



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: August 23, 2022

Pronounced on: September 01, 2022

+ W.P.(C) 7245/2019

AJIT KUMAR CHOUDHARY

.... Petitioner

Through: Mr. Ankur Chhibber, Advocate

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Amrita Prakash, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J

1. As per the petitioner, he applied for the post of Sub Inspector in Central Paramilitary Organization advertised by Staff Selection Commission through “SSC Combine Graduate Level 2000” (hereinafter referred to as “*SSC 2000 Examination*”). After successfully clearing preliminary rounds, he was declared ‘*Unfit*’ in the Physical Efficiency Test and thus preferred an appeal before the Review Medical Board. Thereafter, the petitioner was declared ‘*fit*’ by the Medical Board of the respondents and after interview, was appointed as Sub Inspector in Central Reserve Police Force (hereinafter referred as “*CRPF*”) in April 2004. Meanwhile, since the final result of successful candidates of SSC 2000 Examination was published in September 2002, they joined



different para-military forces in February-March 2003. The said period has been taken as 01.03.2003 for all purposes by the parties before us, thus we will also be referring the said period as 01.03.2003 as well.

2. Also as per petitioner, though he was appointed in April 2004 but since he had applied for SSC 2000 Examination along with his batchmates, he, along with his batchmates were all entitled to the same seniority from the same date, i.e. 01.03.2003 for all purposes. In any event, the non-joining of the petitioner along with his batchmates of SSC 2000 Examination was due to the fault of the Staff Selection Commission as he was not called for the Review Medical Board in time. Despite thereto, since the petitioner was appointed in April 2004 and joined in May 2004, he was wrongly shown in the gradation list of September 2005, due to which he could not undergo the PC Refresher Course and the SSICC Course for promotion to the post of an Inspector.

3. Also contended that in *Naveen Kumar Jha vs. UOI & Ors.* W.P. (C) No. 3827/2012, a co-ordinate bench of this Court vide order dated 01.11.2012 held that similarly situated personnel who joined CRPF pursuant to the said examination in March 2003 were entitled to seniority to the post of Sub-Inspector in CRPF as per merit in SSC 2000 Examination and as he had already earned promotion to the post of Inspector, he was further held entitled to re-fixation of seniority in the said rank with reference to his revised seniority position in the rank of Sub-Inspector and was considered for promotion to the post of Assistant Commandant as per the revised seniority list. CRPF was further directed to revise the seniority position of the similarly situated personnel in the two ranks and thereafter, consider them along with other eligible persons



for promotion to the post of Assistant Commandant. To be noted that the appeal therein against the said order was dismissed by the Hon'ble Supreme Court vide order dated 12.08.2013.

4. Relying upon *Naveen Kumar Jha (supra)*, the petitioner made a representation to the CRPF on 06.09.2013, which was rejected and reliance thereupon was not treated as a precedent. This proved to be the launchpad for the *first round of litigation, Ajit Kumar Chaudhary vs. UOI & Ors.* W.P.(C) No. 4496/2014 by the petitioner before this Court. Vide order dated 30.07.2014 a co-ordinate bench granted the similar relief to the petitioner as in *Naveen Kumar Jha (supra)*, directing the seniority of petitioner to be re-fixed with reference to his merit position at the SSC 2000 Examination, i.e., with those who joined CRPF pursuant to the said examination on 01.03.2003. CRPF was further directed to re-fix the seniority of petitioner in the said rank with reference to their revised seniority position in the rank of Sub-Inspector, i.e., to consider him for promotion to the post of Assistant Commandant as per the revised seniority list and further to revise his seniority position in the two ranks and thereafter, consider him along with other eligible persons for promotion to the post of Assistant Commandant.

5. Also contended that as the abovesaid issue was no more *res integra* in view of order dated 08.01.2019 passed by a co-ordinate bench of this Court in *Dharam Narayan Borana V. UOI & Ors.* W.P.(C) 11765/2016, the petitioner is entitled to all consequential benefits of his seniority as Inspector.

6. Further contended that despite being promoted to higher rank from the same date when his batchmates were promoted, the respondents showed



his date of appointment as 23.04.2004 instead of 01.03.2003 and did not grant him seniority in the rank of Assistant Commandant as well as notional fixation. Thereafter, though respondents vide letter dated 09.05.2018 reassigned his seniority in the rank of Assistant Commandant with effect from 01.01.2015 but did not notionally fix his pay with effect from the even date, even though his batchmates and juniors were appointed as Assistant Commandant with effect from 12.12.2010. The petitioner, thus made a detailed representation dated 18.07.2018 regarding notional fixation of basic pay w.e.f. 01.03.2003 as per the order dated 30.07.2014.

7. Thereafter the respondents vide order dated 16.04.2019 rejected the representation of the petitioner on the ground that he was not entitled for any back wages or notional fixation of pay in the rank of Assistant Commandant. This proved to be the launchpad for this, *second round of litigation* before us, wherein the petitioner seeks the following reliefs:-

“A. Issue a writ of certiorari for quashing the order dated 16.04.2019 whereby the representation dated 18.07.2018 by the petitioner for entitlement of back wages or notional fixation of pay in the rank of Assistant Commandant was rejected.

B. Issue a writ of mandamus directing the respondents to treat the petitioner as having being promoted to the rank of Assistant Commandant from the date the batchmates of the petitioner were appointed i.e. from 01.03.2003 and accordingly notionally fix the pay of petitioner after granting the increments that have been granted to the juniors of the petitioner and further to grant him Senior Time Scale promotion w.e.f the date the batch-mates were granted the said benefit and grant the same relief as has been granted to similarly situated person by this Hon'ble Court vide order dated



08.01.2019 in W.P.(C) No. 11765/2016 titled as Dharam Narayan Borana Vs. Union of India &Ors and vide order dated 11.02.2015 in the matter of Jay Pratap Singh Vs. Union of India &Ors bearing W.P.(C) No. 8080/2013.”

8. In response, the respondents submit that as the petitioner became eligible for promotion to the rank of Assistant Commandant, on re-assignment of seniority in Gradation list of Inspectors, his chance in SCICC SI. No. 82, 83, 84, 85 and ACPC-1 in the rank of Inspector was also protected on administrative grounds as per para 22 (3) of SO No.01/2015. Reassignment made him eligible for re-assignment of seniority in the rank of Assistant Commandant too. Accordingly, his seniority in the rank of Assistant Commandant was also re-assigned vide Directorate order No.G.II.2/2016-Pers.AC (KW) dated 25.04.2016. But the petitioner seeks back wages, notional fixation of pay in the rank of Assistant Commandant, ante-dating his date of promotion as Assistant Commandant at par with his batchmates and to grant him benefits of Senior Time Scale (STS) from the date on which his batchmates were granted the same. Since the petitioner took over the charge of Assistant Commandant on regular basis with effect from 04.03.2016, he will only be eligible for grant of STS after completion of prescribed span of four years of regular service in the Junior Time Scale as per GoI/MHA letter no.I.-45019/2/2001-Pers-I dated 06.05.2002.

9. In support of the abovesaid, relying upon *State of Haryana vs. O.P. Gupta* (1996) SCC(L&S) 633 and *A.K Soumini vs. State Bank of Travancore* (2003) SCC(L&S) 1091, learned counsel for respondents submits that even in the case of notional promotion with retrospective effect,



the employee was not entitled to arrears of salary as he has not worked till the promotional post as per the principal of “No Work No Pay”.

10. Upon perusal of documents and after hearing the learned counsel for both parties we find that clearly the core issues before us qua (i) re-fixation of the seniority of petitioner with reference to his merit position at the SSC 2000 Examination, i.e., with those who joined CRPF pursuant to the said examination on 01.03.2003 and (ii) qua the re-fixation seniority of the petitioner in the said rank with reference to their revised seniority position in the rank of Sub-Inspector, i.e., to consider him for promotion to the post of Assistant Commandant as per the revised seniority list and further (iii) qua revision of his seniority position in the two ranks and thereafter, considering him along with other eligible persons for promotion to the post of Assistant Commandant, were all answered and since settled vide order dated 30.07.2014 in the first round of litigation and thus the same are final and binding upon the respondents.

11. So the only narrow issue encompassed for adjudication before us is whether the petitioner, after promotion to the rank of Assistant Commandant from the date of appointment of his batchmates, i.e., 01.03.2003, is entitled to back wages and notional fixation of pay along with increments granted to his juniors and further to grant of Senior Time Scale promotion with effect from the date the batchmates were granted and also grant of the same relief as has been granted to similarly situated persons by respondents.

12. As the core issue, germane to the dispute before us already stands adjudicated and settled vide order dated 30.07.2014 (*supra*), there is no occasion for the respondents to withhold any consequential benefits, emoluments, pay, allowances or like by depriving the petitioner of his



legitimate dues without any reason or cause which have been extended to his batchmates who participated in the SSC 2000 Examination with him. Similarly the petitioner is also entitled to notional fixation of his pay after grant of the increments which have been granted to his juniors along with the Senior Time Scale promotion with effect from the date the batchmates were granted the said benefit. More so, whence these are all part and parcel of the post held by any personnel like the petitioner from time to time.

13. Non-grant thereof is amounting to gross discrimination and denial of right to equality enshrined under Article 14 and Article 16 of the Constitution of India. Deprivation thereof by the respondents has led to unnecessary hardships, financial loss and injury to the petitioner for no fault ascribable to him, further, if permitted to stand, will cause grave miscarriage of justice and thus should not be permissible. It is but strange that the petitioner has to approach this Court by way of this *second round of litigation* before us. Once his right has been adjudicated, established and recognized vide order dated 30.07.2014 in the *first round of litigation* then the respondents are duty bound to extend all consequential benefits to the petitioner along with his batchmates from the same date, i.e. 01.03.2003.

14. To avoid any confusion in future on the part of any party, we deem it fit, proper and appropriate to clarify by adding that order(s) of the kind dated 30.07.2014 in the *first round of litigation* passed by a Court of Law mean, include and entail that the such personnel is/are entitled to all consequential benefits including but not limited to promotion, seniority, emoluments, pay, allowances or like as the case may be, save and unless there is any impediment or challenge thereto. Any order of such kind does not leave



even a whiff of air to pass through. Such cases are open and shut with nothing left to ponder and/ or adjudicate.

15. The factual matrix and the issue involved in this writ petition have already been settled in *Naveen Kumar Jha (supra)* [para 12, 13], *Jay Pratap Singh (supra)* [para 25, 26], *Durga Nandan Srivastava vs. Union of India & Ors.* W.P.(C) 4348/2014, *Neyaz Ahmad vs. Union of India & Ors.* W.P.(C) 5530/2017 [para 4], *Dharam Narayan Borana vs. Union of India & Ors.* W.P.(C) 11765/2016 [para 17-21] as similarly situated personnel like the petitioner before us have already been extended similar reliefs. We agree with the position of law in the judgments cited by the learned counsel for petitioner before us. The aforesaid are not *judgments in personam* but are *judgments in rem*. The respondents cannot seek to distinguish the petitioner with the similarly situated personnel like him and instead ought to grant them parity, i.e., the same reliefs. Reliance is placed upon *Telecommunication Engineering Service Association (India) & Anr. vs. Union of India & Anr.* 1994 Supp (2) SCC 222 wherein it is held as under:-

“8. They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them and the question is only whether they would be entitled to back wages from the date of notional promotion”

16. Reliance is further placed upon *Ramesh Kumar vs. Union of India & Ors.* (2015) 14 SCC 335 wherein it is held as under:-

“14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an



employee who has been denied promotion earlier. So far as the monetary benefits with regard to retrospective promotion are concerned that depends upon case to case. In State of Kerala v. E.K. Bhaskaran Pillai [(2007) 6 SCC 524 : (2007) 2 SCC (L&S) 487] , this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case-to-case basis and in para 4, it was held as under: (SCC p. 527)

“4. ... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle ‘no work no pay’ cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”



15. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 1-1-2000 with the ante-dated seniority from 1-8-1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

17. On the other hand, the reliance upon *State of Haryana (supra)* and *A.K. Soumini (supra)* by the respondents bear no fruit and cannot come to their aid as the issue involved therein was simpliciter relating to arrears of salary for the period during which the personnel admittedly had not worked and the notional promotion with suitable revision given was held more than sufficient to meet the requirements and there was no fault on the part of the respective employers therein unlike in the present case wherein there was a fault, i.e., delay on the part of the respondents in conducting the Review Medical Board of the petitioner which led to his late appointment whereas in the present writ petition the respondents are bound by the order dated 30.07.2014 passed in the *first round of litigation* as the same has not been varied or set aside till to-date, in fact, on the contrary whence the respondents have themselves acted in adherence thereto and granted benefits



to the petitioner. Taking an overall overview of *State of Haryana (supra)* and *A.K. Soumini (supra)* relied upon by the respondents we find that they are distinguishable as they were passed under the peculiar facts and circumstances involved therein and are thus not applicable to the facts of the present writ petition before us.

18. In any event the principle of normal rule of “No Work No Pay” depends upon the facts and circumstances of each case and is not a rule of thumb. The said principle is not akin to a mathematical theorem which has to end as “Hence Proved” and as there is no straight jacket formula applicable thereto. Reliance is placed upon *Gowramma C (dead) by LRs vs. Manager (Personnel) Hindustan Aeronautical Limited & Anr.* Civil Appeal Nos. 1575-1576 of 2022 wherein it is held as under:-

“9. It is true that no work no pay is a principle which is apposite in circumstances where the employee does not work but it is not an absolute principle, which does not admit of exceptions. In this regard we may notice that in one of the judgments relied upon by the respondents, namely, State of Kerala v. E.K. Bhaskaran Pillai 2007 (6) SCC 524 which, in fact, dealt with issue as to monetary benefits when retrospective promotion is given, this Court held:

“... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the



matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.””

19. Reliance is further placed upon **Ashok Kumar Thakur vs. Union of India & Ors.** (2011) 12 SCC 793 wherein it is held as under:-

“3. Whether an order can be treated as a precedent would depend upon the fact situation. In fact, we have stated that though the normal rule of “no work no pay” could have, in law, been applied, in view of the special features of the case, we had directed payment”

20. The acts of the petitioner are not relating to any delay whereas the acts of the respondents are relating to a continuing wrong causing continuous loss, harm and injury to the petitioner since inception. Further, as the issue involved before us had primarily been settled vide order dated 30.07.2014 in the *first round of litigation*, we deem it appropriate to grant the reliefs sought by the petitioner in the present writ petition, more so as the said reliefs are neither effecting any third parties nor are raking open any dead issues. The petitioner is further entitled to the reliefs sought as there is no fault on the



part of the petitioner in the present case and the delay, if any, in his appointment solely rests upon the shoulders of the respondents. The petitioner cannot be made to suffer for no wrong attributable to him, as such, cannot be denied extension of his rightful dues/ benefits flowing from his seniority and promotion by the respondents.

21. Thus, we allow the present writ petition and direct the respondents to treat the petitioner as having being promoted to the rank of Assistant Commandant from the date his batchmates were appointed i.e. from 01.03.2003 and accordingly notionally fix his pay after granting the increments which have been granted to his juniors and further to grant him Senior Time Scale promotion with effect from the same date of his batchmates when they were granted the said benefit and grant the same relief as has been granted to similarly situated persons as the petitioner. We further direct that the respondents, shall take appropriate steps to calculate and release the amount due with simple interest @ 6% per annum from the actual date it became due, i.e., 01.03.2003 to the petitioner, within a period of *four weeks* from today to comply with the aforesaid directions.

22. Under the facts and circumstances of the present case before us, we clarify that the petitioner will not be entitled to grant of back wages as he was not performing any duty of any senior post and had not in fact been granted promotion. In view thereof the order dated 16.04.2019, whereby the petitioner's representation dated 18.07.2018 for entitlement of back wages or notional fixation of pay in the rank of Assistant Commandant was rejected stands quashed in part as the petitioner is not held to the grant of back wages.



23. The present writ petition is thus allowed in the above terms. Parties to bear their own costs.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

SEPTEMBER 01, 2022/So

