

Central Administrative Tribunal  
Principal Bench: New Delhi

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OA No. 2593/91

New Delhi, this the 2nd day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri S.P.Biswas, Member (A)

Shri Kidar Nath,  
Assistant (Retd),  
H-1514 Mohalla Sui Wallan,  
Gali Kotana Darya Ganj,  
Delhi.

Applicant

(By Shri Sunil Malhotra, Advocate)

Versus

Union of India through  
Director General,  
Health Services,  
Nirman Bhawan,  
New Delhi.  
(By Shri M.M.Sudan, Advocate)

Respondent

O R D E R

delivered by Hon'ble Dr. Jose P. Verghese, VC(J)

This petition has come up for final hearing and the short issue arising out of this petition is that whether the petitioner is entitled to arrears w.e.f. 17.3.1976 to 1.10.1979.

2. The facts leading to the present dispute are as under:-

3. That the petitioner who was working as LDC in the Directorate General of Health Services and was arrested on 6.3.1976 on a criminal charge vide FIR No. 384 dated 4.6.75 under Section 406/420/201 of IPC registered against him. He was placed under deemed suspension by the Director (Admn. Vigilance),

Directorate General of Health Services vide his order dated 17.3.1976 since he was detained in police custody for more than 48 hours.

4. The criminal case that was proceeding against the petitioner in the court of Metropolitan Magistrate, Delhi, resulted in acquittal and he was acquitted of all the charges by various orders passed by the Metropolitan Magistrate. Accordingly under the powers given under FR 54(B), the Director General of Health Services vide his order dated 1.9.1989 passed appropriate orders and declared that the petitioner is entitled to full pay and allowances for the period from 6.3.76 to 31.8.1989 to which he would have been entitled, had he not been suspended, subject to adjustment of subsistence allowances already paid during the period of suspension. It was also held that the period between the date of suspension and the date of revocation of suspension order shall be treated as period spent on duty for all purposes. Subsequent to the said decision, and in terms of OM dated 30.1.1982, the petitioner was promoted first to upper division grade in the scale of Rs. 330-560/- w.e.f. 1.10.1979 and thereafter he was promoted to the Assistant grade in the pay scale of Rs. 1400-2600/- w.e.f. 16.7.1986. But the respondents did not pay the arrears since the fixation of pay was done on notional basis, in accordance to a subsequent order. It is for this purpose namely to obtain the arrears from various periods referred above, this OA has been filed.

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5. The respondents in their reply stated that the petitioner is not entitled to any arrears since his case has been dealt with properly both under FR 54(B) and appropriate orders have already been passed. Thereafter under FR 17, on the basis of no work no pay, notional fixation of the promoted post has been wrongly done, and no arrears have been paid on the basis of OM dated 12.1.1988.

6. The contention of the learned counsel for the petitioner is that this OM dated 30.1.1982 was also the subject matter of the decision of the Hon'ble Supreme Court and of Union of India Vs. K.V. Jankiraman (1991(4) SCC p. 109) wherein it was held that when an employee is completely exonerated and he is not visited with the penalty even of censure indicating thereby that he was found to be not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of 'no work no pay' is not applicable to cases where the employee 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. It is for this reason that FR 17(1) will also be inapplicable in such cases. The Hon'ble Supreme Court dealt with office Memo dated Jan.30, 1982 and further held that where an employee is completely exonerated and found to be not blameworthy in the least and is not visited with the penalty of

even 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 proceeding is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc., the concerned authorities have the powers to decide whether the employee is to be paid the salary and if so, to what extent? (1991(2) LLJ P. 570 at paras 25 & 26).

**7.**

It is further worth mentioning that since the respondents have already passed appropriate orders both under FR 54(B) as well as on the basis of OM dated 30.1.1982, and the benefit of promotion has already been granted first to the grade of UDC and thereafter to the grade of Assistant, there is no question of any allegation that the proceedings were delayed due to the petitioner's instance and this is not the case of the respondents either. Under these circumstances, the petition needs to be allowed.

8. It is further stated by the Learned counsel for the petitioner that these decisions in the case of Union of India vs. K.V.Jankiraman have been further followed in a very recent decision of the Hon'ble Supreme Court namely Sudha Shrivastava vs. The Controller and Auditor General of India, reported in 1996 (3) SCC page 319.

9. In view of the facts and circumstances of the case, the following directions are being issued:-

(i) The OA is allowed and it is stated that the petitioner is entitled to arrears of his payment as follows:

(a) He is entitled to full pay and allowances w.e.f. 17.3.1976 till his suspension was revoked, of course, subject to the adjustment of subsistence allowance already paid to the petitioner during the period of suspension.

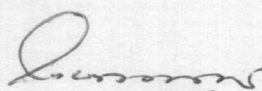
(b) The petitioner is also entitled to arrears from 1.10.1979 till 6.1.1990 and the arrears shall be calculated on the basis of the pay applicable to UDC at the relevant time in the scale of Rs. 330-560/-.

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(c) The petitioner is further entitled to arrears of payments till 6.1.1990 from 16.7.1986 to be calculated on the basis of the pay scale admissible to the Assisant grade namely Rs. 1400-2600/-.

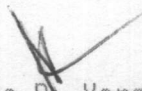
(ii) The petitioner is entitled to 9% interest on the entire amount till the date of payment. It goes without saying that all the payments of arrears will be subject to any amount that has already been paid during the same period which shall be deducted and the remaining amount shall be paid to the petitioner within three months from today. In the event no payment is forthcoming within the stipulated period, the petitioner shall be entitled of 18% interest from the expiry of the three months till the date of actual payment.

10. With these orders, this OA is disposed of with no order as to costs.



(S.P. Biswas)

Member (A)



(Dr. Jose P. Verghese)

Vice-Chairman (J)