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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12067/2016**
JITENDRA MOHAN SINGH

..... Petitioner

Through: Mr. Samrat Nigam, Adv.

versus

BHEL

..... Respondent

Through: Mr. J.C. Seth, Adv. with Mr. Udit
Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
18.07.2017

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1. The present petition is a second round of litigation initiated by the petitioner, inasmuch as he had earlier filed Writ Petition (Civil) No. 9036/2015 challenging the order dated January 15, 2013 whereby he was transferred to Bhopal. The said writ petition was dismissed on September 21, 2015. The petitioner preferred an Intra-Court Appeal being LPA No. 790/2015. The LPA was allowed. The transfer order dated January 15, 2013 was quashed, in the following terms:-

“Considering the facts and circumstances of the case, the impugned order is set aside. The writ petition filed by the

appellant is allowed and the transfer orders dated January 15, 2013 and February 04, 2013 are quashed.”

2. Subsequent thereto, the petitioner had joined his duties at his original place of posting, before he was transferred. The respondent issued an Office Order dated December 3, 2015 whereby they have treated the period between February 16, 2013 and November 08, 2015, the date on which the petitioner joined his duties as period not spent on duty and denied the benefits including seniority for the said period.

3. I may state here, the petitioner had filed a Contempt Petition alleging disobedience of order dated November 04, 2015 in LPA No. 790/2015. The Contempt Petition was rejected with an observation that there is no specific direction to treat the period between February 16, 2013 and November 08, 2015 as period spent on duty. Liberty was granted to the petitioner to file appropriate proceedings in accordance with law. The rights and contentions of all parties were left open.

4. Mr. Samrat Nigam, learned counsel for the petitioner states, once the transfer order has been quashed and the Division Bench has allowed the writ petition, all the prayers in the writ petition deemed to have been granted. He states, the petitioner had sought consequential benefits also, which includes salary and treating the period in question as on duty. According to him, the

impugned action is a malafide exercise of power as the petitioner had challenged the transfer order on justifiable grounds, which has been quashed by the Division Bench. He states, that the impugned action of the respondents is very drastic as apart from denying the salary, the respondent has affected the seniority of the petitioner, which has the effect on promotion as well. He states that the petitioner is entitled to the reliefs as prayed for.

5. On the other hand, Mr. J.C. Seth, learned counsel appearing for the respondent would justify the impugned action of the respondent by contending, the petitioner cannot take advantage of his own wrongs, inasmuch as having not joined the place of posting, he cannot seek the salary for the period of absence. He also states, the Contempt Court has specifically held that there is no specific direction to treat the period in question as period spent on duty. He would rely upon the judgment of the Supreme Court in the case reported as *(1990) 3 SCC 472 Virender Kumar, General Manager, Northern Railways v. Avinash Chandra Chadha and others* in support of his contention that the petitioner is not entitled to the benefits on the principle of no work no pay.

6. Having heard the learned counsel for the parties and on consideration

of the record, it is noted that the Division Bench has set aside the transfer order dated January 15, 2013 and allowed the writ petition on justifiable grounds. The effect of quashing of transfer order is, the petitioner is deemed to be on the post from which he was transferred. The plea; that the petitioner did not join his place of posting is inconsequential/untenable, when the order of transfer is non-est in the eye of law.

7. The plea of Mr. Seth that the principle of no work no pay, shall be applicable, is not also tenable in the facts of this case. No doubt, the Contempt Court has held that there is no direction of the Court to treat the period in question as period spent on duty but at the same time, the Court had left open the rights and contention of all the parties. De-hors the order of the Contempt Court, the petitioner is within his right to argue that he is entitled to the benefits for the period in question including the seniority.

8. I may only record here, during the course of his submissions, Mr. Seth has stated that there is no concept of Seniority in the respondent Organization. He also states, that the promotion is subject to the Rules and petitioner meeting the merit/benchmark. There is no dispute on that proposition of law. When it was put to Mr. Seth that the effect of the impugned action would result in the petitioner losing the benefit of service

between the period February 16, 2013 and November 08, 2015, for the purpose of eligibility for promotion, he states that for the purpose of eligibility, the period in question shall be taken into consideration. In other words, the period of eligibility for promotion shall not be affected. I take this submission on record. If that be so, the only issue needs to be decided is, whether the petitioner is entitled to the back wages for the period between February 16, 2013 and November 08, 2015 and the said issue needs to be decided in favour of the petitioner for more than one reason, inasmuch as the Division Bench has allowed the writ petition by quashing the order of transfer. The consequence thereof is, the petitioner should be put on the same position as if such order has not been passed/issued. Secondly, if the benefit of salary for the said period is denied, it would mean that his non-joining at Bhopal was unjustified, which is not the case as the transfer order has been quashed.

9. Insofar as the judgment of the Supreme Court in the case of ***Virender Kumar (supra)*** relied upon by Mr. Seth is concerned, the same shall not be applicable in the facts of this case, inasmuch as the Supreme Court denied the benefit of pay from retrospective date for the following reasons:-

(i) The entitlement of promotion of the respondents in that case was on

rota quota rule which was held as inequitable and irrational.

(ii) The rota quota rule has to be worked out from the year 1954.

(iii) The higher posts were not vacant and were manned by others, who were paid.

(iv) The respondents had not actually worked, therefore on the principle of no work no pay, the respondents were denied the pay.

10. It is not the case here, inasmuch as it is not a case of promotion from retrospective date. Rather, the petitioner was transferred for certain unjustifiable reasons, otherwise he could have worked on the said post and earned salary. The judgment is distinguishable and has no applicability.

11. The respondents are directed to grant the arrears of salary for the period between February 16, 2013 to November 08, 2015 within six weeks from the date of receipt of the order. During the course of his submissions, Mr. Samrat Nigam has stated that persons junior to the petitioner by two batches have been promoted to the next higher post. I do not say anything on the said aspect except that the petitioner shall be at liberty to make a representation in that regard, which shall be considered by the respondent in accordance with the Rules and shall pass appropriate orders within six weeks from the receipt of the representation. If the petitioner is still

aggrieved, he shall be at liberty to challenge the same in accordance with law. The writ petition is disposed of. No costs.

V. KAMESWAR RAO, J

JULY 18, 2017*/ak*