

CENTRAL ADMINISTRATIVE TRIBUNAL,**CHANDIGARH BENCH**

O.A. No.060/00289/2014

Orders pronounced on: 12.5.2015
(Orders reserved on: 22.4.2015)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

N.K. Bhalla s/o Sh. A.P. Bhalla,

resident of # 345, MDC

Sec. 4, Panchkula (Haryana),

aged 60+, recently retired as

Deputy Commissioner from Navodaya Vidyalaya Samiti,

an autonomous body of the Min. of HRD,

Govt. of India, New Delhi.

... **Applicant**

Versus

1. Union of India through Secretary,

Ministry of HRD, Govt. of India,

Shastri Bhawan, New Delhi.

2. Navodaya Vidyalaya Samiti,

through its Commissioner, B-15, Sec. 62,

Institutional Area, NOIDA (UP).

...

Respondents

Present: **Applicant in person.**

Mr. D.R. Sharma, Advocate, counsel for Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought issuance of direction to the respondents to grant him monetary benefit of pay fixation w.e.f. the date on which he was granted promotion i.e. 20.6.2002, at par with his junior Sh. V.P. Paliwal and calculate the arrears of pay and allowances w.e.f. 20.06.2002 to 30.09.2013 with interest upto the date of payment.

2. The applicant was issued a charge sheet on 10th May, 2002. Departmental Promotion Committee held its meeting on 6.6.2002 for promotion to the post of Assistant Commissioner. The case of the applicant was kept in sealed cover due to pendency of disciplinary proceedings. Another charge sheet dated 30.11.2002 was also issued to the applicant for allegations qua irregularities committed during July, 1992 to September, 1995. The applicant was exonerated of the charges on 4.3.2008 and was promoted as Assistant Commissioner w.e.f. 4.4.2008. On filing of a representation, the applicant was allowed promotion w.e.f. 20.6.2002 but only on notional basis. He claimed grant of actual benefits for such notional period on 11.4.2013 which has been declined vide order dated 20.9.2013 (A-2). The applicant pleads that non working on promotion post was not on account of any fault on his part and as such denial of actual benefits is arbitrary and the authorities cannot take benefit of their own wrong in denying promotion to him

from due date. Reliance is placed upon Union of India etc. vs. K.V. Jankiraman etc. JT 1991 (3) SC 527; State of Punjab through Collector, Patiala & Another Vs. Raj Kumar & Others, 2011 (4) RSJ, 242 (P&H); Gian Singh Vs. State of Punjab & Others, 2011 (1) RSJ, 256 (P&H), Gurdial Singh Vs. Ambala Central Cooperative Bank Ltd. And Another, 2011 (3) RSJ 233 (P&H) and Sunder Dass Vs. Haryana Power Generation Corporation Ltd. & Another, 2012 (3) RSJ 617 (P&H).

3. The O.A. has been resisted by the respondents on the ground of delay and laches. They submit that the applicant had been promoted in 2009 but he kept mum all over these years and has woken up from deep slumber only in 2013 claiming arrears of pay and allowances and as such claim is liable to be dismissed. Reliance in support thereof is placed on a dozen of authorities including **Rabindra Nath Bose & Ors.** **V. Union of India & Others**, (1970) 2 SCR 697 in which challenge to seniority list with delay was declined. Some other decisions cited by respondents indicate that courts do not ordinarily assist the tardy and indolent or the acquiescent and lethargic and if there is inordinate delay on the part of the petitioner in filing a case, such delay is not explained satisfactorily, the Court can decline to intervene and grant relief. The delay has not been explained by the applicant. Even if a delayed representation was considered and replied to, the same would not revive the cause of action.

4. We have heard learned counsel for the parties and perused the material on the file.

18

5. A perusal of the pleadings of the parties would disclose that no doubt DPC was convened well in time but the applicant could not be promoted due to pendency of disciplinary case against him. He was exonerated of the charges only on 4.3.2008 and was promoted as such w.e.f. 4.4.2008 and on his representation the date of promotion was preponed to 20.6.2002 on notional basis only, at par with his junior. No doubt, the applicant has mentioned in para 1 of the O.A. that he is filing O.A. against orders dated 29.6.2009 (A-1) and 29.9.2013 (A-2) but surprisingly he has not sought quashing of both the orders in para 8 of the Original Application. So, unless these orders are quashed and set aside he cannot be extended any relief. In any case, the fact remains that the notional promotion was given and pay fixed vide order dated 29.6.2009 which order was not challenged by him within the period of limitation. It is only by filing O.A. in March, 2014 that the applicant has chosen to challenge the said order. Apparently the O.A. is barred by the law of limitation. In so far as order dated 29.9.2013 is concerned, that would not extend the period of limitation in view of well settled proposition of law that even if a delayed represented is considered and answered, it would not extend the original cause of action, as held in **Gian Singh Maan Vs. The High Court of Punjab & Haryana & Others**, 1980 AIR 1894.

6. It is settled principle of law that if an employee does not work on a post, he cannot claim the wages for that on the principle of "no pay for no work". There is an exception that if an employee is able to

10

prove that he was ready to discharge his duties on the promoted post but he was denied to do by the respondents arbitrarily only then he certainly becomes entitled for the wages for that period. But when the applicant did not work for lawful reasons, then he cannot claim for the wages for that period on the principle of "no pay for no work". In this case we find that the applicant was under clouds due to disciplinary proceedings and on conclusion of the same he was promoted. It can safely be said that he was denied working on a higher post due to lawful reasons and as such he cannot be granted actual benefits. Our view also finds support from the judgment passed by the Hon'ble Supreme Court in the case of **Virender Paul Sharma Vs. Food Corporation of India & Ors.**, 1992 (2) SLR 104, **Union of India & Ors. Vs. Rajendra Kumar Sharma**, 1993(2) supp. SCC 366, **State of Haryana Vs. S.K. Khosla**, 2007(15) SCC 777 and **State of Haryana Vs. O.P. Gupta**, 1996 (7) SCC 533.

7. In the case of **Shukhdeo Pandey Vs. U.O.I. & Ors.**, 2007(7) SCC 455, their Lordships in para 17 have held that:

"if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of 'no work, no pay' is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied".

8. In view of the aforesaid factual scenario and legal proposition of law, the instant Original Application is found to be devoid of any merit and is dismissed.

9. The parties are left to bear their own costs.

(Signature)
(SANJEEV KAUSHIK)
MEMBER (J)

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 12.5.2015

HC*