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

+ W.P.(C) 3447/2016

MANMOHAN KHANNA Petitioner
Through: Mr. Rajat Aneja, Adv.

versus

HIGH COURT OF DELHI Respondent
Through: Mr. Arun Kumar, Deputy Registrar,
Delhi High Court.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER
18.05.2017

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1. The petitioner claims the direction that he should be given arrears in respect of Grade Pay of Rs.4600/- for the period w.e.f. January, 2006 to August, 2013; he also claims entitlement to all promotional scales and consequential benefits.

2. The brief facts necessary for deciding the case are:

The petitioner initially joined the service of Delhi High Court as Peon on 21.11.1979; he was regularized to the post on 01.05.1984. Later he was promoted to the post of Restorer in 2000. Apparently, on alleged misconduct, the petitioner was suspended. At that time i.e. on 10.05.2007, he was attached to a court. By an order of the disciplinary authority, the penalty of compulsory retirement was imposed on the petitioner on

12.03.2008. The petitioner sought a review of the penalty. During the pendency of his plea, the petitioner's juniors were promoted on 22.07.2008. The petitioner had even approached this Court claiming to be aggrieved by the penalty of compulsory retirement. On 16.03.2009, the competent authority reduced the penalty from compulsory retirement to reduction of pay by three stages, which was to be effective for three years i.e. for the period from 10.03.2008 to 10.03.2011. He was later reinstated in service. On 20.04.2009, a show-cause notice was issued proposing to treat the period of his absence i.e. the interregnum between the imposition of penalty of compulsory retirement and the reduction of such penalty i.e. the actual date of joining after such reduction as not having been spent on duty or dies-non. The petitioner resisted the move. Eventually, on 15.05.2010, the competent authority mitigated with the petitioner by accepting the petitioner's plea and directed:

“Therefore, I partly accept his mercy appeal and direct that in modification of the earlier orders passed in his case, Mr. Manmohan Khanna be paid 75% of the wages due to him for the period from the date of his compulsory retirement till the date of his reinstatement. This period will also be taken into consideration for the purposes of pension.”

3. It is urged that the petitioner was unfairly overlooked for promotion in 2012 when certain vacancies arose and that his claim for promotion was eventually acceded to on 20.09.2013. It is argued by Mr. Rajat Aneja, the learned counsel for the petitioner that with the ending of the period of penalty of reduction of his pay, the petitioner's eligibility for promotion could not have been in doubt. In overlooking his claim in 2012 and

proceeding to grant him the relief in 2013 and for a subsequent vacancy the respondents committed an error of law. It is urged that the petitioner's position is primarily premised upon the supposition that the order of period not spent on duty, continued to be in force whereas in reality the order of 15.05.2010 had categorically removed the disability, if any, attached to it.

4. The High Court in its counter affidavit disputes the petitioner's assertions. The High Court's position is that the period of suspension i.e. 10.05.2007 to 10.03.2008 and the period from the date of compulsory retirement to reinstatement i.e. 11.03.2008 to 27.03.2009 could not be treated as service for the purposes of promotion and as qualifying service. It also states that the period between 11.03.2008 and 27.03.2009 was treated as 'non-duty' but later on ordered to be taken into consideration for the purpose of pension but not for all purposes. The relevant paragraph of the said affidavit reads as under:

"9. That it is submitted that the petitioner was placed under suspension w.e.f. 10.05.2007; compulsorily retired from the services of this Court w.e.f. 10.03.2008; and was reinstated into service vide order dated 16.03.2009, although he joined service on 27.03.2009. The competent authority while determining the pay and allowances to be paid for the period under suspension and for the period from the date of his compulsory retirement till reinstatement, vide order dated 14.10.2009, determined the pay and allowances payable to him during the period of suspension at what had already been paid to him and treated the period from the date of compulsory retirement of the official till his reinstatement as "non duty". However, subsequently vide order dated 18.05.2010 of the competent authority, the official was paid 75% wages for the period of compulsory retirement till reinstatement (i.e., 10.03.2008 to 27.03.2009) and the said period was directed to be taken into consideration

for the purposes of pension. Thus, the period of suspension (i.e., 10.05.2007 to 10.03.2008) and the period from the date of compulsory retirement till reinstatement (i.e., 11.03.2008 to 26.03.2009) cannot be treated as service for the purposes of promotion as qualifying service. However, the period w.e.f. 11.03.2008 to 26.03.2009 was treated as “non duty” and, later on, was ordered to be taken into consideration for the purpose of pension, but not for all purposes.”

5. The High Court’s position further is as follows:

“19. That it is submitted that as per the MACP Scheme, the case for grant of financial upgradation under MACP to the petitioner can be placed before the Screening Committee for consideration, as the petitioner completed 20 years’ service in this Court on 19.05.2010 from the date of his initial appointment as Temporary Peon w.e.f. 19.05.1990. However, the period w.e.f. 10.05.2007 to 27.03.2009 (i.e., 1 year, 10 months and 17 days) during which the official remained under suspension, then compulsory retired till his reinstatement, cannot be counted for the purpose of grant of financial upgradation under MACP Scheme, as the same has not been treated as duty for all purposes. Thus, his case for grant of second financial upgradation as per the MACP Scheme w.e.f. 6th April, 2012 in PB-II [Rs.9300-34800 + Grade Pay Rs.4200/- , i.e., the next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008, as per Clause 2 of Annexure-1 of the O.M. dated 19.05.2009] can be placed before the Screening Committee constituted under the MACP Scheme for consideration.”

6. This Court has considered the submissions.

7. The grievance as articulated in these proceedings is with respect to the overlooking of the petitioner’s claim for promotion when his juniors were, in fact, promoted as Junior Assistants in 2012. Now, if one takes into

account the fact that immediately after the compulsory retirement order was made, some of his juniors were also promoted, the narrow issue which this Court is required to decide is whether the High Court was justified in overlooking the petitioner's claim, as it did in 2012. It is a matter of record that the petitioner was considered and granted promotion subsequently on 20.09.2013. In fact, if the petitioner had a grievance contemporaneously, given the previous record of his awareness as a Court employee as well as his diligence in the manner of pursuing his grievances, the delay in approaching the Court is inexplicable. The petitioner explains this delay by saying that he kept representing to the High Court Establishment but to no avail. However, the Court is unpersuaded with the submission. The facts clearly reveal that from a stark grievance with respect to the penalty of compulsory retirement, the petitioner was able to persuade the competent authority (perhaps justifiably) and seek mitigation of the rigours and get back into employment. He got further relief when the period of his absence was treated as having been spent on duty. Given these aspects that the petitioner's claim for promotion was overlooked for one year, in the opinion of the Court cannot perceive the grievance of such magnitude so as to compel the grant of relief under Article 226 of the Constitution, in the given circumstances, especially since the petitioner attained superannuation on 31.03.2015 and these proceedings were initiated a year later i.e. in April, 2016.

8. For the foregoing reasons, this Court is of the opinion that the relief claimed cannot be granted. However, in view of the concession given by the High Court in Para 19 (extracted above), a direction is hereby issued that the

petitioner's case for MACP be considered expeditiously and that he be granted the said relief, subject to the decision of the Screening Committee. For such purpose, it is hereby clarified that in view of the orders of the competent authority dated 25.03.2009 and 15.05.2010, he shall be treated as having been on duty for such purpose only. The entire process shall be completed expeditiously, preferably within four months.

9. The writ petition is disposed of.

S. RAVINDRA BHAT, J

PRATHIBA M. SINGH, J

MAY 18, 2017

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