

# THE HIGH COURT OF MEGHALAYA

WA No.6/2014

In WP(C) (SH) No.440/2010

1. Union of India represented through the Secretary,  
Govt. of India, Ministry of Home, New Delhi.

2. The Director General,  
Central Reserve Police Force (CRPF),  
Block No.-1, CGO Complex, New Delhi.

3. Inspector General of Police (Pers),  
CRPF, Directorate, Lodhi Road,  
New Delhi.

:::: Appellants

-Vs-

Shri. Ram Sukhpal Singh,  
S/o Shri. Ajit Singh,  
67<sup>th</sup> Battalion, CRPF,  
East Khasi Hills District,  
Meghalaya

:::: Respondent/Writ Petitioner

## BEFORE

**HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE (ACTING)**  
**HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the Appellants : Mr. R Deb Nath, CGC

For the Respondent/Writ Petitioner : K Paul, Adv

Date of hearing : **01.12.2014**

Date of Judgment & Order : **04.12.2014**

## JUDGMENT AND ORDER

(Justice T. Nandakumar Singh)

Heard Mr. R Deb Nath, learned CGC appearing for the appellants and Mr. K Paul, learned counsel appearing for the respondent/writ petitioner.

**2.** This intra court appeal is directed against the judgment and order of the learned Single Judge dated 18.04.2012 passed in WP(C)(SH)No.440/2010 filed by the respondent/writ petitioner wherein and where-under, the appellant No.3 (respondent No.3 in the writ petition) was directed to take necessary steps to release arrear of pay of the respondent (writ petitioner) for the period w.e.f. 29.09.2007 onwards within two months from the date of receipt of the order.

**3.** The graphic statement of fact leading to the filing of the writ petition i.e. WP(C)(SH)440/2010 is mentioned in the impugned judgment and order dated 18.04.2012 passed in WP(C)(SH)No.440/2010. However, for appreciation of the grounds taken in the memo of appeal, the concise fact of the respective case of the parties is recapitulated.

**4.** The respondent/writ petitioner was promoted to the rank of Second-in-Command in the month of October, 2004 and the respondent/writ petitioner was considered for promotion to the rank of Commandant by the Departmental Promotion Committee (for short 'DPC') convened on 22.06.2007 and 10.04.2008 for the vacancy year 2007-08 and 2008-09 respectively. But the recommendations of the aforesaid DPC were kept in a "sealed cover" due to pending disciplinary proceedings against the respondent/writ petitioner. The said disciplinary proceeding was initiated vide Memorandum No.D-IX-11/2005-CRC dated 18.05.2007 for the article of charge that "the respondent/writ petitioner posted in CTC-III while functioning as Deputy Commandant (Adm) at GC, CRPF, Lucknow (U/P) during recruitment of constable/GD 2003-04 at GC, CRPF Lucknow committed neglect of duty/remission in the discharge of duty in his capacity in that, he issued appointment letters to wrongly selected candidates as per Board proceeding prepared by the Recruitment Board without checking correctness

of the Board proceeding and cut off percentage marks for SC/ST candidate in contradiction to the instructions issued vide Directorate General letter No.R.II-15/2000-Pers-II dated 09.09.2000, as a result, 23 unqualified candidates of SC/ST categories were issued offer of appointment letters erroneously. Thus, the respondent/writ petitioner failed to maintain absolute devotion to duty and failed to detect the mistakes in the merit list submitted by the Board and thereby violated the provisions contained in Rule 3 (1) (ii) and (iii) of CCS Conduct Rules, 1964”.

5. The respondent/writ petitioner submitted his written statement of defence. The Additional DIGP Pers.I, Govt. of India, Ministry of Home Affairs, Directorate General, CRPF issued an order dated 31.01.2008 for appointing one Shri. R.P. Singh, DIGP, CRPF Allahabad as the Inquiry Authority to inquire into the charge framed against the respondent/writ petitioner. After, full length departmental inquiry, the inquiry officer submitted the inquiry report that the charge leveled against the respondent/writ petitioner had not been proved. The DIG (CR & Vigilance) after consideration of the inquiry report, issued order being No.D.IX-11/2005-CRC dated 17.02.2009 that the ends of justice would be met in this case if the charge leveled against the respondent/writ petitioner is dropped and he is exonerated of the charge leveled against him. The President therefore, orders accordingly. It would be more profitable to quote the said order dated 17.02.2009 hereunder:-

“DIRECTORATE GENERAL, CRPF  
BLOCK NO-1, CGO COMPLEX, LODHI ROAD, NEW DELHI-03  
(Ministry of Home Affairs)

*No.D.IX-11/2005-CRC Dated, the 17 Feb, 2009*

## ORDER

WHEREAS, Departmental Enquiry proceedings under Rule 14 of CCS (CCA) Rules, 1965 were conducted against Shri. Ram Sukhpal Singh, Dy.Comdt.(Now 2-I/C) (IRLA-3409) vide Presidential Memorandum No.D.IX-11/2005-CRC dated 18/05/2007.

2. AND, WHEREAS, the statement of article of charge on the basis of which action was proposed to be taken was attached to the aforesaid memorandum.

3. AND, WHEREAS, the charge leveled against him was as under:-

### **Article-I**

That the said Shri. Ramankhpal Singh, D/C, IRLA No.3409, GC CRPF Lucknow now posted in CTC-III while functioning as Deputy Commandant (Adm) at GC, CRPF, Lucknow (U/P) during recruitment of Constable/GD 2003-04 at GC CRPF Lucknow committed neglect of duty/remission in the discharge of duty in his capacity in that he issued offer of appointment letters to wrongly selected candidates as per Board proceeding prepared by Recruitment Board without checking correctness of the Board Proceeding/Cut off percentage marks for SC/ST candidate in contradiction to the instructions issued vide Directorate General letter No.R.II-15/2000-Pers II dated 09/09/2000 as a result 23 unqualified candidates of SC/ST categories were issued offer of appointment letters erroneously. Thus, Shri. Ramsukhpal Singh, D/C failed to maintain absolute devotion to duty and failed to detect the mistakes in the merit list submitted by the board and thereby violated the provisions contained in Rule 3 (1) (ii) and (iii) of CCS conduct Rules, 1964.

4. AND, WHEREAS, memorandum of charge dated 18/05/2007 was served to the officer on 18/08/2007. After considering his written statement of defence dated 08/10/2007, Departmental Enquiry was set in motion by appointing Shri. R.P. Singh, DIGP, CRPF as Inquiry Authority and Shri. Neeraj Kumar, Commandant as Presenting Officer vide orders dated 31/01/2008. On the basis of evidence adduced during the course of inquiry, IO had concluded the charge framed against the charged officer as not proved.

5. AND, WHEREAS, the President has considered the proceedings of the DE alongwith the report of the IO and all other aspects related with the case and has come to the conclusion that the charge framed against Shri. Ram Sukhpal Singh, DC (Now 2-I/C), charged Officer stands not proved.

6. Now, THEREFORE, in the light of above and having considered all the pros & cons of the case, the President considers that the ends of justice would be met in this case if the **charge leveled against Shri. Ram Sukhpal Singh, DC (Now 2-I/C) is dropped and he is exonerated of the charge leveled against him vide Memorandum dated 18/05/2007.** The President therefore, orders accordingly.

*(By order and in the name of President)*

*Sd/-  
(Ranjit Singh)  
DIG (CR & Vigilance)*

*Shri. Ram Sukhpal Singh,  
2-I/C, Group Centre,  
CRPF, Sindri (Jharkhand)  
(Through the DIGP, GC CRPF Sindri)”*

6. As the respondent/writ petitioner had been exonerated of the charge leveled against him, the sealed cover of the said DPC proceedings of the respondent/writ petitioner had been opened and issued an order dated 08.07.2009, that the competent authority has approved notional promotion of the respondent/writ petitioner to the rank of Commandant w.e.f. 02.07.2008 and promoted to the rank of Commandant and assigned below Shri. D.K. Choudhury, Commandant and above Shri. Baljinder Singh, Commandant and his pay will be fixed under F.R. 27 W R T, Pay of his immediate junior Shri. Baljinder Singh, Commandant. However, he shall not be allowed any arrear of pay for the period preceding the date of actual promotion as Commandant. The said order dated 08.07.2009 reads as follows:-

**“CO-HQ-147 BN.CO-HQ-148BN.CO-HQ-155BN,CO-HQ-156BN,CO-HQ-157BN  
SOI-PER-DG/DG/DEL/CR SO-ADM-IGNS/IGNS/DEL/CRPF @CRPF  
PF To SO-ACT-DIGAJM2/DIGAJM2A/AJM/CRPF @ CRPF  
07/09/2009 1:25 AM ADA-PAO-DG/DEL/CRPF @ CRPF,  
cc  
bcc  
Fw: REG ASSIGNING OF SENIORITY IN THE RANK OF  
Subject COMDT IN R/O SHRI.RAM SUKHPAL SINGH, 2 I/C  
TO: POLCENT NS  
INFO: DIG AJM-II/PAO/67 BN  
FROM: DIGCENT (PERS)  
No.P.VII-5/2000-PERS DTD 08/07/2009**

***U/C (.) REG ASSIGNING OF SENIORITY IN THE RANK OF COMDT IN R/O SHRI. RAM SUKHPAL SINGH 2 I/C (NOW COMMDT) (IRLA 3409) 67 BN () PSE REF. THIS DTE SIG. EVEN NO.DTD 09/05/2009 (.) COMETENT AUTHY HAD APPROVED NOTIONAL PROMOTION OF SH. RAM SUKHPAL SINGH, 2 I/C (NOW COMDT) (IRLA 3409) TO THE RANK OF COMDT WEF 02/07/2008 OF SAID OFFICER IN THE RANK OF COMDT IS ASSIGNED BELOW SHRI D.K. CHOUDHURY, COMDT (IRLA-3374) AND ABOVE SHRI BALJINDER SINGH, COMDT (IRLA-3411) i.e. SL.NO(s) AND 10 OF G/LIST OF 2 I/C AS ON 01/01/2008 (.) HIS PAY WILL BE FIXED UNDER F.R. 27 W R T PAY OF HIS IMMEDIATE JUNIOR SHRI BALJINDER SINGH COMDT (IRLA-3411) (.) HOWEVER HE SHALL NOT BE ALLOWED ANY ARREARS OF PAY FOR THE PERIOD PRECEDING THE DATE OF ACTUAL PROMOTION AS COMDT ///.***

7. The representation filed by the respondent/writ petitioner to the Director General, CRPF, CGO Complex, Lodhi Road, New Delhi dated 08.08.2009 to give the benefits of salary of higher post along with other benefits from the date on which he (respondent/writ petitioner) would have normally been promoted as per DPC held on 22.06.2007. However, the request of the respondent/writ petitioner for allowing him to enjoy the arrear of pay/benefits of salary of higher post along with other benefits from the date he (respondent/writ petitioner) would have normally been promoted as per the DPC held on 22.06.2007 had been rejected vide Signal No.P.VII-5/2009-PERS dated 13.11.2009 issued by the appellant No.3. Being aggrieved by the said portions of the orders dated 08.07.2009 and 13.11.2009 for not granting him arrear of pay for the period preceding the date of actual appointment as Commandant, filed the writ petition being WP(C)(SH)No.440/2010 which had been disposed of by passing the impugned judgment and order dated 18.04.2012.

8. The learned Single Judge in the impugned judgment and order dated 18.04.2012 made a clear finding that it is not the fault of the respondent/writ petitioner that he did not work willfully or intentionally avoided

to work as Commandant but the circumstances which compelled him not to discharge his duties as Commandant, may be due to some unfounded allegations for which, the respondent/writ petitioner cannot be held responsible. After such finding, the learned Single Judge relying on the decision of the Apex Court in ***Union of India & Ors v. K.V. Jankiraman & Ors*** held that the respondent/writ petitioner is definitely entitled to get his salary for the post of Commandant w.e.f. 29.09.2007 on which promotion of the respondent/writ petitioner had been effected. It is admitted case of both the parties that the DPC proceedings for consideration of the respondent/writ petitioner for promotion to the rank of Commandant were kept in a sealed cover due to pending disciplinary proceedings against the respondent/writ petitioner. The respondent/writ petitioner had been fully exonerated from the charge leveled against him vide the said order dated 17.02.2009, which has been quoted above in extenso and also that the respondent/writ petitioner had been given notional promotion w.e.f. 29.09.2007. Therefore, it is a clear case that the respondent/writ petitioner for his no fault was not allowed to work in the higher post of Commandant from 29.09.2007 till the date of his actual promotion i.e. 08.07.2009. The Apex Court in ***Union of India & Ors v. K.V. Jankiraman & Ors: (1991) 4 SCC 109*** held that:

*“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases.*

*26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the*

instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub- paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz, “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion”, we direct that in place of the said sentence the following sentence be read in the Memorandum:

“However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

9. The ratio laid down in **K.V. Jankiraman’s** case (Supra) had been followed by the Apex Court in later case i.e. **State of Haryana & Ors v. O.P. Gupta & Ors: (1996) 7 SCC 533** and held that:

“8. It is true, as pointed out by Sri Hooda, that in **Union of India vs. K.V. Jankiraman: (1991) 4 SCC 109: 1993 SCC (L&S) 387: (1993) 23 ATC 322: AIR 1991 SC 2010** this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the



*claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."*

10. The Apex Court in ***State of Kerala & Ors v. E.K. Bhaskaran Pillai: (2007) 6 SCC 524*** held that principle of "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits from back date also. The Apex Court further held that when the administration has wrongly denied the due promotion to the employee, the employee should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. In the present case, the appellants/respondents had wrongly denied the due promotion to the respondent/writ petitioner only on the ground of pending disciplinary proceedings against him and in that disciplinary proceeding, the charge leveled against the respondent/writ petitioner had been dropped and the respondent/writ petitioner had been fully exonerated from the charge leveled against him. In such case, there is no fault of the respondent/writ petitioner that he did not work or intentionally avoided to work as Commandant from the date of his promotion i.e. 29.09.2007. Para 4 of the SCC in ***E.K. Bhaskaran Pillai's*** case (*Supra*) reads as follows:-

*"4. Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in **Paluru Ramkrishnaiah v. Union of India: (1989) 2 SCC 541: 1989 SCC (L&S) 375, Virender Kumar v. Avinash Chandra Chadha: (1990) 3 SCC 472: 1991 SCC (L&S) 62: (1990) 14 ATC 732, State of Haryana v. O.P. Gupta: (1996) 7 SCC 533: 1996 SCC (L&S) 633, A.K. Soumini v. State Bank of Travancore: (2003) 7 SCC 238: 2003 SCC (L&S) 1041 and Union of India v. Tarsem Lal: (2006) 10 SCC 145: (2007) 1 SCC (L&S) 63. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in **Union of India v. K.V. Jankiraman: (1991) 4 SCC 109: 1991 SCC (L&S) 387, State of A.P. v. K.V.L. Narasimha Rao: (1999) 4 SCC 181: 1999 SCC (L&S) 841, Vasant Rao*****

***Roman v. Union of India: 1993 Supp. (2) SCC 324: 1993 SCC (L&S) 590: (1993) 24 ATC 363 and State of U.P. v. Vinod Kumar Srivastava: (2006) 9 SCC 621: 2006 SCC (L&S) 1940.*** We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

11. The Apex Court in ***v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors: (2013) 10 SCC 324*** held that if the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employer, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. Denial of the arrear pay or punishing of the enjoyment of pay structure of the Commandant by the appellants/respondents w.e.f. 29.09.2007 was due to the initiation of the said disciplinary proceedings, which had been dropped later on and the respondent/writ petitioner had been fully exonerated from the charge leveled against him, and such denial to the respondent/writ petitioner

would amount to indirectly punishing the respondent/writ petitioner and rewarding the appellants/respondents by relieving them of the obligation to pay back wages. Para 22 of the SCC in **Deepali Gundu Surwase's case** (Supra) reads as follows:-

*“22. .... If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”*

12. The Apex Court in **Iswarlal Mohanlal Thakkar v. Paschim Gujrat VIJ Company Limited & Anr: (2014) 6 SCC 434** held that the appellant/employee would be entitled to back wages as the appellant was prematurely superannuated because of the wrong fixation of the date of superannuation of the appellant by relying upon incorrect date of birth. Para 22 of the SCC in **Iswarlal Mohanlal Thakkar's case** (Supra) reads as follows:-

*“22. In view of the aforesaid reasons, we allow the appeal, set aside the impugned judgment and order **Paschim Gujarat Vij. Co. Ltd. v. Ishwarlal Mohanlal Thakkar, Special Civil Application No.4168 of 2002, decided on 19-4-2011 (Guj)** of the High Court and restore the award of the Labour Court, since the services of the appellant were prematurely superannuated taking his date of birth as 27.06.1937 instead of 27.06.1940, and therefore, he is entitled to full back wages and other consequential monetary benefits from the date of termination till the date of his correct superannuation considering his date of birth as 27.06.1940. The back wages shall be calculated on the basis of revised pay scale and the same must be paid by way of demand draft to the appellant within six weeks from the date of receipt of the copy of this order, failing which the respondent shall pay interest @ 12% per annum on the amount due, towards back wages and other consequential monetary benefits, from the date of the Award of the Labour Court till the date of payment.”*

**13.** It is well settled that the judgment and order of the learned Single Judge is interfered with in the intra court appeal only when there is an apparent error on the face of the record and also the judgment is against the established and settled principle of law.

**14.** For the reasons discussed above, we are in full agreement with the finding of the learned Single Judge in the impugned judgment and order dated 18.04.2012 passed in WP(C)(SH)No.440/2010 that the respondent/writ petitioner is definitely entitled to get his salary for the post of Commandant w.e.f. 29.09.2007 on which the promotion of the respondent/writ petitioner had been effected. Accordingly, there is no merit in the present appeal. Hence, writ appeal is dismissed.

**JUDGE**

**CHIEF JUSTICE (ACTING)**

*Lam*