

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 03rd day of JANUARY 2006.

Original Application No. 459 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member-J

Imtiyaz Ahmad Siddique, S/o late Sri Mohd.
Badruddin, R/o House No. 38A-6K, Gaus Nagar, Kareli,
Allahabad.

.....Applicant

By Adv: Sri R. Verma

V E R S U S

1. Union of India, through the Secretary,
Ministry of Defence, North Block,
NEW DELHI.
2. The A.O.C. Records, Officer Incharge,
Trimulgherry,
SECUNDERABAD.
3. The Commandant, Central Ordnance Depot,
Chheoki, Naini,
ALLAHABAD.

.....Respondents

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, JM

For Applicant: Sri R. Verma

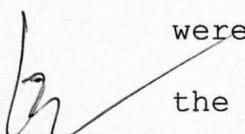
For Respondents: Sri R.C. Shukla brief holder of Sri
S. Singh.

To pay or not to pay arrears is the question
involved in this case.

2. Briefly stated, the applicant was issued with a
charge sheet on 14.01.1992 for certain alleged
misconduct. Initially the Inquiry Report was
submitted and on 24.9.1992 but the Disciplinary

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Authority chose to remand the matter for de-novo proceedings. The de-novo proceedings were conducted and on 21.04.1994 by another Inquiry Officer (in short IO) who had submitted his report. Within the stipulated time the applicant responded to the same on 26.05.2004. The Disciplinary Authority on 24.01.1995 again chose to remit the matter to the IO and a third IO was thus appointed. Appeal filed by the applicant on 04.04.1995 against the aforesaid decision of the Disciplinary Authority only resulted in a time frame(six months) calendared by the Appellate Authority to complete the proceedings and to pass this order, the Appellate Authority had taken as many as 17 months. Despite limiting the period for completion of proceedings within 6 months, the Disciplinary Authority took its own time in issuing a fresh charge sheet on 23.02.1998 which was nothing but the self same charge sheet issued as early as on 14.01.1992. During the aforesaid period obviously, the applicant's fortune of promotion was kept under suspended animation. The applicant had to move OA 656 of 1999 which was disposed of by order dated 09.08.2000 with a direction to the respondents to complete the proceedings within 6 months and failure to adhere the time schedule would result in the Disciplinary Proceedings to stand closed. Notwithstanding the aforesaid direction the proceedings could not be completed within time but were ultimately concluded only on 16.03.2001. And the Disciplinary Authority having carefully examined



the Inquiry Report and other relevant records agreed with the findings of IO and held the applicant "not guilty" of the charges leveled against the applicant. Accordingly, the Disciplinary Authority had ordered that the charges leveled against the applicant 'be dropped'. In the wake of the aforesaid order exonerating the applicant, an order of promotion was passed vide order dated 21.03.2001 whereby the applicant was promoted to the post of OS Grade II w.e.f. 1.5.1995 and re-designated as Assistant w.e.f. 09.08.1998 in the pay scale of Rs. 5000-8000 on notional basis 'in terms of para 17.6.1 of CPRO 26 of 90 and financial effect w.e.f the date of assumption w.e.f 31.3.2001'.

3. The applicant had preferred a representation for arrears of pay and the same was rejected vide order dated 01.04.2002. A lever was however, given to the applicant to claim stepping up of pay in according with rules, at par with his junior. The representation filed by the applicant in this regard has also been dismissed vide order dated 17.02.2003. It is these two orders that are under challenge through this OA.

4. Para 17.6.1 of CPRO is the same as a corresponding para of order dated 10.4.1989 as amended by ~~order~~ dated 27.3.1997 and the same reads as under: -

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"17.6.1, On conclusion 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 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."

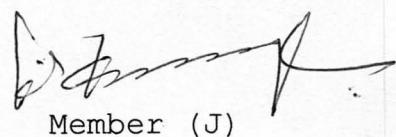
5. A look at the above para clearly goes to show that when an individual has been thoroughly exonerated, deprivation of arrears of pay and allowances on his promotion could be possible only when it was on account of the act of the employee that the Disciplinary Proceedings had prolonged. In other words where the applicant is not responsible for delay in completing of proceedings and ultimately he is exonerated from the charges, he becomes entitled to arrears of pay and allowances in respect of his promotion granted to him in accordance with the sealed cover procedure. In the instant case the Disciplinary Authority has,

agreeing with the findings of the IO, recorded that the applicant is found not-guilty of the alleged misconduct. Accordingly the proceedings were completely dropped. However, surprisingly the stand taken by the respondents in the counter affidavit vide para 6 thereof is, "due to prolonged enquiry proceedings the case was dropped on technical ground". This contention has absolutely no basis. Even if it were so, the applicant cannot be faulted or blamed for the prolonged enquiry proceedings. As narrated above three times the IO was changed almost at the fag end of the proceedings. The Appellate Authority had taken 17 months to order for a fresh enquiry calendaring 6 months time and the Disciplinary Authority had completely and blissfully ignored the time calendared and in his own leisure disposed of the proceedings and that too only after an order of this Tribunal. Under these circumstances there is no question of delay in completion of Disciplinary Proceedings being attributable to the applicant. Nor was the exoneration on technical grounds. Para 17.6.1 of the CPRO 26 of 90 in-fact completely goes in favour of the applicant to make him entitled to the arrears of pay and allowances. The judgment of the Apex Court in the case of **Union of India v. K.V. Jankiraman** **AIR 1991 SC 2010** fully supports the case of the applicant



6. In view of the above, the OA succeeds. It is declared that the applicant is entitled to arrears of pay and allowances for the period from 01.05.1995 onwards at the pay scale for the higher post and increments in the pay scale is also available to the applicant. In addition, if the applicant had been promoted to the next higher of OS Grade I, in the pay scale of Rs. 5500-9000 he is entitled to pay fixation in the said scale based on the applicant's pay on the date of his next promotion.

7. The respondents are directed to calculate the arrears of pay and allowances payable to the applicant as stated above and disburse the same within a period of five months from the date of compunction of this order. No costs.



Member (J)

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