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

+ W.P.(C) 266/2017 & CM No.1293/2017

S.L. GUPTA Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ANR Respondents

Through: Mr. Arun Bhardwaj, CGSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **13.01.2017**

Having heard Mr. S.L. Gupta-petitioner, who appears in person, we do not find any reason to interfere with the impugned order dated 8.12.2015, whereby OA No.538/2014 filed by him has been dismissed, holding that the prayer for grant of backwages etc. is not permissible as the issue is covered and decided by order dated 5.2.2010 disposing of OA No.2328/2009.

The petitioner, who was an officer with the Central Bureau of Investigation, had challenged the punishment of censure in OA No.2328/2009, which was disposed of by the order dated 5.2.2010 passed by the Principal Bench of the Central Administrative Tribunal, holding as under:

“14. In totality of the facts and circumstances of this case, while allowing this Application, we set aside the memorandum dated 27.6.1996 initiating departmental proceedings against the applicant, all proceedings taken in the matter, as also order dated 10.6.2009 inflicting the punishment of censure upon the applicant. In consequence of setting aside of the memorandum, proceedings and the order aforesaid, the applicant would be considered for promotion for all posts on which his juniors may have been promoted from the date they were promoted, and would be fixed in proper pay scales accordingly, which would be notional, but the pay and emoluments of the applicant shall be worked out as mentioned above and he would be paid post-retiral dues accordingly. These directions shall be complied with within six weeks from today. As we have already mentioned, the applicant has suffered irreparable damage which cannot be compensated, but surely, the applicant, for putting him through untold misery and hardship, would be entitled to costs, which we quantify at Rupees twenty thousand, which, we may mention, are only conciliatory and not compensatory.”

A reading of the aforesaid para would show that the Tribunal was aware that the petitioner had superannuated as Additional Superintendent of Police (‘ASP’) on 31.1.2010. Consequently, while setting aside the punishment of censure, it was directed that the petitioner would be considered for promotion for all posts, on which his juniors had been promoted and his

salary would be notionally fixed in the proper scale etc. The pay and allowances shall be worked out as mentioned above and he would be paid post retiral dues. Thus, the Tribunal did not, in this order, grant and accept the prayer of the petitioner for payment of backwages at the promotional posts. The word “notional” is used in contradistinction to “actual”. Similarly, the words “worked out” used with reference to pay and allowance and “paid” with reference to “retiral dues” is clear. Thus, the relief or prayer for payment of backwages was denied or rejected, *albeit* with the direction that the petitioner would be considered for promotion from the date his juniors were granted promotion, and his pay would be notionally fixed for payment of retirement benefits.

Pursuant to the aforesaid order, the respondents worked out and have granted notional promotion to the petitioner to the post of ASP, Superintendent of Police and Senior Superintendent of Police (‘SSP’) w.e.f. the dates his immediate juniors were granted promotion and he has also been paid his retiral benefits on the post that he should have superannuated from, i.e., the post of SSP. His retiral and pensionary dues have been quantified on the basis of notional pay fixed, taking into consideration the dates on which his juniors were promoted. However, arrears of pay from the date he was

granted notional promotion till retirement have not been paid.

In the facts of the present case, the Tribunal, in our opinion, has rightly dismissed OA No.358/2014 holding that the order dated 2.5.2010, disposing of OA No.2328/2009, did not postulate and grant backwages to the petitioner. This being the position, the earlier order dated 2.5.2010, which has attained finality, would operate as *res judicata*. The petitioner did not challenge the said order and, therefore, in our opinion, cannot now be allowed to go behind the order and claim that he is also entitled to backwages from the date he was granted notional promotions. The petitioner cannot be granted backwages, unless the order dated 2.5.2010 is modified and direction to pay backwages is issued.

With the aforesaid observations, the writ petition is dismissed. CM No.1293/2017 is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 13, 2017

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