

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00551/2018

Reserved on: 30.12.2019
Pronounced on : 31.12.2019

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



A.K. Pandey, Son of Late Baikunth Pandey, Principal, Jawahar Navodaya Vidyalaya, Itawah, the then Vice Principal, Jawahar Navodaya Vidyalaya, Garhbanaili, PO- Garhbanaili, PS- Garhbanaili, District- Purnea, Pin Code- 854325 (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Human Resource Development, Government of India, New Delhi- 110001.
2. The Commissioner, Navodaya Vidyalaya Samiti, B/15, Institutional Area, Sector-62, Noida- 201307 (U.P.).
3. The Joint Commissioner (Admin.), Navodaya Vidyalaya Samiti, B/15, Institutional Area, Sector-62, Noida- 201307 (U.P.).
4. The Joint Commissioner (Pers.), Navodaya Vidyalaya Samiti, B/15, Institutional Area, Sector-62, Noida- 201307 (U.P.).
5. The Assistant Commissioner (Estt.3), Office of the Commissioner, Navodaya Vidyalaya Samiti, B/15, Institutional Area, Sector-62, Noida- 201307 (U.P.).
6. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Patna Region, Karpoori Thakur Sadan, Kendriya Karyalaya Parisar, Ashiyana Digha Road, PO- Ashiyana Nagar, P.S.- Rajeev Nagar, Town & District- Patna, Pin Code- 8000245 (Bihar).

.... Respondents.

By Advocate:- Mr. K.P. Narayan

ORDER

Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing and setting aside part of orders dated 18.07.2017 by Navodaya



Vidyalaya Samiti by which the applicant has been promoted with retrospective effect, in compliance of the order of this Tribunal dated 20.02.2017 in OA 270 of 2013, but his pay has been fixed notionally w.e.f. 12.05.2008 and actual monetary benefit are ordered to accrue from a prospective date (date of assuming charge to the post of Principal). The applicant has alleged that the order of this Tribunal, in OA No. 270 of 2013 dated 20.02.2017, had clearly stipulated that the respondents are under obligation to take further consequential action, depending upon the outcome of reconsideration of the applicant's representation against his ACR, in case the gradings were revised upward. Since the adverse remarks against him have been expunged after the Tribunal's order, and he has been promoted from the date of promotion of his junior, he should also be given actual monetary benefit of increased salary since the date of his promotion. The applicant has cited judgments of Hon'ble Apex Court in AIR 2015 (SC) 2904 [**Ramesh Kumar V/s Union of India & Ors.**] and Hon'ble High Court, Patna reported in 2011(3) PLJR 128 [**Kameshwar Prasad Singh V/s the State of Bihar & Others**] and 2011(3) PLJR 351, Para-11 [**Umesh Lal V/s The State of Bihar & Others**] to support his contention.

2. A brief history of this case, summarized from the O.A., is as follows: -

The applicant along with 32 persons who were declared successful in a written test held in the year 2003, were called to appear



for personal talk vide order dated 21.02.2008. However, the applicant's name was not included in the subsequent promotion orders issued on 07.04.2008. The applicant filed a case (OA 194/2008) before this Tribunal which he subsequently withdrew on 27.03.2009. During the pendency of this case, a disciplinary proceeding was started against the applicant which was also withdrawn on 18.03.2009. Some adverse remarks in the ACR for the year 2005-06 and 2006-07 were communicated to the applicant by Memo dated 06.09.2009. The applicant filed another OA (No.210 of 2010) which was disposed of 26.09.2012 with direction to the respondents to consider his representation. Since the request of the applicant was rejected vide order dated 20.03.2013 he again approached this Tribunal through OA 270 of 2013 wherein a direction was issued to the respondents to take decision on applicant's representation and take further consequential action in case the gradings in the ACRs are revised upwards. The impugned order is in compliance of this decision of the Tribunal.

3. The respondents have filed a written statement and denied the claim of the applicant. They have stated that the applicant is not entitled to get benefit of arrears of pay since he has not functioned on the post of Principal. The applicant actually performed the functions and duties attached to the post of Principal from the date he assumed the charge. Actual monetary benefits have been allowed only from the date of assumption of charge. However, his pay has been protected by fixing

the same notionally at par with his junior. These orders are in full compliance of the orders passed by this Tribunal on 20.02.2017. The respondents have also enclosed the judgment of Hon'ble Supreme Court as reported in 1990 SCC (3) 472 in the matter of **Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha & Ors.** (Annexure- R/3) in support of their contention.



4. I have gone through the pleadings and heard the arguments of the learned counsels for the parties. This is the fourth round of litigation in a matter relating to the promotion of the applicant. While the applicant did get the relief of promotion to the post of Principal, and also that of having his pay notionally fixed from the date from which his junior got the promotion, he is still aggrieved because of not getting the pay of the Principal since the date of notional promotion. I have gone through the judgments of the Hon'ble Apex Court mentioned by the applicant (pl. see para 3 above). In one of these judgments, the Hon'ble Apex Court have found that "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" (Ramesh Kumar Vs. UOI - Paragraph- 13). This judgment quotes in detail from an earlier judgment of the Apex Court in **State of Kerala & Ors. Vs. E.K. Bhaskar Pillai** 2007

(6) SCC 524. The most relevant portion of the judgment is reproduced below:-



“Sometimes in the matter when the person is superseded and he has challenged the same before court of 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.”

The other judgment quoted by the applicant (**Umesh Lal Vs. State of Bihar**) also supports grant of monetary benefits on retrospective promotion. The judgments cited by the respondents, on the other hand, support the principle of “no work no pay”.

5. From the decision of the Hon’ble Apex Court in E.K. Bhaskar Pillai’s case (supra), it is clear that there cannot be any hard and fast rule and the principle of “no work no pay” cannot be accepted as a rule of thumb. However, the same judgment indicates that this matter has to be decided on a case by case principle and “the courts may grant sometimes full benefits with retrospective effect and sometimes it may not”. It also calls granting monetary benefits as “exceptions”. None of the cases cited by either the applicant or the respondents are directly on an issue where a promotion was withheld on ground of adverse remarks in the ACRs which were later expunged. In the case of Ramesh Kumar,



the Court granted the benefit of last pay ignoring the “red ink entries”. However, in the same case it can be seen that the petitioner therein was not earlier granted allowance for the period between the date of dismissal and the date of reinstatement in service and (though this may not have been on issue in that case) the Hon’ble Court did not find anything wrong in that. In the second case cited by the applicant (Umesh Lal Vs. State of Bihar), the person affected had officiated at the higher post and thus the principle of no work no pay did not directly apply. We find that the current case is a case of protracted litigation before this Tribunal. The applicant had himself withdrawn his first OA for no clearly mentioned grounds. It may not be very farfetched to presume that this withdrawal was linked to the withdrawal of disciplinary proceedings against him. The applicant succeeded in his second OA on ground that the order rejecting his application was not a reasoned and speaking order. After the third round of litigation before this Tribunal, the respondents have finally agreed to grant the applicant promotion and given him benefit of seniority and also pay from a retrospective date. They have only denied him salary for the past period where he had actually not performed as Principal. The post of Principal clearly involves holding much higher and onerous responsibilities than the post of a teacher, not granting him pay for this past period appears to be reasonable. The applicant also cannot escape responsibility for delay in the resolution of this matter by having withdrawn his first OA to claim this promotion. Taking into account all these facts, I feel that applying

the principle of “no work no pay” in this case is reasonable and no exception need to be made. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

