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(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

**ALLAHABAD** This the 20 Day of 3, 2008

**HON'BLE MR. A.K. GAUR, MEMBER- J**  
**HON'BLE MR. K.S. MENON, MEMBER- A**

**ORIGINAL APPLICATION NO. 882 OF 2005**

Mohd Wasim, S/o Late Shri Mohd. Hanif,  
153, Rabri Tola, Old City, Bareilly- 243005 (U.P.)

.....Applicant

**V E R S U S**

1. Union of India/I.C.A.R, through Secretary,  
Indian Counsel of Agricultural Research,  
Krishi Bhawan, New Delhi.
  2. Director General, Indian Counsel of Agricultural Research,  
Krishi Bhawan, New Delhi.
  3. Secretary, Indian Counsel of Agricultural Research,  
Krishi Bhawan, New Delhi.
  4. Director, Indian Veterinary Research Institute,  
Izatnagar- 243122.
  5. Chief Administrative Officer (Admn.),  
I.V.R.I, Izatnagar, Bareilly.
  6. Assistant Administrative Officer (MRDPC),  
Indian Veterinary Research institute, Izatnagar- 243122.
  7. Assistant Administrative Officer (Establishment-II),  
Indian Veterinary Research institute, Izatnagar- 243122.
- ..... Respondents

Present for the Applicant : Sri K.P. Singh  
Present for the Respondents : Sri N.P. Singh

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**ORDER****BY HON'BLE MR. A.K. GAUR, J.M.**

The present Original Application under section 19 of the Administrative Tribunals Act, 1985 has been directed for issuance of order or direction to the respondents to modify the order dated 15.02.2005 up to the extent that the applicant will be entitled for the monetary benefits w.e.f. 31.12.2001.

2. The facts of the case, in brief, are that that applicant was initially appointed as Junior Clerk on 01.02.1986. In the year 1994, the applicant appeared in Limited Departmental Competitive Examination (in short L.D.C.E) conducted for promotion to the post of Senior Clerk, in which the applicant secured first position and was selected and promoted on the post of Senior Clerk vide order dated 16.02.1995. As per the applicant, the channel of next promotion from Senior Clerk is Assistant and 66% vacancies were to be filled on the basis of seniority cum suitability and remaining 33% were to be filled by L.D.C.E. It is further contended by the applicant that eligibility for promotion to the post of Assistant by way of L.D.C.E is three years of regular service in the grade of Senior Clerk in pay scale of Rs. 4000-6000/-. The applicant claims that a Notification for holding L.D.C.E for the post of Assistant was issued on 03.05.1999 by the Chief Administrative Officer inviting applications from the eligible candidates as on 01.01.1999. As per the applicant that as per the conditions of Notification dated 03.05.1999, the applicant was fully eligible

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and applied for the post of Assistant, but the examination was postponed without any valid reason. It is further contended by the applicant that another Notification dated 27.03.2000 was issued inviting applications from the candidates, who had become eligible and had rendered three years regular and continuous service as on 01.01.2000, in which he again applied. But the examination, to be held in pursuance of the said Notification dated 27.03.2000, was also postponed. **The allegation of the applicant is that to bring some more illegible candidates, junior to the applicant, within the zone of consideration for promotion, the examination was postponed.** In the mean while, **the applicant was served with memo of adverse entry vide order dated 18.08.2000,** aggrieved the applicant made several representations for expunction of adverse remarks in his ACR for the year 1999-2000. Again the respondents issued a Notification dated 25/30.10.2000 for conducting the said examination reducing the quota of promotion through L.D.C.E on the basis of Council's Order No. F.14-2/98-Estt.I (Vil.II) dated 27.07.2000, from 33% to 25% with at least three years service in the grade as on 15.11.2000. Again the said examination was postponed by the respondents vide letter dated 07.03.2001. But the respondents again issued Notification dated 10.05.2001 inviting applications from the eligible candidates latest by 31.05.2001. The applicant further claims that against all the Notifications, even being eligible for promotion against the first Notification, he applied again on 16.05.2001 to participate in the examination scheduled to be held w.e.f. 13.08.2001 to

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17.08.2001. The grievance of the applicant is that the examination, which was scheduled to be conducted in the year 1999, was conducted w.e.f. 13<sup>th</sup> to 17<sup>th</sup> August, 2001, i.e. after a gap of three years and he was deprived of the opportunity of promotion to the post of Assistant in the pay scale of Rs. 5500-9000 by adopting illegal, irregular and corrupt measure in process of examination held during 13.08.2001 to 17.08.2001 and as a result of which, four junior persons to the applicant namely Sri Naseer Ahmad, Mrs. Alka Rani, Sri Rajeev Kumar Saxena and Sri S.N. Singh were promoted vide order dated 31.12.2001 and nothing had been stated about rest of 19 posts.

3. The applicant further claims that again Notification dated 18.04.2002 and 13.05.2002 was published for L.D.C.E-2 for the post of Assistant, against which he represented vide his application dated 27.04.2002 and 07.06.2002, but his name did not figure in the list of promoted candidates due to non-decision on ACR for the year 1999-2000 although he was senior most to all the selected candidates. It is contended by the applicant that the Council finally expunged the adverse remarks and the same was conveyed by the Director vide Memorandum dated 18.10.2003. Thereafter, the applicant vide letter dated 23.10.2003 requested the Director to issue promotion order to the post of Assistant with retrospective effect with all consequential benefits, which was rejected vide order dated 02.01.2004 stating that - "there is no change in the result of the aforesaid examination even after expunction of

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adverse remarks from the ACR for the year 1999-2000. The applicant again represented vide representation dated 27.03.2004, which was not considered/replied. Being aggrieved the applicant filed O.A No. 653/2004, which was disposed of vide order dated 20.08.2004 with direction to the respondents to look in to grievance of the applicant and take appropriate decision. The applicant alongwith representation dated 04.09.2004, had submitted the judgment dated 20.08.2004 before the Director, IVRI, Izatnagar for taking necessary action. The grievance of the applicant in the instant case is that though he was promoted to the post of Assistant in pay scale of Rs. 5500-9000 but notionally w.e.f. 31.12.2001 (the date on which Sri S.N. Singh and other three juniors to the applicant were promoted) and was given monetary benefits with effect from the date, he actually joined the duty on the post of Assistant and sought for modification of the same to the extent for the monetary benefits w.e.f. 31.12.2001.

4. On notice, the respondents filed their Counter Affidavit denying the pleas taken by the applicant. It is submitted by the counsel for the respondents that in the examination held during 13.08.2001 to 17.08.2001, result of which was declared on 31.12.2001, the applicant was not recommended by the DPC for promotion to the post of Assistant due to non-decision on ACR for the year 1999-2000 and as such he is not entitled for monetary benefits with retrospective date. Denying the allegations made by the applicant in Original Application that the examination was not held for three years, the respondents

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have categorically pleaded that the examination was held in the year 1999, 2001 and 2003, but the applicant was not recommended for promotion. It is further submitted by the respondents that the examination was not postponed but due to revision of recruitment rules, a circular for obtaining application from other eligible candidates, who had completed three years of regular service as on 27.03.2000 was issued but on the date of declaration of the result, only four posts of Assistant were lying vacant against L.D.C.E quota and accordingly 4 persons including 1 SC was recommended for promotion. With regard to the ACR of the applicant for the year 1999-2000, the respondents, after getting approval of the competent authority, on the representation dated 16.04.2002, to expunge the adverse remarks, the same were communicated to him vide order dated 18.10.2003. After expunction, the case of the applicant was examined but he was found not getting required merit amongst the candidates recommended for promotion against 4 post of Assistant. Relying on provisions of FR 27, the respondents have submitted that the pay of the applicant has rightly been fixed notionally w.e.f. 31.12.2001 and he is not entitled for monetary benefits as he had not actually working in the said grade, and sought for dismissal of the O.A.

5. Learned counsel for the applicant has filed Rejoinder Affidavit denying the averments made in Counter Affidavit. In support of his contention, counsel for the applicant has submitted that in view of the judgment rendered by Apex Court

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in K.V. Jankiraman Vs. UOI & Ors [AIR 1991 SC 2010] and Hon'ble Punjab and Haryana High Court in case of Bir Singh Kadian and others Vs. State of Haryana and others [1994 Lab. I.C 2353], the provisions of FRSR are not at all applicable ~~in~~<sup>to</sup> in the instant case, the person concerned has been deprived of the benefits due to the fault of the authorities and for no fault of his own.

7. We have heard Sri K.P. Singh, learned counsel appearing for the applicant and Sri N.P. Singh for the respondents and also deeply gone through the pleadings on record as well as the Written Arguments submitted by the both counsel for parties.

8. In view of the discussions made above, we are of the view that the decision relied on by the counsel for the applicant in K.V. Jankiraman (Supra) and the judgment rendered by the Tribunal in Bharat Singh Vs UOI & Ors, 1987 Vol. 3 SLJ (CAT) are not at all applicable to the facts of the present case, Inasmuch as, <sup>that</sup> from the pleading on record, it is established that the respondents have conducted DPC strictly in accordance with rules and there is no illegality in it. Counsel for the applicant has failed to indicate true facts in O.A and for the first time, in the Written Argument, it has been contended that vide order dated 18.08.2005, the applicant was served with a memorandum of adverse entry, against which the applicant made representation. From this submissions of the applicant, the contention of the respondents are established that due to adverse entries in the ACR for 1999-2000, the applicant was

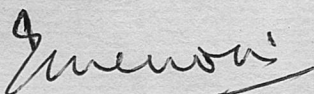
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not recommended by the DPC for promotion to the post of Assistant and after expunction of the adverse remark by the competent authority, his case was examined but still he was found not getting required merit amongst the recommended candidates for promotion to the post of Assistant and the applicant, on recommendation of DPC, has rightly been promoted as Assistant notionally w.e.f. 31.12.2001 ( the date on which Sri S.N. Singh was promoted) giving him the monetary benefits with effect from the date, he actually joined the duty of the post of Assistant. As held by the Hon'ble Supreme Court **in para 34 in case of K.V. Jankiraman (Supra)**- ".....the benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case". After the decision rendered by Hon'ble Supreme Court in case of K.V. Jankiraman (Supra), **in Laxaman Singh Vs. State of Punjab & othters [SC Service Law Judgments 2000(2) 133]**, it has been held - "Adverse remarks- promotion from the post of Assistant Sub inspector to the post of Sub Inspector- Appellant promoted w.e.f. 11.08.1992- juniors given promotion w.e.f. 25.07.1990- claims promotion w.e.f. the date when his juniors were so promoted- promotion was given to him w.e.f. 11.08.1992 on account of pendency of criminal case - Criminal case ended in his acquittal- representation made to the authorities for promotion w.e.f. 25.07.1990 rejected by the DIG on the basis of adverse remarks for the period 01.04.1988 to 31.03.1989- Held- after his acquittal it is for the DPC to consider his case for promotion and not by the DIG-matter remitted to DPC for consideration of his promotion". In the present case also,

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after expunction of adverse remarks in ACR for the year 199902000, the matter was referred to the DPC to consider the case of the applicant for promotion and the Review D.P.C has already considered his case and found him suitable for promotion and based upon the recommendation of Review D.P.C, the competent authority, keeping in view the provisions of FR 27, vide order dated 15.02.2005 has promoted the applicant from Senior Clerk to the post of Assistant notionally w.e.f. 31.12.2001, the date on which Sri S.N. Singh was promoted giving monetary benefits with effect from the date he actually joined the duty of the post of Assistant. As held by the Hon'ble Supreme Court in the case of **Nutan R. Arvind (Smt.) Vs. UOI & Ors, 1996 (2) SCC (L&S) 488**- "the DPC, which is high level committee, considered the merits of the respective candidates, the appellant though considered, was not promoted, Held- when a high level committee had considered the respective merits of the candidates, assess the grading for promotion- the court cannot sit over the assessment made by the DPC as an Appellate Authority".

9. In view of our foregoing reasoning, the action of the respondents in passing order-dated 15.02.2005 holds good and in accordance with law as well as the provisions of FR-27. Accordingly the O.A fails and is dismissed being devoid of merits with no orders as to costs.

  
MEMBER- A.

  
MEMBER- J.

/Anand/