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

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Judgment delivered on: 06.10.2022

+ W.P.(C) 3605/2019

AJAY PAL

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sourabh Ahuja, Advocate.

For the Respondents: Ms. Shiva Lakshmi, CGSC with Mr. Ritwik Sneha and Ms. Srishti Rawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 10.12.2018 passed by the Central Administrative Tribunal whereby, the application of petitioner seeking pay and allowances for the period from 15.01.2014 to 08.06.2015 has been dismissed.
2. Petitioner is an ex-serviceman, who was severely injured in the Mine Blast on 07.06.1995 and transferred to Pension Establishment after 17 years of service.
3. Respondent – Ministry of Railways issued an advertisement on



17.12.2010 inviting applications from ex-servicemen, who had retired after 15 years of service and had passed Army Class-I Certificate or equivalent for filling up of vacancies of Helper, Cleaner, Gang-man, Line Man etc.

4. Petitioner applied and gave the preference for being appointed as Gate-Man, Helper, Cleaner and Gang-Man.

5. Initially, petitioner was declared as not successful on the ground that he had not completed 22 years of military service. The rejection was challenged by the petitioner by filing an Original Application before the Tribunal being O.A. No. 2927/2011.

6. The Tribunal allowed the Original Application vide its judgment dated 26.09.2013 with the direction to the respondents to consider the application of the petitioner as physically disabled ex-serviceman in accordance with the rules, and if found eligible be appointed to a suitable post along with all consequential benefits, as his batch mates except back wages. Respondents were directed to comply with the order within a period of two months.

7. Petitioner was called for a medical examination on 20.12.2013. The petitioner was found medically fit on 15.01.2014. On 27.02.2014, petitioner was informed that he had been empanelled for the post of Safaiwala.

8. As noticed hereinabove, petitioner had applied for the post of Gate-Man, Helper, Cleaner and Gang-Man and had not applied for the post of Safaiwala.



9. Petitioner thereafter, filed a contempt petition before the Tribunal contending that the petitioner was not offered the post for which petitioner had applied and found fit. The contempt petition was disposed of on 06.05.2015 when the respondents decided to appoint the petitioner as a Helper. The petitioner was consequently appointed as a Helper with effect from 09.06.2015.

10. The seniority of the petitioner was initially reckoned as of 09.06.2015. The petitioner thereafter gave representations to the respondents to fix his seniority along with his batch mates and requested for release of his pay and allowances for the period from 15.01.2014 (i.e. when he was found medically fit) up to 08.06.2015 (petitioner having been appointed on 09.06.2015 as a Helper). Petitioner contended that he was available and willing to work but was not allowed to work or join duties.

11. Since the respondents failed to accede to the representation of the petitioner, subject execution application was filed before the Tribunal. During the pendency of the proceedings before the Tribunal, the respondents agreed to grant retrospective seniority to the petitioner w.e.f., 23.09.2013 (i.e. the date when his batch mates were appointed).

12. The only issue remaining is with regard to the back wages for the period when petitioner was found medically fit for joining the duties i.e., 15.01.2014 up to the date when petitioner was permitted to join the duties.

13. The contention of the respondents is that since petitioner has only joined the duties on 09.06.2015, petitioner should not be granted



any back wages on the principal of “no work no pay”. It is further contended that pursuant to the orders of the Tribunal, petitioner was posted as a Safaiwala in Moradabad Division against three vacancies which were lying vacant in Moradabad Division. Since petitioner did not accept the same and filed the contempt petition, an affidavit was filed pursuant to the directions of the Tribunal informing that there were posts lying vacant of Gate-Man, Helper, Cleaner in Delhi Division, Ambala Division and Moradabad Division, as some persons who were appointed against those posts had not joined. Consequently, petitioner was given appointment on 09.06.2015 as a Helper in Ambala Division.

14. Learned counsel for the petitioner submits that the petitioner was always ready and willing to join his duties and it is only because of the lapse on the part of the respondents that he was not offered an appointment. He further contends that the respondents have themselves reckoned the seniority of the petitioner w.e.f., 23.09.2013 (i.e. the date when his batch mates have joined) consequently, there is no ground for denial of the back wages to the petitioner w.e.f., from the date that he was found fit.

15. Reliance is placed on the decision of a Co-ordinate Bench of this Court in *Government of NCT of Delhi vs. Rakesh Beniwal* 2014 (213) DLT 748.

16. It is an admitted position that petitioner was found medically fit on 15.01.2014. It is also not in dispute that petitioner had not applied for the post of Safaiwala, for which an appointment was offered to the



petitioner. It is only after the petitioner initiated proceedings of contempt that the post of Helper was offered to the petitioner.

17. In the Original Application, the Tribunal had specifically directed the respondents to appoint the petitioner to one of the posts that he had applied for, if otherwise found fit. The only fitness required post the decision of the Tribunal was the medical fitness of the petitioner, which also the petitioner qualified on 15.01.2014.

18. Respondents had incorrectly offered the post of Safaiwala to the petitioner as petitioner had not even applied for the same. There is no material on record placed by the respondents to show that as on 15.01.2014 there were no posts of Helper available in any of the Divisions.

19. The stand taken by the respondents is that pursuant to the directions of the Tribunal, enquiry was made from various Divisions and it was found that posts were lying vacant in the Delhi Division, Ambala Division and Moradabad Division, since the persons appointed against the said post had not joined.

20. The counter affidavit also does not indicate as to what was the date when those posts became available. Consequently, it cannot be held that as on the date when petitioner was found fit and offered the post of Safaiwala, there was no post of Helper available in any of the Divisions.

21. Clearly, the petitioner who had offered for joining the duties was denied the opportunity of serving for no fault of his.



22. The case of the petitioner is squarely covered by the decision in *Rakesh Beniwal (supra)* wherein, the Co-ordinate Bench of this Court, relying on the decisions of the Supreme Court in *State of Kerala and Ors. vs. E.K. Bhaskaran Pillai* 2007 (6) SCC 524; *The Commissioner, Karnataka Housing Board vs. C. Muddaiah* 2007 (7) SCC 689 and *Union of India vs. K.V. Jankiraman* AIR 1991 SC 2010, held that the principal of no work no pay, cannot be applied as an absolute proposition and has no universal application.

23. The Court in *Rakesh Beniwal (supra)* has further held that if promotion is denied to an employee because of mistake of the administration and due to no fault of the applicant/ employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake.

24. It was further held that delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners (the administration). Consequently, they cannot take advantage of their own delays in declaring result and issuing appointment letter to deny promotion to the respondent (employee).

25. In similar circumstances, in *Rakesh Beniwal (supra)*, this Court directed the appointing authorities to consider the employees for promotion from the date when their immediate juniors were appointed and additionally grant them all consequential benefits and arrears of pay.

26. As noticed hereinabove, the respondents have already granted the benefit of seniority to the petitioner w.e.f. 23.09.2013 and the only



issue is with regard to the pay and allowances for the period 15.01.2014 to 08.06.2015.

27. Petitioner was denied the opportunity to serve the respondents w.e.f. 15.01.2014 when he was found medically fit for no fault of his and it was only on account of the lapse of the respondents that petitioner was denied the said opportunity. Consequently, we are of the view that the Tribunal has erred in rejecting the application of the petitioner for grant of pay and allowances for the period aforementioned only by taking the actual date of joining into account.

28. In view of the above, the impugned order dated 10.12.2018, to the extent, is set aside. The Respondents are directed to grant the entire pay and allowances to the petitioner for the period 15.01.2014 to 08.06.2015 within a period of eight weeks from today.

29. Petition is allowed in the above terms.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

OCTOBER 6, 2022

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