

Sudha Shrivastava (Smt)

Vs

Comptroller and Auditor General of India

Civil Appeal No. 9949 of 1995

(Kuldip Singh, S. Saghir Ahmed, B. K. Kirpal JJ)

08.11.1995

JUDGMENT

B. N. KIRPAL, J.

1. Leave granted.

2. The only question which arises for consideration in this appeal is whether the heir of a civil servant who was prosecuted in a court of law but was ultimately acquitted, though by that time he had died, can be permitted to continue the proceedings before the court and claim the grant of retrospective promotion to the deceased and the consequential monetary benefits.

3. The husband of the appellant, S. S. Shrivastava was a member of the Indian Audit and Accounts Services (Class I). During the period 1964-69, he was working as a Financial Adviser to the River Valley Project Department under the State of Bihar. After the general elections of 1969, a Commission of Enquiry was set up to enquire into the alleged misdeeds of some of the Ministers in the erstwhile Government. After the receipt of the report, the said S. S. Shrivastava along with the Minister concerned and the Chief Administrator of the River Valley Project was prosecuted under the Prevention of Corruption Act. The Special Judge convicted S. S. Shrivastava and sentenced him to simple imprisonment of two years and a fine of Rs. 10,000. An appeal was preferred by S. S. Shrivastava, but during the pendency of the appeal before the High Court of Patna, he expired. On an application being made, the appellant as late Shri S. S. Shrivastava's heir was permitted to be substituted in the proceedings. Ultimately, by judgment dated 13-4-1983, the said appeal was allowed and the conviction and sentence were set aside.

4. The appellant, thereafter sent representations to the State claiming retrospective promotion and consequential benefits to her husband, but by Order dated 10-7-1987, the said claims were rejected.

5. The appellant, thereafter filed proceedings before the Central Administrative Tribunal, Patna Bench, Patna. The case of the appellant was that her husband was due for promotion to the post of Accountant General (Grade II) in October 1973 and to that of Accountant General (Grade I) in October 1981 and he would have been so promoted but for the criminal proceedings and, as such, it is only just and proper that such promotions be sanctioned and the monetary value of the same be paid to the appellant.

6. The respondent contested the application. Apart from raising the plea that the said application was barred by time, it was also contended that the same was not maintainable as the claim of service was purely personal to the appellant's husbands and no sum could be paid on the basis of deemed

promotion to the appellant. During the pendency of the proceedings, the respondent had agreed to an order dated 29-6-1984, being passed by the Central Administrative Tribunal, whereby, as a special case, an amount of Rs. 90,000 was allowed to the appellant towards the expenses incurred by the deceased in connection with the criminal proceedings.

7. With regard to the merits of the claim, the case of the respondent, before the Tribunal, was that the deceased had been considered for promotion to the post of Accountant General (Grade II) in October 1973, but as his conduct was under investigation before the court of law, "sealed cover" procedure was followed and if he had been alive when the judgment of acquittal was pronounced, only then, he could have had the benefit of the seniority and fixation of pay, on notional basis, but even he would not have been entitled to the arrears of pay. The other claim with regard to the encashment of leave was refuted by the respondent with the contention that no earned leave was there to the credit of the appellant's husband and the leave taken by him for defending the criminal proceedings could not be encashed.

8. The Tribunal vide its judgment dated 5-10-1989 rejected the application of the appellant by holding that the right for enforcement of promotion accrued only on the acquittal of the appellant's husband and as before such acquittal he had died, then this personal right of enforcement of promotion did not actually accrue and, therefore, nothing survived to his legal heirs. In coming to this conclusion, the Tribunal was of the view that a civil servant could not claim promotion as of right and any benefit which would have arisen as a result of the promotion could only have accrued to the officer himself and not to his legal heirs, if he had died before the judgment for acquittal was delivered. The Tribunal also came to the conclusion that the application was barred by limitation. It found that after the acquittal of appellant's husband, a representation claiming the benefits was submitted by the appellant in January 1984 which was followed by a reminder in April 1984 but by letter dated 29-6-1984, the representation was rejected. The mere fact that the appellant received a letter dated 10-7-1987 rejecting her fresh application dated 4-3-1987 could not, it was held, give her a fresh cause of action and the period of limitation had to be reckoned from 29-6-1984. Therefore, the application which was filed before the Tribunal in May 1988 was barred by limitation as well.

9. During the hearing of this appeal, the only contention which has been raised was with regard to the admissibility of the claim of the appellant on merits and no contention was raised and the case proceeded on the basis that the application filed before the Tribunal by the appellant was within limitation. We, therefore, proceed to examine the rival contentions on the merits of the claim.

10. According to the appellant, her husband was due for promotion to the post of Accountant General (Grade II) in the pay scale of Rs. 2250-2500 in October 1973. Admittedly, a "sealed cover" procedure in respect thereof was followed. Therefore, according to the appellant, her husband would have become entitled to promotion to the post of Accountant General (Grade I) in October 1981 which was in the pay scale of Rs. 2500-2750. The husband of the appellant died in October 1981 and her submission was that his service record and confidential reports were very good and, but for the criminal proceedings which were pending, he would have been promoted in his turn. This Court in *Union of India v. K. V. Jankiraman* has held that when the "sealed cover" procedure is followed and the sealed cover is opened on the complete exoneration of the employee from all the charges, then notional promotion is to be given to him from the date when his juniors were promoted. Arrears of salary could be granted from date of the notional promotion having regard to the circumstances of the case. In this connection, it was observed as follows : (SSC pp. 121-22, para 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 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 authorities concerned 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 jeopardies 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 authority concerned 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.'

11. The claim of the appellant was rejected by the Tribunal primarily on the ground that the right to promotion was personal right and the heirs of the deceased have no right to make any claim in regard thereto. The Tribunal fell in error inasmuch as the process for promotion to the post of Accountant General (Grade II) regarding late S. S. Shrivastava had already been undertaken and the "sealed cover" procedure followed. Whatever the rights the deceased had, as a result of this "sealed cover" the procedure having been followed, stood established as on that date. Along with the right to work in the higher post, if he was to be promoted, he would have also got a right to salary in the higher scale. The effect of the acquittal of the appellant's husband must be regarded as if he had been wrongly convicted. He, therefore, would have had a right to have been placed in the higher scale of pay, if he had been selected for promotion and this is a right which would devolve on the legal heirs, if during the pendency of the proceedings, the said employee expired.

12. It will be useful at this stage to refer to the case Rameshwar Manjhi v. Sangramgarh Colliery. In that case, during the adjudication of dispute relating to the termination of a workman, the said workman died and a question arose whether the heir and legal representatives of the deceased workman were entitled to continue with the proceedings for adjudication. While upholding the right

of the heirs and legal representatives to continue with the proceedings for adjudication, it was observed as follows : (SCC p. 298, para 13)

"It is thus obvious that the applicability of the maxim 'actio personalis moritur cum persona' depends upon the 'relief claimed' and the facts of each case. By and large the industrial disputes under Section 2-A of the Act relate to the termination of services of the workman concerned. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously, cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman."

13. Just as a legal representative of the workman could claim back wages or any other monetary relief which would have ensued to the deceased workman, similarly, in the present case, the right to get the benefits, which would have been due to the appellant's husband as a result of the "sealed cover" procedure, would devolve on the appellant. The sealed cover will have to be opened and if it transpires that he was fit for promotion, then he is to be deemed to have been promoted to the post of Accountant General (Grade II) in the pay scale of Rs. 2250-2500 and, thereafter, he is also to be considered for promotion to the post of Accountant General (Grade I) in the higher scale of Rs. 2500-2750. It is not in dispute that this procedure would have had to be followed if the husband of the appellant had been alive when the High Court delivered the judgment, setting aside the conviction.

14. Even otherwise, if the husband of the appellant was not to be promoted, he would certainly be entitled to receive salary in the lower post till the date of his death in October 1981. In Jankiraman case, it was observed by this Court that when an employee is completely exonerated and is not visited with penalty, then he has to be given the benefit of salary of the higher post along with the other benefit on the date on which he would normally have been promoted but for the disciplinary/criminal proceedings. Moreover, this is not a case where the acquittal of the deceased was as a result of his being given the benefit of doubt or on account of non-availability of evidence. In the instant case, the High Court has held, while allowing the criminal appeal and setting aside the conviction that "one cannot but hold that late S. S. Shrivastava had not done anything, which would justify a charge of corruption against him, much less a charge of conspiracy".

15. For the aforesaid reasons, this appeal is accordingly allowed. The order dated 5-10-1989, passed by the Central Administrative Tribunal, Patna Bench, Patna is set aside and the respondent is directed to open the sealed cover and to give to the appellant all the benefits in the light of the observations made in the judgment. The needful should be done within three months from the date of this order. The appellant will also be entitled to costs.