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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No. 597 of 2000

New Delhi, this 14th day of the October, 2000

Hon'ble Mr. Justice Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. Govindan S. Tampi Member (A)

1. Smt. Kiran Sawhney wife of late Shri Madan Sawhney deceased Asstt. Supdt. of Post Officers, Faridabad Division, under Haryana Postal Circle, R/o 2696 Sector, 3 Faridabad, Address for service of notices, C/o Shri Sant Lal, Advocate, C-21(B) New Multan Nagar, Delhi -110056.

(By Advocate: Shri Sant Lal)

... Applicant

Versus

Union of India through

1. The Secretary,
Ministry of Communications, Dept. of Posts,
Dak Bhawan, New Delhi-110001.
2. The Director Postal Services,
Haryana Circle,
Amabala Cantt. 1330001.
3. The Sr. Supdt. of Post Offices
Faridabad Division, Faridabad-1.

.... Respondents

(By Advocate: Shri K.R. Sachdeva)

ORDER (oral)

Justice V. Rajagopala Raddy,

The applicant the widow of Shri Madan Sawhney wh was promoted to the cadre of Assistant Supdt. of Post Offices (in short, ASPOs), with effect from 24.10.1994. He passed away on 3.5.1999. While he was in service, a chargesheet was issued to whom he pleaded not guilty. An enquiry was ordered and the enquiry officer holding that the charges were not proved, exonerated, the applicant's late husband from the charges by an order dated 9.3.1999. When his case for promotion was considered earlier on 24.10.1994, as the charges were pending against him, the recommendation of the DPC was kept in the sealed cover. Now that the charges against

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him were not proved, the competent authority by the order dated 19.3.1999 promoted the applicant with retrospective effect from 24.10.1994 to the post of ASPO, but only on notional basis and he was paid allowances from the date of actual promotion, 22.3.1999, when he joined as ASPO. He could not question the said order as he passed away on 3.5.1999. The applicant, therefore, made a representation and as there was no reply, she filed the present OA, seeking direction to the respondents to pay the arrears and allowances with retrospective effect from 24.10.1994 in the post of ASPO and for proper fixation of pay of her husband.

2. The respondents filed the counter affidavit and contested the case. Learned counsel for the respondents Shri R.K. Sachdeva raised the preliminary objection that the ~~applicant~~^{applicant} was not maintainable as according to him, the applicant is not an aggrieved party as required under section 19 of Administrative Tribunals Act. Learned counsel for the respondents also contended that as per the judgement of Hon'ble Supreme Court in the case of Union of India & Others Vs. Jankiraman etc, (AIR 1991 SC 2010), it is not an automatic right for the employee to be paid arrears of pay and allowances. He was covered by OM dated 14.9.1992 para 3 of the OA.

3. We have heard the contentions of both the counsel and perused the records.

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4. We do not find any substance in the preliminary objection raised by the learned counsel for the respondents. In the instant case, the applicant who is the widow of the employee, sought direction for payment of the arrears of pay and allowances of her husband. This is not a case where the employee was satisfied with the impugned order and hence, he did not file question it. Hardly a month from the date of the order, he expired. It was open to him to question this order within a period of one year. The applicant is entitled to make a representation within a period of three months from the date of the order. That period had also not expired when he passed away, it is not, therefore, possible to hold that the employee has been satisfied with the order. This was a claim available to the employee before he died, but his death deprived him of that right. It is not possible to dispute that the widow of deceased is not entitled to come on record and claim the amounts, do not find any bar for the widow of the employee to file the OA, herself. She is entitled under law to do so as she is certainly aggrieved by the order. In the circumstances, we do not find any merit in the preliminary objection and we hold that the OA is maintainable. Over coming to the merits of the case It is not in controversy that disciplinary proceedings against the applicant's husband ended in exoneration and he was entitled to have been considered for promotion with retrospective effect from 24.10.2000 and accordingly, the respondents promoted him. The question, therefore, is whether the arrears of pay and allowances are to be paid or not.

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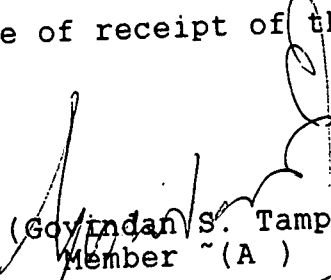
In the case of Union of India & Others Vs. K.V. Jankiraman etc (AIR 1991 SC 2010), it is clearly stated that "when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefits of salary of the higher post along with other benefits from the date on which he would have normally be promoted but for the disciplinary proceedings."

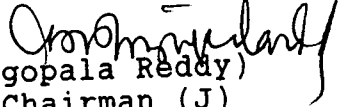
5. Learned counsel for the respondents relied on para 3 of the OA dated 14.9.1992, where it was stated that whether the employee was entitled for the arrears of pay for the period of notional promotion or from the date of actual promotion and if so to what extent, it should be considered by the appointing authority after taking into consideration the facts of the case and find order in the disciplinary proceedings etc. In the instant case no order has been passed by the appointing authority nor reasons were shown in the impugned order for not paying the arrears of pay and allowances.

6. OA is accordingly allowed and respondents are directed to pay the arrears of pay and allowances with effect from 24.10.1994 up to the date of actual promotion and in accordance with the Rules. The applicant is also entitled for costs of Rs. 5000/- (Rupees Five Thousand only). The respondents are

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directed to comply the order within two months from the date of receipt of the copy of the order.


(Goyindan S. Tampi)
Member ~ (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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