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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1907/94 New Delhi, dated the 28th April, 1995

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

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri H.C. Kataria,
Son of Late Shri Uttam Chand Kataria,
R/o A-1/323, Janakpuri,
New Delhi-110058.
(By Advocate Shri V.K. Rao) APPLICANT

VERSUS

1. The Comptroller & Auditor General
of India,
10, Bahadur Shah Zafar Marg,
New Delhi-110002.
2. The Principal Director of Audit,
Economic & Service Ministries,
AGCR Building, Indraprastha Estate,
New Delhi-110002.
3. The Secretary,
Ministry of Personnel, Pensions & Public
Grievances, Shastri Bhawan, New Delhi.
(By Advocate Shri P.H. Ramchandani) RESPONDENTS

JUDGEMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri H.C. Kataria has impugned the order dated 15.10.93 (Annexure A) denying him arrears of pay and allowances upon his promotion as AAO w.e.f. 1.3.84 and A.O. w.e.f. 1.1.88 till the dates of issue of orders consequent to his full exoneration of charges under disciplinary proceedings with interest @ 18% p.a.

2. Disciplinary proceedings U/R 14 CCS (CCA) Rules, 1965 were initiated against the applicant vide orders dated 26.6.85, on the charges that while working as Account in HD IV during 1982 he had displayed gross negligence, misconduct ^{A and} acted with malafide while performing his official functions. By Memorandum
- A

dated 21.8.91 (Annexure 24) the disciplinary authority exonerated the applicant of all the charges. By order dated 28.8.91 (Annexure A.21) the applicant was promoted as AAO w.e.f. 1.3.84 and by order dated 15.10.91 (Annexure A28) he was promoted as A.O. w.e.f. 1.1.88, but his pay in the new pay scales of the promoted posts, was fixed notionally under FR 22(C), and he was denied the arrears of pay and allowances. Upon his representations against this decision of the respondents, he was eventually informed vide impugned letter dated 15.10.93, that the orders issued under DOP's O.M. dated 14.9.92 pursuant to the judgement of the Hon'ble Supreme Court in UOI Vs. K.V. Janakiraman AIR 1991 SC 2010 would be applicable only from the date of issue of that O.M. and cases arising prior to the date of that judgement continue to be governed by the earlier instructions.

3. We have heard Shri V.K. Rao for the applicant and Shri Ramchandani for the respondents, and given the materials on record on careful consideration.

4. We see considerable force in Shri Rao's argument that the arrears of pay and allowances claimed by the applicant cannot be denied to him for the simple reason that the Hon'ble Supreme Court's judgement in Janakiraman's case is dated 27.8.91 i.e. a day prior to the issue of the respondent's first order dated 28.8.91 promoting the applicant as AAO w.e.f. 1.3.84 but denying him arrears of pay and allowances, and well before the second order dated 15.10.91 promoting the applicant as A.O. w.e.f. 1.1.88, but similarly denying him arrears of pay and allowances.

5. The Hon'ble Supreme Court's Judgement in Janakiraman's case (Supra) arose out of SLP's filed by the UOI against the CAT (Full Bench) judgement's dated 2.3.87 in Venkat Reddy's case reproduced at pages 158-181 of CAT Full Bench

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Cases Vol. I Bahri & Sons [^] ~~Mem~~ [^] ~~Delhi~~ 1989, and connected cases. While dealing with the "Sealed Cover Procedure" the Tribunal in Venkat Reddy's case and other connected cases had held that when an employee is completely exonerated, meaning ^{thereby} ~~by~~ that he was not found blameworthy in the least, and was not visited with the penalty even of censure, he had to be given the benefit of the salary of the higher post along with other benefits from the date on which date he would normally have been promoted, but for the disciplinary/criminal proceedings. While expressing broad argument with this finding, the Hon'ble Supreme Court in their judgement dated 27.8.91 in Janakiraman's case (Supra) had gone on to state

"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 from 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".

To this extent we set aside the conclusion of the Tribunal on the said point.

6. The D.M. referred to above is DOPT's D.M. dated 30.1.92.

7. The Hon'ble Supreme Court Judgement in Janakireman's case which laid down the law is dated 27.8.91 and hence, when the respondents issued their order dated 28.8.91 promoting the applicant as AAO w.e.f 1.3.84, and again when they issued

their order dated 15.10.91 promoting the applicant as A.O. w.e.f. 1.1.88 they should have determined whether the applicant would be entitled to arrears of pay and allowances for the period of notional promotion preceding the date of actual promotion, and if so to what extent, by taking into consideration all the facts and circumstances surrounding the disciplinary proceedings, and when they decided that ~~the applicant was not entitled to the arrears in full or a~~ ^{the applicant was not entitled to the arrears in full or a} ~~part of it~~ ^{part of it} they should have recorded their reasons for doing so by means of a detailed, speaking order. This was not done by the respondents. The fact that the DOP issued their O.M. on 14.9.92 pursuant to the judgement of the Hon'ble Supreme Court in Janakiraman's case, and that O.M. was subsequent to the respondents' order dated 28.8.91 and 15.10.91 is not very relevant as the law had been laid down by the Hon'ble Supreme Court on 27.8.91 itself. In fact Shri Rao's argument receive further support from the fact that prior to the Hon'ble Supreme Court's judgement dated 27.8.91 in the SLP's filed against the Tribunal's judgement dated 2.3.87 in Venkat Reddy's case (Supra) and connected cases, it was those judgements which held the field (in the absence of any stay orders which have been ^{brought out} ~~subject to~~ ^{over} ~~own~~ notice by the respondents) and according to those judgements which were clearly anterior to the orders dated 28.8.91 and 15.10.91, arrears of pay and allowances had invariably to be paid in case of full exoneration after disciplinary proceedings/criminal prosecution.

4. In the result this application deserves to succeed and is allowed, to the extent that the impugned letter dated 15.10.93 as well as respondents' letter dated 28.8.91 and 15.10.91, in so far as it denies the applicant arrears of pay and allowances consequent to his promotion, without considering all the facts and

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circumstances surrounding the disciplinary proceeding, and without assigning any reasons whatsoever is quashed and set aside. The respondents will pass fresh orders in the matter keeping the contents of paragraph 5 above squarely in view, and in the event they grant arrears of pay and allowances to the applicant in consequence of those orders, they shall also pay simple interest @ 12% p.a. on the principal so paid. In case they held that the applicant is not entitled to the arrears of pay and allowances, they will record their reasons for doing so by means of a detailed, speaking and reasoned order. These directions should be implemented within 2 months from the date of receipt of a copy of this judgement, and thereafter if any grievance still survives, it will be open to the applicant, after exhausting the departmental remedies available to him, to challenge the respondents decision through a fresh O.A. in which case if either party relies on any document which has already been filed and is on record as a part of the pleadings in this O.A., he need not file a fresh copy of that document, as the documents already filed will be taken on record in that O.A.

5. This O.A. stands disposed of accordingly.
No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

GK

S.R. Adiga
(S.R. Adiga)
Member (A)