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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2307/2004

New Delhi, this the 15th day of July, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

SI Rajender Prasad, No.1436/D
R/o 166/3, Ashok Garden, Gurgaon
Haryana. ... Applicant

(By Advocate: Sh. Alok Shanker)

Versus

The Commissioner of Police
Delhi
Police Headquarters
New Delhi. ... Respondent

(By Advocate: Sh. Ram Kanwar proxy counsel for Sh. Harvir Singh)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant, who is Assistant Sub-Inspector, initially was appointed in Delhi Police as HC(AST) on 4.2.1982 and confirmed on 9.5.1989. A Departmental Promotion Committee was held to fill up one post of ASI (SAST). The name of the applicant along with others was considered for promotion to the post of ASI (SAST). The DPC did not recommend the name of the applicant for promotion due to his indifferent record. His juniors were promoted with effect from 10.8.1993. Another DPC was held on 4.11.1994 for promotion to the same post and the name of the applicant was again not recommended. His request had been considered and rejected.



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2. The applicant submitted another representation to the Lieutenant Governor, Delhi, which was forwarded to the Government of National Capital Territory, Delhi. The Joint Secretary, Home had called for the DPC proceedings. On 22.1.1996, the Deputy Secretary, Home conveyed the decision of the Lieutenant Governor for promoting the applicant from 10.8.1993 when his juniors were promoted. It appears that the Government of NCT of Delhi had apprised about the existence of the name of the applicant on the Secret List of doubtful integrity but the decision of the Lieutenant Governor was reiterated. Resultantly, the Deputy Commissioner of Police removed the name of the applicant from the list of doubtful integrity on 18.5.1993. Thereafter, the applicant was promoted as ASI (SAST) from 25.11.1997 by giving proforma promotion for the period 10.8.1993 to 24.11.1997 vide order dated 25.11.1997, which reads:

PROMOTION - In pursuance of the decision conveyed by the Govt. of NCT, Delhi vide their letter No.F.21/34/93-H(P) Estt/5904 dated 22.1.96, Head Constable (AST) Rajender Prasad No.597/L (27820076) is promoted to officiate as Asstt. Sub-Insp. (Senior Accident Service Technician) with effect from 25.11.97.

He is also granted proforma promotion for the period from 10.8.93 to 24.11.97 in the rank of ASI. During this period, he will not draw the pay and allowances of the post of ASI (SAST), but this period will, otherwise, count towards fixation of pay, increment, and seniority etc.

On promotion, he is posted/allocated to Prov. & Lines, Delhi."

3. The applicant submitted a representation for grant of pay and allowances for the period of proforma promotion. The

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representation was rejected. He submitted another representation of 27.8.2003, which was rejected on 23.9.2003. Hence, the present application has been filed.

4. The applicant prays that his pay and allowances for the period from 10.8.1993 to 24.11.1997 should be released.

5. We have heard the parties' counsel and have seen the relevant record.

6. In the present application before us, the decision of the Lieutenant Governor or of the authority, is not a subject matter of controversy before us. The short question for consideration is as to if the principle of 'no work no pay' can be made applicable in the peculiar facts of the present case or not.

7. In this regard, the decision of the Supreme Court in the case of UNION OF INDIA v. K. V. JANKIRAMAN, ETC., JT 1991(3) SC 535 gives a clear answer. It was held that normal rule of 'no work no pay' is not applicable to cases where the employees, though willing to work, are kept away from work not by their fault.

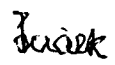
8. Herein, as is apparent from the resume of the facts, the applicant could not discharge the duties of the higher post not at his desire but because of the orders passed by the respondents which were set aside by the Lieutenant Governor. Thus, though he has been given proforma promotion, in the peculiar facts, in our considered opinion, he is entitled to pay and allowances for the post referred to above from the date his juniors were promoted.


9. Resultantly, we allow the present application and direct that pay of the applicant should be released from 10.8.1993 to



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24.11.1997 deducting what has already been paid to him, in accordance with rules.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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