

Vasant Rao Roman vs Union Of India (Uoi) Through The Central ... on 4 March, 1993

Equivalent citations: JT1993(2)SC451, (1993)IILLJ89SC, 1993(1)SCALE777, 1993SUPP(2)SCC324, 1993(3)SLJ73(SC)

Bench: N.M. Kasliwal, N. Venkatachala

JUDGMENT

1. This appeal by grant of special leave is directed against the judgment and order dated 26.11.1986 of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur passed in T.A.A. 35/86. The appellant, a driver in the Central Railway filed a writ petition in the High Court of Madhya Pradesh on 24.3.1981 which was transferred to the Central Administrative Tribunal, Jabalpur Bench under Section 29 of the Administrative Tribunal Act. The Tribunal by order dated 26.11.1986 allowed the petition filed by the appellant and directed the respondent Nos. 1 to 4 therein to fix the appellant's seniority as Shunter 'B' with effect from 12.6.1961 and as a Driver 'C' with effect from 17.12.1965. The Tribunal further directed that the appellant's increments shall be granted and counted with reference to these dates of seniority in the higher grade, but he shall not get any arrears of emoluments.

2. The appellant has come in appeal to this Court claiming that he was entitled to the arrears of emoluments also and there was no ground or justification to deny the same when he has been held entitled for seniority as Shunter 'B' and Driver 'C' with effect from the dates as mentioned above.

3. We have heard learned Counsel for the parties and have also perused the order of the Tribunal. The Tribunal has denied the entitlement of emoluments and other benefits to the appellant on the basis of a memorandum of the Government of India, Ministry of Home affairs in GI.MHA. OM No.E. 7/28/63-Ests (A) issued on 22.12.1964. A perusal of the aforesaid memorandum as detailed in para 14 of the order of the Tribunal shows that it applied to the case of an Officer who remained suspended and could not be promoted due to his suspension or in case of Officers who could not get promotion due to departmental proceeding. The Tribunal placing reliance on the aforesaid memorandum has taken the view that on the analogy of the instructions mentioned in the aforesaid memorandum and on the principle of 'no-work no -pay' on a particular post, the appellant was not entitled to any arrears of pay.

4. In our view, the Tribunal was wrong in applying the aforesaid memorandum in the case of the appellant before us. Admittedly, neither the appellant had been put under suspension nor any disciplinary proceedings were pending against him. On the contrary, he had been made to suffer on account of administrative reasons for which the appellant was not responsible. There was shortage of literate Shunters at Gwalior during 1960. The appellant being literate was deputed for table work and therefore for administrative reasons Gwalior during 1960. The appellant being literate was deputed for he could not complete requisite number of firing kilometers. Thus, with no fault on his

part his juniors had been promoted as Shunters and Drivers and his claim was ignored on account of having not completed the requisite number of firing kilometers. The Tribunal itself has allowed the claim of the appellant regarding seniority over his juniors, considering force in the contention of the appellant. Thus, in the facts and circumstances of this case, we find no justification whatsoever for not allowing the arrears of emoluments to the appellant of the post of Shunter 'B' from 12.6.1961 and that of the post of Driver 'C' from 17.12.1965.

5. In the result, we allow this appeal and modify the order of the Tribunal to the effect that the appellant shall also be entitled-to get all arrears of emoluments with effect from 12.6.1961 as Shunter 'B' and with effect from 17.12.1965 as Driver 'C'. The respondents shall make the payment of the arrears to the appellant within three months from the date of this order. The appellant shall also be entitled to Rs. 3,000/- as costs.