

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2682/2002

New Delhi this the 27th day of August, 2003.

(7)

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Shri Sat Narain,
S/o Late Shri Chandgi Ram,
R/o Vill. Bharthal,
P.O. Bijwasan,
New Delhi-61. Applicant

(Present : None)

Versus

1. Additional Commissioner of Police, Southern Range, Police Headquarters, I.P. Estate, New Delhi.
2. Additional Dy. Commissioner of Police, South District, Haus Khas, New Delhi. Respondents

(through Sh. Ajesh Luthra, Advocate)

ORDER (ORAL)

Shri Justice V.S. Aggarwal, Chairman

By virtue of the present application Sh. Sat Narain who is a retired Assistant Sub-Inspector of Police seeks a direction to grant retrospective promotion to list F-II (Executive)/ad-hoc promotion to the rank of Sub-Inspector from the year 1993 with consequential benefits.

2. The facts are not in dispute. The applicant had faced disciplinary proceedings and on 10.5.1991 a penalty of reduction in pay was imposed. His appeal was dismissed by the Appellate Authority on 6.12.1997. The applicant preferred OA-3268/92. This

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Tribunal had quashed the orders passed by the Disciplinary Authority as well as the Appellate Authority on 30.04.1998 and directed that:-

"In the result, the Disciplinary Authority's impugned order dated 10.5.91 as well as appellate authority's order dated 12.97 are quashed and set aside. The case is remanded back to the Disciplinary Authority with the direction that in the event he disagrees with the finding of the E.O. he should reduce the reasons for such disagreement into writing and communicate the same to the applicant along with a copy of the E.O.'s report and give him a reasonable opportunity to file a representation against the same and on receipt of the representation dispose of the same in accordance with law."

3. When the matter was remitted back the proceedings were initiated afresh as directed by this Tribunal. However, the Disciplinary Authority on 15.1.1999 exonerated the applicant of the alleged dereliction of duty and passed the following order:-

"The case pertains to the year 1988 and the punishment was imposed upon the defaulter in 1991. Thereafter he served the department till his retirement having the punishment to his credit though the same has now been set aside. I have also been told that he is on deathbed and unable to contend in person. Moreover, the punishment against such a person will not serve any end of justice. Keeping the overall circumstances in view, I take a lenient view on humanitarian grounds and exonerate the said defaulter ASI Satnarain, No.221/SD, 1343/D of the charges against him in this DE."

4. It is in face of these facts that the applicant contends that he is entitled to the

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retrospective promotion in list E-II (Executive) to the rank of Sub-Inspector with consequential benefits.

5. When the matter was called there was no appearance of behalf of the applicant. In these circumstances, we do not have the advantage hearing applicant's learned counsel.

6. Learned counsel for the respondents contends (a) the applicant had not gone for the necessary training required for being promoted as a Sub-Inspector and, therefore, he cannot be given the said benefit; (b) the applicant has not been exonerated fully on merits by the Disciplinary Authority and in support of his claim reliance is placed on the decision of the Apex Court in the case of Union of India etc. etc. Vs. K.V. Jankiraman etc. etc. (1991(5)SLR 602); and (c) the Lt. Governor has rejected the claim of the applicant to grant him exemption from undergoing training.

7. We have carefully considered the said submissions. We take up the contentions a & c of the respondents' counsel together.

8. We have already enumerated the facts of the present case in the preceding paragraphs. The disciplinary proceedings had been initiated. This Tribunal had quashed the penalty imposed. Consequently,

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the Disciplinary Authority had exonerated the applicant. The reasons for exoneration becomes irrelevant because ultimately the Disciplinary Authority had exonerated the applicant. We concede that our attention was drawn to certain facts recorded by the Disciplinary Authority but the department does not care to challenge the said order of the Disciplinary Authority and has allowed the order of exoneration to become final. Once a person is exonerated it must be taken that he has been exonerated from the charges for all practical purposes.

9. So far as the decision rendered by the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman (supra), the Apex Court has held in paragraph-26 that:-

"We are, therefore, broadly in agreement with the findings 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 of 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 an 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

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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 jeopardise 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."

10. Perusal of the same clearly shows that these findings of the Apex Court applies in a peculiar situation when an employee may not be completely exonerated and does not visit the penalty even of censure. Herein as referred to above and rementioned at the risk of repetition the exoneration is complete. Reasons are not material. But once a person is exonerated it would be difficult to deny the benefits accruing to him. The exemption that was claimed was from Lt. Governor which has lost its significance

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because the applicant had already superannuated by seeking voluntary retirement. Once it is so to insist that he had to undergo the necessary training would be unreasonable.

11. In the face of the aforesaid, we allow the present application and direct that applicant's claim should be considered in the light of the findings recorded above. The respondents shall not insist on the applicant's under-going the necessary training. If any, consequential benefits accrues, this should be accorded to the applicant.

Naik
(S.K. Naik)

Member(A)

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(V.S. Aggarwal)
Chairman

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