

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
BOMBAY BENCH, BOMBAY:1

Original Application No. 1175/96

Monday the 13th day of January 1997

CORAM: Hon'ble Shri B.S. Hegde, Member(J)
Hon'ble Shri M.R. Kolhatkar, Member(A)

U.C. Roy
Chief Engineer(Survey)
O/o Chief Administrative
Officer(Construction)
6th Floor,
New Administrative office
Building, Mumbai.

... Applicant.

By Advocate Shri T.D. Ghaisas

V/s.

Union of India through
the Chairman
Railway Board,
Ministry of Railways,
New Delhi.

The Secretary, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.

Union of India through
The General Manager,
Central Railway,
Mumbai CST.

... Respondents.

By Advocate Shri S.C. Dhawan.

ORDER (ORAL)

¶ Per Shri B.S. Hegde, Member(J) ¶

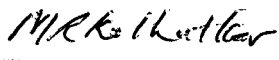
Heard counsel for the parties.

The respondents have not filed the reply.

The applicant has prayed for arrears of pay and allowances from 26.4.93 to 2.4.96 with interest at 18% per annum(cumulative) pending the final hearing and disposal of the application.

During the course of hearing the learned counsel for the respondents has drawn our attention to the decision of the Supreme Court in the case of State of Hariyana and Ors. V/s. O.P. Gupta SC(SLJ) 1996(1) 245 held that a person who has been given notional promotion from the deemed date cannot claim arrears of salary for the period during which he had not worked on such post.

In view of the decision of the Supreme Court, we see no merit in the O.A. and the same is dismissed at the admission stage itself.



(M.R. Kolhatkar)
Member(A)


(B.S. Hegde)
Member(J)

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MUMBAI BENCH

REVIEW PETITION NO.: 27/97 IN O.A. NO. 1175/96.

Dated this Wednesday, the 26th day of March, 1997.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Applicant
(Review Petitioner).

Versus

Respondents.

Tribunal's order by circulation :

PER.: SHRI B. S. HEGDE, MEMBER (J)

The applicant has filed this review petition seeking review of the judgement dated 13.01.1997 in O.A. No. 1175/96.

2. It is true that the O.A. was disposed of at the admission stage itself and the respondents have not filed their reply to the O.A. However, during the course of hearing, the learned counsel for the respondents had drawn our attention to the decision of the Supreme Court in the case of State of Haryana & Others V/s. O.P. Gupta [SC (SLJ) 1996 (1) 245] wherein the Apex Court has held that a person who has been given notional promotion from the deemed date cannot claim arrears of salary for the period during which he had not worked on such post. On that basis, the O.A. was disposed of.

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3. The applicant has challenged the impugned order passed by the respondents vide dated 10.10.1996 stating that pursuant to the representation made by the applicant dated 23.07.1996, the Railway Board vide its order dated 17.09.1996 has advised that as a result of DAR action against him, penalty of censure was imposed on him and he was not completely exonerated from charges and therefore, as per extant instructions, he is not eligible for payment of arrears of pay in the S.A. grade.

4. In the light of the aforesaid decision of the Railway Board, it is apparent that at the time of promotion, the charge memo was pending against the applicant and that being the position, the department was left with no other alternative but to adopt the sealed cover procedure. After opening of the sealed cover, it is made out that a remark of censure has been imposed on him, thereby, the competent authority has taken a decision not to pay him any arrears of pay but only notional promotion was granted to him. The applicant in his review petition has cited the decision of the Supreme Court in Vasant Rao Roman V/s. Union Of India [1993 Supp (2) SCC 324] wherein it is held that non-promotion due to administrative reasons - due to shortage of literate shunters, appellant being literate, deputed for table work, as a result of which he could not complete requisite number of firing kilometers and as such for no fault on his part, his juniors promoted as shunters and drivers ignoring his claim for promotion - In the circumstances held, his claim for promotion over his juniors to the promotion post to be allowed.

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Similarly, the applicant has also relied upon the decision of the Jodhpur Bench in Prem Pal Nepaliya V/s. Union Of India (1997(1)(CAT) Jodhpur 25 ¶.

In this case, the applicant was not promoted due to pending charge-sheet, later on charges dropped in 1992 and was given notional promotion w.e.f. 1981. The Court held that his promotion will be notional and all arrears from 1981 be paid with 12% interest. In that case, the applicant was fully exonerated and sealed cover shows him fit and hence, he was promoted from the due date and arrears paid. That is not the situation in the present case. The punishment of censure was imposed upon him. At the relevant time, charge memo was issued against him, thereby, he could not be promoted and his case was kept in sealed cover. Both the decisions would not help the applicant and the facts of the present case are distinguishable from those two cases. It is a well established principle that judicial review is confined to the manner by which the decision is made and has nothing to do with the correctness or the decision itself. Judicial Review is a trite and is not directed against the decision but is confined to the decision making process. Judicial Review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair judgement and not to ensure that the authority after according fair treatment reaches on a matter which it is authorised by law to decide a conclusion which is correct in the eyes of the Court. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made.

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5. In the light of the above, we do not see any merit in the review petition and the same is dismissed.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B S Hegde

(B. S. HEGDE)
MEMBER (J).

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