

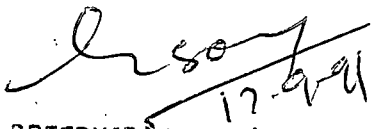


DA 2004/90

Date	Office Report	Orders
		<p>17.9.91</p> <p>Present : Sh. Sant Singh, counsel for the applicant. Sh. V.S.R. Krishna, proxy counsel for Sh. M.L. Verma, counsel for the respondents.</p> <p>Heard the counsel on either sides. The applicant, while he was working as Manager of a military farm, was proceeded against under Rule 16 of the C.C.S. (C.C. &amp; A.) Rules and a penalty of stoppage of one increment without commulative effect was imposed on him by an order dt. 15.1.1990. In view of the pendency of the disciplinary proceedings, he was not considered for promotion by the D.P.C. that met on 14.12.1989. He has prayed for quashing the order imposing the penalty and for considering him for promotion from the date, his juniors have been promoted.</p> <p>2. It was admitted at the time of hearing that by the order dt. 21.1.1991, the appellate authority has quashed the order imposing the penalty. As such the first relief claimed in the application does not survive.</p> <p>3. In respect of the consideration for promotion, it was stated that by the order dt. 30.8.91, the applicant has been promoted to the grade of Farms Officer notionally w.e.f. 5.3.1990, the date on which his junior was promoted. Hence, the second relief prayed for, also does not arise.</p> <p>4. The result is that there is nothing further to be pursued in the Original Application. However, counsel of the applicant took an objection to the order dt. 30.8.91 by which the promotion was allowed to the applicant, in so far as the arrears of pay and allowances till the date <sup>of</sup> the order have <del>been</del> denied. Our attention was invited to the recent</p> <p style="text-align: right;">P.T.O.</p>

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		<p>           decision of the Supreme Court in Union of India Vs. K.V. Janaki Raman (J.T. 1991 (3) S.C. 527). On the strength of the said decision, it was submitted that where arrears of salary is denied in a case of this nature, the competent authority has to record its reasons for doing so. It has to be pointed out that the decision of the Supreme Court was delivered on 27.8.1991 and the order of promotion of the applicant was issued on 30.8.91.         </p> <p>           The provision that was in existence <sup>in</sup> <del>of</del> the official memorandum that was holding the <del>field</del> <sup>was held</sup> <del>as then</del> no arrears of pay shall be payable for the period of notional promotion preceeding the actual promotion. In the <del>place</del> <sup>face</sup> of the said sentence in the OM, the Supreme Court has inserted another sentence to the effect that the competent authority has to arrive at a decision with respect to the arrears of pay for the period of notional promotion by taking into consideration all the facts and circumstances of the proceedings, and where the arrears are denied, reasons for doing so have to be recorded. It was held in the decision that to lay down <sup>an</sup> inflexible rule that in every case where an employee is exonerated in the disciplinary proceedings, he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interest.         </p> <p style="text-align: right;">  </p> <p style="text-align: right;">Contd...</p>

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		<p>5. In the circumstances of this case, we are of the view that if the applicant is aggrieved by the denial of the arrears of pay, during the period of notional promotion, it is a matter which has to be agitated independently, so that the question whether the competent authority has considered the facts and circumstances of the case can be looked into in its proper perspective and a decision <del>is</del> arrived <sup>at</sup>. At any rate, in the present application where the applicant has confined his reliefs to "consideration for promotion from the date his juniors have been promoted", it will not be proper to set in judgement over the denial of the arrears by the order dt. 30.8.1991.</p> <p>6. In view of the above, this application is closed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">   (D.K. CHAKRAVORTY)  MEMBER (A) 17/9/1991 </div> <div style="text-align: center;">   (G. SREEDHARAN NAIR)  VICE CHAIRMAN </div> </div>