

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.417 OF 2022

DISTRICT : PUNE

Sub.:- Arrears of Pay

Smt. Ranjana P. Gage)
Age : Major, Occu. Govt. Service,)
R/o Dr. Eetasha Madke, Flat No.8,)
Smt. Kashibai Navle Medical College,)
Narthe, Pune 411041.)...**Applicant**

Versus

1. The State of Maharashtra, through)
its Chief Secretary (2), Urban Devlp.)
Department, Mantralaya, Mumbai 32)
2. The Commissioner cum Director,)
Nagar Parishad Administration)
Directorate, Government Transport)
Service Building, 3rd floor, Sir.)
Pochkanwala Marg, Worli,)
Mumbai 30.)
3. The Ministry of Finance, through)
the Addl. Chief Secretary,)
Mantralaya, Mumbai 32.)...**Respondents**

**Shri Yashodeep Deshmukh holding for Shri V. Sangvikar, Advocate
for Applicant.**

Shri A. J. Chougale, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.06.2023

JUDGMENT

1. The Applicant has challenged communication dated 21.03.2018 issued by the Respondent No.1- Government thereby rejecting his claim for pay & allowances from 09.04.1999 for the post of Chief Officer,

Group -B invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

(A) The Applicant was appointed as Chief Officer, Group 'C' on 01.09.1992.

(B) He was due for promotion to the post of Chief Officer, Group 'B' in 1998 and matter was placed before the DPC. However, her Annual Confidential Report (ACR) were not up to benchmark and on that ground, he was held unfit for promotion though the said ACRs were not communicated to the Applicant.

(C) Later, the Applicant was promoted to Chief Officer, Group 'B' on 01.12.2005. The Applicant had filed O.A.No.922/2013 for deemed date of promotion to the post of Chief Officer, Group 'B' w.e.f. 09.04.1999 stating that the adverse ACRs on the basis of which promotion was denied to her were not communicated to her and, therefore, it could not have been used to her disadvantage.

(D) The Tribunal disposed of the O.A.No.922/2013 on 02.08.2013 having found that matter was already under consideration before the Review Committee and statement was made by the Respondent - Government that necessary steps will be taken to expedite the decision. The Tribunal, therefore, directed to complete the exercise of deemed date of promotion within four months from the date of order.

(E) Accordingly, the DPC in its meeting dated 17.02.2014 considered the issue and granted deemed date of promotion in the cadre of Chief Officer, Group 'B' w.e.f. 09.04.1999.

(F) The Government accordingly issued order dated 21.04.2014 thereby granting deemed date of promotion w.e.f. 09.04.1999 for seniority and pay and allowances but declined to grant arrears of pay and allowances.

(G) The Applicant again filed O.A.No.48/2017 seeking relief of deemed date of promotion to the post of Chief Officer, Class-I w.e.f. 07.04.2008 with consequential benefits with arrears of pay and allowances for promotional post of Chief Officer, Group 'B' from 09.04.1999.

(H) The Tribunal disposed of the O.A. by order dated 08.09.2017 directing the Respondents to take decision about the relief sought in the light of the decision rendered by the Tribunal in **O.A.No.1010/2016 (Smt. Manda V. Deshmukh V/s State of Maharashtra)**, decided on 06.04.2017 which was delivered on the basis of decision in **(Ramesh Kumar V/s Union of India) AIR 2015 SC 2904** and judgment of the Hon'ble High Court in **W.P. No.539/2016 (Mr. Rajesh D. Waghmode V/s The Chief Secretary, Government of Maharashtra & 1 Anr.)**, decided on 02.09.2016. The Tribunal observed that Applicant has strong case in her favour and accordingly issued directions to the Respondents to take decision within three months.

(I) Since there was no compliance of the directions given by the Tribunal in O.A.No.48/2017, the Applicant had filed C.A. No.38/2018 before the Tribunal. In contempt proceeding, the Respondent - Government tendered the file noting. Having gone through the noting in the file, the Tribunal disposed of contempt proceeding on 31.01.2022 by following order which is as under :-

3. *The noting appears quite well reasoned and under such circumstances we do not find any reason to interfere in this contempt application.*
4. *Further copy of this noting can be collected by the Ld. Advocate for the applicant from the office of the respondents.*
5. *C.A. disposed off accordingly."*

3. It is on the above background, the Respondent No.1-Government issued communication dated 21.03.2018 stating that since the Applicant has taken charge of the promotional post on 01.12.2005, he has not entitled to pay and allowances from deemed date of promotion i.e. from 09.04.1999 in terms of Rule 32 of Maharashtra Civil Services (General Condition of Services), Rules 1981 (hereinafter referred to as 'Rules 1981' for brevity) which *inter-alia* provides for pay and allowances for the promotional post from the date of assumption of charge.

4. Now the Applicant has challenged communication dated 21.03.2018 by filing this Original Application inter-alia contending that Respondents had used non communicated ACRs for denying promotion which was due to him w.e.f. 09.04.1999 and, therefore, it amounts to denial of promotion and entitled to pay and allowances from 09.04.1999.

5. Shri Y. Deshmukh, learned Counsel for the Applicant inter-alia contends that since the Government remedied situation by granting deemed date of promotion w.e.f. 09.04.1999 realizing its fault for not communicating ACRs, there was no reason to deny pay and allowances from 09.04.1999. He vehemently urged that there was no fault on the part of Applicant but it is because of mistake on the part of Respondents, he was deprived of working on promotional post of Chief Officer, Group 'B' and, therefore, the claim of pay and allowances from deemed date of promotion i.e. 09.04.1999 which is already granted to the Applicant cannot be defeated. He, further submits that Rule 32 of Rules, 1981 is the Rule applicable in normal situation but in present case since the Respondents have already granted deemed date of promotion w.e.f. 09.04.1999, he should have been also granted pay and allowances w.e.f. 09.04.1999. In this behalf, he made reference to various decisions which will be dealt with during the course of discussion.

6. Per contra, Shri A. J. Chougule, learned Counsel for the Applicant in reference to contention raised in affidavit in reply submits that even if, deemed date of promotion is granted w.e.f. 09.04.1999 since the Applicant has not worked on promotional post, he is not entitled to pay and allowances from 09.04.1999. In terms of Rule 32 of Rules, 1981, he is entitled to pay and allowances only from the date of assumption of charge of promotional post. He further submits that once the contempt application was disposed of by the Tribunal, the issue cannot be reopened by filing this O.A.

7. In view of pleadings and submissions, the issue posed for consideration is whether the Applicant is entitled to pay and allowances from deemed date of promotion which is already granted to him w.e.f. 09.04.1999. Before going ahead, at this juncture, it would be apposite to see the minutes of DPC dated 17.02.2014 in which he was granted deemed date of promotion to the post of Chief Officer, Group 'B' w.e.f. 09.04.1999 which are as under:-

‘बैठकीचे इतिवृत्त पुढीलप्रमाणे :

श्रीमती रंजना गगे यांची दि.०१.०९.१९९२ पासून संवर्ग मुख्याधिकारी श्रेणी-३ या पदावर रुजू झालेल्या आहेत. संवर्ग मुख्याधिकारी श्रेणी-३ च्या पदावर दि.०१.०९.१९९२ पासून रुजू झालेल्या ३७ मुख्याधिकारी यांना श्रेणी-२ च्या पदावर पदोन्नती देणेबाबत, मा.प्रधान सचिव (२), नगर विकास विभाग यांचे अध्यक्षतेखाली दि.०३.०४.१९९८ रोजी झालेल्या विभागीय पदोन्नती समितीच्या बैठकीमध्ये मुख्याधिकारी श्रेणी-३ मधून मुख्याधिकारी श्रेणी-२ मध्ये पदोन्नती देण्यासाठी निवडसूची तयार करण्यात आली होती.

सदर निवडसूची तयार करताना पदोन्नतीसाठी एकूण २३ पदे उपलब्ध होती. त्यामध्ये वि.जा.भ.ज. या प्रवर्गातील ७ पदे रिक्त होती. या ७ पदांसाठी ४ मुख्याधिकारी विचारक्षेत्रात होते. या ४ मुख्याधिका-यांमध्ये श्रीमती गगे यांचा समावेश होता तथापी या मुख्याधिका-यांचा वेगवेगळ्या कारणावरून पदोन्नतीसाठी विचार केलेला नाही. त्यामुळे वि.जा.भ.ज. या प्रवर्गातील पदोन्नतीची ७ पदे रिक्त ठेवण्यात आली होती.

सदर बैठकीच्या इतिवृत्ताचे अवलोकन केले असता असे दिसून येते की, निवडसूची तयार करताना विचारक्षेत्रात असलेल्या अधिका-यांमध्ये श्रीमती रंजना गगे यांचा मुख्याधिकारी श्रेणी-३ यांचा समावेश होतो. विभागीय पदोन्नती समितीच्या बैठकीच्या वेळी विचारक्षेत्रातील अधिका-यांच्या गोपनीय अहवालाची प्रतवारी त्यांचे गोपनीय अहवालाचे वाचन करून निश्चित केली होती. त्यामध्ये श्रीमती रंजना गगे यांचे सन १९९३-१९९४, १९९४-१९९५, १९९५-१९९६ व १९९६-१९९७ या चार वर्षांच्या गोपनीय अहवालाची प्रतवारी खालीलप्रमाणे विचारात घेण्यात आली होती.

अ. क्र.	गोपनीय अहवालाचे वर्ष	गोपनीय अहवालाचा कालावधी	प्रतवारी	सरासरी प्रतवारी
१	१९९३-१९९४	दि.०३.०६.१९९३ ते दि.३१.०३.१९९४	क	ब-
२	१९९४-१९९५	दि.२०.०४.१९९५ ते २२.०९.१९९५	ब-	
३	१९९५-१९९६	दि.०१.०४.१९९५ ते दि.२२.०९.१९९५ दि.०१.१०.१९९६ ते दि.३१.०३.१९९६	अ अ	

४	१९९६-१९९७	दि.०१.०४.१९९६ ते दि.३०.०६.१९९६	ब+	
		दि.०१.०७.१९९६ ते दि.३१.०३.१९९७	ब-	

श्रीमती गगे यांच्या उक्त चार वर्षांच्या गोपनीय अहवालाची सरासरी प्रतवारी ब- अशी दर्शवून त्यांना पदोन्नतीसाठी अपात्र ठरविण्यात आले. कारण पदोन्नतीस पात्र होण्यासाठी गोपनीय अहवालाची सरासरी प्रतवारी ब अशी येणे आवश्यक आहे. तसेच सदरच्या वि.जा.भ.ज.या प्रवर्गासाठी असलेल्या ७ पदांवर कोणत्याही मुख्याधिका-यांना पदोन्नती दिलेली नाही.

त्यानंतर मा.प्रधान सचिव (२), नगर विकास विभाग यांचे अध्यक्षतेखाली दि.३१.०५.२००५ रोजी झालेल्या विभागीय पदोन्नती समितीच्या बैठकीमध्ये मुख्याधिकारी श्रेणी-३ मधून मुख्याधिकारी श्रेणी-२ मध्ये पदोन्नती देण्यासाठी निवडसूची तयार करण्यात आली होती.

या बैठकीच्या इतिवृत्ताचे अवलोकन केले असता असे दिसून येते की, निवडसूची तयार करताना विचारक्षेत्रात असलेल्या अधिका-यांमध्ये श्रीमती रंजना गगे, मुख्याधिकारी श्रेणी-३ यांचा समावेश होता. विभागीय पदोन्नती समितीच्या बैठकीच्या वेळी विचारक्षेत्रातील अधिका-यांच्या गोपनीय अहवालाची प्रतवारी त्यांचे गोपनीय अहवालाचे वाचन करून निश्चित केले व पदोन्नती देण्यासाठी पात्रापात्रता आजमविण्यात आली. त्यामध्ये श्रीमती रंजना गगे यांना पदोन्नतीसाठी पात्र ठरवून शासनाने दि.०१.१२.२००५ पासून मुख्याधिकारी गट-२ च्या पदावर पदोन्नती दिलेली आहे.

उक्त परिच्छेद क.०३ मध्ये नमूद केलेल्या तक्तयामधील सन १९९३-१९९४ या वर्षांच्या गोपनीय अहवालामधील प्रतिकूल शेरे श्रीमती गगे यांना कळविण्यात आलेले असून, सदरचे प्रतिकूल शेरे वगळण्यात आलेले नाहीत. तसेच श्रीमती गगे यांच्या उक्त नमूद असलेले दि.२०.०४.१९९५ ते २२.०९.१९९५ व दि.०१.०७.१९९६ ते दि.३१.०३.१९९७ या कालावधीतील गोपनीय अहवालामधील प्रतिकूल शेरे श्रीमती गगे यांना कळविण्यात आलेले नाहीत. शासन सामान्य प्रशासन विभागाच्या दि.०१.०२.१९९६ च्या शासन निर्णयामधील परिशिष्ट-अ मधील सूचना क्र.५२ नुसार गोपनीय अहवालातील जे प्रतिकूल शेरे संबंधितांस कळविले नसतील तर असे प्रतिकूल शेरे पदोन्नतीसाठी विचारात घेवू नयेत असे नमूद केलेले आहे.

त्यानुसार आता श्रीमती गगे यांच्या सन १९९३-१९९४, १९९५-१९९६ व १९९६-१९९७ या तीन वर्षांच्या गोपनीय अहवालाची सरासरी प्रतवारी खालीलप्रमाणे करण्यात आली.

अ. क्र.	गोपनीय अहवालाचे वर्ष	गोपनीय अहवालाचा कालावधी	प्रतवारी	सरासरी प्रतवारी
१	१९९३-१९९४	दि.०३.०६.१९९३ ते दि.३१.०३.१९९४	क	ब
२	१९९५-१९९६	दि.०१.०४.१९९५ ते २२.०९.१९९५ दि.०१.१०.१९९६ ते दि.३१.०३.१९९६	अ अ	
३	१९९६-१९९७	दि.०१.०४.१९९६ ते दि.३०.०६.१९९६	ब+	

श्रीमती रंजना गगे या वि.जा.(अ) या प्रवर्गातील आहेत. उक्त तक्त्यात न केलेली ब ही प्रतवारी ग्राह्य धरणे आवश्यक आहे.

मुख्याधिकारी श्रेणी-३ मधून श्रेणी-२ मध्ये पदोन्नती देणेबाबत दि.०३.४.१९९४ रोजी विभागीय पदोन्नती समितीच्या बैठकीसाठी दि.०१.०४.१९९४ ची ज्येष्ठता सूची विचारात घेण्यात आलेली आहे. सदरच्या ज्येष्ठता सूचीमधील पात्र ठरलेल्या श्रेणी-३ च्या मुख्याधिका-यांना श्रेणी-२ च्या पदावर दि.०९.०४.१९९९ रोजी पदोन्नती दिलेली आहे. त्यानुसार श्रीमती रंजना गगे यांना देखील दि.०९.०४.१९९९ हा मुख्याधिकारी श्रेणी-२ पदोन्नतीचा मानीव दिनांक देण्याची शिफारस करण्यात येत आहे.”

8. Now, let us see the order dated 21.04.2014 issued by the Government thereby granting deemed date of promotion in the post of Chief Officer, Group -B w.e.f. 09.04.1999 which is as under :-

" श्रीमती गगे यांनी मानीव दिनांकासंदर्भात सादर केलेले निवेदन तपासण्यात आले त्यानुसार त्यांचे प्रकरण थोडक्यात पुढीलप्रमाणे आहे :-

श्रीमती रंजना गगे ह्या मुख्याधिकारी गट-क पदी सरळसेवेने नियुक्त अधिकारी असून सन २००५ मध्ये ज्येष्ठतेनुसार त्यांना मुख्याधिकारी गट-ब पदावर पदोन्नती देण्यात आली. मुख्याधिकारी गट-क संवर्गाची दि.०१.०४.१९९४ ची अंतिम ज्येष्ठता सूची संचालक, नगरपालिका प्रशासन संचालनालय, वरळी, मुंबई यांनी दि.३०.०४.१९९६ अन्वये प्रसिध्द केली आहे.

०३. मुख्याधिकारी गट-क संवर्गातील अधिका-यांना मुख्याधिकारी गट-ब मध्ये पदोन्नतीसाठी विभागीय पदोन्नती समितीच्या दि.०३.०४.१९९८ रोजी झालेल्या बैठकित श्रीमती गगे यांचा वि.जा.भ.ज. या प्रवर्गातुन विचार क्षेत्रात समावेश करण्यात आला होता. तथापि, त्यांच्या गोपनीय अहवालाच्या प्रतवारीनुसार त्यांना पदोन्नतीसाठी अपात्र ठरविण्यात आले.

तदनंतर श्रीमती रंजना गगे यांना दि.०१.१२.२००५ पासुन मुख्याधिकारी गट-ब पदावर पदोन्नती देण्यात आली आहे.

०४. श्रीमती गगे यांनी त्यांच्या गोपनीय अहवालातील प्रतिकुल शेरे त्यांना वेळीच न कळविले गेल्यामुळे पदोन्नतीचा मानीव दिनांक मिळण्याबाबत अभिवेदन केले होते. या अनुषंगाने विभागीय पदोन्नती समितीने दि.१७.०२.२०१४ रोजी झालेल्या बैठकीत श्रीमती गगे यांनी पदोन्नतीसाठीची पात्रापत्रता पुन्हा तपासली. श्रीमती गगे यांना कळविण्यात न आलेले गोपनीय अहवालातील प्रतिकुल शेरे व शासन निर्णय, सामान्य प्रशासन विभाग क्र. सीएफआर १२९५/प्र.क्र.३६/९५/१३, दि.०१.०२.१९९६ च्या परि.अ मधील सुचना क्र.५२ मधील तरतुद आणि त्यांच्या गोपनीय अहवालांची प्रतवारी विचारात घेऊन श्रीमती रंजना गगे यांना दि.०३.०४.१९९८ रोजी मुख्याधिकारी गट-ब मध्ये पदोन्नतीसाठी पात्र ठरविले. तसेच त्यांना दि.०९.०४.१९९९ हा पदोन्नतीसाठी मानीव दिनांक देण्याची शिफारस केली.

०५. संचालक, नगरपालिका प्रशासन संचालनालय, वरळी, मुंबई यांनी दि.३०.०४.१९९६ रोजी प्रसिध्द केलेल्या दि.०१.०४.१९९४ च्या अंतिम ज्येष्ठता सूचीत श्रीमती गगे यांना कनिष्ठ असलेले श्री.निलावाड (ज्ये.क्र. ९३/१९९४) यांना मुख्याधिकारी गट-ब संवर्गात दि.०९.०४.१९९९ पासुन पदोन्नती देण्यात आली आहे. त्यामुळे श्री.निलावाड यांना मुख्याधिकारी गट-ब संवर्गासाठी दिलेला दि.०९.०४.१९९९ हा दिनांक श्रीमती रंजना गगे यांना मानीव दिनांक म्हणून मंजूर करण्यास शासन मान्यता देण्यात येत आहे.

०६. श्रीमती रंजना गगे, मुख्याधिकारी गट-ब यांना देण्यात येत असलेला मुख्याधिकारी गट-ब संवर्गाचा मानिव दिनांक सेवा हा ज्येष्ठता व वेतननिश्चितीसाठी देय राहिल. तसेच या अनुषंगाने त्यांना थकबाकी अनुज्ञेय ठरणार नाही.

०७. सदर आदेश सामान्य प्रशासन विभागाच्या आणि वित्त विभागाच्या सहमतीने आणि वित्त विभागाच्या अनौपचारिक संदर्भ क्र.१५१/१४/सेवा -३, दि.२७.०३.२०१४ नुसार निर्गमित करण्यात येत आहेत.”

9. It is thus explicit from the above orders that Applicant was denied promotion on the basis of ACR which were not communicated to him. The Government, therefore, rectified the situation having realized the mistake that uncommunicated ACR could not have been used to the detriment of the Applicant for denial of promotion. The Government, therefore, granted deemed date of promotion w.e.f. 09.4.1999. Notably, the said deemed date was granted since one Shri T. B. Nilavad who was junior to the Applicant was given promotion on 09.04.1999 and, therefore, Applicant was also given deemed date of promotion w.e.f. 09.04.1999. Apart, notably the date 09.04.1999 was also fixed for seniority as well as pay and allowances. However, arrears of pay from deemed date of promotion was declined on the ground that as per Rule 32 of 'Rules, 1981' pay and allowances for the promotional post are payable from the date of assumption of charge.

10. The Applicant has claimed pay and allowances from 09.04.1999 i.e. deemed date of promotion inter-alia contending that he was deprived of promotion without any fault on his part and, therefore, entitled to pay and allowances from deemed date of promotion. Insofar as Rule 32 of Rules, 1981 is concerned, it is based on the principle of 'No Work, No Pay'. However, the principle 'No Work, No Pay' cannot be accepted as Rule of thumb in view of settled legal position and where the Government servant was ready and willing to work on promotional post but kept away from the promotional post mistakenly, in such situation, he is entitled to deemed date of promotion with pay and allowances since the issue is no more res-integra in view of various decision of the Hon'ble Supreme Court.

11. In **Ramesh Kumar's** case (cited supra), the Hon'ble Supreme Court dealt with this issue and held that the principle of 'No Work, No Pay' cannot be accepted as Rule of thumb and in certain situations, the court can grant monetary benefits particularly when denial of promotion was because of mistake committed by the department. In Para Nos.11, 12 and 13, the Hon'ble Supreme Court held as under :-

11. The respondents have advanced the argument that the denial of pay and allowances is on the principle of "no work no pay" and no injustice has been done to the appellant since he has not actually worked in the promotional post of Naib Subedar during the aforesaid period. It was submitted that the benefit of pay and allowances was rightly awarded w.e.f. 13.11.2000, the date on which the appellant actually assumed the rank of Naib Subedar but his seniority was maintained so as to protect his interest in his further promotions.

12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. [In State of Kerala & Ors. vs. E.K. Bhaskaran Pillai](#), (2007) 6 SCC 524, this Court 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 a case to case basis and in para (4), it was held as under:-

"... 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."

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."

12. The same issue again posed for consideration before the Hon'ble Supreme Court in **Civil Appeal No.8006-8007/2003 (Prabhu Dayal Khandelwal V/s Chairman, UPSC & Ors.)**, decided on 23.07.2015. In that case, the Hon'ble Supreme Court referred its earlier decision in **(2009) 16 SCC 146 (Abhijit Ghosh Dastidar V/s Union of India & Ors.)**, **(2008) 8 SCC 725 (Dev Dutt V/s Union of India & Ors.)** and **(2013) 9 SCC 566 (Sukhdev Singh V/s Union of India & Ors.)** and reiterated that uncommunicated ACRs could not be used to deny the promotion. Ultimately, in **Prabh Dayal Khandelwal's** case, the Hon'ble Supreme Court held as under :-

"9. In the above view of the matter, we are satisfied, that the respondents ought to be directed to reconsider the claim of promotion of the appellant, to the post of Chief Commissioner of Income Tax, for the vacancies which arose during the years 2000-2001 and 2001-2002 on the basis of the communicated reports for the years 1997-1998 and 1999-2000, within a period of three months from today. Ordered accordingly.

10. In case the appellant is found to be entitled for promotion to the post of Chief Commissioner of Income Tax, he shall be promoted to the said post, with effect from the date of his entitlement. In such an eventuality, he shall also be entitled to all arrears of salary, as would have been payable to him, if he had been promoted as Chief Commissioner of Income Tax at the right time. Simultaneously, he would be entitled to revision of his retiral benefits."

13. The Hon'ble Supreme Court again reiterated the same position in **W.P. No.1209/2021 (R.K. Jibanlata Devi V/s High Court of Manipur through its Registrar General & Ors.)**, decided on 24.02.2023. The Hon'ble Supreme Court held that uncommunicated ACRs could not be relied upon for consideration of promotion. In Para Nos.8 and 8.1, it is held as under :-

" 8. In view of the above and for the reasons stated above, present petition is allowed. The DPC proceedings dated 09.04.2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. The case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 i.e., the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and 2019-20 and thereafter the DPC/competent authority to take a fresh decision in accordance with

law and taking into consideration the ACRs of remaining years, i.e., 2017-18 and 2018-19. Such an exercise be completed within a period of six weeks from today.

8.1 In case after fresh exercise as above the petitioner is promoted to the post of Assistant Registrar, it goes without saying that she shall be entitled to all the consequential benefits including the arrears, seniority etc. w.e.f. 09.04.2021 - the day on which the juniors came to be promoted."

14. Thus, the conspectus of all these decisions is that uncommunicated ACRs could not have been used to deny the promotion. It is precisely for this reason, the Government later remedied the situation and rectified the mistake by granting deemed date of promotion w.e.f. 09.04.1999. Interestingly, the DPC in its meeting dated 17.02.2014, therefore, considered the remaining ACRs and average benchmark of ACRs were found 'B' (good). It was also noticed that Applicant belongs to reserved community and, therefore, 'B' was the benchmark for getting promotion. Accordingly, DPC recommended deemed date of promotion w.e.f. 09.04.1999. The Government accepted it and passed the order granting deemed date of promotion but declined to grant pay and allowances from deemed date which is apparently arbitrary and unsustainable in law in view of aforesaid discussion.

15. The submission advanced by learned P.O. that in view of disposal of contempt proceeding, the Applicant cannot claim pay and allowances from deemed date of promotion is totally misconceived and untenable. There was no such adjudication while disposing contempt application. All that Tribunal found no material to proceed with the contempt application and, therefore, it was closed. It is thereafter Government issued impugned order dated 21.03.2018 denying pay and allowances from deemed date of promotion on the principle of 'No work, No Pay'. This being the situation, the Applicant got cause of action in view of order dated 21.03.2018 which is under challenge in the present O.A.

16. Suffice to say, the Applicant was granted deemed date of promotion having realized the mistake that he was wrongly denied the promotion. In such situation, the principle of 'No Work, No Pay' embodied in Rule 32 of 'Rules 1981' will not be attracted. Impugned order dated 21.03.2018 denying pay and allowances from deemed date of promotion is thus totally arbitrary, indefensible and unsustainable in law. Hence, the following order :-

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communication dated 21.03.2018 denying pay and allowances from deemed date of promotion is quashed and set aside.
- (C) The Respondents are directed to release monetary benefits for the said period within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member-J

Place : Mumbai
Date : 12.06.2023
Dictation taken by : Vaishali S. Mane