

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.2298/2004**

**New Delhi, this the 21<sup>st</sup> day of June, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.Singh, Member (A)**

Dr. Navi Raja Dewan  
S/o Late Shri Dr. O.S.Dewan  
Retd. Chief ENT Surgeon N. Rly.  
Central Hospital  
New Delhi.  
R/o 29/503, East end Apartments  
Mayur Vihar  
Phase-I Estn.  
New Delhi. ....

**Applicant**

**(By Advocate: Sh. H.P.Chakravorty)**

## Versus

1. Union of India through  
The Chairman, Railway Board  
Principal Secretary to Govt. of India  
Ministry of Railways, Rail Bhawan  
New Delhi.
2. The General Manager  
Northern Railway, Baroda House  
New Delhi. .. Respondents

**(By Advocate: Sh. Naresh Kumar Sharma, Sr. Counsel with Sh. Narain Bhatia)**

## ORDER

**By Mr. Justice V.S. Aggarwal:**

Applicant (Dr. Navi Raja Dewan) had joined the Northern Railway as Assistant Medical Officer. He was promoted as Divisional Medical Officer and Senior Divisional Medical Officer. Ultimately, he was promoted as Senior Divisional Medical Officer/Selection Grade.

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2. While working as Senior Divisional Medical Officer, he was implicated in a matter with respect to offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act. His suspension was revoked only on 24.10.2000. On 14.3.2002, the applicant had been acquitted by the Special Judge at Delhi.

3. The applicant had superannuated on 31.10.2000. By virtue of the present application, he seeks quashing of the order rejecting his claim and to grant pay and allowances from 17.10.1998 till superannuation for the post of Senior Administrative Grade with interest and also consequential increase in the Pension.

4. The impugned order reads:

"Sub:- Dr. N.R.Dewan, Sr. DMO (Retd.) –  
Request for payment of arrears  
after notional promotion in  
S.A.Grade.

Ref:- Your representation dated 23-9-2003  
Regarding above subject.

In reference to your representation dated 23-9-2003 on the above noted subject, the case has been examined in Railway Board's office. The position in this regard is given as under in terms of Railway Board's letter No.E(O)III-2003/PM/50, dated 19-1-2004.

Since Dr. Diwan was appointed to officiate in SA Grade from 17-03-98 on notional basis (and he retired from Railway service on 31-10-2000, on attaining the age of superannuation without shouldering the higher responsibility) he is not eligible for difference of pay. As regards revision of pension, it is stated that in terms of Rule 49 & 50 of Railway Service Pension Rules, 1993, the pay being arrived on notional basis is not taken

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into account for the purpose of calculating average emoluments, therefore, revision of pension and pensionary benefits is also not admissible.

Sd/-  
(Mahinder Kumar)  
For General Manager/Po"

5. The application has been contested. The basic facts are not in dispute. Respondents plead that after the applicant was acquitted, the sealed cover was opened. It was found that the applicant had been declared fit for promotion and that he had to be granted promotion to the Senior Administrative Grade on notional basis. The representation of the applicant requesting for arrears of pay was considered. It was decided that since the applicant had been granted promotion to Senior Administrative Grade on notional basis and he retired from service on 31.10.2000 without shouldering higher responsibility, he was not entitled to the difference of pay.

6. The sole controversy herein is as to if the applicant is entitled to difference of pay, though he has been granted notional promotion.

7. The learned counsel on behalf of the applicant has drawn our attention to number of precedents in this regard. But the basic question that comes up for consideration is as to whether, keeping in view the Rules 49 and 50 of the Railway Service Pension Rules, 1993 when applicant had not shouldered responsibility of the higher post, the impugned order can be sustained or not.



8. In this regard on 21.1.1993, the Railway Board has issued the instructions as to the procedure that has to be adopted after completion of the criminal case or the disciplinary proceedings. The said instructions are:

“3. On the conclusion of the Disciplinary Case/Criminal Prosecution, which results in dropping of allegation 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 Railway Servant who has been promoted, as mentioned above, 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 Proceedings/Criminal Prosecution. Where the authority denies arrears of salary or part of it, it will record the reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denial 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 circumstance where such denial can be justified.”

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9. As per these instructions, the facts and circumstances have to be taken into consideration. It has also to be considered whether criminal or disciplinary proceedings are delayed at the instance of the employee and on what ground he has been acquitted. These are some of the circumstances, which are required to be considered as per the instructions that have been issued. The same have not been considered necessarily.

10. On this short ground, we allow the present application and direct that a fresh order taking stock of the totality of the facts and circumstances to which we have referred above, should be passed. This may be done within three months of the receipt of the certified copy of the present order.



(S.A. Singh)  
Member (A)



(V.S. Aggarwal)  
Chairman

/NSN/