



2025:DHC:9556-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28.10.2025

+ **W.P.(C) 15310/2006**

UNION OF INDIA & ANR

.....Petitioners

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Chandan Prajapati,
Mr. Shailendra Kumar Mishra,
Mr. Shivansh Bansal,
Mr. Priyam Sharma, Ms.
Kanchan Shakya and Ms.
Raunak, Advs.

versus

P.B.NARANG

.....Respondent

Through: Mr. L. B. Rai, Mr. Vinesh
Tyagi and Mr. Satvik Rai,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 19.04.2006 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 857/2006, titled ***P.B. Narang v. Union of India & Anr.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein with the following directions:



“18. In the result, for the foregoing reasons, OA is partly allowed. Respondents are directed to pay arrears of promotion to the post of Chief Goods Supervisor to applicant for the period 31.12.1997 to 31.10.2001. Accordingly, retiral benefits may be revised with arrears. Request of applicant for grant of interest is turned down in the circumstances. Respondents are directed to comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. No costs.”

2. The present petition has a rather chequered history and, therefore, requires a detailed consideration of the facts.
3. The respondent herein had filed O.A. No. 2345/1995, titled ***Shri P.B. Narang v. Union of India***, before the learned Tribunal, which was disposed of by the learned Tribunal *vide* Order dated 25.10.1999, allowing the claim of the respondent for regaining his *inter se* seniority vis-à-vis the reserved category employees as Goods Clerk, and, granting the respondent a prior claim to the post of Goods Supervisor.
4. Subsequently, the respondent herein filed a Contempt Petition, being C.P. No. 158/2000 in O.A. No. 2345/1995, before the learned Tribunal, which was disposed of by the learned Tribunal *vide* Order dated 02.01.2001, observing therein that, with respect to the claim of the respondent for arrears of pay, a fresh cause of action arises, which he may pursue separately through original proceedings.
5. Availing of the aforesaid liberty, the respondent again filed an O.A., being O.A. No. 2349/2001, before the learned Tribunal, impugning the seniority list dated 12.04.2001 issued by the petitioners



and sought promotion to the post of Chief Goods Supervisor (CGS) based on the promotion date of his immediate junior, and arrears of pay for the post of Goods Supervisor along with interest, for the period from 01.01.1996 to 09.10.1998, which was denied to him by the petitioners *vide* letter dated 20.11.2000.

6. The learned Tribunal allowed the O.A. No. 2349/2001 *vide* Order dated 03.02.2003, *inter alia* holding that no clear reason was provided by the petitioners for reducing the seniority of the respondent from Serial No. 1 to Serial No. 17. Consequently, the learned Tribunal, set aside the provisional seniority list of Goods Supervisors dated 12.04.2001 in respect of the respondent and directed the petitioners to reconsider his case.

7. Regarding the respondent's claim for arrears of pay for the post of Goods Supervisor from 01.01.1996 to 09.10.1998, the petitioners placed reliance on Paragraph 228 of the Indian Railway Establishment Manual (IREM), claiming that the delay in promotion was due to administrative reasons, and hence, the respondent was not entitled to arrears of pay for the promotional post. This plea of the petitioners was rejected by the learned Tribunal, placing reliance, *inter alia*, on a Full Bench judgment of the learned Tribunal dated 02.01.2002 in the **B.S. Tyagi** case, being C.P. No. 154/2001 in O.A. No. 2066/2001, wherein it had been held that Paragraph 228 of the IREM insofar as it denies pay and allowances to employees based on the principle of 'no work, no pay', even when the employee has been erroneously denied the actual work on account of the fault of the management, is invalid and in violation of Articles 14 and 16 of the Constitution of India.



8. The learned Tribunal, therefore, held that the respondent was entitled to the arrears of pay for the promotional post of Goods Supervisor from 01.01.1996 to 09.10.1998.

9. As far as the claim of the respondent with regard to his promotion to the post of CGS from the date on which his juniors were appointed to the said post, the learned Tribunal observed as under:

“9. The third claim of the applicant is for being considered for promotion to the post of CGS from the date his junior has been promoted, as according to him he had already qualified in the selection test for which he has relied on the letter dated 8.9.1999. Shri Rajiv Bansal, learned counsel has denied that the applicant has been declared qualified in the selection test for the post of CGS. He has pointed out that the letter dated 8.9.1999 only refers to the fact that the applicant has qualified in the written test and there is still a qualifying viva voce test. On the other hand, the learned counsel for the applicant has submitted that the applicant is stated to have obtained less than the cut off marks of 60% in the written test, on account of taking the depressed seniority position as per the revised provisional seniority list dated 12.4.2001 where he has been shown at serial no. 17 instead of the earlier position of no. 1.

10. In view of what has been stated above with regard to the preparation of the revised seniority list of the applicant as Goods Supervisor, we consider it appropriate to dispose of this part of the claim with a direction to the respondents to review his seniority, if any, as per above direction. In case, the applicant qualifies in the selection test in accordance with the Rules, he shall be granted further promotion to the post of Chief Goods Supervisor as per his revised seniority position from the date his junior was promoted, in accordance with the relevant



law, rules and instructions. This shall be done within a period of two months from the date of receipt of a copy of this order, with intimation to the applicant.”

10. The petitioners filed a review petition against the aforementioned order of the learned Tribunal, being R.A. No. 104/2003, titled ***Union of India v. Shri P.B. Narang***, which was dismissed by the learned Tribunal *vide* Order dated 01.05.2003.

11. The petitioners then challenged these orders before this Court by way of a Writ Petition, being W.P.(C) No. 4384/2003, titled ***Union of India & Anr. v. P.B. Narang***, which was again dismissed by this Court, observing as under:

“7. Today before us, the learned counsel for the petitioners by conceding to the fact that in O.A. 2345/1995, the Tribunal had granted seniority to the respondent viz-a-viz the reserve category candidates who were appointed because of accelerated promotion and also the fact that the said judgment had attained finality and two seniority lists were issued wherein the name of the respondent was shown at serial No.2 and serial No.1, respectively, stated as the respondent has failed to qualify in the selection of Goods Supervisor in the year 1995 and could only qualify in the year 1998, he was placed at serial No.17 in the seniority list of April 12, 2001.

8. On a specific query to the counsel, whether such a stand was taken by the petitioners before the Tribunal, the answer is in the negative. In fact, as noted above, the Tribunal had granted time to the petitioners to spell out the reasons for depressing the seniority of the respondent from serial No.1 to serial No.17 but no reasons were forthcoming. If that be so, it is quite late in the day to urge that the



respondent did not qualify the selection to the post of Goods Supervisor in the year 1995 but had qualified in the year 1998 which resulted in the impugned seniority list of April 12, 2001.

9. The effect therefore being, the seniority of the petitioner having been restored in O.A. 2345/1995, the consequence there of need to be given to the respondent. The respondent was rightly given the seniority position at serial No.2 and then at 1, in the seniority lists issued in the year 2000. So in that sense, the promotion to the post of Goods Supervisor shall also relate back from the year 1996. It is for this reason, the petitioner was granted the benefit of back wages and promotion to the next higher post. That apart, we find that the respondent has retired long back. It is quite late in the day to deny the benefit of salary for a period of two years and further promotion to the next higher post.”

12. In the Order dated 03.02.2003 of the learned Tribunal, as well as in the Order dated 02.03.2023 of this Court, neither the learned Tribunal nor this Court found that the suppression of the seniority of the respondent was attributable to any *mala fide* act on part of the petitioners. Additionally, with regard to the claim of the respondent for the post of CGS, the only direction of the learned Tribunal was to consider the claim of the respondent based on the revised seniority, with effect from the date on which his juniors were promoted. However, no direction was issued for the payment of arrears of pay for the intervening period.

13. In compliance with the above order of this Court, the respondent was promoted to the post of CGS on a *pro forma* basis, with effect from 31.12.1997, with a corresponding revision of pay



upon his retirement on 31.10.2001, as, in the meantime, he had superannuated. By order dated 26.04.2003, his pay was revised to the higher grade.

14. Subsequently, the respondent filed O.A. No. 2349/2001 before the learned Tribunal, claiming arrears of pay for the post of CGS for the period from 31.12.1997 to 31.10.2001, with interest. The learned Tribunal allowed the said O.A. of the respondent, observing as under:

“16. In the light of the above the circumstances of the case indicate that depression in the seniority of applicant consequent upon complying with the direction of the Tribunal keeping in light the peculiar facts and circumstances of the case cannot be stated to be a simple administrative error on the part of respondents. It is a calculated intentional and deliberate act on the part of the respondents to have denied the correct seniority to applicant and this wrong placement in the seniority despite direction of the Tribunal led to denial of original promotion to applicant being an intentional and deliberate act, one cannot be deprived of the benefit. What has been held assuming the decision of the Jodhpur Bench of the High Court is binding is an administrative error denying back wages, but each case has to be dealt with on its own merit. This shows that despite holding intra vires the provisions of paragraph 228 of IREM-I, yet there is no legal impediment for the Tribunal to have considered each case on its own merit and peculiar circumstances to find out whether there has been an administrative error.”

15. The learned counsel for the petitioners, placing reliance on the Judgment of the Supreme Court **in State of Bihar v. P.P. Sharma**, 1992 Supp (1) SCC 222, submits that the finding of the learned



Tribunal, which attributes the reduction of the seniority of the respondent to any *mala fide* act on the part of the petitioners, is without merit and has no basis. She submits that the onus of proving *mala fide* on the part of the petitioners lies with the respondent, and that this onus has not been discharged by the respondent in the present case.

16. She further places reliance on Paragraph 228 of the IREM, as well as the Judgment of the Supreme Court in ***Union of India v. Tarsem Lal***, (2006) 10 SCC 145, to submit that Paragraph 228 of the IREM has been upheld by the Supreme Court, and that where the denial or delay of promotion is attributable to administrative reasons, the officer is not entitled to arrears of pay, applying the principle of ‘no work, no pay’.

17. On the other hand, the learned counsel for the respondent submits that, in compliance with the Order dated 25.10.1999 passed by the learned Tribunal in O.A. No. 2345/1995, the petitioners issued a provisional seniority list of Goods Supervisors for Delhi Division on 19.10.2000, placing the respondent at Serial No. 2. The said seniority list was superseded by a subsequent provisional seniority list issued on 21.12.2000, placing the respondent at Serial No. 1. However, in the Seniority list dated 12.04.2001, without assigning any reason whatsoever, the seniority of the respondent was reduced to Serial No. 17. In the absence of any explanation from the petitioners for the said reduction, the learned Tribunal set aside the said seniority list *vide* its Order dated 03.02.2003, which order was subsequently upheld by this Court *vide* its Judgment dated 02.03.2003, referred to hereinabove. He



submits that, therefore, the learned Tribunal has rightly held that the denial of promotion to the respondent to the post of CGS was *mala fide*, entitling the respondent to arrears of pay for the period of such denial.

18. He further submits that the principle of ‘no work, no pay’ is not universal and, in appropriate circumstances, such as the present case, the Court, taking into account all relevant facts, can direct the payment of arrears of pay for the period during which the officer was willing to work in the higher post, but was unjustifiably denied such promotion by the petitioners. In support, he places reliance on the Judgment of the Supreme Court in **Karnataka Housing Board v. C. Muddaiah**, (2007) 7 SCC 689, and the High Court of Himachal Pradesh in **Om Prakash v. State of Himachal Pradesh**, 2022 SCC OnLine HP 4554.

19. We have considered the submissions made by the learned counsels for the parties.

20. In the present case, the learned Tribunal, in its Order dated 03.02.2003 passed in O.A. No. 2349/2001, while setting aside the seniority list dated 12.04.2001, which had reduced the seniority of the respondent from Serial No. 1 to Serial No. 17, did not return any finding that the said seniority list was vitiated by *mala fide* on the part of the petitioners. The learned Tribunal set aside the seniority list on the grounds of non-compliance with the Order dated 25.10.1999 in O.A. No. 2345/1995 and for being unsupported by any reasons.

21. Though the learned Tribunal directed the petitioners to pay arrears of salary to the respondent for the period from 01.10.1996 to 09.10.1998 for the higher post of Goods Supervisor, the said direction



was not based on a finding of *mala fide*, rather, it was based on the observation that Paragraph 228 of the IREM violates Articles 14 and 16 of the Constitution of India.

22. The Supreme Court in ***Union of India v. P.O. Abhram***, Civil Appeal No. 8904/1994, decided on 13.08.1997, however, insofar as Paragraph 228 of the IREM being in violation of Articles 14 and 16 of the Constitution of India, 1950, has held the same to be valid and legal, observing as under:

"This appeal is directed against the order of the Central Administrative Tribunal, Ernakulam Bench, in OA No. 649/90 dated 30-9-1991. Though the appeal challenges the order in its entirety. Mr Goswami, learned Senior Counsel for the appellants, fairly stated that the appeal is now confined only to the payment of back wages ordered to be given by the Tribunal.

By the order under appeal, the Tribunal has allowed the application which challenged the Railway Boards circular dated 15-9-1964/17-9-1964. The said circular inter alia, contains the following clause:

'No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts'.

Consequent to the deletion of the above clause, further directions were given. Learned counsel submits that the clause, which has been directed to be removed, is in accordance with the judgment of this Court in Virender Kumar v. Avinash Chandra Chadha³. This Court, in that case, held on principle of 'no work no pay' that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal, being in consonance with the ruling of this Court, we



are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. The result is that the respondents will be given deemed promotion, if any, before retirement and also the benefit in the matter of fixing pension. No costs.”

23. The said view was based on the earlier Judgment of the Supreme Court in **Virendra Kumar v. Avinash Chandra Chaddha** (1990) 3 SCC 472, where it was held that the principle of ‘no work, no pay’ would apply. It was further held that an officer would not be entitled to a higher salary if such officer had not actually worked in that post.

24. In the Judgment dated 02.03.2023 passed in W.P.(C) 4384/2023, this Court was not called upon to consider the validity of the direction issued by the learned Tribunal regarding the payment of arrears of pay and, therefore, did not make any observation regarding the validity of Paragraph 228 of the IREM. However, the learned Tribunal, in its Impugned Order, was cognizant of the aforesaid Judgment of the Supreme Court and rightly held that the entitlement of an officer to arrears of pay, when promotion is denied, must be determined based on the facts of each case. The learned Tribunal, however, in the Impugned Order, held that the denial of promotion to the post of CGS to the respondent was *mala fide*, thus entitling him to arrears of pay as an exception to Paragraph 228 of the IREM.

25. We, as noted hereinabove, do not approve the finding of the learned Tribunal regarding *mala fide*, as it is not based on any discussion of facts and fails to assign reasons for the same. As noted



hereinabove, even in the Order dated 03.02.2003 passed by the learned Tribunal in O.A. No. 2349/2001, or in the Judgment dated 02.03.2023 of this Court in W.P.(C) 4384/2003, neither the learned Tribunal nor this Court, rendered any finding that the denial of promotion to the respondent to the post of Goods Supervisor or CGS was *mala fide*. The denial of promotion to the post of Goods Supervisor was found to be unjustified merely because the revision of seniority was made without reasons. The same, in our opinion, is not sufficient to attribute *mala fides* to the petitioners.

26. In **P.P. Sharma** (supra), the Supreme Court enunciated the circumstances under which an action taken by an authority can be said to be *mala fide*. It observed as under:

“49. The focal point from the above background is whether the charge-sheets are vitiated by the alleged *mala fides* on the part of either of the complainant R.K. Singh or the Investigating Officer G.M. Sharma. In *Judicial Review of Administrative Action S.A. de Smith*, (3rd edn. at p. 293) stated that:

"The concept of bad faith ... in relation to the exercise of statutory powers ... compromise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or private interests. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise... The administrative discretion means power of being



administratively discreet. It implies authority to do an act or to decide a matter a discretion."

The administrative authority is free to act in its discretion if he deems necessary or if he or it is satisfied of the immediacy of official action on his or its part. His responsibility lies only to the superiors and the Government. The power to act in discretion is not power to act ad arbitrium. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it brings the authority concerned in conflict with law. When the power is exercised mala fide it undoubtedly gets vitiated by colourable exercise of power.

50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly. whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (1) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has



been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

27. We do not find the above test to be made out by the respondent. In fact, the learned Tribunal, in its Order dated 03.02.2003, while adjudicating the claim of the respondent for promotion to the post of CGS, directed that the case of the respondent be considered for the grant of such promotion from the date his juniors were promoted; however, it did not issue any direction with respect to the payment of arrears of pay in case the respondent was found entitled to retrospective promotion to the said post.

28. We, therefore, have some doubt as to whether the O.A. filed before the learned Tribunal, seeking arrears of pay upon the promotion being granted in compliance with the aforesaid order, was maintainable at all; such relief not being granted in the earlier O.A..

29. Be that as it may, in the absence of any reasons for attributing *mala fides* to the petitioners, and the said finding having been set aside by us in the present order, we are of the view that the principle of ‘no work, no pay’ would apply to the case of the respondent. The respondent, upon such promotion, would be entitled only to notional fixation of his pay for the purpose of determining his retiral benefits, as he had in the meantime superannuated.

30. In the view of the foregoing discussion, the Impugned Order cannot be sustained and is accordingly set aside.

31. The petition is disposed of in the above terms.



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32. There shall be no order as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

OCTOBER 28, 2025/ys/RM/hs