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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3463/2011 & C.M. APPL. 7214/2011

DEVI DAYAL

..... Petitioner

Through: Mr. A. P. Nagrath and Mr. Sumit
Sharma, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Jagjit Singh, Mr. Ashok Singh
and Mr. Preet Singh, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.12.2019

1. The facts of the present case have been set out in some detail in the order dated 5th December, 2018, which reads as under:

“1. The petitioner has preferred the present writ petition to assail the order dated 23.09.2008 passed by the Central Administrative Tribunal (CAT) in OA no. 361/2008.

2. The petitioner has preferred the said OA to seek a direction to the respondents to pay him the arrears of pay for the post of Chief Booking Supervisor (CBS) in the pay scale of Rs.6500-10500 for the period from 01.02.1997 to 09.09.2005.

3. The petitioner was proceeded against departmentally and found guilty by the disciplinary authority. The penalty of withholding of increment for three years without cumulative effect was imposed upon him on 24.08.1994. The grievance of

the petitioner is that though his penalty was set aside on 17.11.2000, he was not promoted from the date his juniors were promoted and only after he preferred repeated OAs before the Tribunal, he was promoted vide order dated 27.9.2004 w.e.f. 01.02.1997. So far as the date of promotion i.e. 01.02.1997 is concerned, the petitioner has no grievance. His grievance is related to non-payment of arrears of salary of the promotional post from 01.02.1997 onwards. Even after issuance of the promotion order dated 27.09.2004, he was relieved from his post to be able to join the promotional post only on 09.09.2005. Thus, the petitioner claims arrears of pay for the period 01.02.1997 to 08.09.2005. The Tribunal had rejected the same by placing reliance on the judgment of the Supreme Court in Union of India & Drs. vs. Tarsem Lal & Drs. Civil Appeal no. 4222 of 2006 decided on 21.9.2006. So far as the period from 01.02.1997, to a date sometime after the passing of the order dated 17.11.2000-when the respondent should have given effect to the promotion is concerned, we find no merit in the petitioner's claim. The petitioner had not worked in the promotional post and therefore, would not be entitled to actual arrears of salary for the promotional post for that period. Pertinently, he had been given notional promotion and notional pay fixation on the promotional post from 01.02.1997. However, the aspect that requires consideration is whether the respondents could have unreasonably delayed the passing of the promotion order after the penalty had been cancelled on 17.11.2000, and could have delayed the implementation of the order dated 27.09.2004 to 08.09.2005 and whether the petitioner should be compensated for his suffering on that account.

4. We are of the view that on the passing of the order dated 17.11.2000 by the competent authority exonerating the petitioner, promotion order should have been issued for the promotion of the petitioner to the promotional post within a reasonable time, let's say, by 01.01.2001. The respondents should therefore explain as to why the petitioner should not be granted the arrears of pay, or a part thereof, for the promotional

post from 01.01.2001 onwards till 08.09.2005. We direct the respondent to file an affidavit on the aforesaid aspect. The affidavit be filed within six weeks.”

2. Pursuant to the above order, the Respondents on 19th November, 2019, filed an affidavit, where *inter alia*, it is sought to be contended that while the Petitioner was due for promotion with effect from 1st February, 1997 in the Grade of Rs. 6500-10500, he was undergoing penalty of ‘withholding of increment without cumulative effect’ with effect from 1st November, 1998 to 31st October, 2000, which was reduced by an order dated 17th November, 2000 to ‘censure’. It is stated that there was no delay in processing the case of the Petitioner by the Respondents and that he could not be promoted earlier than 9th September, 2005, because he was “undergoing various penalties”.

3. In the rejoinder filed, it is clarified that the promotion which has been spoken of was the promotion due to the Petitioner as Chief Booking Supervisor as on 1st February, 1997. Prior to this date, in disciplinary proceedings, a penalty of ‘withholding of increment for three years without cumulative effect’ was imposed on 24th August, 1994. In the revision filed against the said order, the said penalty was cancelled by the CCM (G). In other words, there was no penalty at all operating as on 1st February, 1997. This is clear from the order dated 17th November, 2000 passed by the CCM (G) exonerating the Petitioner from the charge.

4. The Respondents appeared to have confused the above facts with the events subsequent to 1st February, 1997 i.e. issuing of charge-sheets on 16th September, 1997 and 10th January, 2003, both of which were much after 1st

February, 1997.

5. Consequent upon the exoneration of the Petitioner by an order dated 17th November, 2000, he was granted proforma promotion as Chief Booking Supervisor from 1st February, 1997. In its order dated 5th December 2018, this Court had observed “that on the passing of the order dated 17.11.2000 by the competent authority exonerating the Petitioner, promotion order should have been issued for the promotion of the petitioner to the promotional post within a reasonable time, lets say, by 01.01.2001.”

6. Therefore, the only remaining issue concerns the grant to the Petitioner of difference of pay and allowances from 1st January 2001 to 9th September, 2005, the date on which he was actually given charge of the promotional post which had earlier been denied to him.

7. It must be noticed here that the Respondents delayed considering the Petitioner’s review filed on 15th June, 1996, which led him to file O.A. No. 2553/1999. It was pursuant to the directions of the CAT in the said O.A. that the Chief Commercial Manager (CCM) (G) passed the above order dated 17th November, 2000, exonerating the Petitioner.

8. As pointed out by the Respondents, where promotion was denied because of the employee undergoing a penalty, and there is a subsequent exoneration by the departmental authority, Fundamental Rule 29-A would apply. The relevant portion thereof reads as under:

“a) If the said order is set aside, he shall be given, for the period such order has been in force, the difference between the pay to

which he would have been entitled had that order not been made and the pay actually drawn;”

9. The Respondents are in error in relying upon paragraph 228 of the Indian Railway Establishment Manual, Vol. 1, since that would apply when promotion is not granted due to “administrative lapse.”

10. In that view of the matter, the Respondents are now directed to pay the Petitioner the arrears of pay in the promotional post of Chief Booking Supervisor from 1st January 2001 till 9th September, 2005, together with simple interest at 6% per annum on the said sum from 9th September, 2005 till the date of payment, which should not be more than eight weeks from today. In the event that the payment is delayed beyond eight weeks, then additionally, the Respondents would pay simple interest at 9% per annum on the said sum for the period of delay.

11. The petition is disposed of in above terms. The pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 13, 2019

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