

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2619/2004

New Delhi this the 26th May, 2005

HON'BLE SHRI S.A.SINGH, MEMBER (A)

Mahesh Chand Nagar,
S/o Late Shri K.C.Nagar,
R/o 310, Dariba Kalan, Chandni Chowk,
Delhi-110006. ...Applicant.
(By Advocate: Shri Zakir Hussain)

Versus

1. Union of India
Through it's Secretary,
Ministry of Finance,
New Delhi.
2. Chief Commissioner of Income Tax
Delhi (Admn),
C.R.Building,
New Delhi.
3. Addl. Commissioner of Income Tax (HQRS PERS)
C.R.Building,
New Delhi. ... Respondents.

By Advocate: Shri V.P.Uppal)

ORDER

By Shri S.A.Singh, Member (A)

The applicant joined as LDC in the Income Tax Department in 1976. A criminal case under the Prevention of Corruption Act was registered on 12.5.1992. He was acquitted of all charges on 01.9.1993 and his suspension was revoked vide order dated 03.10.2003.

2. On 15.10.2003, the applicant made a representation for opening of sealed cover and grant of promotion. As this was not done, the applicant filed OA No. 1156/2004, which was disposed of by the Tribunal directing the respondents to pass an appropriate speaking order on the representation of the applicant, preferably within four months. On receipt of the order the respondents opened the sealed cover and passed the impugned



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orders granting notional promotion from 26.6.2001 to the post of Sr. TA and to Office Superintendent (OS) from 28.6.2001. However, arrears of pay and allowances pertaining to the period of notional promotion were not agreed to. Aggrieved by this, the applicant filed the present OA seeking the following relief:

- a) Interest of 8% on delayed payment of arrears pertaining to the period of suspension;
- b) Quashing of the impugned order denying him arrears of pay for the period of notional promotion and
- c) Payment of arrear and allowances pertaining to the period of notional promotion.

3. The main ground of the applicant for seeking the above relief is that FR 17(1) read with DOPT's OM dated 14.9.1992 is not be applicable in view of the Apex Court's judgement in the case of Union of India Vs. K.V.Jankiraman AIR 1991 SC 2010 wherein it has been ruled that the employee who has been exonerated is fully entitled for pay and allowances for the period of notional promotion. DOPT's OM reads as under: -

"Action after completion of disciplinary case/criminal prosecution:

On the Completion of disciplinary case/ criminal prosecution, which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover / covers and with reference to the date of promotion of his next junior on the basis of such position. The government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. 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 appointing 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. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. 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. These are only some of the circumstances where such denial can be justified."

4. According to the applicant, the respondents were in clear violation of these instructions of DOPT as he was acquitted on facts and not on any technical ground or other reason. Hence, he would be entitled to be paid for the period of notional promotion. This has been upheld in case of State of West Bengal & Ors. Vs. Hari Ramalu and Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera reported as 2000(4) SLR 91 and AIR 1995 SC 1364 respectively. The period of suspension should also be treated as on duty for all practical purposes.

5. Interest is payable on delayed payments in view of the judgment in the case of O.P.Gupta Vs. Union of India AIR 1987 SC 2257. The Apex Court had directed the Director General CPWD to pay compound interest @ 12% per annum on the arrears of pay and allowances to Shri O.P.Gupta, Assistant Engineer. A similar view had been taken by the Apex Court in the case of Maimoona Khatun Vss. State of U.P. AIR 1980 SC 1773 and Vijay L Malhotra vs. State of UP AIR 2000 SC 3513 (20).

6. The respondents contested pleadings of the applicant. The respondents have pleaded that the applicant is not entitled for the arrears of pay and allowances for the period of notional promotion. The Additional Commissioner of Income Tax (Headquarters Personals) in his order dated 24.9.2004 has mentioned that in terms of FR 17 read with DOPT's OM dated 14.9.1992, the applicant is not entitled to draw any arrears of pay for the period of notional promotion. Further, the promotions are subject to the outcome of the appeal filed by the CBI before the Hon'ble High Court of Delhi against the acquittal order passed by the Court of Shri P.K.Bhasin, Special Judge, Delhi.

7. The respondents contended that the judgement of K.V. Jankiraman (supra) has to be read in totality. It is not an inflexible rule that in every case when an employee is

exonerated in disciplinary / criminal proceedings he should be entitled to all salary for the intervening period. This will undermine discipline in the administration and jeopardize public interests. Therefore to deny the salary to an employee would not, in all circumstances, be illegal.

8. The respondents plead that CBI has filed an appeal. The question of payment of arrears is thus subject to the outcome of this appeal. In the case of N.K. Suparna Vs. Union of India ATJ 2005 (1) 420 it is held that appeal is a continuation of the original proceedings. The applicant would not be entitled for pay or arrears as the proceeding of the appeal has not concluded and attained finality.

9. The applicants contended that the appeal had not been admitted as leave to appeal not heard. He is entitled to arrears, as the court has not passed any order in this connection. The Tribunal in OA 2401/2003 in the case of P.K. Sarin Vs. Union of India and Another has been held that pendency of appeal does not amount to continuation of proceedings. Also in the case of Deputy Direction of Collegiate Education Administration Madras (supra) wherein it has been held that the Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311 (2), once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant accused is acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service.

10. I have heard the parties and gone through the documents placed on record.



11. I first take up the question payment of arrears when an appeal is pending in the High Court. In view of the judgment in the case of State of Bengal vs. Hari Ramalu (Supra) and in OA 2401/2003 in the case of P.K.Sarin (supra), I find no merit in the view that arrears cannot be paid when an appeal is pending in the High court.

12. Next I come to the question of payment of interest. The applicant has relied upon the case of O.P.Gupta Vs. Union of India (supra) wherein Court has made a direction for payment of interest at 12% per annum on the delayed payment of pension. Facts in that case were that the departmental inquiry was protracted for a period of 20 years and the appellant was kept under suspension for a period of nearly 11 years. The court concluded that there was no occasion whatever to protract unless it and was actuated with the mala fide intention of subjecting him to harassment. Therefore the court concluded there is no reason for us to depart from that practice in the facts of the present case. It was also held that there is no presumption that the Government always acts in a manner, which is just, and fair. In view of this fact, the court had awarded interest on the delayed payment. In the present case, the applicant was reinstated and given notional promotion after he was acquitted of the criminal proceedings. As such, it cannot be taken that the respondents have in any manner delayed the matter. He would therefore not be entitled to interest.

13. Now I come to the question of payment of arrears pertaining to the period of notional promotion. In the impugned order reasons for denying arrears of pay for the period of notional promotion are two: FR 17 and DOPT's OM dated 14.9.1992 do not permit payment. The order reads as under: -

“However, in terms of fundamental rule 17 r/w/ DOPT's OM No. 22011/4/91-Estt. (A) Dated 14.9.1992, Shri M.C.Nagar would not be entitled to draw any arrears of pay for period of notional promotion.”

FR (1) reads as below:

“F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and

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allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

And the relevant portion of DOPT's OM dated 14.9.1992 has already been reproduced in Paragraph-3 above.

14. F.R. 17 specifies the date from when an officer shall begin to draw pay and allowances attached to the post, i.e. from the date when he assumes duties. In the present case, the applicant could not have joined duties from the date of notional promotion as his case was in a sealed cover. He did not stay away on his own accord. Hence, the respondents cannot deny arrears on the basis of Rule 17.

15. From the reading of DOPT's OM dated 14.9.1992, it is apparent that a Government servant becomes entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, if allegations against the Government servant have been dropped or in case the Government servant is completely exonerated. However, where the appointing authority denies arrears of salary or part of it, it will record its reasons, after taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. In the present case, the competent authority has not given detailed reasoning but merely stated that in terms of FR 17 and DOPT's OM dated 14.9.1992, the applicant is not entitled to draw any arrear of pay for the period of notional promotion. Therefore, the order of the competent authority cannot be taken to be meeting the requirement of OM dated 14.9.1992. Hence, the following part of the impugned order is quashed: -

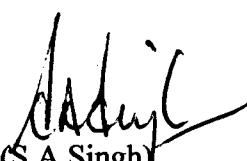
"However, in terms of fundamental rule 17 r/w/ DOPT's OM No. 22011/4/91-Estt. (A) Dated 14.9.1992, Shri M.C.Nagar would not be entitled to draw any arrears of pay for period of notional promotion."

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16. In view of forgoing, I dispose of the OA with the directions to the respondents to examine the claim of the applicant for payment of arrears and allowances pertaining to the period of notional promotion, afresh, by keeping in view the judgment of the Tribunal in the present OA and pass a reasoned and speaking order within three months of receipt of this order. No costs.


(S.A.Singh)
Member (A)

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