

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Date of Decision : December 04, 2008

WP(C) No.9010 of 2007

Mrs. Shashi Kiran Suri
Through : Mr.J.S. Bhasin, Advocate

Petitioner

Versus

India Tourism Development Corporation Ltd. and Ors. Respondents
Through : Mr.V.K. Rao, Mr. Ayushya Kumar, Advts.

S.N. Aggarwal, J. (ORAL)

The petitioner is working with respondent No.1 Corporation since 05.10.1978. She was deployed to work as Personal Assistant to General Manager, Hotel Janpath w.e.f. 19th July, 1997. While she was working as Personal Assistant to General Manager, Hotel Janpath, she was served with charge-sheets dated 09th October, 2001, 08th May, 2002 and 15th June, 2002 with regard to three separate incidents. The present writ petition filed by the petitioner is in its fourth round of litigation. She had earlier filed three more writ petitions being WP(C) No.6864/2001; WP(C) No.23016/2005 and WP(C) No.16288/2006. The first two writ petitions (WP(C) No.6864/2001 and WP(C) No.23016/2005) filed by the petitioner were in respect of promotion claimed by her to the post of Senior Assistant, Grade-II. The third writ petition being WP(C) No.16288/2006 filed by the petitioner was for quashing of the above mentioned three charge- sheets served upon the petitioner while she was working as Personal Assistant to the General Manager, Hotel Janpath. All these three writ petitions have since been disposed of. The petitioner has not disclosed the date of disposal of the first writ petition being WP(C) No.6864/2001 but Mr. Bhasin, learned counsel appearing on her behalf says that the said writ petition was withdrawn by the petitioner. The second and the third writ petition mentioned above were

disposed of vide order passed by this court on 11th May, 2007 and 15th May, 2007 respectively (Annexure P-2 and 3) at pages 15-16 of the paper book. The second and the third writ petitions filed by the petitioner were disposed of since the respondents themselves have agreed to withdraw the charge-sheets served upon the petitioner on 09th October, 2001, 08th May, 2002 and 15th June, 2002 and to grant her promotion to the post of Senior Assistant, Grade-II after convening a fresh DPC. Pursuant to the settlement arrived at between the parties during the pendency of the above referred second and third writ petitions, a fresh DPC was held and the petitioner was granted notional promotion retrospectively w.e.f. 01st December, 2002 to the post of Senior Assistant, Grade-II and the office order passed by the respondents dated 16th August, 2002 in this regard is Annexure P-1 at pages 13-14 of the paper book. The petitioner, in this writ petition, is now claiming the following reliefs:- “a. issue a writ in the nature of certiorari quashing/setting aside the impugned office order dated 16.08.2007 passed by respondent No.3; b. issue a writ in the nature of mandamus or such other appropriate writ or directions to the respondents to grant arrears to the petitioner from the date of promotion i.e., 01.12.2002 to 10.07.2007 and to post the petitioner in Janpath Hotel on the post of Senior Assistant Grade-I.” As far as relief 'a' is concerned, Mr. Bhasin, learned counsel appearing on behalf of the petitioner has contended that the petitioner could not have been granted notional promotion with retrospective effect because according to him, the petitioner was entitled to actual promotion with retrospective effect and to all consequential benefits flowing from such promotion. Mr. Bhasin has contended that there are no statutory rules and regulations which disqualify the petitioner from getting actual promotion with retrospective effect because, according to him, the promotion was wrongly denied by the respondents to the petitioner on the date she was entitled to such promotion. The learned counsel appearing on behalf of the petitioner has relied upon a Division Bench judgment of this court in UOI and Ors. vs. G.D. Goel in WP(C) No.4657/2005 decided on 14.03.2008 and has laid emphasis on para-13 of the said judgment, which is extracted below:- “13. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realizing that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see State of Kerala

and Others v. E.K. Bhaskaran Pillai “ JT 2007 (6) Hon'ble Supreme Court 83; Mohd. Ahmed v. Nizam Sugar Factory and Others “ (2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others “ 1993 Supp (4) SCC 748. On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed. Relying on the above referred judgment of Division Bench of this court, Mr. Bhasin has argued that the petitioner cannot be denied the benefit of pay of the promotional post from the date she was granted notional promotion because the promotion was denied to her wrongly because of the charge-sheets served upon her. The contention of Mr. Bhasin is that the principles of 'no work no pay' cannot be applied to the facts of this case because in this case the petitioner was not instrumental in not working on the promotional post. It is submitted that the petitioner could not work on the promotional post till the time she was granted promotion vide order dated 16th August, 2007 because of fault of the management (respondent No.1 herein). He, therefore, contends that the petitioner should be granted benefit of salary of the promotional post of Senior Assistant, Grade-II from the date she has been granted promotion to the said post vide order dated 16th August, 2007. Per contra, Mr. Rao, learned counsel appearing on behalf of the respondent has relied upon judgment of Hon'ble Supreme Court in UOI vs. B.M. Jha, JT 2008 (1) Hon'ble Supreme Court 77, wherein it has been held that the salary and allowances of a promotional post cannot be granted to an incumbent as no work was done by him in the promotional post till the time the incumbent was actually promoted. Mr. Rao has contended that in the present case, the promotion was not granted to the petitioner because of pendency of charge-sheet against her at the relevant time. He, therefore, submits that the denial of the promotion to the petitioner was bona fide and no fault can be attributed to the management in this regard. According to Mr. Rao, the petitioner is not entitled to salary for the period prior to the period she was actually employed to the post of Senior Assistant, Grade-II. I have given my anxious consideration to the above rival arguments advanced by the learned counsel for the parties and I could not persuade myself to agree with the submissions made on behalf of the petitioner. In the present case, it is not disputed that the petitioner was charge-sheeted with regard to three separate incidents vide charge sheets dated 09th October, 2001, 08th May, 2002 and

15th June, 2002. It is also admitted that the petitioner was not denied promotion because of pendency of these charge-sheets against her at the relevant time. It is true that the respondents themselves agree to withdraw the charge-sheets during the pendency of the above referred second and third writ petitions and to hold a DPC for considering the petitioner for her promotion to a higher post. This does not imply that the petitioner was denied promotion because of mala fide on the part of the respondents. The charge-sheets were agreed to be withdrawn by the respondents since the petitioner has agreed to not to make claim against the respondent/management in respect of the subject matter of the earlier writ petition being WP(C) No.16288/2006 as is borne out from the order which is Annexure P-3 at page-16 of the paper book. Mr. Bhasin has referred and relied on the Rules of respondent No.1 relating to recruitment, promotion and seniority annexed as Annexure P-5 at page 19 of the paper book. The Rule 19 relied upon by the counsel for the petitioner reads as under:- “19. PROMOTION OF EMPLOYEES PENDING ENQUIRIES OR UNDER SUSPENSION (i) That the employees against whom disciplinary proceedings are pending or contemplated, the recommendations about their suitability in the Select list will be recorded separately by the DPC/Selection Committee in a 'sealed cover' which will be opened on the conclusion of disciplinary proceedings. However, where an employee is found 'unfit for promotion' on the basis of his record without taking into consideration the disciplinary case pending/contemplated, the 'sealed cover' method will not be adopted. (ii) That after departmental enquiry, if the employee is completely exonerated 'sealed cover' recommendations of the DPC/Selection Committee will be given notional promotion retrospectively, if necessary even by reverting the employees who were given adhoc promotion. However, no arrears of pay shall be payable to them for the period of notional promotion preceding the date of actual promotion. (iii) (iv) (v)” In the present case three charge sheets were pending against the petitioner before they were agreed to be withdrawn by the respondent/management on 11th May, 2007. In terms of Rule 19 (ii) of ITDC, recruitment, promotion and seniority rules, at best the petitioner could have been considered for her promotion by following the 'sealed cover' procedure. In terms of Rule 19 (ii), the petitioner would not have been entitled to any arrears for the period of notional promotion preceding the date of actual promotion. This Rule relied upon by the petitioner's counsel actually goes against the petitioner. It would be significant to refer to para-5 of the judgment of the Hon'ble Supreme Court in UOI vs. B.M. Jha (supra), which is extracted below:- “5. We have heard learned counsel for the parties.

It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of State of Haryana and Others v. D.P. Gupta and Others (JT 1996 (3) Hon'ble Supreme Court 141; [1996 (7) SCC 533] and followed in the case of A.K. Soumini v. State Bank of Travancore [JT 2003 (8) Hon'ble Supreme Court 35] has taken the view that even in case of an optional promotion from retrospective to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of no work no pay. The learned Division Bench in the impugned judgment has placed reliance on the case of State of Andhra Pradesh v. K.V.L. Narasimha Rao and Ors. [JT 1999 (3) Hon'ble Supreme Court 205]. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this court. Therefore, we are of the view that in the light of the consistent view taken by this court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of no work no pay in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.05.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principle Bench.” In view of the above judgment of the Hon'ble Supreme Court, it is amply clear that the petitioner is not entitled to any arrears for the period of notional promotion preceding the date of actual promotion. I, therefore, hold that the petitioner is not entitled to any arrears of salary for the period of her notional promotion preceding the date of her actual promotion. As far as the other prayer made by the petitioner for her posting in Hotel Janpath is concerned, counsel for both the parties have agreed for passing of a consent order with regard to the said prayer. In terms of the consent given by the counsel for the parties, the request of the petitioner for her posting in Hotel Janpath shall be re-examined by the CMD of respondent No.1 after giving personal hearing to the petitioner who will thereafter pass a speaking order with regard to the posting of the petitioner strictly in terms of the rules and regulations and also exigencies of service of the respondent No.1 Corporation. In case the petitioner is not satisfied with such decision of the CMD of respondent, she is granted liberty to challenge the said decision in appropriate proceedings before the competent court, as per law. In view of the above this writ petition stands disposed of leaving the parties to bear their own costs.

Sd/-
S.N. AGGARWAL
JUDGE