SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ravindra Kumar Sood Vs. NTPC and Others

Ravindra Kumar Sood Vs. NTPC and Others

SooperKanoon Citation : sooperkanoon.com/1183549

Court : Delhi

Decided On : May-02-2016

Judge : Pradeep Nandrajog &Amp; The Honourable Ms. Justice Mukta Gupta

Appeal No. : R.P. Nos. 590 of 2015 & 78 of 2016 in LPA No. 684 of 2011

Appellant : Ravindra Kumar Sood

Respondent : NTPC and Others

Judgement :

1. By a common judgment dated November 18, 2015 three appeals were disposed of. Relief granted to the appellant in LPA No.684/2011 has become the subject matter of the above captioned two review petitions, one filed by the respondent and the other by the appellant.

2. To set the setting for the factual backdrop concerning the two review petitions, the judgment, review whereof is prayed for by both sides records the checkered history of the appellant after he joined NTPC in the Accounts Department as a Junior Controller in the year 1986 and was served with a charge sheet in the same year, followed by another charge sheet issued and the proceedings terminating therefrom in the form of the former resulting in penalty of one increment with cumulative effect imposed and the latter resulting in initially a penalty of removal from service being imposed, but converted into a penalty of censure. At a meeting held on January 16, 1989 it was decided that all cases would be closed and as a

result on January 01, 1990 the appellant being promoted as a Controller Grade II. Appellant made representations that he be promoted to the post of Controller Grade II with effect from January 01, 1987 or at least with effect from January 01, 1988 when period of penalty of stoppage of one increment came to an end.

3. Noting the contentious facts and the events which transpired post 1990, relief was granted to the appellant by passing the directions as follows:-

91.(a) LPA No.684/2011 filed by Mr.Sood is allowed with the relief that Mr.Sood is held entitled to be promoted to the post of Junior Controller with effect from the date the person immediately junior to him was promoted; Controller Grade-II with effect from the date the person immediately junior to him was promoted; Supervisor Grade-I with effect from the date the person immediately junior to him was promoted; Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted and Sr. Assistant Engineer with effect from with effect from the date the person immediately junior to him was promoted. (We are not directing Review DPCs to be held because admittedly at the relevant DPCs Mr.Sood was empanelled for promotion but the empanelment was not given effect to because of the pendency of the disciplinary proceedings)

92. Mr.Sood would be entitled to all consequential benefits except actual salary for the higher posts to which he would now be promoted to, and we deny the same applying the principle that not having shouldered the responsibilities of the higher posts he should not be paid actual wages for the post in question, but we clarify that he would be given notional benefit of being placed in the pay scale with annual increments. Arrears be calculated and paid to him within a period of six months.

4. Of the various factual issues decided in the context of the pleadings and the records, one issue decided was that the stand of the respondent of having considered the appellant for promotion to E-1 level (post of Assistant Engineer) in the year 1996 and 1997 was wrong. The basis on which the opinion was rendered by this Court was that in the counter affidavit filed to the writ petition the categorical stand of the respondent was that as per the service rules of NTPC the appellant was not entitled to be considered for promotion, a stand which was

contrary to the service rules which envisage that an employee under charge sheet had to be considered for promotion and recommendations kept in a sealed cover. It was noted that a summersault was made by NTPC when it filed an additional affidavit on December 13, 2002 to plead that the DPCs which met in the years 1996 and 1997 had considered the appellant for promotion and had put the recommendations in the sealed cover and subsequently when the sealed covers were opened, on being found opined to be not fit for promotion the appellant was not promoted. The vacillating stand of NTPC resulted in a finding recorded in para 71 of the decision dated November 18, 2015 as under:-

Per contra, NTPC contended that Mr.Sood was not promoted in the years 1996 and 1997 because of pendency of departmental proceedings initiated against him. (It was strongly highlighted by counsel for Mr.Sood that NTPC has taken variant stands with respect to promotion of Mr.Sood in the years 1996 and 1997. It was highlighted that NTPC has contended in the counter affidavit that Mr.Sood was not entitled to be considered for promotion in the years 1996 and 1997 on account of pendency of departmental proceedings whereas in the additional affidavit dated December 13, 2002 it was contended that DPC held in the years 1996 and 1997 had considered DPC but findings/recommendations of DPC qua Mr.Sood were kept in sealed cover due to pendency of departmental proceedings initiated against Mr.Sood. Be that as it may. Nothing much turns thereon for the reason it has been averred by NTPC that findings/recommendations of DPC qua Mr.Sood kept in sealed cover were opened subsequently. It has nowhere been contended by NTPC that Mr.Sood was not fit for promotion in the years 1996 and 1997. The fact of the matter remains that NTPC denied promotion to Mr.Sood in the years 1996 and 1997 on account of pendency of departmental proceedings initiated against him).

5. Grievance of the respondents in R.P.No.590/2015 is limited to the directions issued to promote the appellant to the post of Assistant Engineer with effect from the date persons immediately junior to him were promoted and thereafter to the post of Senior Assistant Engineer. With reference to paragraph 71 of the decision dated November 18, 2015 it is urged in the review petition that the finding returned against NTPC of taking contradictory stand is incorrect. Though counsel

conceded, with an apology, that the pleadings are far from satisfactory.

6. To resolve the issue we look at the averments made by the appellant in paragraph 34 of the writ petition, in which the appellant has pleaded:-

That, however, respondent failed to consider the representations dated 22.4.96 of the petitioner and also failed to conduct DPC-96 and DPC-97 according to the NTPC promotion policy and also failed to consider the petitioner from his due dates, despite of the specific orders of this Hon ble Court. However, the same has been put under the sealed cover.

7. It is apparent that the appellant himself has sown the seeds of confusion by firstly pleading that according to the rules no DPC was held in the year 1996 as also the year 1997, and in the same breath pleading that the recommendations of the DPC were kept in a sealed cover, and aspect of the pleading which was overlooked in the decision dated November 18, 2015.

8. NTPC has added to the confusion by replying to para 34 of the writ petition by pleading as under:-

Para No.34 of the writ petition is wrong and denied. The petitioner was not entitled to be considered for promotion in view of the charge sheet issued to him and on-going inquiry into charges against him.

9. The result was a finding returned by us in the decision, limited review whereof is prayed for, that there is not credibility emerging in the plea of NTPC which wanted to produce the record of the DPCs held in the year 1996 and 1997 showing appellant being considered for promotion from S-3/S-4 level to E-1 level and not achieving the benchmark.

10. But we find that in response to ground F urged in the writ petition, wherein it is stated that the wrong committed by the respondents is of not considering name of the appellant for promotion in the DPC held in the year 1997, the response is as under:-

Ground F of the writ petition is wrong and denied. The allegations against the respondent are wrong and denied. It is further denied that the petitioner was deprived of the right of consideration of his case in the DPC-1997. It is submitted that the petitioner s case for promotion was duly considered in the DPC-1997 as per rules.

11. In an additional affidavit filed by NTPC in the year 2002, in para 9 it was pleaded as under:-

As regards promotion of the petitioner from S-3 to E-1 post, the petitioner was duly considered in the year 1996-97 as well by the regional level DPC. The petitioner as per pre-requirement appeared in a mandatory test and interviewed for the same. The regional level DPC did not recommend his name for promotion to E-1 cadre in both the years i.e. 1996 and in 1997. The papers relating to the petitioner qua his recommendations was kept in sealed covers as disciplinary proceedings against the petitioner were going on till 29.12.1997. The papers regarding regional DPC recommendations vis- -vis the petitioner for 1996 and 1997 are annexed as Annexure RA-5-6 respectively.

12. Indeed, these pleadings in the writ petition and the counter affidavit filed by NTPC at the first instance missed the attention of this Court when the three appeals were disposed of and thus there is an error apparent on the face of the record warranting the directions issued in paragraph 91(a) to be modified by removing the direction to promote the appellant firstly to the post of Assistant Engineer with respect to the date persons immediately junior to him were promoted and thereafter to the post of Senior Assistant Engineer with effect from the date persons immediately junior to him were promoted. But the consequences of appellant s entitlement to be promoted as Controller Grade II and Supervisor Grade I, which entitlement has been decided to be accepted by the department, would warrant a direction to be issued that reckoning appellant s seniority and hence eligibility for the post of Assistant Engineer (having come within the zone of consideration) when the person immediately junior to him was considered and promoted, a review DPC be held with reference to the year the appellant would now be treated to be deemed to have become eligible and within the zone of

consideration for the post of Assistant Engineer and if promoted, be considered for further promotion accordingly; and if promoted the decision(s) with retrospective effect with consequential benefits of notional increments be implemented. The reason being that a fresh appraisal of the service record of the appellant needs to be conducted with reference to the said year when, as per his seniority being re-fixed, needs to be conducted. The issue of actual wages would be decided hereinafter with reference to R.P.No.78/2016 filed by the petitioner.

13. The appellant is the applicant in R.P.No.78/2016 and is aggrieved by consequential direction given by us in paragraph 92 that applicant would not be entitled to actual salary for the higher post to which he would be promoted as a consequence of relief granted by us in paragraph 91(a) noted above for the reason that the applicant has not shouldered the responsibilities of the higher posts.

14. Counsel appearing for applicant in R.P.No.78/2016 has essentially contended that this Court has committed an error in not granting actual salary to applicant for the higher posts for the reason the applicant was performing the work relating to higher posts even while working on the posts held by him during pendency of appeals. To substantiate the same, the applicant has annexed various office orders as also information received by him under Right to Information Act.

15. The aforesaid submission of the appellant has to be decided with reference to paragraph 92 of judgment dated November 18, 2015 noted above. To repeat : we had denied actual salary for the higher posts to the appellant for the reason the appellant had not shouldered the responsibilities of the higher posts.

16. The office orders as also information received under RTI Act annexed by the appellant with the review petition do not show that appellant had shouldered responsibilities of higher posts during pendency of appeals. Merely because nature of work performed by the appellant on post held by him during pendency of appeal was same as that of higher posts would not imply that the appellant had shouldered responsibilities of higher posts.

17. In view thereof, we find no infirmity in the directions given by us in paragraph 92 of judgment dated November 18, 2015.

18. R.P.No.78/2016 is accordingly dismissed.

19. As regards R.P.No.590/2015, in view of our observations and findings in the preceding paragraphs and in particular para 9, we modify the directions issued in paragraph 91(a) of the order dated November 18, 2015, by substituting the same as under :

91.(a) LPA No.684/2011 filed by Mr.Sood is allowed with the relief that Mr.Sood is held entitled to be promoted to the post of Junior Controller with effect from the date the person immediately junior to him was promoted; Controller Grade-II with effect from the date the person immediately junior to him was promoted; Supervisor Grade-I with effect from the date the person immediately junior to him was promoted. But as regards entitlement to be promoted as Controller Grade II and Supervisor Grade I, reckoning his seniority to the posts of Controller Grade II and Supervisor Grade I in terms of the directions issued concerning said posts, reckoning petitioner s seniority for purposes of eligibility qua zone of consideration review DPC be held for the post of Assistant Engineer when person immediately junior was considered by treating the person as within the zone of consideration and if promoted the benefit of seniority be ante-dated as also consequential benefits of deemed promotion except actual wages and thereafter another review DPC be held for the post of Senior Assistant Engineer and directions qua the post of Assistant Engineer be read as applicable to said post as well. (We are not directing Review DPCs to be held because admittedly at the relevant DPCs Mr.Sood was empanelled for promotion but the empanelment was not given effect to because of the pendency of the disciplinary proceedings)

20. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com