

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION NO. 063/237/2018 &
M.A. NO. 63/309/2018**

Chandigarh, this the 21st day of February, 2019

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Amar Nath Dubey son of late Sh. Parshu Ram Dubey, aged 41 years, working as Office Superintendent, ESIC Model Hospital, Village Katha, Baddi (H.P.) Group-C.

....APPLICANT

(By Advocate: Shri Sandeep Siwatch)

VERSUS

1. ESI Corporation through Director General, Panchdeep Bhawan, CIG Road, New Delhi-110002.
2. Regional Director, ESI Corporation, Regional Office, Sai Road, Baddi (H.P.).

....RESPONDENTS

(By Advocate: Shri K.K. Thakur)

ORDER (oral)

SANJEEV KAUSHIK, MEMBER (J)

M.A. No. 63/309/2018 seeking condonation of delay of 111 days in filing the accompanying O.A. is allowed, as prayed, keeping in view the averments made therein.

The applicant in the present Original Application has assailed order dated 7.11.2016 (Annexure A-1), whereby the respondents have refused to grant full pay and allowances admissible to him for the period when he was under suspension w.e.f. 4.6.2010 to

13.11.2011 and arrears of pay for the period of notional promotion preceding the date of his actual promotion i.e. from 25.8.2011 to 31.7.2014, when the charge sheet had already been quashed by this Tribunal.

2. The facts of the case are not in dispute. The applicant herein joined the respondent department as LDC on 19.8.2003 and in the year 2006 he was promoted as UDC. Unfortunately an FIR No. 8 under Section 7, 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 was registered against him at the instance of State Vigilance Commission (H.P.) on 4.6.2010. He was arrested and released on bail on 8.6.2010. He was placed under deemed suspension vide letter dated 7.6.2010 w.e.f. the date when he was detained by the police. In the criminal trial, the State Vigilance Commission submitted challan before the Trial Court. Pending criminal trial, respondents started parallel departmental proceedings against the applicant vide charge sheet dated 3.9.2011/4.10.2011, to which the applicant filed reply on 5.10.2011, wherein he requested not to proceed in the matter by appointing enquiry officer, as the allegations in the criminal trial and in the departmental proceedings were the same and to wait till criminal trial is concluded. His suspension was revoked vide order dated 14.11.2011 and consequently he joined on 17.11.2011. In the criminal case, the applicant was convicted by the Trial Court and his conviction was set aside by the Hon'ble High Court of Himachal Pradesh, Shimla vide judgment dated 21.04.2014 and the applicant was honourably acquitted. After his acquittal, the

applicant approached this Tribunal by filing O.A. NO. 63/77/2015 seeking quashing of order dated 7.4.2015, vide which his representation, not to proceed departmentally against him, as he has already been acquitted, on the same set of charges, by the Hon'ble High Court, had been rejected. This Tribunal has accepted his O.A. vide order dated 24.11.2015, by setting aside the impugned charge sheet and the applicant was held entitled to all consequential benefits. This order attained finality as the respondents did not challenge the order in the judicial review. Thereafter, the respondents opened the sealed cover and the applicant has been promoted to the post of Assistant, vide order dated 7.11.2016 w.e.f. 25.8.2011 and monetary benefits are payable from 1.8.2014 i.e. the date of his actual joining the post of Assistant. The solitary grievance of the applicant before this Court is that though he has been promoted to the post of Assistant, but he has been denied the benefit of pay and allowances from the date when he was promoted i.e. from the date when his juniors were so promoted. He has not been paid the pay for the period when he was under suspension and only he was paid the subsistence allowance.

3. In support of his claim, he argued that the impugned order is liable to be set aside firstly on the ground that the respondents have not followed the guidelines contained in DOPT O.M. dated 14.9.1992 (Annexure A-7) relating to Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. He submitted that in terms of para 3 of said O.M., in case the Government servant is

completely exonerated honourably, then he becomes entitled for grant of promotion from the date when his junior was promoted and also entitled for salary for that period. The respondents have denied the salary to him as the departmental proceedings were delayed due to fault attributable on the part of applicant. He submitted that this O.M. has been issued as per judgment of Hon'ble Supreme Court in the case of **Union of India etc. vs. K.V. Jankiraman etc.** (AIR 1991 SC 2010). Thus, he prayed that the impugned order be invalidated and the respondents be directed to grant him full pay and allowances for the period when he was under suspension.

4. Respondents, while resisting the claim of the applicant, filed written statement wherein they have taken an objection that since the applicant had not worked on the promoted post, therefore, the competent authority has decided to deny him the pay and allowances and granted him only notional benefit from the date he was actually promoted and for the period when he was under suspension he has already been paid the subsistence allowances.

5. We have heard the learned counsel for the parties, perused the pleading available on record, and given our thoughtful consideration to the matter.

6. In the light of the above depicted facts particularly O.M. dated 14.9.1992 (Annexure A-7) read with decision in the case of K.V. Jankiraman (supra), we are of the view that this O.A. deserves to be allowed for the simple reason that once the applicant has been acquitted by the Court of law honourably and subsequently charge

sheet has already been quashed by this Court in his earlier O.A. NO. 63/77/2015 vide order dated 24.11.2015 where he was held entitled for all consequential benefits then the respondents cannot over reach the judgment passed by this Court and deny him pay and allowances for the period he was under suspension. With regard to objection taken by the respondents for not granting him the benefit from the date of his promotion only on the plea that he had not worked on that post is also contrary to DOPT O.M. dated 14.9.1992 (Annexure A-7). The relevant para 3 reads as under:-

“3. On the conclusion of the 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 enunciate 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.”

7. The above abstracted instructions have been issued by the DOPT keeping in view the judgment of Hon'ble Supreme Court in the case of K.V. Jankiraman (supra) where the Lordships have

held that if a person is honorably acquitted of the charges then he is entitled for grant of all benefits of promotional post. Thus, the stand of the respondents in denying him benefits of pay and allowances on promotional post, on the plea that he has not worked, on the said post is contrary to law and indicated instructions.

8. The learned counsel for the applicant in support of his claim has also referred to judgment of Hon'ble High Court of H.P. rendered in the case of **Bimla Devi vs. State of Himachal Pradesh and Ors.** (2016 (2) SLR 425) wherein while considering the judgment in the case of K.V. Jankiraman (supra) the Hon'ble High Court has rerecorded the following findings and allowed claim in para 19 as under:-

“The Departmental Promotion Committee in the instant case was held in the year 1988. He was acquitted on 5.12.1997 by this Court. However, despite that he was promoted on 21.7.2000 on notional basis. He was always ready and willing to discharge the duties of Ranger, but has been prevented for the simple reason that the reason that the recommendations made by the Departmental Promotion Committee were kept in sealed cover and these were opened only on 21.7.2000. Thus the principles “no work no pay” would not be applicable. It is reiterated that Roshan Lal has been acquitted by this court after perusal of entire evidence and not on any technical defects. He was required to be promoted with effect from due date, i.e. 8.2.1989 with monetary benefits.”

9. Similar view has been taken by the Hon'ble Punjab and Haryana High Court in the case of **Satish Kumar Goel vs State of Haryana** (2018 (1) SCT 801).

10. In the wake of the above, we are left with no option, but to allow this O.A. The impugned order is hereby quashed and set aside and the respondents are directed to grant the applicant all

consequential benefits, as had already been held, in the earlier round of litigation for the period when he was under suspension and he is held entitled to actual benefits for the period from the date of his actual promotion including seniority. However, the claim of the applicant for grant of interest is declined keeping in view the facts and circumstances of the case. Needful be done within three months from the date of receipt of certified copy of this order. No costs.

**(P.GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 21.02.2019

‘SK’



