

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1239 of 2002

New Delhi, this the 8th day of April, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDIL)

Gopal Krishan Gupta
Working in DC Office,
Tis Hazari,
Delhi.

-APPLICANT

(By Advocate: Shri Anil Singhvi)

Versus

Government of NCT of Delhi

Through its

1. Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.
2. Secretary (Services)
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.
3. Dy. Secretary (Services)
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.
4. Secretary (Finance)
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.
5. Principal Secretary (Revenue)
Government of NCT of Delhi,
Tis Hazari, Delhi.

-RESPONDENTS

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judil)

The applicant has filed this OA impugning Annexure A-1 vide which his representation for payment of arrears of pay and allowances in the pay of UDC w.e.f. 25.4.90 had been rejected.

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2. Applicant also impugns order Annexure A-2 vide which the applicant had been promoted w.e.f. 25.4.90. vide order dated 28.12.2001 and has not been granted arrears of pay and allowances since he was granted promotion with retrospective effect but his pay has been fixed from the date of the order of the promotion.

3. The facts in brief are that the applicant who was posted as LDC with respondent No.5, a criminal case was launched against the applicant under FIR No. 134/82 under Section 420/468/471 IPC. The applicant was also placed under suspension vide order dated 29.4.82 with immediate effect.

4. Subsequently the applicant was acquitted of the criminal charges by the court of M.M. Delhi and on his acquittal suspension order was revoked and it was ordered that the period of suspension be treated as period spent on duty for all purposes including pay and allowances, pension etc. under the provisions of FR 54 as per Annexure A-3. However, applicant was given promotion on 28.12.2001 that too with retrospective effect, i.e., w.e.f. 25.4.90 but it was directed that he will not be entitled for any arrears of pay and allowances as he had not worked as UDC. The applicant submits that this has been purportedly done under FR 17(1) and the same is not applicable in the case of the applicant because he was always ready and willing to do work but it is the respondents who had kept him away from the work for no fault on the part of the applicant. The applicant thus submitted, that as per the judgment in the



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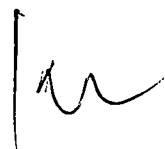
case of U.O.I Vs. K.V. Jankiraman, AIR 1991 SC 2010 and also another judgment given by this Tribunal at Jabalpur Bench in OA 325 and 326 of 1986 entitled as Ramesh Chander Vs. R.S. Gahlewat the applicant is entitled to all the consequential benefits also.

5. Respondents are contesting the OA. The respondents in their reply pleaded that the promotion is always with prospective effect as per the procedure laid down for DPCs in accordance with the instructions contained in Swamy's Manual on Establishment and Administration which has been annexed as Annexure R-1.

6. It is further stated that the applicant has not been subjected to any discrimination so the applicant is not entitled to consequential relief.

7. I have heard the learned counsel for the parties and gone through the records of the case.

8. The respondents main reliance is on the instructions contained in Swamy's Manual as given by the DOP&T. But it appears that the reliance placed on the instructions of the DPC by the respondents is a misplaced one since the denial of pay and salary to the applicant from the date of his promotion is covered only under FR 17(1) which has not been appreciated in the case of U.O.I. Vs. K.V. Jankiraman, AIR SC 2010 nor the respondents department is allowed to take the plea of no work no pay as per the dictates in the case of U.O.I Vs. K.V. Jankiraman which is reproduced hereinbelow:-



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" It was further contended on their behalf that the normal rule is 'no work no pay'. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometime with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such suffering, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of 'no work no play' is not applicable to case 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 FR 17(1) will also be inapplicable to such cases (emphasis supplied)).

9. The facts of the case in hand are similar to the facts in the case of Jankiraman. The applicant had been put to trial as if he had committed some forgery in the order passed by the SDM, Patel Nagar on the basis of which he was subjected to trial in the criminal court of M.M. where he had been acquitted on merits.

10. I have also gone through the judgment given by the Ld. M.M. and found that prosecution has failed to prove its case against the accused and thus he was acquitted. In these circumstances I am of the considered opinion that the applicant was kept away from service and was not promoted for no fault on his part. Thus the



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applicant is also entitled to arrears of pay and retrospective promotion and this OA deserves to be allowed.

11. Accordingly, I allow the OA and the impugned orders are quashed. The respondents are directed to pay arrears of difference in payment of pay and allowances in the post of UDC w.e.f. 25.4.90. These directions may be complied within a period of 2 months from the date of receipt of a copy of this order. However, the prayer with regard to interest is not accepted. No costs.


(KULDEEP SINGH)
MEMBER(JUDL))

Rakesh