

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.648/94

New Delhi, this the 21st December, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Sub-Inspector Chaman Singh,

No.2720-D,

Delhi Police,

through

Mrs. Avnish Ahlawat, Advocate,

243, Lawyers' Chambers,

Delhi High Court,

New Delhi.

... Applicant

By Advocate: Mrs. Avnish Ahlawat

Vs.

1. Government of National Capital Territory
of Delhi, through
Commissioner of Police, Delhi,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. Deputy Commissioner of Police (Hq-I),
Delhi Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

... Respondents

By Advocate: Shri B.S. Oberoi, Proxy for
Shri Anoop Begai

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The applicant filed the original application 1858/87 when he was serving as Head Constable challenging the order dated 10.10.86 whereby penalty of reduction in rank from the post of ASI to that of Head Constable was passed. The appeal against the same preferred by the applicant was rejected by the Additional Commissioner of Police by the order dated 28.6.87 and that order was also assailed in the O.A. The O.A. was allowed

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by the order dated 24.3.92 quashing the orders of penalty passed by the disciplinary authority and upheld by the appellate authority and revisional authority with a direction to restore the applicant to the post of ASI as if the impugned order of punishment has not taken effect and to pay him the difference in salary during the period and also to treat the period under suspension as duty for all purposes. This order was complied by the respondents by the order dated 17.6.92 restoring the applicant to the rank of ASI from the date of reduction i.e. 21.10.86 and further giving him the difference of salary drawn by him during the period of reduction. His suspension period from 30.4.85 to 29.7.85 has also been treated as period spent on duty for all purposes. By the order dated 10.7.92 the applicant has also been fixed in the pay of ASI. By the order dated 27.10.93 the applicant was admitted to promotion list E-II (Executive) w.e.f. 26.12.88 in terms of rule 16(i) of the Delhi Police (Promotion & Confirmation) Rules, 1980. The grievance of the applicant was that he has not been paid pay and allowances for the period from 26.12.88 to 1.11.93 and he made a representation to the Additional Commissioner of Police on 16.11.93 and thereafter filed CCP No.460/93 which was decided on 3.1.94. The contempt petition was dismissed with liberty to the applicant, if so advised, to seek redressal of his grievance in appropriate proceedings.

2. The applicant filed this application in March, 1994, aggrieved by the order dated 4.11.93 whereby he was granted proforma promotion in the rank of SI from 26.12.88 to 1.11.93 stating that he will not be entitled to draw the pay and allowances for the post of S.I. otherwise it

will be counted for purpose of fixation of pay, increment and seniority.

3. A notice was issued to the respondents who contested this application. It is stated that the case of the application for admission of his name in List E-I(Ex.) as per his immediate junior was considered and his name was brought on Promotion List w.e.f. 7.4.88 vide notification dated 26.4.93 and in the meantime he was already deputed for Uppter School Course w.e.f 25.9.92 vide Notification dated 13.11.92 and that Uppter School Course was completed in the term ending May 1993. After successful completion of Uppter School Course, the name of the petitioner was admitted to List E-II(Ex.) vide Notification dated 27.10.93 and promoted to officiate as Sub Inspector(Ex.) w.e.f. 2.11.93 vide Notification dated 4.11.93. He was given proforma promotion to the rank of Sub-Inspector from 26.12.88 to 1.11.93 as the petitioner had not performed the duty for the post of S.I.(Ex.) and also as per provisions contained in FR-17(i). Rule 16(i) of the Delhi Police(Promotion & Confirmation) Rules, 1980 says that without passing the Uppter School Course, nobody can get promotion on regular basis. The petitioner passed the Uppter School Course in May 1993, so he was promoted on regular basis w.e.f. 2.11.93 with proforma promotion from 26.12.88 to 1.11.93 and his seniority was also fixed with his original counterparts.

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4. We heard the learned counsel for the parties at length. The contention of the learned counsel for the applicant is that the applicant was not given promotion from due date because of the disciplinary departmental proceedings which were finally resulted in exoneration of the applicant on account of judicial review. When the proceedings initiated did not end in any penalty against the applicant then the applicant in having been held to be continuous service he should have been granted all the benefits which the applicant in a normal course would have got. Since the applicant has been found fit for promotion from due date, he has to be paid his pay and allowances of the promotional post also. We have considered this contention and we find that the Tribunal while considering the penalty imposed upon the applicant of reduction to the lower rank of Head Constable observed that the finding of the disciplinary authority that the applicant is guilty of the charges based on no legal evidence and is perverse. It was also held that the appellate and the revisional authority have not applied their minds to the grounds raised by the applicant and have not cared to scrutinise the evidence recorded before the Inquiry Officer before deciding to uphold the finding of disciplinary authority. The conclusion drawn by the Inquiry Officer is said to be based not on the evidences which came before him but it is held on judicial review that the enquiry proceedings were ab initio, illegal on account of the chargesheet issued to the applicant for the summary of allegations served upon the applicant are without foundation. It is another matter that the legal evidence may not justify the conclusion

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or on technical grounds the orders of the appellate and revisional authority cannot be sustained. The applicant has been given due benefits after reinstatement in service which he would have normally drawn had the penalty been not imposed upon him. He has also been given notional promotion from the date a junior to him was promoted i.e. w.e.f. 26.12.88 to the post of S.I. His pay has also been fixed notionally with all benefits of increment and has been paid actual emoluments of the promotional post w.e.f. the date of the order passed by the competent authority dated 2.11.93. The learned counsel for the applicant has placed reliance on the case of UOI Vs. K.V. Jankiraman reported in JT 1991(3) S.C.527 also does not help the case. The learned counsel for the applicant has referred to para 26 of the report. The relevant para is reproduced below:-

" 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 alongwith the 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 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 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,

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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."

Now coming to the impugned order we find that the applicant was granted proforma promotion in the rank of S.I. for the period from 26.12.88 to 1.11.93 for which he will not be entitled to draw the pay and allowances for the post of S.I. otherwise it will be counted for the purpose of fixation of pay, increment and seniority. The contention of the learned counsel for the applicant is that the respondents have not given any reason in this order but in the reply filed to this application it is clearly stated that the applicant was not granted pay of the promotional post as he did not perform the duties of the post of S.I. during the period of proforma promotion. The respondents have also referred to FR-17(i) which disentitled the applicant for the arrears of the promotional post on which he did not work. It is another thing that the finding of the Inquiry Officer was held to be not based on admissible evidence as ordered by the Tribunal in its judgement in O.A. 1858/87 decided on 24.3.92. But in that judgement also, the Tribunal did not give a direction that the applicant be paid the arrears of pay of the promotional

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post and this point was considered in the proceedings of contempt filed by the applicant in CCP No.460/93 decided on 3.1.94. Thus, the stand taken by the respondents in the circumstances of the case has to be judged in the light of law laid down by the Hon'ble Supreme Court in the case of K.V. Jankiraman(supra). The Hon'ble Supreme Court has left the matter for consideration of the competent authority but in case the arrears are not paid of the promotional post then the respondents have to give reasons. That reasons are shown in the counter filed by the respondents. The order, therefore, cannot be faulted with on that ground that there were no reasons in the order.

5. The learned counsel for the applicant has also placed reliance on the case of G.T. Lad & Ors. Vs. Chemical & Fibres of India Ltd. reported in SLJ 1979 p.318. The respondents Company issued notice to the workers asking them to report for duty on or before September 18, 1972, failing which their absence would be construed as voluntary abandonment of service and their names would be struck off from the muster rolls of the Company. The names of the appellants were struck off from the rolls of the Company on October 23, 1972. In that context, the Hon'ble Supreme Court considered for the payment of back wages where reinstatement has been directed by the Court and held that the entire back wages must follow as a matter of course. Of course, there is discretion in the Court having regard to special circumstances, if any to modify this rule. The facts of this case therefore do not help the case of the applicant because the applicant has been paid full wages after reinstatement.

It is only because w.e.f. 26.12.88 one junior was promoted to the rank of S.I. the applicant has also been given that posting on national basis but actual payment of the salary and emoluments from the date of the order when he has taken charge. Here it may be recalled that the original decision of the Tribunal in O.A. 1858/87 the Tribunal did not make any order either giving promotion to the applicant or for payment of the salary of the promotional post and only directed that consequential benefits will be given to the applicant. These consequential benefits were considered in the contempt petition filed by the applicant before the Tribunal and the contempt petition was dismissed holding that the judgement has been fully complied with. In these circumstances, the authority cited by the applicant for payment of wages of the promotional post from the date of national promotion has no basis.

6. The learned counsel for the applicant has also referred to the decision of Hon'ble Supreme Court in the case of Brahma Chandra Gupta Vs. UOI reported in 1984(3) Vol.37 SLR p.307. In this case the question of payment of pay for the suspension period was involved when the applicant was facing a criminal trial. The petitioner was finally acquitted by the appellate court and no departmental enquiry was held so it was directed that he should be paid the backwages. In that case the respondents have paid 3/4th of the salary but remaining 1/4th was not paid. In those circumstances on the basis of the judgement of the Trial Judge set aside the order of the High Court and upheld that of Trial Judge for the payment of full wages for the suspension period. This case also does not help the applicant

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because it was not a case of suspension and for the suspension period the applicant has already been paid the full wages for the post on which he was suspended. It was only on 26.12.88 after decision of O.A.1858/87 in 1992 that the applicant has been given retrospective proforma promotion w.e.f. 26.12.88.

7. The question of payment of backwages was also considered by the Hon'ble Supreme Court in the case of Virinder Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha & others reported in (1990)3 SCC 472. That was a case of seniority and promotion and the Hon'ble Supreme Court considered the payment of emoluments of higher post whether justified with retrospective effect on account of deemed promotion of earlier date. It was observed having not worked in the higher post, there was no entitlement to higher salary on the principle of 'no work no pay'. In the circumstances it was held that there was neither equity nor justice for award of emolument of higher post. This point was also considered regarding arrears of pay in the case of Ratanlal Malviya Vs. State of M.P. reported in (1994) 26 ATC 739. Here it was a case where the employee who was quasi permanent, his services were terminated in violation of principles of natural justice for under a bonafide decision and with justification. In such circumstances, the Hon'ble Supreme Court held that the said person is entitled to prospective reinstatement without arrears of pay. In this case the applicant challenged his termination before the Administrative Tribunal but that was dismissed on the ground of delay. The Hon'ble Supreme Court

examining the judgement of the Tribunal which held that the applicant was negligent and repeatedly remained absent for long periods without leave and his services were otherwise also not satisfactory on which basis his services were terminated and were upheld by the Tribunal. The Hon'ble Supreme Court quashed the order of the Tribunal and directed reinstatement and consolidated amount of Rs.5,000/- was awarded towards backwages because of the litigation entered into by the applicant. Another case to the point is of Sagir Ahmed Vs. UOI & ors. reported in (1994)27 ATC 78. In that case also the petitioner who was a casual labourer for over 5 years in Incometax Department was removed from the service on account of his involvement in a criminal case. On acquittal from the criminal court, he was reinstated in service but no backwages were awarded and period of absence to count for continuity of service as casual labourer and further benefits, if any. The Hon'ble Supreme Court in para 4 has observed as follows:

"It is no doubt correct that the applicant having worked as a casual labourer for over a period of five years had no right to hold the post but his services were not terminated on the ground that his work was unsatisfactory. The termination was on the ground that the appellant was involved in a criminal case. He, having been acquitted in the criminal case the natural consequence would be that he is entitled to be reinstated in the service. We allow the appeal set aside the order of the Tribunal and direct the respondents to reinstate the appellant in service. In the facts and circumstances of this case we direct that the appellant shall not be entitled to back wages. The period of absence shall, however, be treated for the purposes of continuity in service as casual labourer and for whatever benefits which may ensure to him in the service. We set aside the order of the Tribunal and allow the appeal with no order as to costs."

The learned counsel for the applicant argued that this was a case of casual labourer and cannot apply to the case of the applicant. However, the casual labourer has acquired the status of the temporary employee. His services were terminated on 18.4.85 and he was ordered to be reinstated by the decision of the Hon'ble Supreme Court by the order dated 24.9.92, i.e. after seven years. The ratio laid down by the Hon'ble Supreme Court in all these cases as well as in the case of K.V. Jankiraman(supra) is that it is for the respondents to decide in the particular circumstance of the case as to the wages for the promotional period to be paid on notional basis or actually and from which date?

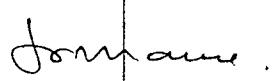
8. In the present case, the respondents have given benefits to the applicant inspite of his involvement in departmental disciplinary enquiry. On a similar issue though not identical the Hon'ble Supreme Court considered payment of :~~as~~ back wages from the date of promotion to Telecom Engineers consequent to orders passed in Junior Telecom Officers Forum and Others V. Union of India, JT 1992(5) SC 525. The Hon'ble Supreme Court considered the matter for grant of back wages from the date of promotion which were denied by the Tribunal while disposing of civil appeal filed by Telecommunication Engineering Service Association(India) and Another V. Union of India and Another held that the officers would get re-fixation of the seniority and notional promotion with retrospective effect and Tribunal was justified in declining to grant back wages except w.e.f. the date they actually worked on the higher post. The case is reported in JT 1994 Vol.7 S.C. p. 518.

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9. In view of above facts, the application is devoid of merit and the impugned orders passed by the respondents do not call for any interference. The application is dismissed leaving the parties to bear their own cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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