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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1892/88.

M.P.No. 28/89.

Date of decision: 16.12.1993.

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

THE HON'BLE SHRI B.S. HEGDE, MEMBER (J)

S.K.K. Bhatt,
C-40, Krishna Park,
Devali Road, Khanpur,
New Delhi.

.. Applicant

(By Advocate Shri RP Obroi, counsel)

Versus

Union of India
(Through Secretary, Department of Culture),
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi.

2. Director General,
Archaeological Survey of India,
Janpath, New Delhi-11.

3. Sh. Shiv Kumar,
Junior Accounts Officer,
Archaeological Survey of India,
Janpath, New Delhi-11.

(By Advocate Shri ML Verma, counsel)

J_U_D_G_E_M_E_N_T

[Hon'ble Shri B.S. Hegde, Member (Judicial)]

After considering the pleadings of the parties
we find that the only question now remaining for consi-
deration in this O.A. is the matter of arrears of pay.

The applicant has retired from service on 30.4.1989

and the Respondents, in their reply submitted that all

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the dues of the applicant have been paid and there is nothing more to pay. The contention of the applicant is that since the applicant has been acquitted of the charge levelled against him, he should be considered for promotion to various posts which had been denied to him during the pendency of the criminal proceedings. The criminal case had been under trial for 14 years, as a result he was not considered for promotion. It is not the dispute that the applicant has not been given promotions and pensionary benefits have been paid to him. So far as the applicant's past services are concerned, the Respondents had given him notional promotion and not the arrears of pay. That is in dispute.

2. The learned counsel for the applicant, Shri O.B. Obroi relied upon the Full Bench decision of this Tribunal - Venkata Reddy v. Union of India - wherein the Tribunal struck down the earlier O.M. dated 30.1.1982 which is similar to the existing O.M. dated 12.1.1988. Therefore, he contends that since the Respondents cannot give effect to the content of the O.M. as it has been struck down by the Tribunal, he should be paid the arrears of pay corresponding to the respective promotions given by the department.

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3. On the other hand, the Respondent's stand is that the Office Order dated 29.12.1988 has granted all the benefits due to the applicant by way of retrospective promotions to various grades and consequential benefits as admissible under the relevant rules. He has been allowed notional promotions with retrospective effect in the respective grades at par with his juniors as per eligibility and as per existing rules and regulations. The pension and other retirement benefits dues have also been paid to him as per the rules. It is stated that as against the decision of the Full Bench, the Respondents have filed a SLP in the Supreme Court and obtained a Stay Order from the Supreme Court on 16.11.1987, which is prior to the promulgation of the O.M. dated 12.1.1988. Though in the O.M. dated 12.1.1988 it is stated that the Government servants promoted notional with reference to the date of promotion of his juniors, will not be allowed any arrears of pay for the period preceeding the date of actual promotion.

4. The question of admissibility of arrears of pay and provisions of O.M. of the Department of Personnel & Training dated 30.1.1982 and 12.1.1988 are referred to in paragraph 4 and 5 of the judgment in UOI v. K.V. Janki-
raman [AIR 1991 SC 2010]. Paragraph 7 of the judgment

deals with the judgement of the Full Bench of the Tribunal on the question of admissibility of arrears of pay. The Supreme Court held " while agreeing with the findings of the Tribunal that when an employee is completely exonerated meaning thereby that is not found blameworthy in the least and is not visited with penalty even of censure, he has to be given the benefit of 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. The Supreme Court modified the sentence occurring in the Office Memorandum giving retrospective promotion :

" He may be promoted notionally with reference to the date of promotion of his juniors but he will not be allowed any arrears of pay for the period preceeding the date of actual promotion;

By the following

" however, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceeding 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

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of the disciplinary proceedings/criminal prosecution. That the authority denies arrears of salary or part of it, it will record its reason for doing so."

5. In the light of the above, question to be seen here is whether the applicant is entitled for the arrears of pay for the notional promotion which was given to him by the respondents. On perusal of the Metropolitan Magistrate Court's order dated 16.5.87 it is made clear that the prosecution have failed to prove the charge against the accused under section 409/477 - A of the Indian Penal Code. It is made clear in the judgment that no documentary evidence is placed on record to this effect that as per their balance sheet amount of Rs. 82,000 on the date when the accused was missing from the office or such amount has been entrusted to him. The evidence of entrustment is lacking which is fatal to the prosecution. FIR has also not been proved which is a material document on which the prosecution has been relied upon etc. Therefore, it is manifestly clear that the applicant has been completely exonerated from the charge levelled against him by the criminal court. The State has not challenged the findings of the Metropolitan Magistrate in higher forum.

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6. The Supreme Court in UOI versus K.V. Jankiraman's case while agreeing with the finding of the Tribunal has observed that^a 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. 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

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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."

7. In that view of the matter and keeping in view of the observation of the Supreme Court, the applicant

has to be given the benefits of the salary of the higher post along with other benefits from the date he would have normally been promoted but for the disciplinary/criminal proceedings. In the instant case, it is an admitted fact that there is no such allegation against the applicant as the criminal case has been dragged on at the instance of the applicant.

8. In the conspectus and facts and circumstances of the case, we are of the view, that the applicant is entitled to be given the benefits of the salary of the higher posts from the date he would have normally been promoted but for the criminal proceedings. Accordingly, we direct the respondents to fix the pay of the applicant in the respective grades and to pay the arrears of pay and allowances due to the applicant on the aforesaid basis from the dates of promotion of his juniors to various grades within a period of three months from the date of receipt of this order. There will be no order as to costs.

B.S. Hegde
(B.S. Hegde)
Member (J)

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