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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2631/93

NEW DELHI THIS THE 18th DAY OF AUGUST, 1994

HON'BLE SHRI A.V. HARIDASAN, MEMBER (J)

Shri S.C. Sehgal,
Working as Superintendent
Govt Boys Senior Secondary School No.1
Roop Nagar, Delhi.
Directorate of Education
Govt of National Capital Territory of Delhi

R/o 6/8, Singh Sabha Road,
Subzimandi, Delhi-7

....Applicant

By Advocate : Shri S.K. Sawhney

VERSUS

1. Govt of National Capital Territory of India,
Through,
Lt Governor
Raj Niwas, Delhi.

2. Chief Secretary,
Govt. of National capital of Delhi
Delhi-54

3. Director,
Directorate of Education,
Government of N.C.T.
Old Secretariat
Delhi.

4. Joint Secretary (Services)
Govt of National Capital Territory of Delhi
5, Sham Nath Marg,
Delhi-54.

... Respondents

By Advocate : Shri Jog Singh

JUDGEMENT (ORAL)

Hon'ble Shri A.V. Haridasan, Member (J)

The grievance of the applicant in this case is that though he was given promotion to Grade-I post of DASS by order dated 26.02.93 (Annexure A-1) in the scale of Rs.1640-2900 w.e.f. 28.08.89, the Delhi Administration unjustifiably denied arrears of difference in pay and allowances consequent to retrospective promotion. The factual matrix ~~are~~ ^{is}

given as follows :-

The applicant was appointed as Lower Division Clerk (LDC for short) on 14.5.1960 in Nari Nikatan, an institute fully funded and controlled by Delhi Administration. While he was working as Head Clerk in the scale of Rs.425-640 (NPS) ~~in~~ the institute of Nari Nikatan was taken ^{over} by Delhi Administration on 1.12.1979. The entire staff of Nari Nikatan was kept on ex-cadre posts without inducting them in the Delhi Administration Subordinate Services. Therefore, applicant along with similarly situated staff of Nari Nikatan filed O.A. 1798/89 claiming their seniority in Delhi Administration Subordinate Service from the date of their appointment. This application was disposed of by a judgement dated 26.02.92 with the direction to the respondents to assign seniority to the applicant with similarly situated other in Delhi Administration Subordinate Services from 1.12.79 i.e. the date on which they they were absorbed in Delhi Administration Subordinate Services and to consider the applicants for promotion to the next higher grade by the Competent Authority of D.P.C. w.e.f. the date their next juniors were promoted. Pursuant to the above direction, the respondents promoted the applicant w.e.f. 28.8.89 the date ~~from~~ ^{on which} persons next below him was promoted by the order dated 26.02.93. His pay was also fixed granting him increment on 1.10.89 consequent upon his regular appointment to Grade-I/Superintendent under decision No.15 below F.R.22(C) vide Order dated 16.04.94 (Annexure A-3). But as per orders 26.2.93 (Annexure A-I) and orders dt 16.04.94 (Annexure A-3) the applicant would draw higher pay only from the date on which he took over the post. Against

This situation denying him monetary benefits consequent on his retrospective promotion, the applicant made a representation dated 10.5.93 (Annexure A-4). Finding no reply to his representation the applicant has filed this Application praying that the respondents may be directed to pay arrears of pay to the applicant consequent on his retrospective promotion to Grade-I post of DASS in the scale of Rs.1640-2900 w.e.f. 28.08.89 with interest as the same was withheld unjustifiably.

3. The respondents in their reply statement admit that pursuant to the decision of the Tribunal O.A. No.1798/89, the seniority of the applicant was reckoned from the date 01.12.79 and that he was promoted i.e. w.e.f. 20.8.89 the date on which his junior was promoted, and that in the order of promotion as well as in the order fixing the pay, it was stipulated that the actual monetary benefits would accrue to the applicant only from the date on which he took over the post i.e. on 2.03.93. They seek to sustain this stipulation on the ground that as the applicant did not shoulder higher responsibility of the post prior to that date in accordance with the roster and F.R.17 he is not entitled to higher pay, earlier than to the date he actually took over.

4. We have heard the arguments of Shri S.K. Sawhney Counsel for the applicant and Shri Jog Singh, counsel for the respondents and I have perused the pleadings and the other materials on record.

5. According to the counsel for the applicant the denial by the respondents the actual pay of the post to which the applicant was promoted w.e.f. the date on which he was promoted is unreasonable

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and unjust. The counsel for the applicant argued that the fact that the applicant ~~did not shoulder~~ ^{the} higher responsibility of the post w.e.f. the date on which he was entitled to be promoted cannot be held out to deny him the actual benefit of promotion because non-promotion of the applicant at the relevant time was not on account of any reasons ~~not~~ ^{only} attributable to the applicant but ^{only} for reasons totally within the control of the respondents. Therefore, according to the learned counsel there is no justification to deny the monetary benefits to the applicant seeking shelter against F.R.17. The Hon'ble Supreme Court has observed in Union of India Vs K.V. Jankiraman A.I.R.-1991 S.C. 2010, as under :-

"It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interest persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to such cases as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases".

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4. Though the situation in this case is not identical to one considered by the Hon'ble Supreme Court ~~in this case~~ under citation, here also the applicant ~~want~~^{was} not promoted to the higher post at the relevant time though he was entitled to be so promoted on an erroneous interpretation of the question of seniority. If the applicant was considered according to the ^{Correct} interpretation and promoted, he would have shouldered the higher responsibilities of the higher post. Hence the delay in the applicant's promotion occurred not on account of any reason attributable to the applicant. Therefore, I am of the view that on his ^{retrospective} representation, promotion w.e.f. 28.8.89 he is entitled to get the higher pay and allowances w.e.f. that date.

5. In the result, the application is allowed and the respondents are directed to pay to the applicant difference in the arrears of pay and allowances between what should have been paid to him from the date of retrospective promotion i.e. 28.8.89 and what has been paid till 2.03.93. The respondents are directed to comply with the orders within a period of 3 months from the date of communication of this order. However, claim for interest is disallowed. The parties are to bear their own costs.


(A.V. HARIDASAN)
MEMBER (J)