

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1096 OF 2005

Union of India & Anr.	...Petitioners
Versus	
Kirtikumar Anant Hirave	...Respondent

Mr. G. Hariharan with Mr. N. R. Prajapati i/b. Mr. A. A. Ansari
for Petitioners.
None for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 12 APRIL 2018

ORAL JUDGMENT :

1] Heard Mr. Hariharan for the petitioners. The respondent, though served, neither present nor represented.

2] The challenge in this petition is to the judgment and order dated 8th July 2004 made by the Central Administrative Tribunal (CAT) in Original Application No. 495 of 2003 instituted by the respondent.

3] Mr. Hariharan, the learned counsel for the petitioners submits that in this case, admittedly, penalty of stoppage of one increment without cumulative effect had been imposed upon the respondent. He submits that on account of such penalty, the respondent was not entitled to the benefit of Time Bound Promotion. He submits that on account of such penalty, the respondent, also lost his seniority and the CAT, was not at all justified in awarding any reliefs to the respondent by ignoring the admitted fact that a minor penalty had been imposed upon the respondent.

4] In order to evaluate the aforesaid submission, we have perused the record as well as the reasoning in the impugned judgment and order. In our opinion, there is no merit in the contention raised so as to interfere with the impugned judgment and order.

5] It is true, as contended by Mr. Hariharan that a minor penalty of stoppage of one increment without cumulative effect had been imposed upon the respondent. The effect of such minor penalty on promotions is governed by certain executive instructions issued by the petitioners themselves

in the form of DGP & T Memo dated 19th May 1984, which reads as follows :

*“Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection, a reference is invited to the instructions issued by the Min. of OM No. 22011/1/68-Estt.(a) dated the 16th February, 1979, stating inter alia that the punishment of censure, recovery of pecuniary loss and **stopping of increment do not constitute a bar to promotion of the official provided on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommend his promotion to the next higher post.**”*

[Emphasis supplied]

6] The aforesaid, is sufficient, to reject the contention of Mr. Hariharan that the case of the respondent could not have been considered even for award of Time Bound Promotional Scale, on account of the minor penalty of stoppage of one increment without cumulative effect imposed upon him.

7] Besides, the CAT, has referred to the judgment and order dated 9th March 2000 in OA No. 479 of 1994 passed by the CAT, Jaipur Bench, in which, a clear view is taken that penalty of stoppage of one increment does not constitute a bar for promotion of such official, provided, on the basis of

overall assessment of his record, DPC recommends promotion to the next higher grade. To the same effect, is the ruling of the CAT, Bombay Bench in OA No. 168 of 1994.

8] The contention based upon the respondent losing his seniority has been considered by the CAT and rejected for cogent reasons. Even we are satisfied that on account of imposition of minor penalty of stoppage of one increment without any cumulative effect, the respondent, did not lose his seniority. In any case, since, the CAT was concerned with the issue of Time Bound Promotional Scale, the issue of seniority was not, strictly speaking very relevant.

9] For all these reasons, no good ground is made out to interfere with the impugned judgment and order dated 8th July 2004. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)