

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1558 OF 2003

New Delhi, this the 5th day of February, 2004-

HON'BLE-SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, ADMINISTRATIVE MEMBER

Shri Roshan Lal Verma
S/o Om Parkash Verma
R/o 205, Pocket G-28,
Sector-3, Rohini, Delhi.

(By Advocate : Shri V.K. Raina)

....Applicant

Versus

1. Govt. of NCT of Delhi,
Through
Chief Secretary,
Delhi Secretariat,
I.P. Estate,
New Delhi.
2. The Secretary (Services),
Govt. of NCT
Delhi Secretariat,
I.P. Estate,
New Delhi.
3. The Development Commissioner,
Office of the Development Commissioner
Govt. of NCT,
5/9, Under Hill Road,
Delhi.
4. The Controller of Accounts,
Principal Accounts Officer,
'B' Block, Vikas Bhawan,
I.P. Estate,
New Delhi.

(By Advocate : Shri Vijay Pandita)

.....Respondents

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

Though in the Original Application, the applicant was seeking that he should be promoted to the post of Grade-III (DASS)/Upper Division Clerk from 1993, the said relief has since been granted during the pendency of the present Application. Therefore, the sole controversy before us is that if the applicant is entitled to the consequential benefits in

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the form of arrears of pay and allowances for the period he had actually not performed the duty of the post of Grade-II (DASS)/UDC.

2. Some of the facts relevant in this regard would precipitate the controversy.

3. The applicant was working as a Lower Division Clerk with the respondents organisation. He remained under suspension from 1992-2000, when the suspension order was revoked by order dated 5.1.2001. Suffice to say that the applicant has since been acquitted by a court of law in the year 1999. He seeks that since he has been promoted, he should be granted arrears of pay and allowances.

4. According to the learned counsel of the respondents, since the applicant has not performed the duties of Grade-III (DASS)/UDC, he cannot seek the arrears of pay and allowances in this regard. He relied upon the decision of the Supreme Court in the case of Union of India and Others Vs. Jaipal Singh, (2004) 1 Supreme Court Cases 121.

5. The facts of the cited case would show that it is distinguishable. In the case referred to, the respondent before the Supreme Court was involved in a criminal case punishable under Section 302 read with Section 34 of Indian Penal Code. He had been convicted by the Court of Session and was acquitted by the Punjab & Haryana High Court. As a consequence

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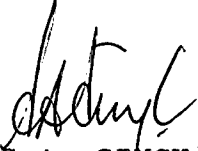
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thereto, when he was not reinstated, he had filed an application pertaining to his reinstatement. The Supreme Court held that when the respondent before the Supreme Court was not in service, he was ^{not} entitled to the backwages because the respondents could not avail of his services. This is not the position here.

6. In fact the question posed before us would be answered by the decision of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2010.

7. The Supreme Court considered the Fundamental Rule 17 and in the facts held that when an employee is ~~compulsorily~~ exonerated in criminal and disciplinary proceedings and has not been awarded with any penalty, even a censure, then the principle of 'no work no pay' will not have any application. It will not be a case of no work that is not arising in the present case. It is avocation of the respondents who did not allow the applicant to discharge the duties of Upper Division Clerk. Therefore, following the ratio decidendi of the decision in the case of K.V. Jankiraman (supra), we allow the present Original Application and direct that the applicant would be entitled to arrears of pay and allowances even for the period when he could not perform the duties of Grade-III (DASS)/UDC. The arrears should be paid within three months from today.


---(S.A. SINGH)
---ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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