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

\+ **Date of Decision:23.01.2019**

% W.P.(C) 9759/2018

MOHAN LAL ..... Petitioner

Through: petitioner in person.

versus

G.N.C.T. OF DELHI AND ANR. ..... Respondent

Through: Ms. Sangita Rai with Ms. Kumud Ray, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 05.07.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 755/2017. The Tribunal has rejected the said Original Application of the petitioner. The petitioner had approached the Tribunal primarily to assail the order No. 6240 dated 28.12.2016 passed by the respondent – GNCTD, whereby the seven advance increments granted to the petitioner were withdrawn and his pay was re-fixed with effect from 15.06.1994.

2. It appears that in the year 1999, the petitioner claimed additional increments on account of his clearing the qualification of ICWA.

3. To press his said claim, he preferred O.A. No. 591/ 2004 before the Tribunal wherein he sought the following reliefs:

> *"(i) to direct the respondent to give, within three months, the benefit of his seven advance increments to the applicant with effect from 1.1.1996 (the date of implementation of the 5th Pay Commission report), by keeping his seven advance increments intact in number also throughout his employment on the analogy of the judgment given by the Hon'ble High Court of Delhi in the case of Suresh Kumar Gupta, and the resultant Pay fixation since 1.1.1996 as the applicant was availing the benefit of the said seven advance increments intact with effect up to 31.12.1995;*
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> *(ii) to direct the respondents to award to the applicant all the benefits consequential in terms of the relief (i) above; and*
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> *(iii) to award reasonable interest and costs also in favour of the applicant."*

4. The Tribunal disposed of the said Original Application on 18.02.2005 and the operative part of the order reads as follows:

> *"9. As is apparent from the Office Memorandum that has even been issued, to which the Delhi High Court has referred to in details,* ***necessarily the claim has to be considered on the touchstone of the fact as to whether acquiring the said higher qualification, the same would contribute to the efficiency of the said officer pertaining to the duties he is to discharge.***

10. ***This question has yet not been considered by respondent no. 1. It is indeed for the applicant to show the nature of duties he is performing as to how the higher qualification acquired by him would improve his efficiency and performance.*** *At this stage, therefore, it would be improper for this Tribunal to express much on this count because sufficient material does not appear to be on the record.*

11. Resultantly, ***we dispose of the present Original Application directing respondent no. 1 to consider the claim of the applicant in light of the aforesaid and take a conscience decision preferably within four months from the date of receipt of the certified copy of this order."*** (emphasis supplied)

5. The said issue was then considered by the Ministry of Home Affairs, Government of India. The views/ comments of the Government of NCT of Delhi were also called for, and vide communication dated 21.04.2004, the Government of NCT of Delhi stated as follows:

"It is stated that generally these qualifications of ICWA/ CS are helpful in discharging higher duties in a department dealing in the accountancy or audit work. In the instant case, Shri Mohan Lal was posted as Project Director (DRDA/DUDA), Daman at the time of sanctioning of advance increments and ***there seems to be no direct correlation between the qualification acquired by him and the duties discharged by him at that time. The officer is presently posted in Sales Tax Department as Dy. Commissioner (vigilance) and there also seems no direct linkage between the qualification acquired by the officer and the duties being discharged by him in his present post. Further the service of the officer is transferable amongst the segments of the Cadre, since the officer belongs to the DANI Civil Service. As such, it would not be appropriate to justify***

the usefulness of the higher qualification acquired by the officer, keeping in view the Generalist/ Administrative nature of duties discharged by the Members of DANICS cadre". (emphasis supplied)

6. The views of the DOP&T were also called for and DOP&T observed as follows:

"(i) Although Shri Mohan Lal has claimed that his qualification would be useful to the Govt. However, as pointed out by the Govt. of NCT of Delhi, ***there is no correlation between the duties and responsibilities to be discharged by a DANICS officer and the Company Secretary-ship/ ICWA qualifications, as the DANICS officers are required to perform generalist factions under the Govt.***

(ii)The minimum qualification required for appointment to the Entry Grade of DANICS as per the Recruitment Rules is Graduation;

(iii) Neither the rules governing the conditions of service for the DANICS nor the scheme of Civil Services Examination, through which direct recruitment to DANICS was/ is being made, provide for any additional benefit for possessing higher qualification; and

(iv) The various court judgements/ precedents quoted by Shri Mohan Lal cannot be applied in his case, as those are case specific and would not have general applicability in absence of specific rules in this regard." (emphasis supplied)

7. In the light of the aforesaid, the Government of India regretted its inability to accede to the request of the petitioner for keeping his seven

advance increments intact, in number, throughout his employment and resultant pay fixation etc. since 01.01.1996.

8. Firstly, we may observe that the order dated 04.08.2005 passed by the Government of India was premised on the comments obtained from the Government of NCT of Delhi vide letter dated 21.04.2004. Pertinently, this order was never assailed by the petitioner and he accepted the same.

9. It appears that while the petitioner was serving as Director PFA, and enjoying all powers of HOD, one of his subordinates was required to officiate as HOD on a particular day i.e. 15.05.2009. On that day, an order was passed in favour of the petitioner by the officiating HOD, whereby he was granted the seven advance increments and his pay was, accordingly, fixed.

10. A perusal of the order dated 15.05.2009 shows that there is not a whisper in the said order, of the order passed by the Government of India on 04.08.2005. It does not even make a reference to the communication dated 21.04.2004 issued by the Government of NCT of Delhi, which has been extracted in the order dated 04.08.2005.

11. *Dehorse* the aforesaid decisions taken by the Government of India and the Government of NCT of Delhi, the order dated 15.05.2009 granted the reliefs sought by the petitioner, which was passed by an officer subordinate to the petitioner, who occupied the position of HOD only on the day that the order was passed.

12. It appears that the petitioner was about to retire when the aforesaid irregularity came to light and, consequently, the Government of NCT of Delhi passed the order dated 28.12.2016.

13. In the aforesaid light, the Tribunal has found no merit in the petitioner's Original Application. The finding returned by the Tribunal reads as follows:

> *"9. It is a matter of record that the applicant was granted seven advance increments by the Daman and Diu Administration on the basis of higher educational qualifications acquired by him. In fact, the increments have also become part of his pay. The respondents also did not withdraw the increments on their own. It is the applicant who has to blame himself for the subsequent events. The applicant wanted the benefit of seven increments to be enhanced on the basis of the revised pay scale of 5th CPC, while keeping the number of increments intact. In other words, he wanted the benefit of this PRC with reference to each of the seven increments, and not on the prevalent pay scale. When the same did not find favour with the administration, the applicant approached this Tribunal by filing OA No. 591/2004. It is here, that the question as to whether the grant of increments to the applicant on the basis of higher educational qualifications was justified or not in terms of the relevant Fundamental Rules, was examined. Thus, the question as to whether the applicant was entitled for the seven increments was left open to be considered afresh, though the sanction of such increments had taken place more than a decade, before the Tribunal passed the order.*
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> *10. In compliance with the direction issued by this Tribunal, the MHA passed order dated 04.08.2005. After discussing various aspects of the matter, the MHA took the view as under:-*
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> > *"5. And whereas the matter was examined in consultation with Department of Personnel & Training and it was noted that-*

(i) Although Shri Mohan Lal has claimed that his qualification would be useful to the Govt. However, as pointed out by the Govt. of NCT of Delhi, there is no correlation between the duties and responsibilities to be discharged by a DANICS officer and the Company Secretaryship/ICWA qualifications, as the DANICS officers are required to perform generalist functions under the Govt.;

(ii) The minimum qualification required for appointment to the Entry Grade of DANICS as per the Recruitment Rules is Graduation;

(iii) Neither the rules governing the conditions of service for the DANICS nor the scheme of Civil Services Examination through which direct recruitment to DANICS was/is being made, provide for any additional benefit for possessing higher qualification; and (iv) The various court judgments/precedents quoted by Shri Mohan Lal cannot be applied in his case, as those are case specific and would not have general applicability in absence of specific rules in this regard."

11. It needs to be mentioned here that not being aware of this development, the applicant filed a Misc. Application before this Tribunal for execution and once the order dated 04.08.2005 was placed before the Tribunal, it was opined that there is satisfactory execution and it was left open to the applicant to prosecute the respondents vis-àvis the order dated 04.08.2005. However, the applicant did not choose to challenge the order dated 04.08.2005.

12. Once the highest authority in the Administration has taken the view that the applicant is not entitled for increments, it is natural that the respondent which is the executing authority takes note of the same. It is no doubt true that there was lapse of time between these two events. Once the applicant has permitted the order dated

04.08.2005 to become final, he has no alternative but to face the consequences that would flow from it. We, do not find any basis to interfere with the impugned order. The OA is accordingly dismissed. A prayer is made by the applicant, in the context of recovery of the amount referable to the increments that was withdrawn from him. The amount is no doubt huge and we would have certainly examined the feasibility of staying the recovery of arrears. However, the record discloses that the applicant himself was instrumental in the benefit of increments being continued to him even after the order dated 04.08.2005 was passed. Our attention was invited to some of the proceedings. The amount is said to have been recovered already. The order dated 04.08.2005 has assumed finality and we cannot take away the consequences thereof, at this length of time."

14. In the aforesaid light, we find absolutely no merit in the petition. In fact, one gets the impression that the petitioner took undue advantage of the situation when he was serving as Director, and procured the order in his favour from the acting HOD, who was, otherwise, his subordinate.

15. Dismissed.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 23, 2019
N.Khanna