

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.126 OF 2018

DISTRICT : MUMBAI

Shri Devappa Annapa Gavade.)
Age : 49 Yrs., Occu.: Government Service)
as Joint Secretary, Agriculture, Animal)
Husbandry, Dairy Development & Fisheries)
Department, Mantralaya, Mumbai and)
Residing at Flat No.A/501, Gahlot)
Majesty, Plot-3A, Sector 46-A, Nerul,)
Navi Mumbai – 400 706.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary)
(Services), General Administration)
Department, Mantralaya,)
Mumbai – 400 032.)
2. Additional Chief Secretary (Home),)
Home Department, Mantralaya,)
Mumbai – 400 032.)
3. Additional Chief Secretary (Finance),)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 12.01.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 challenging the impugned order dated 20.11.2017 denying pay and allowances from deemed date of promotion (04.08.2012 to 19.12.2014) for the post of Deputy Secretary.

2. In nutshell, the facts giving rise to this O.A. are as under :-

In 2011, while the Applicant was serving in the cadre of Under Secretary, he was in the zone of consideration for the post of Deputy Secretary. The meeting of DPC was held on 30.10.2011 wherein the Applicant was found fully eligible for promotion to the post of Deputy Secretary. However, he was not promoted on the ground that D.E. was contemplated against him. The DPC in fact recommended the Government to take appropriate decision in respect of his promotion in terms of Circular dated 02.04.1976. Later belatedly, the Applicant was served with charge-sheet of DE on 07.05.2012 under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). In DE, it was alleged that the Applicant renewed Country Liquor permit contrary to Rules and thereby committed misconduct. Even after service of charge-sheet, there was no progress in the DE. In the meantime, the process of promotion was completed ignoring the claim of Applicant.

3. The Applicant had, therefore, filed O.A.No.324/2013 before this Tribunal challenging the initiation of DE, which was disposed of by Judgment dated 20.07.2014. The Tribunal issued direction that DE should be completed within twelve weeks from the date of order and if it is not completed by final order within stipulated period, it would stand quashed and Applicant would be exonerated from DE. Interestingly, later, DE was closed on the ground that the documents for initiation of DE were not available in the Department. As such, the DE stands

withdrawn by the Government. Consequent to it, the Applicant was promoted on the post Deputy Secretary by order dated 11.12.2014. Later by order dated 27.09.2016, he was given deemed date of regular promotion w.e.f.04.08.2012. The Applicant then by his letter dated 03.10.2016 requested for pay and allowances for the period from 04.08.2012 to 19.12.2014 which has been declined. Being aggrieved by it, the Applicant has filed the present O.A. contending that he has been illegally deprived of the benefits of promotional post, and therefore, entitled to pay and allowances for the said period.

4. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the impugned order contending that in terms of minutes of DPC itself, the Applicant was found eligible for promotion and admittedly, no DE was initiated or in existence on the date of meeting of DPC, and therefore, the Applicant could not have been denied promotion on the specious ground that DE is contemplated against him. He has further pointed out that in fact, there was no substantial material to proceed with DE and ultimately, the Government has withdrawn the charge-sheet which invariably fortify the position that there was no ground much less justiciable to deny promotion to the Applicant. He submits that the Applicant was illegally kept away from promotional post and subjected to severe injustice. He, therefore, submits that the Applicant cannot be denied pay and allowances for the period from deemed date of promotion i.e. from 04.08.2012 to 19.12.2014. In this behalf, he placed reliance on **AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India)** and the decision rendered by this Tribunal in **O.A.No.791/2017 (Pradeepkumar U. Rathod Vs. State of Maharashtra) decided on 17.05.2019** wherein this Tribunal has granted monetary benefits for the period of deemed date of promotion and the defence of 'no work no pay' was rejected.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to support the impugned order contending that the Applicant is entitled for the pay and allowances for promotional post w.e.f. 20.12.2014 only and

admittedly, having not worked on the promotional post in the period from 04.08.2012 to 19.12.2014, he is not entitled to pay and allowances in terms of Rule 28 read with Rule 32 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). She further sought to justify the denial of promotion to the Applicant by DPC in its meeting dated 31.10.2011 in view of contemplated DE. As such, the opposition of denial of pay and allowances during the period of deemed date of promotion is basically founded on Rule 32 of 'Rules of 1981'.

6. In view of submissions advanced at the Bar, the question posed for consideration is whether denial of pay and allowances during the period of deemed date of promotion is legal and valid and the answer is in emphatic negative.

7. As stated above, the factual aspects are not at all in dispute. Indisputably, when DPC was held on 31.10.2011, the Applicant was in the zone of consideration and in fact, the DPC held him fully eligible and suitable for promotion to the post of Deputy Secretary. As on the date of meeting of DPC, there was no initiation of DE by service of charge-sheet, the DPC thought it appropriate to refer the matter to Government to examine the same in the light of G.R. dated 02.04.1976. However, no such decision was taken. Admittedly, it is only on 07.05.2012, the charge-sheet was issued against the Applicant under Rule 8 of 'Rules of 1979'. This being the position, there is no denying that on the date of meeting of DPC, there was no DE against the Applicant in the eye of law. Needless to mention that DE is deemed to have been initiated from the date of service of charge-sheet.

8. Apart, it is explicit from the record that there was no sufficient material to proceed with DE against the Applicant. This Tribunal in O.A.No.324/2013 by order dated 24.07.2014 directed to complete DE within 12 weeks by passing final order and in the event of failure to do so, the DE would stand cancel exonerating the Applicant. It is in

compliance of the direction of this Tribunal when Department tried to collect the material for completion of DE, interestingly, no such document was available with the Department. Therefore, Home Department itself forwarded the proposal to Hon'ble Minister for withdrawal of DE and accordingly to avoid further embarrassment, the Government itself has withdrawn the DE. Later, the Applicant was promoted. If this is the state of matter, it will have to be held that on the date of meeting of DPC, there existed no material much less departmental proceedings against the Applicant, so as to keep him away from the promotional post.

9. Indeed, the perusal of file noting of GAD (Page Nos.73 and 74 of P.B.) reveals that the GAD had disapproved the manner in which issue of promotion of the Applicant was handled by Home Department relying on Circular dated 02.04.1976. In this behalf, relevant portion is material, which is as follows :-

“सन २०११-१२ च्या उपसचिव पदाच्या पदोन्नतीसाठी आस्थापना मंडळाची बैठक दि. ३१.१०.२०११ रोजी संपन्न झाली. या बैठकीमध्ये अंतिमतः पदोन्नतीस पात्र ठरलेल्या अधिका-यांच्या यादीमध्ये श्री. गावडे यांना उपसचिव पदावर पदोन्नतीसाठी पात्र ठरविण्यात आले असले तरी त्यांच्याविरुद्ध प्रस्तावित असलेली विभागीय चौकशीची कारवाई विचारात घेता त्यांना प्रत्यक्ष पदोन्नती देण्याबाबत शासन परिपत्रक सा.प्र.वि. दि.०२.०४.१९७६ मधील तरतूदीनुसार शासन मान्यतेने जाणिवपूर्वक निर्णय घ्यावा, अशी शिफारस आस्थापना मंडळाने केली.

श्री. गावडे यांना गृहविभागाने दि.०७.०५.२०१२ च्या ज्ञापनाअन्वये महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम क्र.८ खालील तरतूदीनुसार दोषारोप पत्र बजावले होते. याचाच अर्थ श्री. गावडे हे दि.०७.०५.२०१२ पासून विभागीय चौकशीच्या प्रभावाखाली होते (Under influence of Departmental Enquiry) याचाच अर्थ दि.३१.१०.२०११ रोजीच्या आस्थापना मंडळाच्या बैठकीच्या तारखेस दोषारोप पत्र बजावले अशी वस्तुस्थिती नसल्याने, तसेच शासन परिपत्रक सा.प्र.वि. दि.०२.०४.१९७६ मधील सुचनांनुसार त्यांची पदोन्नती दोषारोप पत्र बजावलेल्या कर्मचा-यांप्रमाणे समजून त्याप्रमाणे त्यांचे पदोन्नती प्रकरण हाताळणे ही बाब योग्य नव्हती.

मा.न्यायाधिकरणाच्या उपरोक्त दि.२४.०७.२०१४ च्या आदेशातील परिच्छेद क्र.४ चे अवलोकन केले असता श्री. गावडे यांच्याविरुद्ध विभागीय चौकशीची कारवाई पुढे चालू ठेवण्याकरीता आवश्यक कागदपत्रे मिळत नसल्याने/उपलब्ध होत नसल्याने सदर DE ची कारवाई बंध करण्याबाबतचा प्रस्ताव (दोषारोप मागे घेण्याबाबतचा प्रस्ताव) (withdrawing of Departmental Enquiry) गृहविभागामार्फत मा. मंत्री (गृह) यांच्याकडे सादर करण्यात आला असल्याचे गृह विभागाने त्यांच्या दि.११.०१.२०१३ च्या पत्रान्वये सामान्य प्रशासन विभागास कळविल्याचे दिसून येते. त्यामुळे श्री. गावडे यांना दि. ०७.०५.२०१२ च्या ज्ञापनाअन्वये बजावलेले दोषारोप पत्र हे विभागीय चौकशी नियम पुस्तिकेतील प्रकरण क्र.तीन (३.१)मधील तरतूदीनुसार श्री. गावडे यांच्या विरुद्ध विभागीय चौकशी सुरु करण्याकरीता प्रथम दर्शनी तथ्य नसताना (In the absence of prima facie substance) बजावले असल्याचे दिसून येते.

उपरोक्त घटनाक्रम विचारात घेता श्री. गावडे हे आस्थापना मंडळाच्या बैठकीच्या तारखेस विभागीय चौकशीच्या प्रभावाखाली नव्हते. त्यामुळे त्यांच्याप्रकरणी शासन परिपत्रक सा.प्र.वि. दि.०२.०४.१९७६ मधील सुचना आकर्षित होत नाहीत. तसेच त्यांच्याविरुद्धच्या दोषारोपास बळकटी देणारी ठोस कागदपत्रे उपलब्ध होत

नसल्याने, त्यांच्या विरुद्धची विभागीय चौकशीची कारवाई पुर्णत्वास जावू शकली नाही, ही वस्तुस्थिती नाकारणे योग्य ठरणार नाही. त्यामुळे श्री. गावडे यांना सन २०११-१२ च्या उपसचिव पदावरील पदोन्नतीच्या आस्थापना मंडळाच्या बैठकीतील पात्रतेनुसार केवळ प्रस्तावित विभागीय चौकशीच्या आधारे (Merely on the basis of proposed DE)(Prior to the serving of chargesheet, under rule ८ or १० of MCS [D & A] Rule, १९७९) उपसचिव पदावरील पदोन्नतीचा जाणीवपूर्वक निर्णय घेण्याचा निर्णयाचे पुनर्विलोकन करण्याबाबतचा प्रस्ताव सा.प्र.वि. कक्ष-११ चे अभिप्राय घेवून साप्रविमार्फत आस्थापना मंडळाच्या बैठकीत पुनर्विचारार्थ सादर होणे आवश्यक वाटते.”

10. However, unfortunately, GAD ultimately rejected the claim of Applicant for pay and allowances for the period from deemed date of promotion stating that he is entitled only for notional promotion and not entitled to arrears of pay and allowances for the said period.

11. At this juncture, it would be apposite to see the contents of Circular dated 02.04.1976, which *inter-alia* contains detailed instructions/criteria and the procedure to be followed in the matter of promotion of person whose conduct is under investigation or against whom, the DE is pending. The Circular dated 02.04.1976 reads as under :-

“According to the existing practice, Government servants whose conduct is under investigation or against whom a departmental enquiry is pending, are ordinarily not considered for promotion. **This practice is however, likely to cause hardship in the case of Government servants who are otherwise fit for promotion and the charges against whom may not be so serious as to disqualify them for provisional promotion during the pendency of the investigation or enquiry.** The question has been examined. There are three stages at which action will have to be taken viz.

1. The stage of preparing the select list.
2. Interim promotion during the pendency of the proceedings, and
3. The final action to be taken after the conclusion of the investigations and the departmental enquiry if any. Action as below should be taken in respect of these three stages.

2. The Stage of preparation of select list:

- (a) At the time of drawing up of the select list, the case of a person facing an investigation or departmental, enquiry should be considered in the same manner in which the cases of other person are considered i.e. On the basis of his previous record of service. If on the basis of his

record, he is found fit for promotion, his name should be included in the select list at the appropriate place; **but this inclusion should be considered to the purely provisional to be reviewed after the conclusion of the departmental enquiry or investigation if on conclusion of the investigation it is decided that a departmental enquiry is not necessary.** This position will apply to all persons irrespective of whether they are under suspension or not.

- (b) If the state of his record is such that because of his suspension, his record for the past 2/3 years is not available and so no decision either way can be taken then the Selection Committee should keep his case 'open' i.e. to be considered at the later date without prejudice to him because of the delay.
- (c) If, on the basis of his record, he is not found fit for promotion, no further question arises.

3. Interim promotion during the pendency of the proceedings.

If the person is found fit and his name is provisionally included in the select list;

- (a) During the .pendency of the proceedings, the question of promoting a person under suspension does not arises such a person shall not be promoted.
- (b) **In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry.** If it is decided that he should so promoted such promotion will provisional and will be reviewed on the conclusion of the investigation or enquiry.

4. On conclusion of the investigations and/or departmental enquiry :

- (a) If a person is completely exonerated the following should follows:
 - (i) If he was provisionally promoted, his provisional should be treated as regular.
 - (ii) If such a person had become due for promotion but was promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.

- (b) If he is not completely exonerated, then his case should be reexamine and a fresh decision should be taken as to whether, in view of the result of the investigations of enquiry, he is fit to be promoted.
- (i) If he is not found fit in such a reexamination and if he was provisionally promoted earlier the provisional promotion should come to an end. If he was not so promoted, no further question arises.
- (ii) If he is found fit, the competent authority should indicate his revised place in the Select List. This revised place is expected to be lower than original provisional place in most cases because of the interest resulting from the proceeding. If such a person was already provisionally promoted earlier, he should be deemed to be promoted accordingly to his revised position in the select list and the period his earlier promotion should be treated as fortuitous. If such a person was not already promoted, he should be promoted according to his revised position in the select list and the same consequence as in clause (a) (ii) above should follow.
- (c) Cases which are kept Open should be decided expeditiously."

12. Suffice to say, the Circular dated 02.04.1976 itself provides for provisional promotion, even if employee is facing D.E. In so far as the facts of present case are concerned, admittedly, no DE existed on the date of meeting of DPC. It is only on 07.05.2012, the DE was initiated. As such, the case of the Applicant was on far better footing and there was no reason much less justiciable to ignore him. He should have been promoted provisionally in DPC meeting dated 30.11.2011 itself since there was no embargo or legal hurdle in his way to get promotional post.

13. Thus, what transpired from the record that the Applicant was illegally deprived of the avenues of promotion and he did not get opportunity to work on promotional post and to get higher pay and allowances for the said post for a long period. He was willing to work on promotional post but was deprived of the said benefit without any valid reason.

14. Reliance placed by the learned P.O. on Rule 32 read with Rule 28 of 'Rules of 1981' is displaced. The only contention raised by learned P.O. is that since the Applicant has not worked on promotional post, he is not entitled to pay and allowances of promotional post in view of Rule 32 of "Rules of 1981". Rule 28 and Rule 32 of 'Rules of 1981' are as under :-

28. Date from which pay and allowances take effect.- Subject to any exceptions specifically made in these rules, a Government servant commences or ceases to be entitled to the pay and allowances of a post with effect from the date on which he assumes or relinquishes charge of the duties of that post, if he assumes or relinquishes charge of those duties in the forenoon of that day; otherwise from the following day.

Exception.- For a period of not more than three days spent by a direct recruit to the post of a Deputy Engineer in taking over charge of his post on first appointment, he should be granted his grade pay excluding any special pay or allowance (but including dearness allowance) to which he would be entitled on assumption of complete charge.

32. How the date of promotion is determined.- The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But, when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.

15. In so far as applicability of Rule 28 read with Rule 32 is concerned, those are general rules applicable to normal situation. Whereas, in the present case, as concluded above, the Applicant was prevented and illegally denied the promotion though he was admittedly eligible and suitable for promotion. It is not the case of Respondents that there was no vacancy or any other hurdle except initiation of DE in future. At the cost of repetition, it is necessary to point out that the Government itself has withdrawn the charge-sheet since there was no material against the Applicant to proceed with the DE and to avoid embracement, D.E. was withdrawn as a damage control exercise.

16. Where a person is deprived or illegally denied to work on promotional post, the principle of 'no work no pay' would not attract in

view of various decisions rendered by Hon'ble Supreme Court, which are as under :-

- (i) **AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India)** wherein the Hon'ble Supreme Court held that in normal circumstances when retrospective promotions are effected, the benefit flowing therefrom including monetary benefits must be extended to an employee who has been denied promotion earlier and the principle 'no work no pay' cannot be accepted as a rule of thumb and matter needs to be considered on case to case basis. In Para No.13, the Hon'ble Supreme Court held as follows :

“13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

In this case, the Hon'ble Supreme Court also referred to its earlier decision in **AIR 2007 SC 2645 (State of Kerala Vs. E.K. Bhaskaran Pillai)** wherein it was held that the principle of 'no work no pay' cannot be accepted as a rule of thumb and the matter will have to be considered on case to case basis. In **Bhaskaran Pillai's** case, the Hon'ble Supreme Court in Para No.4 held as follows :-

“4. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in

that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

- (ii) **(2016) 16 SCC 663 (Shobha Ram Raturi Vs. Haryana Vidut Prasaran Nigam Limited)**. In that matter, the order of retirement was challenged. The Hon'ble Punjab and Haryana High Court set aside the retirement order. However, the monetary benefits were refused on the principle of 'no work no pay'. However, when the matter was taken up before Hon'ble Supreme Court, the monetary benefits/back-wages were granted on the ground that the principle of 'no work no pay' cannot be applied where fault lies with the Respondents in not having utilized the services of the Appellants for the period from 01.01.2003 to 31.12.2005. In Para No.3, the Hon'ble Supreme Court held as follows :-

"3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay".

- (iii) **(1991) 4 SCC 109 (Union of India and Ors. Vs. K.V. Jankiraman)**. Para No.25 of the Judgment is relied upon, which is as follows :

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

- (iv) Judgment of Hon'ble Bombay High Court in **Writ Petition No.6794/2018 (State of Maharashtra Vs. Smt. Manda Deshmukh) decided on 14th September, 2018**. This Writ Petition was filed challenging the Judgment passed by this Tribunal in O.A.1010/2016 decided on 06.04.2017. In this O.A, the monetary benefits were refused relying upon Rule 32 of 'Rules 1981'. The Tribunal referred to the decisions in

Jankiraman's case and **Ramesh Kumar's** case (cited supra) and held that the principle 'no work no pay' will not apply where an employee was illegally deprived of the opportunity to work upon such a post. The decision rendered by this Tribunal has been confirmed by Hon'ble High Court in Writ Petition No.6794/2018 with modification to the extent of interest.

- (v) Same view was taken granting pay and allowances for the period from deemed date of promotion by this Tribunal in **O.A.No.102/2017 (Ashok Khamkar Vs. Commissioner of Police) decided on 17.05.2019.**

17. At this juncture, it would be also apposite to refer recent decision of Hon'ble Bombay High Court in **2016(1) Mh.L.J. 827 (Prabhakar J. Rangari Vs. Hon'ble Minister of Industries & Chairman, Maharashtra Industrial Development Corporation).** In that case, the promotion was denied because of pendency of DE though Petitioner was fulfilling all requisite criteria for promotion and was eligible for the same. The DE was pending for years together. It is in that context, the Hon'ble High Court referred Circular dated 02.04.1976 which inter-alia provides for provisional promotion where an employee is facing the DE and held that denial of promotion is arbitrary and denial of legitimate right to seek promotion. Ultimately, directions were issued to promote the Petitioner with deemed date and with all consequential benefits, subject to outcome of D.E.

18. Furthermore, Shri Chandratre, learned Advocate for the Applicant rightly referred to **AIR 2007 SC 3100 (The Commissioner, Karnataka Housing Board Vs. C. Muddaiah)** wherein the employer had raised the issue of no work no pay, which was turned down by Hon'ble Supreme Court in following words :-

"We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had

worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

19. The reference made by learned P.O. on the decision of Hon'ble Supreme Court **1991 AIR SCC 938 (Virender Kumar Vs. Avinash Chandra Chadha)** is of no help to the Applicant in the facts and circumstances of the present case. In that case, on the principle of 'no work no pay' the monetary benefits were refused with the finding that during the relevant period, higher posts were not vacant and were manned by incumbents concerned to whom the emoluments of the said posts were filled. Therefore, in the fact situation, want of non-availability of post, the principle of 'no work no pay' was invoked. Whereas, in the present case, as concluded above, the Applicant was indeed out of promotion for non-existing grounds and thereby he was deliberately deprived from promotion.

20. Thus, the legal principles expounded by Hon'ble Supreme Court in the Judgment referred to above and by Hon'ble Bombay High Court referred to above are fully attracted and I see no reason to deprive of the Applicant from monetary benefits of the promotional post. The Applicant was *ex-facie* subjected to injustice by denying promotion on totally non-existing ground which needs to be undone by granting monetary benefits to him.

21. The necessary corollary of aforesaid discussion leads me to conclude that the principle of 'no work no pay' and Rule 32 of 'Rules of 1981' have no application in the present situation. Consequently, the impugned order dated 20.11.2017 refusing monetary benefits for the period from deemed date of promotion is totally unsustainable in law and deserves to be quashed. Indeed, there is no reference of Rule 32 in the impugned order. Be that as it may, the impugned order is totally

indefensible and liable to be struck down. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 2011.2017 is hereby quashed and set aside.
- (C) The Respondents are directed to release the monetary benefits of the Applicant for the period from 04.08.2012 to 19.12.2014 for promotional post of Deputy Secretary with all consequential benefits within two months from today, failing which the Respondents will have to pay interest at the rate of 9% p.a. from the date of this order.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 12.01.2021
Dictation taken by :
S.K. Wamanse.

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