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Court : Rajasthan

Decided On : Mar-07-2003

Reported in : RLW2003(4)Raj2550; 2003(2)WLC576

Judge : Anil Dev Singh, C.J. and; K.S. Rathore, J.

Acts : Railway Property (Unlawful Possession) Act, 1966 (in short R.P. (Uttar Pradesh) Act, 1966

Appeal No. : D.B. Civil Writ Petition No. 749 of 2002

Appellant : Union of India (Uoi) and ors.

Respondent : Ram Singh and anr.

Advocate for Pet/Ap. : G.C. Garg and; Alok Garg, Advs.

Disposition : Writ petition dismissed

Judgement :

Singh, C.J.

1. A criminal case was registered against the respondent under the Railway Property (Unlawful Possession) Act, 1966 (in short R.P. (U.P.) Act, 1966). He was tried in the Court of Additional Chief Judicial Magistrate (Railways), Ajmer. The case terminated in acquittal of the respondent vide order of the trial Court dated 17.7.95. It is not disputed that no departmental proceedings were initiated against

the respondent in respect of the charges for which he was tried and acquitted by the Additional Chief Judicial Magistrate (Railways). While acquitting the respondent, the Additional Chief Judicial Magistrate granted the benefit of doubt to him.

2. After the respondent was acquitted of the charges, the appellants by an order dated 13.1.1997 promoted him to the post of Driller Gr.-I and allowed the benefit of notional fixation of pay in the promotional post w.e.f. 12.9.80, the date when his junior Shri Chandra Kishore was appointed to the post of Driller Gr.I.

3. The respondent challenged the order before the Central Administrative Tribunal with the prayer that he should be given actual monetary and other consequential benefits of promotion with effect from 12.9.1980.

4. The Tribunal by its order dated 17.8.2001 allowed the application and directed that the respondent be allowed actual monetary benefits from the date he has given notional benefit of promotion. It was also directed that the appellants shall accord financial benefits accruing during the suspension period treating the respondent as on duty.

5. The appellants being aggrieved by the order passed by the Tribunal have filed the instant writ petition.

6. We do not find any infirmity in impugned order passed by the Tribunal. In case the criminal trial was not pending against the respondent, he would have been promoted on 12.9.80, when his junior was promoted and he would have been entitled to receive salary of the higher post. The effect of acquittal recorded by the Trial Court was that charge against the respondent was wiped out. He was not even visited with any penalty even of censure, since no disciplinary proceedings were initiated against him. Therefore, there is no blameworthy conduct which can be legally and legitimately ascribed to him. This being so, there is no valid reason to deprive the respondent of actual monetary benefit for the period of notional promotion, preceding to date of actual promotion.

7. Learned counsel for the petitioners submitted that the respondent was not acquitted honourably and was only given benefit of doubt. Since he was given benefit of doubt, the petitioners were right in allowing to him notional promotion w.e.f. 12.9.1980 for the purpose of fixation of his salary from 13.1.1997 on the principle of no work no pay.

8. In support of his submissions he relied upon the decision of Supreme Court in Union of India v. K.V. Jankiraman (1).

9. Learned counsel for the petitioners overlooks the fact that in the same judgment the Supreme Court pointed out that the normal rule of no work no pay is not applicable to cases such as, in which an employee willing to work is kept away from work by authorities for no fault of his.

10. We are conscious of the fact that in cases where the charges against an employee are grave, it will be for the authorities to decide whether the employee will be entitled to any arrears of pay for the period of notional promotion.

11. In the instant case the appellants did not plead before the Tribunal that the respondent was accused of having committed grave offence. The petitioners did not even place before us the chargesheet which was filed against the respondent before the trial Court. The offence of which the respondent appears to have been accused of is under the RP (UP) Act. It appears that the charge is not of grave nature. This fact is not disputed by learned counsel for the petitioners. It needs to be pointed out that the criminal proceedings were initiated against the respondent more than a decade back. He faced the trial and was finally acquitted. It is only fair that when the respondent was acquitted the petitioners ought to have been given the benefits of promotional post with retrospective effect. The appellants have not even given any reason for denying arrears of salary to the respondent, except that the criminal proceedings were pending against him. The action of the petitioners being unjust and unfair, was rightly set aside by the Tribunal.

12. In the circumstances, the petition fails and is hereby dismissed.