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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 2735/97

New Delhi: this the 30th JUNE, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Ashok Kumar Sinha,
S/o Late Shri Rameshwar Prasad,
R/o C-II/18, Tilak Marg,
New Delhi presently posted as GM Telephones,
S-1, New Delhi Applicant.

(Applicant in person)

Versus

1. Union of India,
through its Secretary,
Department of Telecommunications,
Sanchar Bhawan,
20, Ashok Road,
New Delhi.

2. Chairman,
Telecom. Commission,
Sanchar Bhawan,
20, Ashok Road,
New Delhi

..... Respondents.

(By Advocate: Shri S.M. Arif)

JUDGMENT

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' order dated 11.4.97 and dated 6.8.97 and claims retrospective promotion to Senior Administrative Grade (SAG) with effect from ^{the date} his juniors were promoted with arrears, interest and costs.

2. Applicant was proceeded against departmentally vide Charge Memo dated 22.4.94 in respect of certain acts of omission and commission relating to the period when he was functioning as Director, Telecom Dibrugarh from 25.8.82 to 26.12.89. The Enquiry Officer in his report dated 26.9.96 held the charge as not proved, upon which the proceedings against applicant were dropped by order dated 18.10.96

(Annexure-2). By order dated 28.11.96 (Annexure-4) applicant was granted notional promotion to SAG w.e.f. 21.9.95 the date of promotion of his junior and also notional pay fixation with effect from that date, with actual pay and allowances confined to the date he actually assumed charge of the higher post.

3. The surviving grievance therefore relates to applicant's claim for arrears, interest and costs.

4. We have heard applicant who argued his case in person and respondents' counsel Shri Arif.

5. Applicant has cited several rulings, one of which is UOI Vs. Janaki Raman AIR 1991 SC 2010.

"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. This cannot be denied on principle of 'no work, no pay'. 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. Hence FR 17(1) will also not apply to such cases.

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. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such

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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 jeopardise public interests. While therefore disapproving the last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of Memorandum dated January 30, 1982 viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", the following sentence is directed to be read in place of the said sentence.... "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 proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

6. In the present case, the impugned orders dated 11.4.97 state that applicant is not entitled to arrears on the principle of 'no work, no pay' as ordered by the Hon'ble Supreme Court in Janki Raman's case (Supra) but the above extract from that judgment goes to show that respondents have clearly misread the ratio in Janki Raman's case (Supra). Similarly the impugned order dated 6.8.97 states that applicant is not entitled to arrears in view of DP & T's OM dated 4.11.93 but here again, nothing has been shown to us to establish that respondents had examined the matter in the light of the ratio in Janki Raman's case (Supra) extracted above and recorded reasons for their findings.

7. Respondents in paras 4.5 to 4.11 of their

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reply have sought to fasten the delay in concluding the departmental proceedings, from the date it was instituted on 22.4.94 till the charges were dropped on 18.10.96, on applicant on the ground of his non-inclination to visit Shillong to inspect the documents and his filing OA No.120/95 in CAT Patna and SLP (C) No.22135/95 against the judgment of CAT Patna in Hon'ble Supreme Court. Respondents have not satisfactorily explained why, if applicant was disinclined to visit Shillong to inspect the documents, they themselves did not proceed further with the D.E. in accordance with rules and instructions. In so far as filing of OA in the Tribunal and SLP before Hon'ble Supreme Court is concerned, a Govt. servant cannot be denied his right to approach the appropriate legal forum in accordance with law for amelioration of a grievance.

8. In the facts and circumstances of this case, the impugned orders dated 11.4.97 and 6.8.97 to the extent they deny applicant the arrears are quashed and set aside. Respondents should calculate and pay to applicant the arrears within 2 months from the date of receipt of a copy of this order. The prayer for interest and costs is rejected, as nothing has been shown to suggest that respondents were actuated by any malafide motive in denying applicant his arrears, and they acted so only because of a wrong appreciation of the ratio in Janki Raman's case (Supra).

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9. The OA is allowed to the extent mentioned in para 8 above. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

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VICE CHAIRMAN (A).

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