

(2013) 10 DEL CK 0169

Delhi High Court

Case No: Writ Petition (C) 4728 of 2011

Delhi Transport Corporation

APPELLANT

Vs

Harish Chand Gupta

RESPONDENT

Date of Decision: Oct. 21, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Avnish Ahlawat, for the Appellant; G.D. Gupta and Mr. Anil Mittal and Mr. Anuj Kr. Ranjan, for the Respondent

Judgement

V. Kameswar Rao, J.

The challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated December 20, 2010, whereby the Tribunal has allowed the Transfer Application No. 1300/2009 thereby directing the petitioner to make payment of arrears to the respondent pursuant to his promotion as Deputy Traffic Manager [re-designated as Senior Manager (Traffic)]. The brief facts are that the respondent was appointed as Assistant Traffic Superintendent on September 30, 1982. He was promoted to the post of Traffic Superintendent on March 07, 1986.

2. On April 30, 1987 adverse remarks in the ACR for the year 1986 were communicated to the respondent. Because of the adverse ACR he could not be promoted as Senior Manager (Traffic) on September 08, 1988 and again on March 09, 1989.

3. The adverse remarks in the ACR for the year 1986 were expunged in the year 1988. The respondent was promoted to the post of Senior Manager (Traffic) with effect from December 04, 1998.

4. He filed a writ petition No. 1483/2003 before this Court seeking promotion as Senior Manager (Traffic) with effect from the year 1988 and for further promotion to the post of Deputy Chief General Manager (Traffic) reckoning his seniority with effect from 1988. The writ petition was allowed and directions were given by this

Court to consider the case of the respondent as Senior Manager (Traffic) with effect from 1988. It was also directed that he would be entitled to consequential seniority. The relevant portion of this Court's order in Writ Petition No. 1483/2003 is reproduced as under:

Since the promotion has to be effected on the principle of seniority-cum-merit, it does not mean that as a result of the adverse entry being expunged petitioner would be entitled to automatic promotion. Review DPC has to be held as of the year 1988 to consider the case of the petitioner for promotion and while so doing take into account the relevant ACRs. Needless to state that pertaining to the year 1986, ACR to be considered would be one where the adverse entry has been expunged in terms of the order dated 12.12.1989. If as a result of the deliberations of the said DPC petitioner is held entitled to be promoted, effect thereof be given. In such eventuality petitioner would be entitled to the benefit of seniority to the post of Deputy Traffic Manager w.e.f. the date his juniors were promoted. If the petitioner is not empanelled for promotion as a result of the review DPC to be held as of the year 1988, further review DPC be held as of year 1989 and if the petitioner is recommended for promotion therein, petitioner would be entitled to his seniority w.e.f. 1989. As regards wages to be paid, if the petitioner is held entitled to be promoted fundamental rules would apply and a decision would be taken by the competent authority in respect of the wages payable to the petitioner in terms of the fundamental rules. Petitioner would be entitled to all consequential benefits if as a result of the review DPC petitioner is held entitled for promotion w.e.f. the year 1988 or the year 1989 as the case may be for further promotion to the post of Deputy Chief General Manager.

5. In compliance to the order of this Court, a Review DPC was convened on April 28, 2004 and the case of the respondent was considered for promotion with effect from 1988. The Board of DPC granted relaxation in short fall of requisite experience to the respondent who was eventually promoted as Senior Manager (Traffic) with effect from October 06, 1988 vide order dated April 01, 2005. His salary was fixed with effect from October 06, 1988 on notional basis on the principle of no work no pay.

6. He filed another writ petition No. 3676/2006 seeking direction for arrears of salary with effect from October 06, 1988 till June 16, 2004. The writ petition was transferred to the Tribunal and was numbered as T.A. No. 1300/2009. The petitioner contested the claim of the respondent in terms of FR. 27 and office memorandum dated February 20, 1967 which inter-alia stipulates that if officer placed junior to the officer concerned has been promoted he should be promoted immediately and if there is no vacancy the junior most officer officiating in the higher grade should be reverted to accommodate him. On promotion his pay should be fixed in accordance with FR. 27 but no arrears would be admissible. The Tribunal while allowing the T.A. No. 1300/2009 had given the following finding:

In the instant case, the applicant right for fair consideration for promotion stand vitiated inasmuch as two DPCs held in the years 1988 and 1989 considered the adverse entry against the applicant which adverse entry came to be expunged. The promotion of the applicant is on the principle of seniority-cum-merit. The applicant has been given promotion from the back date which fortify that he is entitled to the said promotion based on his seniority and merit. The principle of "no work no pay" is not applicable to the present case, as the applicant has been wrongly denied the promotion. As a result of which his juniors steal a march over him, enjoying the fruits of salary on their promotion during the intervening period. That being so, the said benefits ought to be extended to the applicant as well, who has been given promotion retrospectively for otherwise. This amounts to subjecting him to hostile discrimination, which is not warranted in law.

7. One aspect the Tribunal had overlooked while allowing the Original Application is the delay that has occurred in initiating the litigations by the respondent. The first one being the writ petition No. 1483/2003, after a period of 5 years, seeking promotion as Senior Manager (Traffic) with effect from 1988 after the adverse remarks in the ACRs for the year 1986 were expunged in the year 1998 and was promoted as Senior Manager (Traffic) with effect from December 04, 1998. Even the promotion he got as Senior Manager (Traffic), pursuant to the order of this Court in writ petition No. 1483/2003 was in 2004 and the pay was fixed without grant of arrears on August 13, 2004. Pursuant thereto the second litigation was initiated in the year 2006 for grant of arrears. In all, the litigation for grant of arrears was initiated after a lapse of 7 years from the date when adverse remarks in ACRs were expunged.

8. This Court in Writ Petition No. 1483/2003 has left it to the wisdom of the Competent Authority to take a decision with regard to wages on promotion keeping in view the terms of Fundamental Rules. The Competent Authority having taken a view on the basis of FR. 27 and office memorandum dated February 20, 1967 coupled with the fact that the litigation for arrears of pay was initiated after 7 years, we do not find any infirmity in the order dated August 13, 2004 denying the arrears of salary.

9. The issue of grant of arrears of pay has come up for consideration before the Supreme Court and this Court on many occasions. This Court in its judgment in Writ Petition (Civil) No. 7334/2012 decided on May 20, 2013 Union of India & Anr. vs. Thanglalmuon has held as under:

Even this Court in the opinion reported as [Amar Singh Vs. Union of India and Another](#) applying the principle of "No Work No Pay" has held that the action of the Government denying the arrears of pay to an employee cannot be said to be unreasonable. In Para 5 and 6 it was noted as under:-

5. The petitioner claimed a higher seniority position on the ground that he was drawing higher salary and a higher scale of pay from the date of his initial appointment in the establishment of respondent No. 2. On amalgamation of different posts and creation of a new cadre, the petitioner was placed below some of the persons, who were drawing lesser pay scale than him. Consequently, he filed representations before the respondents for re-fixation of his seniority taking into consideration of the fact that he was in a higher grade of pay than the persons who were shown senior to him. The aforesaid contention of the petitioner was rightly found to be justified and accordingly the seniority list was re-drawn. Based on that revised seniority list the review DPC was held. It recommended his promotion from a retrospective deemed date. The issue is because he was given a notional promotion from a retrospective date should he be also paid arrears for the said period.

It is true that the petitioner was not at fault for his inability to actually work in the post of Research Officer from 1992, onwards till 1996 when actually the order of promotion was passed. It is, however, required to be considered that before giving the permission for holding a review DPC the Department of Personnel and Training made it explicitly clear that the said permission may be considered for giving notional promotion but the same shall have to be without payment of arrears. Such a decision was conveyed because of clear stipulation in Clause 18.4.3 of the circular issued by the Department of Personnel and Training. A bare reading of the said clause makes it apparent that in case where an injustice is created and a junior person is promoted earlier than the said mistake and injustice shall have to be rectified by giving notional promotion from the date his juniors were promoted. The very purpose of giving notional promotion is to take care of some injustice, inter alia, because some junior has come to be promoted earlier. In this connection, reference may be made to a decision of the Supreme Court in [Union of India \(UOI\) and Another Vs. M. Bhaskar and Others](#), .

6. Clause 18.4.3 of the circular issued by the Department of Personnel and Training makes it categorically clear that if the officers placed junior to the officer concerned have been promoted, the concerned officer should be promoted immediately giving notional promotion from the deemed date when his juniors have been promoted but no arrears would be admissible. When the decision in the present case to give notional promotion, without any arrears, is taken on the basis of the aforesaid mandate of the circular, no fault could be found in the actions of the respondents in not making payment of the arrears to the petitioner. In my considered opinion, the principle of "No Work - No Pay" is also applicable to the facts and circumstances of the present case. While coming to the aforesaid conclusions I am fortified by the decision of the Supreme Court in [State of Haryana and Others Vs. O.P. Gupta, etc.](#), wherein also the claim for arrears of pay from the date of notional promotion was rejected as the persons did not actually work in the said posts. The petitioner in the present writ petition has also not challenged the legality of the aforesaid circular,

which is in the nature of guidelines and in absence of any statutory rule governing the field, the mandate of the aforesaid circular would hold the field.

10. In view of the above, we set aside the order of the Tribunal dated December 20, 2010 in Transfer Application No. 1300/2009. Consequently Transfer Application No. 1300/2009 is also dismissed. No costs.

C.M. No. 9579/2011

Dismissed as infructuous.