

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.25750 of 2009
and MP.No.1 of 2011

A.Joseph

..Petitioner

Vs.

1.The Registrar
Central Administrative Tribunal
High Court Buildings
Chennai 600 104

2.Union of India
rep. By the Senior General Manager
Heavy Vehicles Factory
Avadi, Chennai-600 054

..Respondents

Writ Petition filed praying to issue a writ of Certiorarified Mandamus calling for the records in O.A.No.81 of 2008 dated 10.09.2009 on the file of the 1st respondent and quash the same and direct the 2nd respondent to sanction financial benefit namely arrears of salary due from 24.12.1996 to 30.11.2000 from which date the applicant was appointed as UDC pursuant to the orders of the 2nd respondent dated 11.08.2005 and pay the arrears of salary to the petitioner.

For petitioner : Mr.S.Sadasharam

For respondents : Mr.N.Vijaya Baskar for R2
R1-Tribunal

O R D E R

(Order of the Court was made by K.RAVICHANDRABAABU, J.)

This Writ Petition is filed challenging the order passed by the Central Administrative Tribunal in O.A.No.81 of 2008 dated 10th September 2009, wherein, the request made by the petitioner herein seeking for pay and allowances with effect from the promotion dated 24.12.1996 to the post of UDC was rejected.

2. It is the contention of the learned counsel for the petitioner that though the promotion was given to him by order dated 11.08.2005 with effect from 24.12.1996 to the post of UDC from the post of LDC, the monetary benefit was not given to him from the said date of promotion and on the other hand, it was given only with effect from 30.11.2000. Thus, according to the petitioner, when the petitioner is not at fault, the Department cannot deny the monetary benefit and postpone the same to the subsequent date instead of granting it from the date of promotion.

3. The learned counsel appearing for the petitioner relied on the decision of the Apex court in the case of Ramesh Kumar Vs. Union of India and others reported in AIR 2015 Supreme Court 2904 in support of his contention that when the petitioner is not at fault, the principles of "no work, no pay" cannot be made applicable and consequently, the department cannot deny the benefit.

4. Per contra, the learned counsel appearing for the Department/Railways submitted that in the very promotion order granted to the petitioner on 11.08.2005, it was made clear that the promotion was granted not with retrospective effect but on the other hand it was granted only with effect from 30.11.2000 i.e., the date of assumption of higher responsibilities of UDC, by postponing the financial benefit to accrue from 30.11.2000, the date on which the petitioner actually assumed such responsibility of the UDC viz., the promoted post. Therefore, he contended that when the petitioner has not actually performed the duty of promoted post upto 30.11.2000, the principle of 'no work no pay' will apply to the present case and consequently the claim made by the petitioner was rightly rejected by the first respondent. It is further contended that there were disciplinary proceedings pending against the petitioner at the time when his case was taken up for promotion and in one such disciplinary proceedings, he was imposed with a punishment of reduction in pay by one stage for one year without cumulative effect and in another disciplinary proceedings, he was imposed with a penalty of reduction in pay by two stages for one year with cumulative effect.

5. Heard the learned counsel appearing for the respective parties and perused the typed set of papers filed before this court.

6. In this case, the factual aspects of the matter would disclose that the petitioner was given the promotion by order dated 11.08.2005 pursuant to the order passed by the Central Administrative Tribunal in O.A.No.887 of 2004 dated 15.06.2005, wherein, the Tribunal has directed the Department to open the sealed covers and to take a decision on the same on the basis of

the findings recorded therein and thereafter, to communicate the same to the applicant therein.

7. Pursuant to the said order passed by the Tribunal, the above said order of promotion dated 11.08.2005 has been passed by the Department. Perusal of the said order would clearly indicate that the promotion notionally given to the petitioner to the post of UDC will take retrospective effect from 24.12.1996 in all aspects, however, by extending the financial benefit only with effect from 30.11.2000 i.e., the date of assumption of higher responsibilities of UDC by the petitioner.

8. It is not in dispute that the petitioner assumed such responsibilities of UDC only on 30.11.2000 and till such time, he was performing the duties of LDC, which post he held before. Therefore, it is very clear that he was not performing the duties of the promoted post in between these two dates (24.12.1996 to 30.11.2000) and consequently, the principle of 'no work no pay' will certainly apply to the case of the petitioner herein.

9. The learned counsel for the petitioner however would contend that the fault is not on the part of the petitioner in not working in the promoted post from the date of the order of promotion. We are not able to accept such submission. The very order of promotion granted speaks in clear and categorical terms that it is a notional promotion and that monetary benefit will take with effect from 30.11.2000 on which date he assumed the duty of promoted post. Further, it is also evident that while considering the case of the petitioner for promotion, certain departmental proceedings were pending against him, which subsequently, ended in imposing punishments on the petitioner as stated supra. Under these circumstances, we are of the view that the petitioner is not justified in contending that he is not at fault but the department only postponed the benefits of promotion on that date.

10. The decision relied on by the learned counsel for the petitioner (cited supra) also indicates that the principle of 'no work no pay' would not be attracted where respondents were in fault in not considering case of appellant for promotion and not allowing him to work on promotion post carrying higher pay scale in that case. Here, it is not the case of the applicant that he was not considered for promotion. On the other hand, his case was considered and he was given promotion. Under the facts and circumstances of the present case, the department postponed the monetary benefits of promotion and he was extended the financial benefit only in a later date. i.e., the date, on which he assumed the duties of the promoted post. Hence the above decision will also not help the petitioner in any manner. Consequently, we find no merit in the Writ Petition and

accordingly, the same is dismissed. No costs. Consequently,
connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Registrar
Central Administrative Tribunal
High Court Buildings
Chennai 600 104

2.Union of India
rep. By the Senior General Manager
Heavy Vehicles Factory
Avadi, Chennai-600 054

+1cc to Mr.S. Sadasharam, Advocate, S.R.No.23950

+1cc to M/s. N. Vijaya Baskar, Advocate, S.R.No.23793

NR(CO)
EU(12/05/2016)

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सत्यमेव जयते

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