

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 6th of February, 2023
Pronounced on 17th April, 2023**

CWP No.7890 of 2014 (O&M)

Balwinder SinghPetitioner

Versus

Punjab State Power Corporation and anotherRespondents

CWP No.12752 of 2014 (O&M)

Balwinder SinghPetitioner

Versus

Punjab State Power Corporation and anotherRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sandeep Bansal, Advocate and
Mr. Anubhav Bansal, Advocate
for the petitioner.

Ms. Ravisha Mahajan, Advocate for
Mr. Mukul Aggarwal, Advocate
for the respondents-PSPCL.

PANKAJ JAIN, J.

These are the two writ petitions filed at the behest of the petitioner. By way of CWP No.7890 of 2014, the petitioner is seeking to enforce his claim on the promotional post of AAE from the date his juniors were promoted in the year 2008. In CWP No.12752 of 2014, the petitioner has impugned orders dated 25th of July, 2008, 26th of June, 2014 and that 2nd of December, 2014 whereby punishments have

been imposed upon him.

2. The dispute between the parties has a chequered history. Petitioner came in employment of respondent-Corporation in the year 1991. It is claimed that despite being fully eligible and senior the petitioner was not promoted as AAE whereas persons junior to him stand promoted vide order dated 14th of December, 2007. Petitioner approached this Court by way of CWP No.22980 of 2011 *qua* his claim for promotion which was disposed off vide order dated 12th of December, 2011 in the following terms :-

“The case of the petitioner as made out in the present petition is that the petitioner is working as J.E. since 9.4.1991 and he was at No. 6282 of the seniority list. All JEs upto the seniority No. 6283 were given promotion and the petitioner was not promoted because of a complaint, wherein, inquiry was conducted by the Vigilance. As per the report submitted by the Vigilance, some irregularities were found to be committed by the defaulter employees, which have been brought out in the complaint. Learned counsel for the petitioner contends that case of the petitioner was not properly considered for promotion as only 13 points were required for promotion and on the basis of ACR, the bench marks of the petitioner comes to 15.86 as on 14.12.2007, whereas, the officials of the Department has miscalculated his bench marks as 12.84. Learned counsel for the petitioner submits that the petitioner has made various representations as well as legal notice to the respondents but no action has been taken neither on the representation nor on the legal notice.

Learned counsel for the petitioner submits that the petitioner would be satisfied in case directions are issued to the respondents to decide his legal notice (Annexure P-3) annexed

with the petition.

In view of the limited prayer of the petitioner, the present petition is disposed of with a direction to the respondents to look into the legal notice (Annexure P-3) annexed with the petition and consider the case of the petitioner in accordance with law within a period of two months from the date of receipt of copy of this order. In case, the petitioner is found entitled for promotion on the basis of facts as mentioned in the legal notice, the necessary relief be granted to the petitioner within a period of one month thereafter and in case the petitioner is still aggrieved by any action of the respondents, he is at liberty to challenge the same.

Disposed of accordingly.”

3. Pursuant to these directions an order was passed by the respondents explaining denial of promotion to the petitioner in the following terms :-

“From

The Superintending Engineer/Personnel,
Personnel Section (T), PSPCL, Patiala.

To

Sandeep Bansal, Advocate
House No 568, Sector 16-D, Chandigarh.

Memo No. 2232/NG-5/1365 Dated 08.02.2012.

Subject: Legal Notice regarding promotion of Shri
Balwinder Singh from JE to AAE.

Reference your letter No. Nil dated 20.09.2011.

In reference to letter aforesaid, it is written that the case for promotion of Shri Balwinder Singh (JE) s/o Shri Joginder Singh, seniority No. 6282, was considered in month of 07/2008

and vide this office letter No. 139969/83 dated 17.07.2008, the employee was put into deferred list and circulated so as the discrepancies in his record be removed and the employee be considered for promotion again. Apart from this the employee was again considered for promotion in month 6/2011. At that time, the employee had requisite Bench for promotion for consideration from JE to AEE but his case had to be deferred as his suspension period from 26.07.2008 to 07.12.2008 was not regularized and the information to this effect was given vide this office letter no. 9140/51 dated 30.06.2011 to concerned employee/office.

In addition it is also informed that Charge Sheet No.121 dated 07.02.1996 is pending against the employee, which is under consideration in the office of Chief engr/Distri North, the decision of which is to be taken by Chief IR and Welfare Department, Patiala.

This is for your information and necessary action please.

Sd/- Under Secretary/Zone(T)
For the Superintending Engineer/Personnel,
Personnel Section (T),
PSPCL, Patiala”

4. So far as the claim of the petitioner in CWP No.7890 of 2014 for promotion from JE to AEE is concerned, the same primarily stands redressed vide order dated 18th of November, 2015 and that dated 23rd of March, 2018 whereby the petitioner has been granted deemed date of promotion w.e.f. 3rd of January, 2008 i.e. the date when his junior namely Pardeep Kumar, J.E. Son of Sh. Mangu Ram was granted promotion. However, counsel for the petitioner would still agitate regarding denial of monetary benefits.

5. The question w.r.t. entitlement of the petitioner for monetary benefits from the deemed date of promotion shall be answered in the later part of the judgment.

6. The second writ petition preferred by the petitioner i.e. CWP No.12752 of 2014 involved an interesting tale. The petitioner was chargesheeted on 7th of February, 1996 involving following charges :-

“Charge sheet No: 121 Dated 07-12-1996 against engineer Balwinder Singh J.E. Date of Birth: 07-06-1957 under Distribution, City Division, Kapurthala.

When he (Engineer Balwinder Singh J.E. S/o Joginder Singh) was posted at Khera Mandir Sub-Division as J.E. from 09-04-1991 to 21-10-1995, then he has been found blameworthy for following negligencies and improprieties.

1) Shri Resham Singh S/o Shri Munshi village Sidhwa applied for one motor connection of 1.572 kilowatt through letter no. 1476/AT dated 12/2003, and given to sub-division officer Khera Mandir. The Legal heirs of the above said applicant complained to the Sub-Division Officer Khera Mandir that till date no demand letter has been issued to them nor they have given any test report to the office and their father Shri. Ramesh Singh had expired in October 1990. From the enquiry of the above said case it was found that one demand letter (1830-A) was issued from Khera Mandir sub-division on 12-10-1994 in the name of Shri. Resham Singh. This demand letter was accepted by Shri. Balwinder Singh against the rules of the board. There after one revised demand letter (2103 A Dated: 09-11-1994) was accepted by Shri. Balwinder Singh J.E. on his own. In the above said case Shri. Balwinder Singh J.E. without passage of the test report, got

the material from the store and one H.T. Line of 9 Spanes was erected. The work of T/F and L.T. Lines was done at some other place rather than at proper place. Similarly one blank line was got vacated and it was placed on the single place. Thus one illegal line was got vacated and one legal connection was tried to be given which is a fraud with the Board and the Applicant.

2) The under mentioned work of connections were got done by Shri Balwinder Singh J.E. from 100 K.V.A. Govt. Tubewell T/F and 63 K.V.A Tarsem Singh T/F11

- 1) Shri Jarnail Singh 1 village Kulah (A. And A. 7995)
- 2) Shri Jarnail Singh 1 village Kulah (A. And A. 7995)
- 3) Shri. Kapur Singh village Kular (A. And A. 8003)
- 4) Shri. Ajaib Singh village Kular (A. And A. 8011)

For enquiring the above said works, one committee, constituted by Senior Executive Engineer/City Division Kapurthala and found the under mention mistakes.

(a) Serial Number 1 was overlooked and H.T. Line of other 3 connections was issued. More over the cable wire of serial no 4 was laid whereas no pole was put at serial no 1.

(b) The work of Serial Number 4 was completed and after putting cable, theft of electricity was ecouraged.

(c) For Serial Number 2 and 3, the map so prepared had shown the length 50m and 11m less than the original in order to give benefit to the applicant.

Apart from this. It was also found that before issuing the connection to serial number 3 T/F, 79 B.H.P. Load was running and he from the motor of Shri. Nirmal Singh which was of 3 B.H.P. and connected to his adjoining 63 K.V. of village T/F so

that connection could be issued to Shri. Kapur Singh (serial number 3). Thus in measurement, wrong map was shown.

3) Shri. Balwinder Singh J.E. misappropriated the goods of the amount of Rs. 1,53,894 of the board to include conductor pole and other things, which he dug out without permission and shifted from one place to another unofficially and details of which are given in Annexure (a) and 3(a). Annexures are separately attached.

4) Shri. Balwinder Singh J.E. supplied the electricity to the under mentioned motors illegally.

(a) Two illegal motors were found running in the fields of Karnail Singh. One motor was given electricity by him through 63 K.V.A. of Tarsem Singh T/F by raising L.T. Line of two spans and second motor was given electricity supply by raising L.T. Line of four spans through 63 K.V.A. Ajit Singh T/F. As per aforesaid, he by using the goods of the board, illegally and without any permission, supplied the electricity to two T/F illegally and got the electricity theft done.

(b) It was found that in village Kular in the field of Ajaib Singh 63 K.V.A. T/F to the field of Hazara Singh T/F and conductor was put at the last point of the line so that motor can be run illegally. Length of the LT line is 1200 meters which is against the rules of the board. Some new conductors were found and some were old. however the connection was issued in the self-material connection. It transpires that he had misappropriated the goods of the board and used the goods of the board for self-material case.

(c) On 01-08-1995, complaint staff found one running motor at Dera Santokh Singh village Aiyan, and the same

was removed by Complaint Staff, but he did not take any action against the same.

(d) One motor of 7.5 horse power of Gurmeet Kaur (Khusropur) feeder was found running illegally. In the same way in the fields of Gurmeet Kaur village Aiyan, one double L.T. Line was found to be laid upto the tube well room and was used to run the motor. Both these above said wires were removed by the complaint staff of village Kular on 01-08-1995 at the spot. On 29-09-1995 the owners of the above said motors showed two passbooks A.P.K. 5/645 and A.P.K. 3/236 which were forged and both the owners disclosed that both the passbooks have been issued by Balwinder Singh J.E. The location of these connections was changed by him in the concerned ledger.

(e) He supplied illegal electricity through L.T. Line to the motor of Sohan Singh S/o Rala Singh village Sidva which was of 5 C.H.P.

(5) Balwinder Singh J.E. shifted the under mentioned lines/connections without any permission and shifted as per his wishes.

(a) The six spanes of 100 K.V.A.. T/F from village Kalva to last but one pole from which one L.T. Line 25 K.V.A. T/F goes to Karnail Singh wala T/F, were shifted to the main line.

(b) One L.T. Line 100 K.V.A. going from village Kalva enroute from the top of house of Arjan Singh Fauji to Sardar Jaswant Singh T/F was shifted two poles back.

(c) Tubewell connections which were on the name of Shri. Karnail Singh and Mohinder Singh S/o Shri Jagir

Singh, which earlier used to run from 63 K.V.A. Mohan Singh T/F village Aiyan and same were shifted to 25 K.V.A. Santokh Singh T/F. These motors were having wire of three spane with a pole which was miss appropriated.

(di) The lines of Tubewell connections from 25 K.V . A. Karnail Singh T/F village Kalva/Aiyan to Santokh Singh and Sibani etc, were removed from there and hidden. This line was of 10 spanes and this tubewell connection of 25 K.V .A. was given to Santokh Singh T/F.

(e) 3 spane L.T. Line of 25 K.V .A. which was going from Karnail Singh T/F village Kalva/Aiyan to Shri. Mohan Singh's connection, were removed and miss appropriated and the motor was run by putting the cable wire.

(f) Electricity supply to the farm of Inder Singh S/o Mandeep Singh was given earlier through 100 K.V.A. Chaki Wala T/F village Kular. He put one additional spane and shifted the motor illegally.

(6) Shri. Balwinder Singh J.E. prepared wrong maps in the cases of self-material.

(a) He prepared estimate of tubewell connection of Shri. Bhagwan Singh S/o Bhal Singh of village Khusropur and showed 100 K.V .A. T/F in the map whereas at the spot, it was of T/F 63 K.V.A. In the same way L.T. Line of 1 spane was shown in the map where as on the spot 2 spane L.T. Line was required at the spot.

(b) In the estimate prepared by him for tubewell connection of Sardar Sohan Singh S/o Kartar Singh

village Kular, he showed L.T. Line of 1 spane in the map where as at the spot it was of 2 spane.

In this way, in the above said works, he showed higher capacity of T/F and less number of L.T. Lines in the maps and tried to cause financial loss to the board.

For the above said irregularities and mistakes, employee is found to have committed the violation of Rule 4 of the Employees Conduct Regulation 1971 and he(Balwinder Singh J.E.) is liable for disciplinary action as per Regulation 8 of the Employees (P and A) 1971 Regulations read with Regulation 5 (i to ix).”

7. Inquiry was conducted. Petitioner was ordered to be dismissed from service vide order dated 25th of July, 2008. Petitioner preferred departmental appeal. Order of dismissal passed against the petitioner was kept in abeyance and he was ordered to be reinstated vide order dated 2nd of December, 2008 in the following terms :

“Vide this office order, the appeal filed by Sh. Balwinder Singh JE.(Now dismissed), after consideration from appellate authority and in view of Affidavit given by Sh. Balwinder Singh JE.(Now dismissed), while postponing the implementation of office order No. 448 dated 25.07.2008 of the Chief Engineer/ North Zone, Jalandhar, for getting detailed enquiry in this case, he is reinstated on duty on following conditions and he is posted under Chief Engineer/Distribution(Border), Amritsar on any Non Public dealing post :

- 1) He will work on preliminary pay during regular enquiry.
- 2) He will get his MAS accounts finalized.
- 3) If the amount of Rs. 1,53,894/- is found to be

correct, then he will make good the loss.

- 4) He will be agreeable to the final decision given by the competent authority of the Board.
- 5) The employee shall fully cooperate during detailed enquiry.

Apart from aforesaid, for detailed enquiry on the charge sheet No. 121 dated 7/2/1996 issued by Chief Engineer/North Zone, Jalandhar against Sh. Balwinder Singh JE,(Now dismissed), Er P K Bansal, Chief engr/HRD PSEB, Patiala (Previously Dep Chief Engr/Energy cons, PSEB Patiala) is appointed as Enquiry Officer and the PA attached to Chief engr/HRD PSEB, Patiala is hereby appointed as presenting officer under PSEB Employees Punishment and Appeal Rules, 1971.”

8. On further inquiry as ordered by the appellate authority, only Charges No.2, 4(a), 4(c) and 4(d) were found to be proved. The petitioner was exonerated of other charges. The inquiry report was placed before the appellate authority. On 26th of June, 2014 following order was passed :

“5) Whereas this office vide o/o No. 83 dated 17.02.2014 had appointed Er Harnek Singh(Retired Chief engr) to enquire into the charges as per Charge Sheet against Sh. Balwinder Singh JE. The enquiry report was presented through proper channel to Director administration for consideration/decision vide this office letter No. ENG-10(61)08. The case of the employee was presented to appellate authority for his consideration. After considering the Enquiry report, the following decision is given:- Sh. Balwinder Singh JE is responsible for laying LT lines in his area and got the illegal Motors run and thus caused huge financial loss to the Board,

therefore, a cut of 10% is imposed in the pension of this employee forever. Apart from this after measuring the accounts of the employee, if any shortcoming is found in the material, then the same be recovered from the employee.

Thus, the punishment as awarded by the Punishing authority vide office order No. 448 dated 25.07.2008 is maintained and the appeal of the employee is ordered to be dismissed.”

9. The said order was further modified vide order dated 2nd of December, 2014 to the following effect :

“When Shri Balwinder Singh, JE was posted under City Division/ 08, Kapurthala, a Charge Sheet No. C-121 dated 07.02.1996 was issued to him with the following charges:-

"He erected illegal lines and while granting tubewell connections, he also grossly violated the rules of the Board. While preparing site plan in the estimates, present running load was not shown. Also, the in the site plan, the location of the transformer was shown wrongly. The material of the Board such as conductors, poles etc. were misappropriated, on account of which Board suffered a financial loss of Rs1.53 lacs. He issued unauthorised tubewell connections. Also, unauthorised shifting of LT, HT lines were done. Tubewells were also shifted unauthorisedly. An attempt was made to cause financial loss to the Board by making false estimates in self finance schemes."

2. The employee submitted his reply to the charge sheet.
3. After considering the reply of the employee, comments of the field officers, departmental inquiry report and other facts, Chief Engineer, Jalandhar, being the competent authority, passed the orders of dismissal of the employee

after holding him guilty. Accordingly, office order No.448 dated 25.07.2008 was issued.

4. The employee filed an appeal against the aforesaid office order No.448 dated 25.07.2008.
5. After receiving approval from the competent authority, vide office order No. 739 dated 02.12.2008, the employee was reinstated with certain conditions and was transferred to a non-public dealing post.
6. Vide office order No.83 dated 17.02.2014 Engineer Harnek Singh (Retired Chief Engineer) was appointed as an Inquiry Officer for inquiring the charges as mentioned in the charge sheet against Shri Balwinder Singh, JE. Vide file No. ENG-106(61)08, inquiry report was submitted before Director Administration for a decision of the case. The appeal case of the employee was put before the Appellate Authority, for its consideration. After perusing the inquiry report, the following order is being passed:-

"Shri Balwinder Singh JE, by running illegal motors by putting LT lines in his area, has caused huge financial loss to the department. Therefore, a cut of 10% in the pension of the employee is imposed forever. Besides this, if some shortage is found in the material, the same would be recovered from the employee".

This is being issued with the approval of the competent authority.

10. Thus, after the petitioner retired on 30th of June, 2015 now he is facing the aforesaid punishment of cut of 10% in pension which has been ordered to continue forever.

11. Counsel for the petitioner submits that the punishment is

disproportionate to the misconduct alleged against the petitioner and thus it would be a case which would warrant interference by this Court while exercising writ jurisdiction under Article 226/227 of the Constitution of India.

12. In order to adjudicate upon proportionality of the punishment *viz-a-viz* charge levelled against the petitioner it will be apposite to peruse the findings on charges which have been proved against the petitioner. The same read as under :-

“Charge no 2

For Charge No. 2, one Site committee was constituted and members of which were Er. T S thind, Er. S S Josan, Er O P Garg and all got recorded their statements.

Engineer OP Garg has also submitted in his statement that works at ser No. 2,3 & 4 has been done as per seniority and work No. 1 has not been done as per seniority. As per report given by the constituted committee, the consumers of No. 1 connection fields, were founf from No. 5 Pole site and other items were not at site. As per Annexure E along with Committee report, for starting the four connections, more material has been demanded. As per which for all four connections, still some thing or other is required, which makes it clear that when on 11.11.1995, the report was presented, on that day, the connection work of all four connections was incomplete. Thus till that time, no connection was released till that time. It transpires that the then Sub Divisional Officer passed the SRs of Sr No. 1 to 4 together and all works started together. The works connection Nos 2,3 & 4 were nearing completion at earlier point of time. Meanwhile Sh. Balwinder Singh absented from duty. Whereas no connection

was released till that time. Therefore it cannot be said that connections have been released breaking the seniority.

As per report of the committee, the material was shown less than required at the site as per the estimates of the consumers. May be that the difference shown is minimal but at a later stage, after the measurements of the material at spot, the estimates could have been modified, still at the preliminary stage, it was the responsibility of Er. Balwinder Singh to have got the correct estimates, therefore he is responsible for not preparing correct estimates as per correct measurements.

The cable was laid to Ser No 4 Ajaib Singh, but at the time of checking by committee, no theft was taking place and there is no such document produced. Apart from this, as per site report, there is some work left for all connections.

Similarly at ser No. 3, before giving Tubewell connection from earlier Transformer to earlier waning connection of Nirmal Singh 3 BHP 63 KV, it was the responsibility of the employee, because he did not prepared the case correctly as per site position and wrong map has been shown in the Estimates, for which he is responsible.

Charge no 3:

As per his charge, the employee is charged for shortage of Rs 1,53,894/- and which has been shown as having dismantled the lines from fields and misappropriating them. Annexure 3(a) with the charge sheet shows these lines and the details of material have been given in Annexure 3(b). No inquiry report based on which this shortage has been detected, has been produced and apart from details of lines and material, no other document has been presented. Er. O.P Garg, who appeared as

witness for this Charge, has stated that inquiry in this regard was conducted by the then Executive Engineer Kamboj, who expired lateron. No record/report was produced regarding this enquiry because the Record Keeper is also shown to have died and no record was available in the office. So this charge is not proved because of lack of convincing evidence.

Charge No 4-(a), (c) and (d).

Charge No 4 (a) is regarding running motors illegally. Engineer O P Garg appeared regarding this Charge and for Charge No. 4(a), two number AP motors were made functional after laying lines for LT spans. In this regard Er O P Garg has submitted in answer to question No. 45 that enquiry regarding this was conducted by him and that he found motors running illegally during his inquiry and caught the same. So the concerned JE is responsible for the illegal laying of lines for running motors, may be that there is no concrete evidence that he is involved in laying of illegal lines, but for running of such illegal motors in his area and he being incharge of his area, is fully responsible for that.

According to charge No 4 (c) complaint staff caught illegal running motor and took off the cable and thus as per charge 4(d), the 7.5 Horse Power motor of Gurmeet Kaur was run after laying L.T line. For these illegal motors, the consumers were also issued fictitious Pass books and the entries (wrongly typed as netries) were being made in ledgers and billing was also done. May be that the responsibility of entry in ledgers and billing is of concerned ledger clerk/Goods accountant, but these kind of works were being done in the area of concerned JE. Therefore he cannot go scot free, because he has the responsibility of inspecting his area by going in the field. Therefore for these charges, the employee is responsible for being the JE of the area.”

13. The charges levelled against the petitioner primarily relate to negligence and there is no finding that the petitioner was involved in any activity which led to financial loss to the Corporation.

14. In view of the aforesaid 10% cut in pension that too for all times to come would definitely be highly disproportionate to the charges levelled against the petitioner. Resultantly, the same is ordered to be set aside beyond two years from the date of order of punishment. That means 10% cut in pension would be applicable for 24 months.

15. Coming on to the claim of the petitioner for monetary benefits for the time he was denied promotional post, the precise question regarding claim of an employee to monetary benefits where he has been found to be entitled to retrospective promotion came for consideration of Apex Court in **CA No.3041/2010** titled as '**State of U.P. and others vs. B.B.S. Rathore**' decided on 24th of July, 2014 wherein it was held that :

“The question of payment of salary on notional promotion was considered by this Court from time to time. In *State of Haryana & Ors. Vs. O.P.Gupta & Ors.*, (1996) 7 SCC 533, the Court observed and held as follows:

"6. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an

order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1.1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis.

7. This Court in *Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr.* [(1989) 2 SCC 541, at P. 556, para 19] considered the direction issued by the High Court and upheld that there has to be "no pay for no work" a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in *Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha* [(1990) 3 SCC 472 at

p. 482, para 16]

8. It is true, as pointed out by Sri Hooda, that in Union of India vs. K.V. Jankiraman [AIR 1991 SC 2010] this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

Thereafter, the said issue was considered by three Judges Bench of this Court in A.K.Soumini Vs. State Bank of Travancore & Anr., (2003) 7 SCC 238. In this said case, this Court held :

"8. In State of Haryana & Others vs. O.P. Gupta & Others [1996(7) SCC 533], this Court had an occasion to deal with a claim for arrears, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this Court

followed the earlier decisions reported in Paluru Ramakrishnaiah vs. Union of India, (1989) 2 SCC 541 and Virender Kumar, G.M., N. Rlys. Vs. Avinash Chandra Chadha. [(1990) 3 SCC 472]

9. So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6 1/2 at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference.

In case of Union of India Vs. B.M.Jha (2007) 11 SCC 632, this Court took a similar view which is as follows:

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of State of Haryana & Ors. v. D.P. Gupta & Ors., [1996] 7 SCC 533 and followed in A.K. Soumini v.State Bank of Travancore (2003) 7 SCC 238 has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on the case of State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors., (1999) 4 SCC

181. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.5.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principal Bench."

The Court in the case of State of Haryana & Another vs. S.K. Khosla & Others, (2007) 15 SCC 777 held that:

"2. Heard the learned counsel for the appellants. He brought to our notice a decision of this Court in State of Haryana v. O.P. Gupta whereunder in respect of an

identical matter arising out of similar proceedings of even date this Court while setting aside the decision of the High Court allowed the appeal at the instance of the State and held that in the circumstances noticed in that case which are identical as well in the cases before us, the question of payment of arrears of salary with retrospective effect from the notional dates does not arise since, indisputably the respondents had never worked during that period in the promotional post, the settled principle in such cases being, "no work, no pay". The said principle applies with equal force to the cases before us too. Applying the ratio of the said decision these appeals are also allowed and the orders of the High Court are set aside and the writ petitions before the High Court shall stand dismissed. No costs."

The following principles emerge from the aforesaid judgments:

- (i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.
- (ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.
- (iii) The principle of "no work, no pay" is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is entitled to the arrears of salary.

This principle has no application to the cases where the claims for promotion are considered in accordance with the rules and the promotions are made pursuant thereto."

16. Resultantly when viewed in the light of afore-stated principles laid down by Apex Court, the petitioner cannot be denied monetary benefits of promotional post. Petitioner was always willing to work and was denied opportunity for no fault on his part but because the employer took unreasonable time to conclude proceedings. Thus once the respondents themselves have found petitioner entitled for promotion from retrospective date, he cannot be denied monetary benefits.

17. Consequently, the Writ petitions are allowed in the aforesaid terms.

18. Pending application(s) if any shall also stand disposed off.

19. A copy of this order be kept on the files of other connected case.

April 17, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No