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

% **DECIDED ON: 11.01.2018**

+ **W.P. (C) 6741/2014**

RENU BAKSHI Petitioner
Through: Ms. Sahila Lamba, Advocate.

Versus

HIGH COURT OF DELHI Respondents
Through: Mr. Jayant K. Mehta, Adv. for
DHC with Ms. Suveni Bhagat and Mr.
Shaurya Kuthiala, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner seeks a direction that the benefit of Non-Functional Pay Scale ("NFPS") should be accorded to her w.e.f. 13.05.1998 when she became eligible for it.

2. The facts relevant to this case are that the petitioner was working with the Delhi High Court establishment; at the relevant time, i.e., in 1997-98, she was Sr. Judicial Assistant ("SJA") (in ₹9300-34,800 with GP ₹4800). She completed four years in that pay on 13.05.1998. At that time, the NFPS was not available; by reasons of a policy of the Court - the order for which was made on 25.08.2006, employees eligible to that benefit, i.e., those who completed four years in the grade of SJA or equivalent thereto at the relevant stage were

entitled to the NFPS. The policy required that the benefits were to be given notionally w.e.f. 01.01.1996 (i.e. in terms of fitment/fixation) and the actual monetary benefits were to flow i.e. and were granted w.e.f. 03.10.2003. The petitioner contends that in terms of the policy, besides the four years' experience in the cadre of SJA, the individual also had to possess the vigilance clearance at the time of his or her consideration for the NFPS. According to the petitioner, the vigilance clearance in respect of her case was obtained on 10.11.2016 but the benefit actually withheld for a considerable amount of time and instead she was granted on 01.07.2013 and made effective from the same date.

3. Ms. Saahila Lamba, learned counsel for the petitioner contends that in terms of the Office Memorandum of 25.01.2006 issued by the Department of Personnel & Training, Central Government, the cadre authorities could grant NFPS ₹8000-275-13,500 subject to fulfillment of three conditions. Firstly that the incumbent had to complete four years of approved service in the grade subject to vigilance clearance; consequently notional pay fixation was to be given from 01.01.1996 though actual benefits were to accrue from 03.10.2003 and that lastly the officers were to be entitled to the arrears of pay with effect from the latter date. The scheme was adopted by the establishment of this Court by orders of the Chief Justice on 17.08.2006. It is submitted that though the petitioner faced some enquiries and charges, in several of them she was exonerated or the period of penalty/disciplinary orders were suffered. It is highlighted that the petitioner was entitled

to be considered from the date she completed the four years' period, i.e., 13.05.1998. Though, at that time, an enquiry was pending against her in respect of minor penalty charges (having been initiated on 02.05.1996), the exoneration was recorded by the competent authority on 17.05.1999. On the latter date, there was no impediment in the petitioner's entitlement to the NFPS. It is submitted that the High Court establishment's reliance upon the subsequent charges and the pendency of disciplinary proceedings cannot obscure the fact that at least from 17.05.1999 till 2001, the respondent High Court could have obtained the vigilance clearance and granted the NFPS benefit. Its failure to do so, complains the petitioner's counsel, is arbitrary.

4. Mr. Jayant K. Mehta, Advocate appearing on behalf of the Delhi High Court points out that the establishment is not obliged to consider the case of every employee or official on a day to day basis but rather has to consider the case on a reasonable basis when the claims of all concerns are considered *en masse*. Counsel relies upon a chart extracted in paragraph 6 of the counter affidavit and states that even though the petitioner was cleared of the charges leveled on 02.05.1996 on 17.05.1999, nevertheless, soon thereafter, a preliminary enquiry was initiated on (25.01.2000). This led to her indictment for misconduct and ultimate penalty of censure on 03.12.2002. It is submitted that subsequently too, preliminary enquiries were conducted followed by regular enquiry, later resulting in penalty such as stoppage of two increments with cumulative effect, warning, stoppage of one increment without cumulative effect (on 17.09.2011) etc.

5. The chart relied upon by the High Court is extracted below: -

S. No.	Preliminary Inquiry/Regular Inquiry	Date of initiation	Date of Decision	Decision
1.	Regular Inquiry	02.05.1996	17.05.1999	Charges stand not proved. The petitioner was exonerated.
2.	Preliminary Inquiry Regular Inquiry	25.01.2000 05.03.2001	17.05.2000 03.12.2002	The Petitioner was held responsible for loss of documents filed by the plaintiff in Suit No.1637/1997. The Petitioner be 'censured' and it be placed on her record with a clear warning to her that any lapse on her part will render her to strict disciplinary action in future.
3.	Preliminary Inquiry Regular Inquiry	21.04.2005 (on the complaint dated 10.01.2005) 08.03.2006	02.09.2005 27.09.2006	As per preliminary inquiry report, it was found that either the Petitioner or Mrs. Savitri Arora, SJA is responsible for the loss of files. A penalty of stoppage of two increments with cumulative effect imposed on the Petitioner and Ms. Savitri Arora.
4.	Preliminary Inquiry	25.04.2005 (on the complaint dated 16.08.2004)	29.05.2005	Vide preliminary inquiry report, the Petitioner was held responsible for

				<i>delay in tracing the documents.</i> <i>A warning was issued to the Official with a direction to place the same on C.R. file.</i>
5.	<i>Preliminary Inquiry</i>	24.03.2005	22.03.2007	<i>It was held that the preliminary inquiry shows the failure on the part of the Petitioner in maintaining devotion to duty and reflect adoption by her of dilatory tactics to willfully cause delay.</i>
	<i>Regular Inquiry</i>	02.04.2007	31.07.2011	<i>Charges not proved.</i>
6.	<i>Preliminary Inquiry</i>	17.09.2007	07.12.2007	<i>The Petitioner was held responsible for the loss of original Arbitration Award and proceedings relating thereto submitted by Shri A.S. Gahlawat, Sole Arbitrator.</i>
	<i>Regular Inquiry</i>	05.02.2008	17.09.2011	<i>A penalty of stoppage of one increment without cumulative effect imposed on the Petitioner.</i>

The narration as evident would reveal that on 25.08.2006, the Central Government's policy for NFPS was adopted by the Court. Undoubtedly, at that stage, the petitioner was facing disciplinary

proceedings in the form of regular enquiry initiated on 08.03.2006. That was preceded by preliminary enquiry based upon a complaint initiated on 21.04.2005. This Court is of the opinion that there is merit in the High Court's contention with respect to the petitioner's claim for entitlement to be considered on the basis of her eligibility as on 13.05.1998. At this stage or even later, she could not claim as a matter of right that the NFPS had to be given. If at all from 17.05.1999 for a brief period of six months, the entitlement to be considered would have arisen. However, the Court has to keep in mind the fact that the establishment had to review the cases of various individuals after 28.05.2006 on a case by case basis. At that time, the establishment's not granting the benefit with effect from the date claimed by her or after 17.05.1999 cannot be faulted because the window period was very brief. Preliminary enquiry was started on 25.01.2000, barely six months after the ending of the previous enquiry. However, this Court is of the opinion that for the period 03.12.2002 to 21.04.2005, there was in fact no impediment - except the "censure" which was to be placed on her service records. That order of censure cannot result in an indefinite black mark on the service record; it only had a finite duration. Consequently when the petitioner's claim was actually considered - which was done in 2013, the High Court overlooked that for almost three years (subject to the completion of the effect of 'censure' on her record) there was no impediment to the grant of NFPS. In these circumstances, the Court is of the opinion that the High Court establishment should review the record of the petitioner for the period 03.12.2002 to 21.04.2005 and determine firstly whether

her case could be considered to be clear from the vigilance angle and if so take necessary action by way of fixing the NFPS from the concerned date in accordance with the Office Memorandum dated 25.01.2006 and grant the necessary benefits. It is, however, clarified that the benefits which would be by way of differential salary and terminal payments would be subject to the withholding of pay and other penalties imposed by the High Court for the duration that the petitioner actually suffered it.

6. The above directions shall be complied with by the respondent/DHC within eight weeks from today.

7. The writ petition is partly allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JANUARY 11, 2018
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