

03.12.2024
(D/L-8)
Ct. No.4
(B.K.N.)

W.P.C.T. 327 of 2024

The Union of India
Service through the Secretary,
Ministry of Defence & Ors.
Vs.
Shri Sanjib Das

Mr. D. N. Roy, Sr. Counsel,
Mr. Rajesh Kumar Shah,
Mr. Saurav Halder
...for the Petitioners/Union of India

Mr. Subhasish Majumdar,
...for the Respondent

1. Heard learned counsel for the petitioner as well as the learned counsel for the respondent.
2. The petitioner was working as a 'Junior Works Manager' when he was asked to submit his show cause as to why he did not submit mortgage property paper and other papers after obtaining the house building advance from the department.
3. The authorities alleged contravention of the rules in this regard and he was served with a charge memo dated 14th September, 2017 in this connection.
4. The petitioner assailed the departmental proceedings instituted on the basis of the charge memo before the Central

Administrative Tribunal. O.A. No. 91 of 2020 was filed by him. After considering the stand of the parties therein the Tribunal disposed of the O.A. in the following terms:

“9. Having noted that the advance was drawn as utilized for the purpose it was drawn, and that in terms of HBA rules, the applicant only made himself liable to pay penal interest which also stood already realized, we hold initiation of proceedings as unwarranted. In the aforesaid backdrop, the proceeding initiated against the applicant is quashed with liberty to the respondents to act in accordance with law.”

5. The proceedings against the petitioner was thus dropped by the authorities vide an office order issued on 2nd August, 2021. Thereafter the authorities have also granted the petitioner the benefit of promotion to the post of J.W.M. Senior Grade (S.G.) which was due to the applicant with effect from 13th September, 2018 being the date on which it was granted to other similarly situated.
6. The said promotional benefit was by virtue of D.P.C. dated 5th February, 2020 wherein the findings of the D.P.C. was kept in a sealed cover since at that point of time the proceedings against the petitioner arising out of charge memo dated 4th September, 2017 was still pending.
7. The order granting the benefit of promotion is dated 25th August, 2021. It grants the

petitioner the benefit of promotion with effect of 13th September, 2018 on a notional basis though he has been allowed the benefit of pay fixation based on his promotion with effect from 13th September, 2018 as well as seniority in the grade of Junior Works Manager (S.G.) from the date (13th September, 2018), the actual monetary benefits have not been given to him.

8. The petitioner aggrieved by such deprivation has approached the Tribunal once again. The original application filed by the petitioner bearing O.A. No. 1467 of 2021 has been decided in the following terms:

“11. After going through the entire facts and rule position, we are of the opinion that when the applicant was completely exonerated from the charges during disciplinary proceedings and not a single punishment was imposed upon him during the relevant period, he should not be deprived of any benefit including the salary and arrears of promotional post. Thus, the stand of the respondents in denying the benefit of pay and allowances on promotional post of JWM 9SG) is contrary to the law. Hence, the respondents are directed to grant the applicant all consequential benefits i.e. salary and arrears for the period from 13.09.2018 to 24.08.2021 along with other consequential benefits of the promotional post i.e. JWM(SG). Accordingly the O.A is allowed. The impugned order dated 25.08.2021 is quashed with regard to not giving the benefit of arrears of pay and salary for the period from 13.09.2018 to 24.08.2021 for the promotional post of JWM(Senior Grade). No order as to costs.”

9. The learned counsel for the Union of India submits that the grant of actual benefits from the date of promotion is unsustainable on

account of the fact that the same is in contravention of the office memorandum dated 14th September, 1992. He has laid emphasis on paragraph 3 of the office memorandum which reads as follows:

“3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated. The due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such promotion. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration of the facts and circumstances of the disciplinary proceeding/criminal prosecution where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.”

10. A plain reading of paragraph 3 of the office memorandum dated 14th September, 1992 reveals that in such a situation as the petitioner has been faced with, the authority, in the event they chose to deprive the person

of their actual benefits are required and obligated to record reasons for doing so. The reasons also are as per the office memorandum to be reasonable and by way of illustration the office memorandum in the same paragraph has taken note of two such circumstances. One of the circumstances is that if the proceedings have been delayed on the behest of the delinquent or if the proceedings have culminated in exoneration giving benefit of doubt or on account of non-availability of evidence to the delinquent.

11. These two illustrations are not exhaustive but from bare perusal of the same it is obvious that the discretion to withhold the grant of actual benefit is to be based on cogent reasons similar to the illustrations or on the lines of the two examples contained in paragraph 3 of office memorandum dated 14th September, 1992.

12. In the instant case we have seen that the Tribunal in fact had held that the proceedings initiated against the petitioner based on the charge memo dated 14th September, 2017 was “unwarranted”.

13. The petitioner, therefore, was made to suffer the rigours of the proceedings from 13th

September, 2018 to 24th August, 2021 on non est reasons. This finding of the Tribunal has been accepted by the respondent authorities who have chosen not to assail the same, rather complied with the same by dropping the proceedings and granting the benefit of promotion to the petitioner.

14. The reliance placed by the learned counsel for the present petitioner on paragraph 3 of the office memorandum dated 14th September, 1992, therefore, is unsustainable to support the order dated 25th August, 2021. No reasons whatsoever have been recorded for granting only notional benefits, thereby denying actual benefits of the promoted post to the applicant with effect from 13th September, 2018. The relevant extract of the order dated 25th August, 2021 reads as follows:

“04. Accordingly, Competent Authority of Ordinance Factory Board is pleased to order the following promotion in the grade Junior Works Manager (Selection Grade)/(Tech/Non-Tech) [Group – ‘B’ Gazetted] LEVEL ‘8’ in the PAY MATRIX [Pre-revised Pay Band – 2 (Rs. 9300-34800) + Grade Pay Rs. 4800/- with effect from 13.09.2018 (notionally). His notional promotion will be taken into consideration for fixation of pay and revision seniority in the grade of Junior Works Manager (SG) in Non-Technical Stores discipline.

PER NO.	NAME	Unit	FROM	TO	Date of promotion
817714	SANJIB DAS	RFI	JWM(NT/Stores)	JWM(SG)(NT- Stores)	13.09.2018 (Notional).

05. Shri Sanjib Das, P.No.817714 will be placed at Sl. No. 28A above Shri Mohanan M (P.No. 868277) below Shri Chauhan CS. (P.No. 849329) in the grade of Junior Works Manager (Selection Grade) for the vacan year 2018 in .on Technical/Stores discipline in the OFB

Order No. DJWM(SG)/DPC/2020/Per/GD dated 17.02.2020.

06. The above promotion will take effect w.e.f. 13.09.2018 (Notionally).”

15. It is manifest from the same that the withholding of actual benefits is not in conformity with the requirements contained in paragraph 3 of the office memorandum dated 14th September, 1992.

16. The Tribunal in the impugned order otherwise has also considered the petitioner's entitlement to actual benefits from the date of promotion based on decisions of the Apex Court in the case of **Ramesh Kumar -Vs.- Union of India and Ors.** reported in **(2015) Supreme Court Cases 335** discussing the principle emanating from the said judgment that the principle of no work for no pay would not be attracted where the employer was in fault and on account of such lapse the employee has suffered deprivation of his opportunity to perform the duties of the higher post.

17. The considered order of the Tribunal has also taken note of the submissions advanced today with reference to paragraph 3 of the office memorandum dated 14th September, 1992.

18. For the reasons indicated above we are not inclined to interfere with the order passed by the Tribunal in O.A. No. 1467 of 2021.

19. The writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)