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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

This the 16th day of August, 2004

OA NO. 2458/2003

**HON'BLE MR. JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE MR. S.K.NAIK, MEMBER (A)**

**Sh. Ram Kishan
S/o Sh. Ram Pat,
R/o 1128, Pana Paposian
Narela,
New Delhi.**

... Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

**Director of Education,
Directorate of Education,
Government of NCT of Delhi,
New Delhi.**

... Respondent

(By Advocate Shri George Paracken)

ORDER (ORAL)

Justice V.S.Aggarwal, Chairman

The matter has been argued. It was not in dispute that the applicant faced a trial pertaining to an offence punishable under Section 307 of the Indian Penal Code. During the pendency of those proceedings the applicant has been placed under suspension. The learned Additional Sessions Judge held the applicant guilty of the offence punishable under Section 324 of the Indian Penal Code and awarded the applicant benefit of Section 360 of the Code of Criminal Procedure read with Section 4 & 6 of the Probation of Offenders Act 1958. Thereafter the applicant filed an appeal against the judgment and order of sentence passed by the learned Additional Sessions Judge. The Delhi High Court disposed of Criminal Appeal No.511/2002 recording:-

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"In view of the aforesaid view of the Supreme Court, the Appeal is dismissed with the direction to the employer not to use the conviction for any purpose that may affect the service including the dismissal."

2. In pursuance thereto applicant has been reinstated on 2.4.2003. During the course of submissions it was not further disputed that the applicant had earlier filed OA-1619/2004 claiming quashing of the disciplinary proceedings that have been initiated against the applicant. Respondents had admittedly been directed to consider the request of the applicant in this regard and as yet final order of respondents has not been passed.

3. In face of the aforesaid facts, so far as the claim of the applicant that he should be given due promotions/senior scale and that he should be paid full pay and allowances are concerned, we are not expressing any opinion. This is for the reason that respondents, as referred to above, have started departmental proceedings against the applicant. It is subject to the final outcome of those proceedings or the claim of the applicant which we have referred to above that the said controversy can be decided.


4. However, it was urged that applicant had been given subsistence allowance when he was suspended from 9.4.93, the same was enhanced subsequently. The claim is that with the coming into force of the 5th Central Pay Commission the subsistence allowance should have also been increased.

5. Respondents plea has been that in the original application no such relief has been claimed.

6. We have considered the said contention. So far as the fact as to whether such a relief has been claimed or not, it is obvious from the relief clause that applicant seeks replacement scale of Rs.6500-10,500 with the coming into force of the 5th Central Pay Commission. The settled principle in law is that lesser relief can always be granted. Once the applicant, subject to what we have

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recorded above, is under suspension for this period and 5th Central Pay Commission report has come into being, the necessary consequences is that subsistence allowance be fixed keeping in view the replacement scale of the post with 5th Central Pay Commission and accordingly the allowances be calculated. The arrears, if any, be paid to the applicant preferably within 4 months. Applicant has been reinstated on 2.4.2003 and is discharging his duties. We were informed that even for that period full pay and allowances have not been paid. We direct, from the date applicant is reinstated and is discharging the duties of the post of TGT teacher, the applicant should be awarded the pay and allowances of the post to which he is discharging his duties. The said calculation should also be effected and within 4 months arrears, if any, be paid to the applicant.


(S.K. NAIK)
Member (A)

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(V.S. AGGARWAL)
Chairman