/RSDC Irrigation, passed the order dated 01.11.2012 (Annexure P-16), rejecting the promotion claim of appellant, being devoid of any merit.

(11) The appellant then approached this Court by way of CWP No.10862 of 2013. Learned Single Judge vide order dated March 14th, 2014, has deprecated the conduct of the respondent-authorities in harassing the appellant and in denying him promotion from the date his juniors were so promoted. Learned Single Judge, thus, directed the respondents to promote the appellant as Project Foreman Special w.e.f. 01.11.1991 till his date of superannuation i.e. 30.06.2012.

(12) As regards the consequential benefits, learned Single Judge has viewed that to strike balance and keeping in view the fact that appellant did not discharge the responsibilities of the higher post, it would be appropriate to award him 1/3rd of arrears of his salary.

(13) We have heard the appellant in person as well as learned Addl. Advocate General, Punjab and have gone through the record.

(14) True it is that the appellant could not perform the duties of the promotional post of Project Foreman Special even for a day till he retired from service on attaining the age of superannuation.

(15) But was it a case where the appellant was not promoted either on account of a bona fide inter-se-seniority dispute or on account of any genuine doubt on his eligibility? Or was it a case of closed mindset and inbuilt bias has been working to his disadvantage ever since 1980?

(16) Having given our thoughtful consideration to the rival submissions with reference to the questions posed hereinabove, it appears to us that the appellant has been deprived of his lawful and legitimate service benefits. It cannot be seriously disputed that had he not been under suspension on 28.08.1991, the appellant would have been considered for promotion as Project Foreman Special on 01.11.1991. Such a consideration was indeed extended to his junior Bishan Dass. The non-consideration of the appellant's claim for promotion on the aforesaid date could be justified only if there were any charges levelled against him or any inquiry held. The fact of the matter is that no charge-sheet was served nor any inquiry held against the appellant. He was finally re-instated after three years with all consequential benefits. Keeping in view the treatment earlier meted out to the appellant, it does appear that he was kept under suspension inordinately to deny him the opportunity to perform duties or draw other consequential benefits including promotion. The authorities have failed to reason out either for not reinstating the appellant after the police had filed untraceable report after 4-5 months or for not holding inquiry, if there was slightest doubt regarding involvement of the appellant. In other words, the delay in re-instating the appellant is solely attributable to the authorities and not to him, as the appellant could not be promoted in the year 1991 only for the reason that he was under suspension. The authorities ought to have rectified the error after he was reinstated in October, 1994 or even thereafter when he

represented for promotion in the year 1996. The deep rooted prejudices carried against the appellant is writ large from the fact that the Industrial Tribunal vide award dated 28.11.2011, though returned a firm finding of fact that his junior was promoted on 01.11.1991 without considering the appellant's claim and that he was entitled to such promotion from the date when his junior was promoted, yet the Chief Engineer chose to sit over the Industrial Tribunal's award and rejected the appellant's claim vide so called speaking order dated 01.11.2012.

(17) Learned Single Judge has adversely commented upon the conduct of the respondent-authorities. Taking into consideration the cumulative effect of all the facts and circumstances, we are satisfied that it was a case where one after the other illegal or erroneous decisions taken by the authorities, with or without any motive, have resulted in the denial of due promotion to the appellant and as a result thereto, he could not perform the duties of promotional post. Having held that, the action of the authority cannot be approved impliedly or indirectly by curtailing the payment of backwages for such a recourse would amount to legitimising an act which is per-se illegal.

(18) As observed earlier, it is not a case where the appellant was not promoted due to any bona fide seniority dispute or any serious objection regarding his eligibility to hold the promotional post. We are thus of the view that the appellant is entitled to be paid arrears of pay on the promotional post w.e.f. the date of his retrospective promotion, namely, 01.11.1991 till he retired on superannuation w.e.f. 30.06.2012. We order accordingly.

(19) Adverting to the appellant's claim to award interest, it appears to us that the balance can be well struck between the competing claims of the parties by denying interest to the appellant on the arrears of pay. We are thus of the view that the interest of justice and equity would be adequately safeguarded in holding the appellant entitled to arrears of backwages on the promotional post of Project Foreman Special w.e.f. 01.11.1991 till 30.06.2012 but he shall not be entitled to any interest thereupon. Let the arrears of pay be paid to the appellant within a period of six months from the date of receipt of a certified copy of this order.

Appeal stands allowed in the abovesaid terms.

(SURYA KANT)
JUDGE

(P.B.BAJANTHRI)
JUDGE

17.03.2015
anil