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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO.112/2008

Date of Order 23.09.2010

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

Yasin Khan S/o Shri Labu Deen Khan, aged 62 years, R/o Gram Post Hamusar, Tehsil Ratan Garh, District Churu. Last employed on the post Welder Gd.-I under S.S.E. (PW), Jodhpur, Division Jodhpur, North West Railway.

....Applicant

Mr. B. Khan, counsel for applicant.

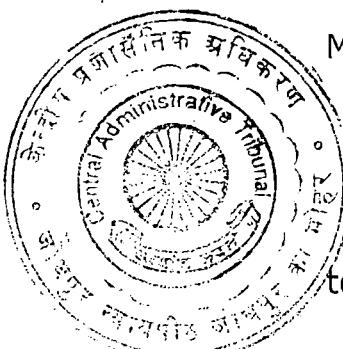
VERSUS

1. The Union of India, through General Manager, North/West Railway, Jaipur (Raj.).
2. The Divisional Railway Manager, North/West Railway, Jodhpur Division, Jodhpur (Raj.).
3. The Senior Personnel Officer, North/West Railway, Jodhpur Division, Jodhpur (Raj.).

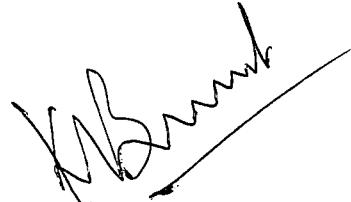
.....Respondents

Mr. Manoj Bhandari, counsel for respondents.

ORDER (ORAL)

The applicant claims that a promotion avenue, which is open to him, on his representation, as a result of equivalence, was granted to him alongwith his juniors. But the consequence was not granted to him.

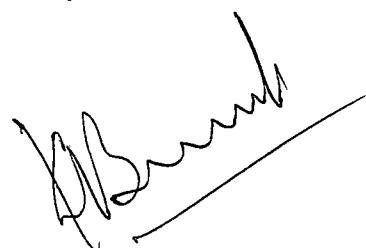
2. The respondents would say that on representation of the applicant, they had revised the date of promotion at par with his junior Sawai Ram, Mahadeo and Shankar Puri, Welder Gr.I in the pay scale of Rs.4500-7000, they were promoted with representation date i.e. from 19.02.2004 on a proforma basis. The respondents would say that the applicant had not shouldered of actual responsibility of higher post from the date of issue of the



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proforma promotion and therefore he is not entitled for the consequence and for which they relied on the Hon'ble Supreme Court's Judgment in **A.K. Soumini vs. State Bank of Travancore & Anr.** reported in (2003) 7 SCC 238 which canvass a view of a principle of "no work no pay". The principle is that if by a promotion by way of a gesture of gratis and not by way of right, a special benefit was conferred on employee, ex-facie, the right of consequence out of such promotion cannot be granted. On closure inspection, it comes out that a special gratis promotion and not promotion by way of right is covered by this. In the instant case, the applicant would point out that the promotion of the applicant is not result of any gratis benefits but merely an acknowledgement of his right to promotion which was normally available to him. Therefore, this judgment may not be of any benefit.

3. The respondents also relied on the judgment of Hon'ble High Court in **Union of India & Ors. vs. C.A.T. & Ors.** reported in 2003 (3) CDR 2449 (Raj.) which quoted para 228 of Indian Railway Establishment Manual which reveals that when promotion is not made timely due to administrator errors, employee is not entitled to arrears of pay for the period he did not work. This case is relating to Tribunal, holding that the Para 228 IREM as invalid and violative of Articles 14 & 16 of the Constitution of India. The Hon'ble High Court held that para 228 of IREM is intra vires of the Constitution of India. But in the present case, the question is not whether the para 228 of IREM is ultra virus or intra vires. This judgment only canvassed of view that due to administrator errors,



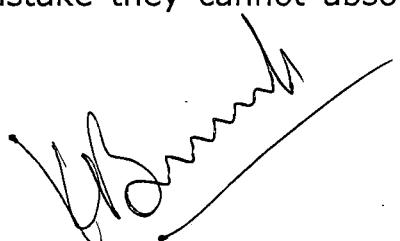
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if a promotion is granted or not, employee is not entitled to arrears of pay for the period he did not work, on which he was subsequently promoted. But I may have to keep in view the Constitution of India. The proper understanding para 228 of IREM will be to mean that each case should be dealt with on its merit. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the stage which the employee would have reached if he was promoted at the proper time. The enhanced pay may be allowed from the date of actual promotion says the respondents.

No arrears on this account shall be payable, as he did not actually shoulder the duties and responsibilities of the higher grade post.

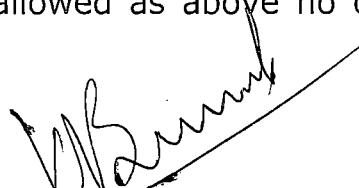
In short, for the mistake of the authorities, employee should shoulder the burden. But Hon'ble Apex Court has held that whenever a person, for no fault of his, was brought out to a position below that he enjoyed and was asked to return the extra benefits that had been conferred on him it cannot be done. Therefore, relying on the Hon'ble Apex Court decision if blame cannot be attached to an employee, he cannot be penalized in

Sahib Ram Vs. State of Harayana & Ors. reported in 1995 SCC (L&S) 248, the Apex Court had held that the focus of consideration would be different in such case. In other words, the Railways cannot abdicate their responsibility of doing things rightly and correctly. But by merely saying that they cannot be responsible for their own mistake they cannot absolve themselves of jurisdiction





responsibility of correcting the same. The IREM, now as held by the High Court may be intra vires but the methodology of understanding it would be according to the judgments cited above. If blame cannot be attributed to the employee and there is administrative error then the consequence must follow and just notion will be to hold the responsible to be accountable. That may be the correct position. Therefore, respondents are directed to grant all benefit of notional promotion including financial benefits w.e.f. 19.02.2000 to 13.10.2004 to the applicant within a period of three months from the date of receipt of the copy of this order. If the amount due is not released to the applicant within three months then the respondents are liable to pay interest at the rate of 15% per annum. The OA is allowed as above no order as to costs.



(Dr. K.B. SURESH)
Judicial Member

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दिनांक १२/१२/१५
प्रतीक्षा अधिकारी, राजस्थान
कानूनी विभाग, राजस्थान
जोधपुर अधिकारीत, राजस्थान