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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 259 of 2017**

{Arising out of Order dated 09.03.2016 passed in Original Application No. 938/2013 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur}

D. S. Mukhopodhyay S/o Late D. P. Mukhopadhyay, Aged About 63 Years Retired Sr. Private Secretary, P. No. 130333, Bhilai Steel Plant, Bhilai- 490001, R/o House No. 4, Plot No. 84, Street No.1, Pragati Nagar, Risali, Bhilai – 490006, District Durg (C.G.)

---- Petitioner**Versus**

1. Steel Authority of India Limited Through Its Chief Executive Officer, Bhilai Steel Plant, Bhilai, Distt-Durg Chhattisgarh, Pin 490001
2. The General Manager (PERSONNEL) Bhilai Steel Plant, Bhilai, Distt Durg Chhattisgarh, Pin 490001

---- Respondents

For Petitioner : Shri Vijay K. Deshmukh, Advocate.
 For Respondents : Dr. N. K. Shukla, Senior Advocate with Shri Arjit Tiwari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**P. R. Ramachandra Menon, Chief Justice****02.08.2019**

1. The manner of finalizing the grievance projected by the Petitioner by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short, 'Tribunal') with regard to the eligibility to get promotion and the consequential benefits, simply by directing the authorities concerned to consider and pass appropriate orders on the representation preferred by the Petitioner, instead of deciding the merit, is put to challenge in this writ petition.

2. We heard Shri Vijay K. Deshmukh, the learned counsel appearing for the Petitioner as well as Dr. N.K. Shukla, Senior Advocate appearing for the Respondents / employer at length.
3. The sequence of events reveals that the Petitioner joined the Bhilai Steel Plant as an Assistant (Steno-Typist) on 10.10.1975 and retired from service, on attaining the age of superannuation, on 30.01.2013. The grievance is mainly with regard to the denial of promotion, for which he was legitimately entitled *w.e.f.* 30.06.2006, which was denied to him merely for the reason that he had filed a writ petition against the Management and the same was pending consideration.
4. It is to be noted from the undisputed pleadings brought on record, that the relevant rules of promotion existing in the Respondent-Company very much enabled the Petitioner to be considered for elevation to the executive cadre *w.e.f.* 30.06.2006. In fact, the eligibility of all the qualified persons for promotion to the executive cadre was considered by the Departmental Promotion Committee (DPC) in September, 2006. The Petitioner was also found eligible to be promoted to the executive cadre *w.e.f.* 30.06.2006. Admittedly, the same was not given to him, referring to a writ petition filed by him (as Writ Petition No. 1629 of 1998 before the Madhya Pradesh High Court) which was subsequently transferred in this Court, and ultimately got dismissed as per order dated 12.09.2011. The other persons who were found eligible alongwith the Petitioner in the very same DPC were granted promotion to the executive cadre, pursuant to their withdrawing the writ petition filed by them.
5. The Petitioner, presumably for the reason that he was confident of winning the case filed against the Management, did not find it appropriate to withdraw the writ petition and as mentioned above, the Management did not give the promotion to him. The Petitioner made several representations referring to the

facts and figures, but they were simply kept in cold storage by the Respondent. Ultimately, this was sought to be interdicted with the intervention of the Tribunal and was accordingly that O.A. No. 938 of 2013 was filed raising the necessary grounds.

6. The claim sought for was sought to be resisted by the Respondent / Employer. The matter was argued in detail with reference to the materials on record and after hearing, the learned Tribunal passed the order dated 09.03.2016, whereby direction was given to the 1st Respondent to consider the representations preferred by the Applicant and to pass a speaking order, keeping in view of the change in scenario that the Writ Petition No. 1629 of 1998 filed by the Applicant and others had already been disposed off by the Chhattisgarh High Court on 12.09.2011. It is against the said order, that the present writ petition has been filed by the Petitioner.
7. During the course of hearing, the learned Senior counsel representing the Respondent / Management submits that the claim of the Petitioner herein has been considered by the Management, particularly, pursuant to the verdict passed by the Tribunal and accordingly, Annexure D/1 order has been passed on 24.03.2019, whereby a decision has been taken to grant promotion to the Petitioner notionally *w.e.f.* 30.06.2006, as he has already retired from service on attaining the age of superannuation on 31.01.2013. The learned counsel further submits that it is by virtue of the principle of 'no work, no pay' and that a Circular has been issued by the Ministry of Public Grievance and Pension that such a course has been pursued, as supported by the verdict passed by a learned Single Judge of the Delhi High Court in the case of **Amar Singh vs. Union of India** reported in **2002 LAB. I.C. 474**.
8. The learned counsel for the Petitioner submits that the benefit given as per Annexure D/1 is only pursuant to the belated wisdom and this has affected the

rights and interests of the Petitioner quite to a larger extent, insofar as the Petitioner was denied of the actual extent of salary and such other benefits, as paid to the juniors or persons similarly situated who were promoted *w.e.f.* 30.06.2006 earlier. It is further point out that there was absolutely no fault or lapse on the part of the Petitioner in any manner and the Management themselves had found the Petitioner fit enough to be promoted *w.e.f.* 30.06.2006. The only insinuation against the Petitioner was that he had moved this Court by filing a Writ Petition No. 1629 of 1998. It could not have been a barrier or ground to deny promotion to the Petitioner, insofar as pursuing his rights in a legal manner before an appropriate forum, is a vested constitutional right, which could not have been hindered / watered down in any manner by the Management, which otherwise would only amount to 'pressurizing tactics' and is liable to be deprecated. We find considerable force in the said submission.

9. As discussed by the Tribunal in the order under challenge, there is no dispute as to the factual aspect. It will be worthwhile to make a reference to the contents of paragraphs 2 and 3 of the verdict passed by the Tribunal. In paragraph 2, the Tribunal has referred to Annexure A/3 which is an intimation sent by the Respondent Management to the PRO, with reference to the latter's letter dated 28.07.2007. The said reply issued by the Respondent Management clarifies in crystal-clear terms, that there were no such directives / policy / rules / guidelines as available with the Management regarding debarring an employee from promotion, if he/she has initiated a judicial remedy against any act of the Management.
10. The Tribunal makes a further reference to Annexure A/2, which is a communication dated 31.01.2009 from the Respondent / Management to the Applicant, the contents of which have already been extracted in paragraph 2. The effect of those two Annexures have been discussed in the subsequent

paragraph i.e. paragraph 3. The position emerging is that the Management, as mentioned already, had found the Petitioner eligible for promotion *w.e.f.* 30.06.2006 and that the only reason for denying the benefit of promotion was filing of Writ Petition No. 1629 of 1998 by the Petitioner, against the Management, before the Madhya Pradesh High Court (which came to be transferred to the Chhattisgarh High Court). The other persons who had joined hands by filing writ petition before this Court were granted the benefit of promotion *w.e.f.* 30.06.2006, on their withdrawing the proceedings. Insofar as pursuing a legal remedy cannot be bar in claiming the rights, which otherwise the person concerned is eligible to claim, and further since Annexure A/2 communication issued by the very same Respondent / Management clearly indicated and informed the PRO that there was no such directive/policy/rules/guidelines to debar the employee or deny the benefit of promotion merely for the reason that he had initiated a judicial proceedings against the Management, it was never open for the Management to have denied the timely promotion to the Petitioner. It took nearly '13 years' for the Management to have realised the mistake and to grant the benefit of promotion, notionally, as per Annexure D/1 order dated 24.03.2019.

11. In the said circumstance, the principle of 'no work no pay' which is embodied in the Circular referred to by the Delhi High Court in ***Amar Singh*** (supra) is not at all attracted, as the mischief was done by none other than the Respondent / Company and the reason for denial of promotion was only for filing a writ petition by the Petitioner; which could not have been a reason at all. In the said circumstances, we are of the view that the Petitioner is entitled to get the promotion to the executive cadre *w.e.f.* 30.06.2006 with all consequential benefits including arrears of wages. It is ordered accordingly. The verdict passed by the Tribunal stands set aside. Annexure D/1 order passed by the Respondent / Management granting only 'notional promotion' *w.e.f.* 30.06.2006

stands modified to the said extent. We are consciously refraining from awarding any cost.

12. The Petitioner, having retired from service way back 31.01.2013, the consequential benefits as above shall be worked out and disbursed to the Petitioner as expeditiously as possible, at any rate within 'three months' from the date of receipt of a certified copy of this judgment.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge