

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.370 OF 2019**

**DISTRICT : MUMBAI**

Shri Laxman Tarachand Rathod. )  
Working as Administrative Officer in Kama )  
& Albless Hospital, Mumbai and residing at )  
R/o. C/G-01, Sayali Complex, )  
Dharamveer Nagar, Diva (E), )  
District : Thane – 400 612. )...**Applicant**

**Versus**

1. The Chief Secretary, )  
State of Maharashtra, Mantralaya, )  
Mumbai – 400 032. )
2. The Secretary. )  
Medical Education & Drugs Dept., )  
9<sup>th</sup> Floor, G.T. Hospital Compound, )  
Mumbai – 400 001. )
3. The Director. )  
Medical Education & Research, )  
Government Dental College Building, )  
4<sup>th</sup> Floor, St. Georges Hospital )  
Campus, Mumbai – 400 001. )...**Respondents**

**Mr. P.L. Rathod, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 13.10.2021**

**JUDGMENT**

1. The challenge is to the communication dated 17.04.2018 issued by Respondent No.2 thereby denying pay and allowances for the period from

deemed date of promotion to the actual date of promotion for the post of Senior Assistant, Office Superintendent and Administrative Officer invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts giving rise to this O.A. are as under :-

(i) Initially, the Applicant has filed O.A.No.1098/2016 for claiming deemed date of promotion for the post of Senior Clerk, Office Superintendent and Administrative Officer in this Tribunal.

(ii) During the pendency of O.A, the Government by order dated 20<sup>th</sup> April, 2017 having realized that Applicant has been deprived of deemed date of promotion for no fault on his part approved the proposal for deemed date of promotion on the post of Senior Assistant, Office Superintendent and Administrative Officer.

(iii) The Tribunal, therefore, disposed of O.A.No.1098/2016 by order dated 15.06.2017 directing the Respondents to take further consequential steps within three months.

(iv) Since Respondents did not comply direction given by the Tribunal, the Applicant has filed Contempt Application No.21/2018.

(v) During the pendency of Contempt Proceeding, the Respondents issued the order of deemed date of promotion and consequently, Contempt Proceeding was disposed of with liberty to the Applicant to make representation for further grievances.

(vi) The Respondent No.2, however, by order dated 17.04.2018 rejected the claim for pay and allowances from deemed date of promotion to the actual date of promotion relying on Rule 32 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) which

*inter-alia* provides for pay and allowances of higher post from the date of assumption of charge.

3. It is on the above background, the Applicant has challenged the communication dated 17.04.2018 *inter-alia* contending that he is deprived of pay and allowances for the period from deemed date of promotion till the actual date of promotion for no fault on his part, and therefore, the principle of 'no work no pay' or Rule 32 of 'Rules of 1981' are not applicable.

4. Shri P.L. Rathod, learned Advocate for the Applicant has pointed out that for no reason, the Applicant was deprived of the avenues of promotion for the post of Senior Assistant, Office Superintendent and Administrative Officer though deserving and suitable, but his juniors were promoted, and therefore, he was constrained to file O.A.No.1098/2016 before this Tribunal which was disposed of in view of approval of Government to grant deemed date of promotion for all these posts. He has further pointed out that it is only because of administrative lapses on the part of Respondents, the Applicant was kept away from the promotional post for a long time, and therefore, the claim for pay and allowances for the period from deemed date of promotion till the actual date of promotion has to be accepted in the light of catena of decision which will be referred a little later.

5. Per contra, the learned Presenting Officer submits that in view of Rule 32 of 'Rules of 1981', a Government servant is entitled to pay and allowances for higher post only from the date of assumption of charge, and therefore, the Applicant is not entitled for pay and allowances of the higher post on the principle of 'no work no pay' of higher post.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the Applicant is entitled for pay and allowances for the period from deemed date of promotion from 02.03.2009 to

26.09.2012 for the post of Senior Assistant, from 27.02.2012 to 23.11.2016 for the post of Office Superintendent and from 24.11.2016 to 09.09.2018 for the post of Administrative Officer.

7. Indisputably, it is because of administrative lapses on the part of Respondents, the Applicant was deprived of promotions for the post of Senior Assistant, Office Superintendent and Administrative Officer, and therefore, realizing the mistake and lapses of the Department, the Government by order dated 24.04.2017 granted deemed date of promotion for the post of Senior Assistant, Office Superintendent as well as Administrative Officer. In this behalf, pertinent to note that there is clear admission in communication dated 20.04.2017 that promotions to the Applicants were delayed only because of administrative lapses on the part of Department. Therefore, deemed date of promotion given to Mr. D.D. Rathod who was junior to the Applicant was granted to the Applicant. As such, this is not a case where Applicant was not eligible or for any other reason, he was not entitled to the promotions. He was kept out of promotions due to sheer negligence and administrative lapses on the part of Respondents.

8. In such situation, the next question would be as to whether the Respondents can deny the benefit of pay and allowances to higher posts from deemed date of promotion to the actual date of promotion on the principle of 'no work no pay' and in my considered opinion, in the light of settled legal position, the Respondents are bound to pay difference of pay and allowances for these posts from deemed date of promotion to the actual date of promotion

9. Indeed, the Government by Circulars dated 25.02.1965, 14.09.1982 and 29.10.2001 (Page Nos.49 to 52 of Paper Book) admitted its liability to pay the difference in pay and allowances of the promotional post from the date on which juniors are promoted. Material to note that these Circulars were also considered by Hon'ble High Court in **Writ Petition No.539/2016 (Rajesh Waghmode Vs. Chief Secretary,**

**Government of Maharashtra) decided on 2<sup>nd</sup> September, 2016** taking note of decisions of Hon'ble Supreme Court in **AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India & Ors.), AIR 2007 SC 2645 (State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai)** and pay and allowances admissible to the promotional post from deemed date of promotion were granted.

10. The learned Advocate for the Applicant has further pointed out that the said issue of entitlement of pay and allowances for the period from deemed date of promotion to the actual date of promotion and applicability of Rule 32 of 'Rules of 1981' has been already dealt with by this Tribunal in **O.A.No.100/2016 (Manda Deshmukh Vs. State of Maharashtra) by Judgment dated 06.04.2017**. In the said matter, the defence that a Government servant is not entitled to pay and allowances from the date of promotion in the light of Rule 32 of 'Rules of 1981' has been turned down and pay and allowances were granted. The said decision has been confirmed by Hon'ble High Court in **Writ Petition No.6794/2018** with modification to the extent of interest only. As such, the Applicant being similarly situated person on the ground of parity, he is entitled to the benefit of said decision.

11. Furthermore, this issue is no more *res-integra* in view of various decisions holding the field, 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 Vidyut 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.”*

12. The learned P.O. could not point out any of the decision contrary to the decisions referred to above which are holding the field. It is thus explicit that where a Government servant is deprived of working on

promotional post for no fault on his part and particularly, promotion is denied due to sheer lapses or mistake on the part of Department, the benefit of pay and allowances for the promotional post from deemed date of promotion cannot be denied and in such situation, there is no applicability of principle of 'no work no pay'. The principle of 'no work no pay' would not attract where a Government servant is unjustly denied the avenues to work on promotional post. As such, the Applicant cannot be deprived of consequential monetary benefits viz. pay and allowances from deemed date of promotion to actual date of promotion.

13. The totality of aforesaid discussion leads me to conclude that the impugned communication is totally arbitrary, bad in law and liable to be quashed. Hence, the order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 17.04.2018 denying pay and allowances from deemed date of promotion to actual date of promotion are quashed and set aside.
- (C) The Respondents are directed to pay difference in pay and allowances for the promotional posts viz. Senior Assistant, Office Superintendent as well as for the post of Administrative Officer within two months from today.
- (D) No order as to costs.

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

Mumbai  
Date : 13.10.2021  
Dictation taken by :  
S.K. Wamanse.

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