

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

Reserved on: May 11, 2016
Pronounced on: May 30, 2016

+ **W.P.(C) 20235/2005**

H.N. SHARMA Petitioner

Through: Ms.Meenu Maini, Advocate

versus

UOI & ORS.Respondents

Through: Ms. Geetanjali Mohan, Advocate
with Mr. Mohit Kumar, Mr.
Chetan Rai Wahi and Mr. Sultan
Choudhary, Advocates for
respondent-Railways

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

SUNIL GAUR, J.

1. Consequent upon the civil court's declaration on 12th August, 1977, the petitioner was given deemed promotion on the post of Sub-Inspector, Railway Protection Force (RPF) in the grade of ₹1400-₹2300/- and assigned seniority alongwith 1968-1969 batch vide letter dated 12th August, 1996, which is annexed as P-4 with the writ petition.
2. It is the case of the petitioner that he made successive representations/reminders to claim arrears of pay of the post of Sub-Inspector w.e.f. 1st February, 1971 and the last representation was made by him on 19th May, 2004 to the fourth respondent-*Chief Security*

Commissioner, R.P.F., North Central Railway, Allahabad, which stood rejected vide impugned order of 23rd August, 2004 (Annexure P-1).

3. Challenge laid to the impugned order (Annexure P-1) by the learned counsel for the petitioner is primarily on the ground that when in compliance of the Civil Court's declaration, the petitioner had been given promotion from the date when his juniors were appointed, so as a natural corollary, he is entitled to the consequential benefits, which include arrears of pay, etc..

4. According to learned counsel for the petitioner, the delay in promotion of the petitioner was on account of an error on the part of the respondent for which he ought not to be made to suffer. It was pointed out by learned counsel for the petitioner that vide letter of 12th August, 1996 (Annexure P-4), the Railway Board had issued directions that the petitioner will not lose his seniority and will get all consequential benefits including promotion to higher grades to which his immediate juniors were promoted. Thus, it was urged that rejection of the petitioner's representation vide impugned order (Annexure P-1) is wholly unjustified. To contend so and seek quashing of the impugned order, the petitioner's counsel had placed reliance upon the Supreme Court's decision in the case of Union of India and Others v. K.V. Jankiraman and Others, (1991) 4 SCC 109 and a decision of a Division Bench of this Court in the case of Union of India and Ors. v. C.N. Sahai & Ors., Administrative Tribunal Judgments 2003 (2) 361.

5. On the contrary, it was contended by learned counsel for the respondents that the petitioner has been granted seniority and consequential benefits, but he is not entitled to higher grade pay of a Sub-

Inspector because he did not perform duties of the said post. To submit so, reliance was placed upon the Supreme Court's decision in the case of Virender Kumar, G.M., Northern Railways, New Delhi v. Avinash Chandra Chadha and Ors., AIR 1991 SC 958. It was submitted that in the light of the principle of "*no work, no pay*" enunciated in the above referred decision, the petitioner is not entitled to claim any arrears of pay on the promotional post and therefore, the impugned order does not suffer from any infirmity and so, this petition deserves to be dismissed.

6. On considering the submissions advanced by both the sides and on perusal of the impugned order, the material on record and the decisions cited, we find that in compliance of the Civil Court's decision, the petitioner has been granted consequential benefits, which include fixation of seniority, etc.. The impugned order relies upon the Railway Board's letter of 29th September, 2000 which clearly states that since the petitioner did not perform the duties in the higher grade of Sub-Inspector, he is not entitled to payment of arrears as claimed by him.

7. It is evident from the respondent's communication of 20th March, 1997 (Annexure P-5) that the petitioner was given proforma promotion as Inspector while making it clear that that he will not be entitled to arrears of pay as he did not work on the promotional post. The Supreme Court in the case of Virender Kumar (supra) has declared way back in the year 1991 that neither equity nor justice is in favour of employees to award them emoluments of higher posts with retrospective effect when such employees have not worked on the given post. Applying the principle of "*no work, no pay*", it was pertinently observed by the Supreme Court in this decision as under: -

*“As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticised on account of the absurd result to which it leads, viz. the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the bar that this is the situation even with respect to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. **There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P.S. Mahaly. Union of India [(1984) 4 SCC 545 : 1985 SCC (L&S) 61 : (1984) 3 SCR 847] directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished.***

It is true that the appellant-railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in L.P.A. No. 220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions

*in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-railways had paid the incumbents concerned the emoluments of the said posts. **The respondents have not actually worked in the said posts and, therefore, on the principle of “no work no pay” they will not be entitled to the higher salary.** Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit.” (emphasis added)*

8. The decision in Virender Kumar (supra) was not cited before the Supreme Court when in a later decision in K.V. Jankiraman (supra), the Supreme Court has declared that when notional promotion is given, then the question of arrears of salary has to be considered from the date of notional promotion while taking into consideration as to whether the Inquiry proceedings were delayed by the employee and thereafter, the concerned authority should decide the entitlement of such an employee to back pay and the extent thereof. In K.V. Jankiraman (supra), Supreme Court had considered the sealed cover procedure and had set aside the order of the tribunal whereby it was directed that full salary be paid to the employee from the date of his notional promotion and the Supreme Court had directed that the claim of the employee to the arrears of pay be considered in the light of the role of the employee in causing the delay in the Inquiry proceedings.

9. In view of the afore-noted dictum of the Supreme Court in K.V. Jankiraman (supra), reliance placed by petitioner's counsel upon a Division Bench decision in case of C.N. Sahai (supra) is of no

consequence, as while considering the aspect of arrears of pay, the role of such delinquent employee in delaying the proceedings, has to be considered.

10. After deliberating upon the submissions advanced by both sides in the light of the cited decisions, we find that only a diligent employee can claim benefit of the decision in K.V. Jankiraman (supra) and not an indolent employee like the petitioner herein. It is being so said because the claim of the petitioner for arrears of pay relates back to 1st February, 1971. In fact, the petitioner was selected for the post of Sub-Inspector, RPF, Central Railway on 30th June, 1969, but was not given an appointment as he was declared medically unfit due to flat foot. On 2nd January, 1970, the petitioner was selected for the post of Rakshak Constable and was given an appointment. After a lapse of 16 years, the petitioner had challenged the respondent's decision taken in the year 1969, to declare him medically unfit due to flat foot, by filing a civil suit which was eventually decreed and the civil court's decision was implemented on 26th June, 1987 as the petitioner was granted seniority of a Sub-Inspector w.e.f. the year 1969. No doubt, the Railway Board vide letter of 12th August, 1996 had directed that the petitioner be granted consequential benefits, but it would not mean that it would include arrears of pay w.e.f. the year 1971.

11. The principle of "*no work, no pay*" stands qualified by the Supreme Court in the case of K.V. Jankiraman (supra) to the extent that in case an employee is exonerated, then the question of arrears of pay has to be considered in the light of the conduct of such an employee during the course of the Inquiry proceedings. However, the delay aspect assumes

importance in the instant case. On this aspect, we are guided by the Supreme Court's decision in the case of Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 wherein delay of seven years was held to be fatal while observing that gross negligence on the part of the counsel or the litigant is to be taken note of. The pertinent observations of the Supreme Court in Esha Bhattacharjee (supra) are as under: -

*“17. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. **Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.** Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.” (emphasis added)*

12. The jurisdiction of this court under Article 226 of the Constitution of India, which is essentially an equity jurisdiction, should not be

exercised in favour of a person who approaches the court after a long lapse of time and when no cogent explanation is given for the delay. Relevantly, the claim of the petitioner relates back to the year 1971 for which he took no remedial action in 16 years. Mere submission of representations to the respondents right up to the year 2004 cannot be treated as invocation of a legal remedy on the part of the petitioner. The petitioner has not been able to offer any cogent explanation for the inordinate delay spanning over 16 years in approaching the court by way of a civil suit. On account of this gross delay on his part, we have no hesitation in holding that the petitioner is not entitled to the arrears of pay w.e.f. the year 1971.

13. Consequently, this petition is dismissed while refusing to entertain a hopelessly stale claim.

HIMA KOHLI, J

SUNIL GAUR, J

MAY 30, 2016

s/vn