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Court : Orissa

Decided On : Jan-14-2009

Reported in : 107(2009)CLT451

Judge : B.P. Das and; R.N. Biswal, JJ.

Appellant : Narottam Kumar Jha

Respondent : Union of India (Uoi) and ors.

Judgement :

B.P. Das, J.

1. The case of the Petitioner is that while working as Constable in CISF, he was removed from service with effect from 15.9.1984 in pursuance of the disciplinary proceeding initiated against him on the allegation of a false case of dacoit and ultimately, by virtue of the Order Dated 22.1.1985, the Appellate authority issued an order reinstating the Petitioner in service with full pay and allowances. The Appellate authority also directed that the period of suspension of the Petitioner would be treated as duty and the period from the date of removal to the date of rejoining duty as leave due. On 24.12.1988 the Petitioner was promoted to the rank of Naik with effect from 23.12.1988. On 10.10.1997 the holders of the post of Naik were given the rationalized rank of HC/GD and pay scale of that post. On 15.11.1999 on being found fit by the Review DPC, the Petitioner was given notional promotion to the rank of Naik, w.e.f. 24.11.1986, i.e., the date his batch

mates were promoted to the said post and his pay was regularized under FR-27 from the date of such notional promotion. On 31.12.1999 the Petitioner was given notional promotion to the rank of HC/GD w.e.f. 16.12.1989 and his pay were regularized under FR-27 from the date of said notional promotion. Thereafter, the impugned Order Dated 10.5.2000 was passed by the Assistant Inspector General (Estt), wherein it is indicated that in view of the provisions of FR-17 and on the principle of 'No Work, No Pay', the Petitioner is not entitled to the arrear of salary of the post of Naik from 24.11.1986 to 22.12.1988 and of HC/GD from 16.12.1989 to 9.10.1997 as he had actually performed duties of these posts during the said periods.

The said impugned order was passed in pursuance of the representations of the Petitioner dated 28.3.2000 and 15.4.2000. filed for grant of arrear of salary from the dates he has been notionally promoted to the ranks of Naik and Head Constable/GD.

2. Now the moot question arises whether FR-17, basing upon which the benefit of arrear scale of pay was denied, is applicable to the Petitioner. Admittedly, the Petitioner was put under suspension, removed from service and ultimately, he was reinstated by the Appellate order with full back wages and regularizing the period of his absence. It is also not disputed that the Petitioner was given promotion to the next higher rank from the date, on which his batch mates were given promotion. That date fell during the period when the Petitioner was removed from service.

3. After going through the contents of FR-17, it would be worthwhile to have a look at FR-54(1), which is extracted hereunder:

FR 54(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

This provision has been applied by the Appellate authority and in the Appellate order, as it reflects in Annexure-9, the Petitioner has been reinstated in service with full pay and allowances and treating the period of his suspension as duty and for regularization of period from the date of removal of service till rejoining his duty as leave due. This being the position, in our considered opinion, the subsequent action of the O.Ps. rejecting the claim of the Petitioner by applying the provision of F.R.17(1) is unwarranted, as the same is subject to F.R.54 and in case of the Petitioner, the recourse to F.R.17(1) is not applicable.

4. This being the position, the irresistible conclusion would be that the order, which has been passed by the Appellate authority in terms of FR-54, shall be final.

In the decision of the Apex Court rendered in *Union of India v. K.V. Jankiraman*, reported in : (1991)11LLJ570SC , it is held that the normal rule of 'no work no pay' is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. In the case at hand, the Petitioner could not get promotion to the next higher grade because of his removal from service, which was subsequently set aside by the Appellate authority. No fault can be found with the Petitioner for not working in the subsequent promotional post.

5. Mr. J.K. Mishra, Learned Assistant Solicitor General of India, relies upon the decision of the Apex Court in *Union Territory, Chandigarh v. Brijmohan* reported in (2007) 11 SCC 488, wherein it is stated that it is settled law that when an incumbent does not discharge any duty, the principle of 'no work no pay' would be applicable.

6. The fact of the present case does not fit in to the facts of the *Brijmohan* case, for which the same is not applicable to the case of the Petitioner. In view of the facts

narrated above and the position of law indicated in the case of Jankiraman (supra), we have no hesitation to see aside the Order Dated 10.5.2000 in Annexure 9. Accordingly, we direct.

7. Let the back wages of the Petitioner in his promotional post from 24.11.1986 to 22.12.1988 and from 16.12.1989 to 9.10.1997 be computed and paid to the Petitioner within a period of three months from the date of communication of this order.

R.N. Biswal, J.

I agree.

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