

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.590 OF 2021**

**DISTRICT : PUNE**

**Sub.:- Denial of Absorption,  
Pension & Service Benefits**

1. Shri Pandurang B. Kale. )  
Age : 57 Yrs, Working as Canal Inspector )  
in the Office of Executive Engineer, )  
Khadakvasala Irrigation Division, )  
Lonideokar, Tal.: Indapur, District : Pune. )  
R/o. A/P. Palasdeo [Kalewadi], )  
Tal.: Indapur, District : Pune. )
2. Shri Nagnath N. Sarade. )  
Age : 60 Yrs, Occu.: Retired, Worked as )  
Canal Inspector, Last place of posting in )  
the Office of Executive Engineer, )  
Ujani Dam Management, Division )  
Bhimanagar, Tal.: Madha, )  
District : Solapur. )
3. Shri Tatyasaheb S. Deshmukh. )  
Age : 57 Yrs, Retired, Worked as )  
Canal Inspector, Last place of posting in )  
the Office of Executive Engineer, )  
Ujani Dam Management, Division )  
Bhimanagar, Tal.: Madha, )  
District : Solapur, R/o. A/P Wangi No.1, )  
Tal.: Karmala, District : Solapur. )
4. Shri Arun N. Gutal. )  
Age : 59 Yrs, Retired, Worked as )  
Canal Inspector, Last place of posting in )  
the Office of Executive Engineer, )  
Ujani Dam Management, Division )  
Bhimanagar, Tal.: Madha, )  
District : Solapur, R/o. A/P Shetphal, )  
Tal.: Karmala, District : Solapur. )
5. Shri Jalindar B. Pawar. )  
Age : 58 Yrs, Retired, Worked as )  
Canal Inspector, Last place of posting in )  
the Office of Executive Engineer, )

Khadakvasala Pat Bandhare, )  
 Sinchan Bhawan, Pune. )  
 R/o. S.No.52, Khandwa Kund, Pune-48. )

6. Shri Arun S. Ghadage. )  
 Age : 59 Yrs, Retired, Worked as )  
 Canal Inspector, Last place of posting in )  
 the Office of Executive Engineer, )  
 N.R.B.C, At Phaltan, District : Satara, )  
 R/o. A/P Pomalwadi Ketur No.2, )  
 Tal.: Karmala, District : Solapur. )

7. Ambadas D. Shelar. )  
 Age : 57 Yrs, Retired, Worked as )  
 Canal Inspector, Last place of posting in )  
 the Office of Executive Engineer, )  
 Ahmadnagar Irrigation, Ahmadnagar, )  
 Deceased through Legal Heirs :- )

7a] Smt. Sangita Ambadas Shelar. )  
 Age : 51 Yrs., R/o A/P Saikrushna )  
 Park, Dange Chowk, Thergaon, )  
 Pune - 33. )

7b] Shri Nikhil Ambadas Shelar. )  
 Age : 28 Yrs., R/o As above. )

8. Shri Gabaji B. Bhor. )  
 Worked as Canal Inspector, Last place of )  
 posting in the Office of Executive Engineer,)  
 Mula Irrigation, Rahuri, )  
 Deceased through Legal Heirs :- )

8a] Smt. Sunita Abaji Bhor. )  
 Age : 45 Yrs., R/o. A/P Hirave Bk, )  
 Tal.: Junnar, District : Pune. )

8b] Shri Sagar Abaji Bhor. )  
 Age : 27 Yrs., R/o As above. )

**)...Applicants**

**Versus**

1. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Water Resources Department, )  
 [Erstwhile Irrigation Department], )  
 Mantralaya, Mumbai - 400 032. )

2. The Superintending Engineer and )

- Administrator, Command Area )  
 Development Authority [CADA], )  
 Nashik, having office at Sinchan )  
 Bhavan, Trymbak Road, Nashik-2. )
3. The Superintending Engineer and )  
 Director, Irrigation Research and )  
 Development Directorate and Zonal )  
 Officer, Pune Zone, Pune. )
4. The Executive Engineer. )  
 Bhima Irrigation Project, )  
 Chandrabhaga Nagar, Pandharpur, )  
 District : Solapur. )
5. The Superintending Engineer, )  
 Pune Irrigation Circle, Pune, having )  
 Office at Sinchan Bhavan, Pune. ) **...Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicants.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 03.04.2023**

### **JUDGMENT**

1. In this Original Application, the Applicants have challenged the communication dated 28.09.2020 issued by Respondent No.1 – Government of Maharashtra whereby their claim for applicability of old pension scheme has been rejected on the ground that their appointment is of 2010 i.e. after cut-off date 01.11.2005, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. At the very outset, it needs to be stated that this claim is raised by 8 helpless project affected persons/employees seeking restitution of their right to pension in terms of old pension scheme and struggling for appointment and consequential service benefits for more than three decades. This O.A. has checkered history of litigations hoisted upon them and despite the orders passed in their favour from time to time,

they are deprived of appointment within reasonable time due to sheer inaction and lethargy on the part of Government which ultimately resulted into quite belated appointment in 2010 and by the time, new pension scheme came into effect from 01.11.2005 thereby deprived of the benefits of old pension scheme. After appointments in Government service, they hardly could render few years' service and stand retired.

3. Following are the uncontroverted facts as clearly borne out from the record.

- (i) Applicant Nos.1 to 6 and husband of Applicant No.7(a) – Sangita and husband of Applicant No.8(a) – Sunita are projected affected persons, since their agricultural lands were acquired by the Government for Ujjani Project.
- (ii) In view of policy of Government to accommodate project affected persons in Government service, they were called for interview on the post of Canal Inspector/Measurer, and accordingly, came to be selected in the year 1986.
- (iii) The Applicants were accordingly deputed for training as per the then Rules in terms of letter dated 02.01.1986 issued by Respondent No.4 – Executive Engineer, Bhima Irrigation Project, Pandharpur (Page No.30 of Paper Book).
- (iv) Some disgruntle daily wages Canal Inspectors being unhappy with the appointment of the Applicants filed Civil Suit in Solapur Court and obtained temporary injunction. Consequent to it, the training of the Applicants was abandoned midway, as seen from letter dated 29.09.1986 issued by Respondent No.4 (Page No.219 of P.B.).
- (v) One Sadashiv M. Pandav, colleague of the Applicants filed Writ Petition No.206/1991 as a representative petition of

projected affected persons before Hon'ble High Court raising grievance that though they undergone training of the Canal Inspector after due selection, they are deprived of the appointment. Hon'ble High Court by order dated 08.04.1991 disposed of the Writ Petition in following terms :-

“Coram: S.P.Kurdudkar, and  
V.V. Kamat, JJ.”

Date: Monday, April 8, 1991

**Oral Order** : (Per Kurdudkar, J.)

*Heard advocates for the parties.*

*This is a representative petition filed by the petitioner on behalf of himself and other 100 candidates who are affected by the Ujjani Project. The claim of the petitioners is that they have undergone a training of the Canal Inspector after their selection. This selection list came to be cancelled sometime in the year 1986. It appears that petitioners and the other candidates similarly situated did not take appropriate steps dispute the directions by this Court in Write Petition No.59 of 1987 and 1540 of 1987. By now more than 3 years have passed and it is not known as to whether any vacancies are available in the cadre of Canal Inspector. In the ends of justice. we direct the respondents to consider the claim of the petitioner and other similarly situated person sympathetically and if any vacancies are available the petitioner may be accommodated in accordance with law. The Write Petition to stand accordingly disposed of.”*

- (vi) Despite the directions given by Hon'ble High Court, the Government did not take any steps and matter was simply kept in cold storage for a long time leaving the Applicants in lurch.
- (vii) Later, one of the project affected person viz. Dattatray M. Londhe filed O.A.No.870/1995 before this Tribunal raising the grievance of non-compliance of the order passed by Hon'ble High Court. O.A. came to be disposed of by the Tribunal on 20.11.1995 in following terms :-

“3. After hearing the Learned Counsel and the P.O. we think that fair procedure could be devised by the department for selecting the candidates, In order ensure a fair selection, we direct that the respondents should prepare within two months from today a list of candidates who would be eligible for training as Canal Inspector and be publish the same adequately on the notice board of the concerned offices, If any, objections are received to such a list those objections should be decided according to rules and regulations governing the point and after recording the reasons in the decision.

4. After the list of the eligible candidates is so prepared the department may interview the adequate number of such eligible candidates, if the list is abnormally long for being interviewed. But while eliminating persons from the cadre for reason or the other, the Department should record its own reasons in explicit terms.

5. We make it clear again that we do not propose to override any rule, direction or resolution, but the aforesaid directions are to be enforced in consonance with the directions, rules, etc. already given etc., so as to ensure a fair selection of the concerned candidate with these directions the petition stands disposed of.”

However, nothing was materialized.

- (viii) Later, in the meantime, present Applicant No.7 – Ambadas Shelar filed O.A.No.864/1994 before this Tribunal raising grievance that though they have been selected for training, no appointment has been issued and training was midway cancelled. That O.A. was disposed of by the Tribunal on 05.10.2000 in following terms :-

“Heard both sides Ms. Shah, Presenting Officer has shown us some papers to indicate that Petitioners 1, 2 & 4 have been already selected for training as Canal Inspectors and Petitioner No.3 is on the waiting list. Shri Potbhare, learned Advocate for the Petitioner has also seen list and states that the grievance of the Petitioners does not survive. Hence O.A. is disposed off as such.”

- (ix) Applicants thereafter filed Contempt Application No.10/2001 raising grievance of non-issuance of appointment orders. The said Contempt Application No.10/2001 was heard by

the Tribunal with O.A.No.96 to 103/2001 which was also filed claiming some relief on 20.07.2001 and was disposed of by the Tribunal in following terms :-

**“ORDER** : - The Respondent State is directed to estimate the vacancies of Canal Inspectors that existed on the date of The High Court decision namely 8.4.1991 and subsequently till 27.10.1993 when the new rules for the recruitment of Canal Inspectors came into force and fill up such vacancies from among the various petitioners herein and others similarly situated if they have approached any of the benches of the Tribunal and the applications are still pending and for this purpose take necessary steps to enable them to complete the balance of their training. The Respondents will be free to fill up the vacancies that have arisen after 27.10.1993 as per the rules made on that day with these directions the Original Applications and the Contempt Application are disposed off. No orders as to costs. Our directions to be complied with within 2 months.”

- (x) Being aggrieved by the aforesaid order dated 20.07.2001, the State had filed Writ Petition No.5389/2001 before Hon’ble High Court which came to be dismissed on 23.06.2004 in terms of following order :-

*“1. By these petitions, the petitioner Government of Maharashtra has impugned the orders passed by the Maharashtra Administrative Tribunal whereby it was ordered that the Government should implement the impugned rules from the date of the amendment onwards and for the doing so categories the vacancies into two periods first prior to amendment and second subsequent to amendment. A statement was made on 5<sup>th</sup> February, 2001 that some time be given for the state to ascertain the No. of the vacancies as per this direction. Two and half years have passed yet no instructions are given by the states to its Special Counsel appearing in this case. We see no reason to further encourage the lethargy or the state by granting any more time. Apart from that the order of the Tribunal is correct in law and therefore needs no interference. All petitions are therefore dismissed.”*

- (xi) Unfortunately, despite the aforesaid position and judicial orders passed against Government from time to time,

nothing was materialized within reasonable time and matter was simply kept in cold storage by the Government.

- (xii) Belatedly, the Government woke-up from slumber and issued orders on 06.06.2008 for appointing 11 candidates including Applicants for completion of training and further necessary action (Page No.46 of P.B.).
- (xiii) Later, Government by order dated 02.01.2010 gave appointment to 10 persons including Applicants on the post of Canal Inspector for appointment on the post of Canal Inspector (Page No.48 of P.B.). It is in pursuance of it, Respondent No.2 - Superintending Engineer and Administrator, Command Area Development, Nashik appointment the Applicants on the post of Canal Inspector in the pay scale of Rs.5200-20200 with G.P. 1900 by order dated 15.04.2010. Applicants accordingly joined Government service on the post of Canal Inspector.
- (xiv) Applicants then made representation on 13.10.2012 to Respondent No.2 raising grievance that they shall be deemed to be appointed in Government service from 1986 and by considering deemed date of appointment, they be given benefit of old pension scheme, increments, etc. (Page NO.52 of P.B.).
- (xv) In view of representation made by the Applicants, the Government called report of Respondent No.2 who in turn submitted his report on 17.02.2016 to the Government (Page Nos.282 to 284 of P.B.). The contents of these reports are self-explanatory which amply demonstrates injustice caused to the Applicants. Therefore, the contents of report dated 17.02.2016 which is not disowned by the Government are



very crucial and it needs to be reproduced for proper appreciation. The contents are as under :-

“प्रति,

मा. सचिव,  
पाटबंधारे संशोधन व विकास संचालनालय व  
परिमंडळ अधिकारी पुणे परिमंडळ, पुणे.

विषय - सन १९७७ च्या कालवा निरीक्षक मोजणीदार पदाच्या सेवा प्रवेश नियमानुसार  
प्रशिक्षण घेतलेल्या उमेदवारांना शासन सेवेत सामावून घेणे बाबत

उपरोक्त विषयास अनुसरून सन १९८६ मध्ये कार्यकारी अभियंता, भीमा पाटबंधारे विभाग, पंढरपूर यांचे अधिनस्त १०१ उमेदवारांचे कालवा निरीक्षक/मोजणीदार पदाचे प्रशिक्षण दि.२०.०१.१९८६ रोजी चालू करण्यात आलेले होते. सदर १०१ उमेदवारांमध्ये ५० टक्के उमेदवार खात्यांतर्गत विविध पदावर कार्यरत असलेले रूपांतरीत असताही आस्थापनेवरील व ५० टक्के प्रकल्पग्रस्त स्वातंत्र सैनिक व सामाजिक आरक्षणांतर्गत निवड केलेले उमेदवार यांचा समावेश होता.

खात्यांतर्गत ५० टक्के उमेदवारांमध्ये काही उमेदवारांना किंबहुना सर्व कर्मचा-यांना सदर प्रशिक्षणात सामावून घेण्याबाबत जिल्हा सत्र न्यायालय, सोलापूर येथे फेब्रुवारी १९८६ मध्ये दाखल केलेल्या दाव्याच्या अनुषंगाने कोर्टाने दिलेल्या न्याय निर्णयानुसार सदर प्रशिक्षणास प्रगती देण्यात आलेली होती.

खात्यांतर्गत कर्मचा-यांच्या तक्रारीनुसार व कोर्टाच्या आदेशानुसार दि.२९.११.१९८६ पासून कार्यकारी अभियंता, पंढरपूर पाटबंधारे विभाग, पंढरपूर यांनी सदर प्रशिक्षणाची यादी रद्द केलेली आहे. सदर यादी ५० टक्के उमेदवार प्रकल्पग्रस्त, स्वातंत्र सैनिक, अनुकंपा अशा विविध सामाजिक आरक्षणांतर्गत निवड झालेले होते. शासकीय सेवेतील निवडीनंतर खात्यांतर्गत प्रशिक्षण चालू असताना कोर्टाच्या आदेशानुसार सदर कर्मचा-यांना सेवा मुक्त करण्यात आले होते.

सदर उमेदवारांपैकी प्रकल्पग्रस्त उमेदवारांना रिक्तपदी सामावून घेण्याचे आदेश सन १९९१ मध्ये मा. मुख्य न्यायालय, उच्च न्यायालय, मुंबई यांनी दिलेले आहे. न्यायालयीन निर्णयाच्या अधीन राहून ११८ पदे रिक्त असल्याने शासनाने संबंधितांना सेवेत सामावून घेण्याचे आदेश दि.२२.०७.१९९२ के दि.२१.१२.१९९२ रोजी दिलेले आहेत.

मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांचे दि.२०.०७.२००१ व मा. उच्च न्यायालय, मुंबई यांचे दि.२३.०६.२००४ च्या निर्णयानुसार प्राधिकरणाने दर दहा उमेदवारांना कालवा निरीक्षक व मोजणीदार पदावर दि.१५.०४.२०१० च्या आदेशानुसार नियुक्ती देण्यात आली. वस्तूतः उच्च न्यायालयाने दि.२३.०६.२००४ रोजी दिलेल्या निर्णयास अनुसरून व सचिव समितीने दिलेल्या मान्यतेनुसार १९७७ च्या कालवा निरीक्षक व मोजणीदार पदाच्या सेवा प्रवेश नियमानुसार प्रशिक्षण पूर्ण केलेल्या पात्र उमेदवारांना कालवा निरीक्षक पदावर सामावून घेण्यास शासन जलसंपदा परिपत्रक दि.०२.१०.२०१० अन्वये मान्यता प्रदान करण्यात आलेली आहे.

प्रस्तुत प्रकरणी १९८५ साली राज्य शासनाच्या पाटबंधारे विभागाने कालवा निरीक्षक म्हणून निवड केलेल्या व विभागांचे प्रशिक्षण घेतलेल्या इंदापूर तालुक्यातील (जिल्हा पुणे) प्रकल्पग्रस्त उमेदवारांना वेळोवेळी न्यायालयाच्या आदेशानंतर सेवेत सामावून घेण्यात आलेले नाही. तसेच प्रकल्पग्रस्तांच्या बाजूने प्रशासकीय न्यायधीकरणाच्या निर्णयावर शासनाने रीट पिटीशन ५३८३/२००१ अन्वये दाखल केलेल्या दाव्याचा निकालही शासनाच्या विरोधात जाऊन संबंधित उमेदवारांना शासकीय सेवेत सामावून घेण्याचे आदेश दिलेले आहेत. सन १९८५ ते १९९३ या कालावधीत कालवा निरीक्षक व मोजणीदार अशी एकूण १३४ पदे मंजूर होती व त्यापैकी ११८ पदे रिक्त होती.

व्यपगत पदे विचारात घेऊन कालवा निरीक्षक ५४ व मोजणीदार ३० अशी एकूण ८४ पदे रिक्त होती. दि. ०८.०४.१९९१ रोजी मा. उच्च न्यायालयाने आदेश देऊनही महाराष्ट्र प्रशासकीय न्यायाधिकरण यांच्याकडे शासनाने सदर निर्णयाबाबत याचिका दाखल करून व प्रशासकीय न्यायाधीकरण निर्णयावर शासनाने रीट पिटीशन ५३८३/२००१ अन्वये दाखल केलेल्या दाव्याचा निकाल शासनाच्या विरोधात गेल्याने संबंधित उमेदवारांना शासकीय सेवेत सामावून घेण्याचे आदेश दिलेले आहेत.

थोडक्यात, सदर कर्मचा-यांना शासनाने सेवेत सामावून घेण्याबाबतचा निर्णय प्रत्यक्षात १९९४ साली घेतला होता. महाराष्ट्र प्रशासकीय न्यायाधिकरण यांनी मा. उच्च न्यायालय, मुंबई यांचा दि.०८.०४.१९९१ चा निर्णय कायम केला आहे.

दि.०८.०४.१९९१ रोजी संबंधितांना सामावून घेण्याचा निर्णय मा. उच्च न्यायालय, मुंबई यांनी दिल्यानंतर शासनाने दि.२२.०७.१९९२, ०२.०२.१९९४ व दि.२१.१२.१९९४ रोजी संबंधितांचे प्रशिक्षण देवनिायत्ती देण्याचे तसेच न्यायालयीन निर्णय असल्याने सुधारित सेवा प्रवेश लागू करू नयेत असे आदेश दिलेले होते.

मा. उच्च न्यायालय, मुंबई यांचे दि.०८.०४.१९९१ च्या निर्णयानुसार व शासन पत्र दि.२२.०४.१९९२ व दि.२१.१२.१९९४ नुसार कार्यवाही होणे आवश्यक होते. परंतु तशी कार्यवाही न होता सन २०१० मध्ये जवळजवळ १९ वर्षे न्याय निर्णयाची अंमलबजावणी होण्यास विलंब झालेला आहे.

सदर उमेदवार प्रकल्पग्रस्त असून शासकीय सेवेत त्यांची निवड सेवा प्रवेश नियमानुसार १९८६ साली नियुक्ती होऊन देखील विभागातील कर्मचा-यांनी केलेल्या तक्रारीवरून सदर कर्मचा-यांचे प्रशिक्षण अपूर्ण राहिले व पुढे २०१० पर्यंत त्यांना सेवामुक्त करण्यात आलेले होते. १४ वर्षांच्या प्रदीर्घ कालावधीत सदर कर्मचा-यांचे आर्थिक नुकसान व त्याचबरोबर त्यांना प्रापंचिक अडचणींना सामोरे जावे लागले आहे. दरम्यानच्या कालावधीत वाढत्या वयामुळे त्यांना शासकीय नोकरी पासून वंचित राहावे लागले. न्यायालयीन निर्णय होऊन देखील त्यांना वेळीच सामावून न घेतल्याने त्यांना महाराष्ट्र नागरी सेवा नियमानुसार शासकीय सेवेचे फायदे मिळत नाहीत. त्यातील बरेचसे कर्मचारी सेवा निवृत्तीच्या उंबरठ्यावर असून सेवानिवृत्ती पर्यंत त्यांची १० वर्षे अहर्ताकारी सेवा पूर्ण तारीख होत असल्याने त्यांना निवृत्ती वेतनाई लाभापासून वंचित रहावे लागणार आहे.

प्रस्तुत प्रकरणी संबंधित कर्मचा-यांना मा. उच्च न्यायालय, मुंबई येथे दि.०८.०४.१९९१ च्या आदेशानुसार शासनाने दि.२२.०४.१९९२ व दि.२१.१२.१९९४ च्या आदेशानुसार पूर्वलक्षी प्रभावाने नियमित सेवेत सामावून घेऊन त्यांना वेतन व भत्त्यांची थकबाकी न देता निवृत्तीवेतन लाभासाठी अहर्ताकारी सेवा गणण्या बाबत पुढील कार्यवाही परिमंडळ स्तरावर करण्यात यावी.

प्रकल्पग्रस्त उमेदवारांपैकी सध्या कार्यरत असलेली कर्मचा-यांची यादी व सध्याचे कार्यक्षेत्र अवलोकनार्थ जोडले आहे.”

(xvi) Notably, Government by its letter dated 22.07.1992 directed Respondent No.4 for inclusion of the Applicants in training in terms of order passed by Hon'ble High Court on 08.04.1991 and again by letter dated 21.12.1994 clarified that there is no hurdle of completion of training of the Applicants as per the then existing Rules and new Recruitment Rules of 1993 would not apply to the Applicants. The contents of letter dated 22.07.1992 and 21.12.1994 are also material, which care as under :-

“पाटबंधारे विभाग, मंत्रालय  
मुंबई - ४०० ०३२  
दिनांक - २२/०७/१९९२

प्रति,

अधीक्षक अभियंता व प्रशासक,  
लाभक्षेत्र विकास प्राधिकरण,  
सोलापूर

विषय :- कालवा निरीक्षक मोजणीदार यांचे प्रशिक्षण सुरु करणेबाबत...  
संदर्भ :- मा. ना उच्च न्यायालय, मुंबई यांचा निर्णय दि.०८/०४/१९९१

उपरोक्त विषयानुसार व मा. ना उच्च न्यायालय, मुंबई यांचा दि.०८/०४/१९९१ च्या निर्णयाच्या अधीन राहून संबंधित प्रशिक्षणार्थीचे प्रशिक्षण पूर्ण करून उत्तीर्ण उमेदवारांना सेवेत सामावून घेण्यात यावे.

सही /-  
शासनाचे अवर सचिव”

“पाटबंधारे विभाग, मंत्रालय  
मुंबई - ४०० ०३२  
दिनांक-२१ डिसेंबर, १९९४

प्रति,

अधीक्षक अभियंता व प्रशासक,  
लाभक्षेत्र विकास प्राधिकरण,  
सोलापूर

विषय :- कालवा निरीक्षक/मोजणीदार यांचे प्रशिक्षण सुरु करणेबाबत...  
संदर्भ :- आपले क/लाक्षेत्रविप्रा/पशा/आ-१/९४, दि. ७.४.९४ चे अर्धशासकीय पत्र.

उपरोक्त विषयी संदर्भीय पत्राचे अनुषंगाने मुद्देनिहाय अभिप्राय पुढीलप्रमाणे आहेत.

अ.क्र.	मुद्दा	अभिप्राय
१.	कालवा निरीक्षक मोजणीदार पदावरील नियुक्तीसाठी शासनाचे पत्र दि.१५.०१.९४ सोबत नियमातील नियम क ध नुसार संवर्गात नेमणुका देण्यासाठी आता नेमणूक पूर्व प्रशिक्षण राहणार नाही. त्यामुळे शासनाचे दि.०२.०२.९४ चे पत्राने प्रशिक्षण वर्ग सुरु करण्याबाबतच्या सूचना निर्गमित केलेले आदेश आता रद्द ठरत आहेत. याचे दृढीकरण करण्यात यावे.	१. सर्वश्री पांडव व इतर यांना उच्च न्यायालय मुंबईच्या सन १९९१ च्या निर्णयानुसार रिक्त पदी सामावून घेण्यास्तव तत्कालीन (जुन्या) कालवा निरीक्षक/मोजणीदार पदाच्या सेवा प्रवेश नियमानुसार कार्यवाही होणे आवश्यक असल्यामुळे त्यांना पूर्वीच्याच सेवा प्रवेश नियमाप्रमाणे प्रथम प्रशिक्षण व नंतर नियुक्ती देण्यात यावी. त्यामुळे दि.०२.०२.९४ चे पत्र रद्द करण्याचा प्रश्न उद्भवत नाही.
२.	सध्या खात्यामध्ये रोजंदारीवर/कार्यव्यापी आस्थापनेवर/रुपांतरित अस्थाही आस्थापना यावर काम करणारे व महाराष्ट्र राज्यपत्र दि.११.११.९३ चे परिशिष्ट मध्ये समाविष्ट असलेल्या पदावरील कर्मचा-यांमधून पाटबंधारे खात्याने मर्यादित (विभागीय/खाते) स्पर्धात्मक परीक्षा आयोजित करून त्यामधून ७५% टक्के निवड करावयाची असे उमेदवार	२. सदर मुद्द्याबाबत प्रत्यक्ष नियुक्तीनंतर विचार करावा लागणार आहे. तरीही याबाबत प्रवर्तित नियमानुसार कार्यवाही करण्यात यावी.
३.	१) १८ वर्षांचे वर ३० वर्षांचे आत आहेत. २) जे माध्यमिक शालांत परीक्षा उत्तीर्ण आहेत. ३) व ज्यांना माध्यमिक शालांत परीक्षा उत्तीर्ण झाल्यानंतर पाटबंधारे खात्यातील बांधकामाचा किंवा परिरक्षण व दुरुस्ती याबाबतचा ३ वर्षांचा अनुभव मिळवलेला आहे अशा उमेदवारांमधून २५% नेमणूक अशा प्रकारे एकूण १००% जागा भरण्यात याव्यात असे आदेश निर्गमित केलेले आहेत. तरी ७५% व २५% उमेदवार हे आरक्षित (बिंदूनामावली) जागा प्रमाणे निवडावयाचे किंवा कसे याबाबत मार्गदर्शन करण्यात यावे तसेच प्रकल्पग्रस्तांचे किती प्रमाण ठेवावयाचे याचाही खुलासा द्यावा.	३. सर्वश्री पांडव व इतर यांच्या प्रकरणी तत्कालीन (सन १९७७ च्या) सेवा प्रवेश नियमानुसार कार्यवाही करावयाची असलेने त्यांच्या प्रकरणी सुधारित सेवा सुधारित सेवा प्रवेश नियमांची अडचण येण्याचा प्रश्न उद्भवत नाही.

	चालू केलेले प्रशिक्षणातील प्रशिक्षणार्थी पण (नंतर बंद झालेले) यांना उपलब्ध रिक्त पदावर नियमाप्रमाणे सामावून घेण्याचे आदेश दिलेले आहेत. तसेच पूर्वी सुरु केलेले प्रशिक्षणार्थी मधून कोणत्या पद्धतीने (लेखी/तोंडी) परीक्षा २५% पदावर नेमावयाचे लेखी/तोंडी परीक्षा कोणी घ्यावयाच्या याबाबत सुद्धा मार्गदर्शन करावे.	
४.	२५% साठी निवड करताना सन १९८५ पासून प्रशिक्षण वर्गाच्या निवडीपासून वंचित राहिलेले उमेदवार अर्ज करतील व निवड व्हायला पाहिजे असा आग्रह धरतील तरीपण त्यांचे पैकी काही उमेदवार जे वरील वयाचे अटीमध्ये नमूद केलेल्या वयापेक्षा जास्त वयाचे झालेले असतील तरी त्यांचे बाबतीत ते इतर सर्व प्रकारे पात्र ठरल्यास त्यांचे बाबतीत ते इतर सर्व प्रकारे पात्र ठरल्यास त्यांचे वयाची अट शिथिल करावी लागेल व अशी अगोदरच शिथिल करण्याबद्दल आदेश काढावेत.	४.नामनिर्देशनाची नियुक्ती करताना जे उमेदवार कालवा निरीक्षक/मोजणीदार पदाच्या प्रशिक्षण वर्गापासून दीर्घकाळ वंचित राहिले अशांना वयात शिथिलता देण्यात देता येणार नाही. त्यांनी इतर उमेदवारांप्रमाणेच आवश्यक विहित अवयव मर्यादेची पूर्तता करणे आवश्यक आहे. तसेच २५% पदांसाठी निवड करण्याचे नियम हे ऑक्टोबर ९३ पासून लागू करण्यात आलेले आहेत. त्यामुळे सन १९८५ मधील उमेदवारांचा प्रश्न उद्भवत नाही व सदर प्रकरणी न्यायालयाच्या निर्णयानुसार फक्त श्री पांडव व इतर त्यांचे बाबतीत विचार करावयाचा आहे. इतरांचा नाही याची कृपया नोंद घ्यावी.

सही /-  
(सु.स. खारकर)  
शासनाचे अवर सचिव'

(xvii) In the meantime, some of the Applicants stands retired on attaining the age of superannuation after rendering few years' service and they were paid benefit of DCPS. Two died during service. The details of the date of retirement, period of service rendered and amount of DCPS received are as under :-

**कर्मचा-यांच्या अंशदायी पेन्शन योजनेचा सविस्तर तपशील**

अ. क्र.	कर्मचा-याचे नाव	नियुक्ती दिनांक	सेवानिवृत्ती दिनांक	झालेली सेवा वर्षे	DCPS मिळालेली रक्कम रुपये			शासना कडे जमा रक्कम	मिळणारी पेन्शन रुपये
					कर्मचारी १०%	शासन १४%	एकूण		
१	श्री. पांडुरंग बापूराव काळे	२७.०४. २०१०	३१.०५. २०२२	१२	४४००००	६१६०००	१०५६०००	४२२४००	२३१०
२	श्री. तात्यासाहेब शंकर देशमुख	२९.०४. २०१०	३१.०३. २०२०	१०	३४२९५५	४८०१३८	८२३०९३	३२९२३७	१७००
३	श्री. अरुण नारायण गुटाळ	२२.०४. २०१०	३१.०५. २०१८	८	२४४४१०	३४२१७३	५८६५८३	२३४६३३	१०००
४	श्री. अरुण सोपाना घाडगे	२२.०४. २०१०	३१.०५. २०१८	८	२४४४१०	३४२१७३	५८६५८३	२३४६३३	१०००
५	श्री. जालिंदर भानुदास पवार	२२.०४. २०१०	३०.०६. २०१९	९	२६०४१७	३६४५८३	६२५०००	२५००००	११४५
६	श्री. नागनाथ नामदेव सरडे	६.५. २०१०	३१.०५. २०१७	७	१६७७४५	२३४८४२	४०२५८७	१६१०३५	९१३
७	कै. गबाजी बापू भोर (मयत) श्रीमती सुजिता	२८.०४. २०१०	२७.१०. २०१५ It is	५	४१६६७	५८३३३	१०००००	-	-

	गबाजी भोर		date of death						
८	कै. अंबादास धोंडीबा शेलार (मयत) श्रीमती संगीता अंबादास शेलार	२७.०४. २०१०	१५.११. २०१० It is daet of death	१	-	-	-	-	-

4. Respondent No.1 - Government, however, by order dated 28.09.2020 rejected the claim of the Applicants for the benefit of old pension scheme by cryptic order stating that since they were appointed in 2010, they were not entitled to the benefit of old pension scheme.

5. It is on the above background, the Applicants have again filed the present O.A. to redress their grievance.

6. Adverting to the aforesaid factual undisputed aspects, Shri A.V. Bandiwadekar, learned Advocate for the Applicants vehemently urged that this is a classic case of denial of justice, since Government failed to fulfil their legal obligations in terms of various orders passed by Hon'ble High Court as well as Tribunal and it is because of total inaction and lethargy on the part of Government in issuance of appointment to the Applicants within reasonable time, they are deprived of their legitimate rights of pay and allowances as well as pension under old pension scheme. It is only after more than two decades' inordinate delay, they were appointed, but the claim of Applicants for entitlement to old pension scheme is frustrated in view of applicability of DCP Scheme came into force w.e.f.01.11.2005. He has further pointed out that since Applicants were appointed quite belatedly in 2010, only two of them would render more than 10 years' service and others got very few years' service. He has further pointed out that Applicants being project affected persons, the Government was under moral as well as legal obligation to appoint them, but it failed to protect their interest which resulted into such pitiable situations and hardship now faced by the Applicants. On this line of submission, he made a fervant plea that the Tribunal may decide appropriate particular date of deemed date of appointment on the

post of Canal Inspector, so that they could get pensionary benefits and to undone the justice meted out to them.

7. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer made feeble attempt that Applicants being not borne in the cadre, the question of giving pensionary benefits with retrospective effect in terms of old pension scheme did not survive. According to her, Applicants were appointed only in 2010 i.e. after 01.11.2005, and therefore, they were rightly given the benefit of DCPS. She further raised plea that once Applicants were given the benefit of DCPS, now they cannot be allowed to turn back and claim the benefit of old pension scheme. Indeed, this shows totally indifferent and inhuman attitude of the Government. All that, Applicants will have to forego the benefits received under DCPS, if Applicants found entitled to relief claimed.

8. Despite repeated queries raised by the Tribunal, she had no explanation much less justiciable for huge and inordinate delay of more than two decades in issuance of appointment orders to the Applicants on the post of Canal Inspectors though they were fully eligible and entitled to the appointment on priority basis being project affected persons whose lands were acquired by the Government for public purposes rendering them landless and helpless.

9. In view of submissions, the important issue posed for consideration is whether in the facts and circumstances of the present case, the Applicants are entitled to the benefits of old pension scheme and if yes, what would be the deemed date of appointment in the service so as to calculate their service for the purposes of pension.

10. The facts as set out in Para No.3 of the Judgment of this order as well as communications made in between Government and Respondent No.2 – Superintending Engineer is not in dispute. There is no denying that Applicants were project affected persons whose agricultural lands

were acquired by the Government for Ujjani Project rendering them landless persons. Notably, Government of Maharashtra through GAD issued G.R. on 21.01.1980 thereby giving directions to the concerned Department (Irrigation and Water Conservation Department) to give highest priority to project affected persons for appointment in Government service and age limits has been also relaxed. Initially, the Government had issued G.R. dated 20.11.1973, but having found that the scheme is not implemented effectively, the Government again issued G.R. dated 21.01.1980 giving clear direction to give highest priority for such land affected persons, so that they could get some succor and financial assistance for the survival. During the course of hearing, learned Advocate for the Applicants has placed on record G.R. dated 21.01.1980 which is taken on record and paginated at Page Nos.295 to 297 of P.B.

11. At this juncture, it would be approposote to reproduce Para No.2 of G.R. dated 21.01.1980, which is as under :-

“ 2. प्रकल्पग्रस्तांना शासन सेवा प्रवेशासाठी दिलेल्या वरील सवलती व्यवहारामध्ये विशेष परिणामकारक होत नाहीत असे शासनाच्या निदर्शनास आले आहे. पाटबंधारे प्रकल्पांच्या आस्थापनेवर दिलेल्या सर्वोच्च प्राथम्याखेरीज प्रकल्पग्रस्तांना इतर शासकीय कार्यालयांमध्ये सेवा प्रवेशासाठी प्राथमिक क्रम देण्यात आलेला नाही. परिणामतः शासकीय नोकरीसाठी प्रकल्पग्रस्तांना व त्यांच्यावर अवलंबून असणा-या व्यक्तींना तारतम्यपूर्वक दिलेल्या पसंतीच्या सवलतीचा फारसा उपयोग होत नाही. यामुळे शासकीय सेवा प्रवेशासाठी सर्वोच्च प्राथम्यक्रम मिळावा अशी मागणी प्रकल्पग्रस्तांकडून ब-याच काळापासून करण्यात येत आहे. राज्याच्या विकासाकरिता शासनाने हाती घेतलेल्या विविध प्रकल्पामुळे प्रकल्पग्रस्तांना स्थलांतर करावे लागते आणि इतरत्र नवीन जीवनक्रम सुरू करावा लागतो आणि त्या अनुषंगाने अनेक अडचणींना तोंड द्यावे लागते. या त्यांच्या त्यागाची जाणीव ठेवून त्यांना शासनाने दिलेली नोकरी विषयक सवलत प्रत्यक्षात परिणामकारक व फलदायी ठरावी आणि पुनर्वसनाच्या कार्यवाहीमध्ये त्यांना सहाय्य व्हावे म्हणून त्यांना शासकीय सेवा प्रवेशासाठी निश्चित प्राथम्यक्रम देणे आवश्यक आहे असे शासनाला वाटते. यासाठी शासन पुढील प्रमाणे आदेश देत आहे :-

(अ) शासनाने हाती घेतलेल्या पाटबंधारे प्रकल्पासह सर्व प्रकल्पांच्या बाबतीत, त्या प्रकल्पांना महाराष्ट्र प्रकल्प विस्थापितांचे पुनर्वसन कायदा, १९७६ लागू केला आहे किंवा नाही हे लक्षात न घेता, त्यांच्या आस्थापनेवरील तृतीय व चतुर्थ श्रेणीतील पदांवर नेमणूक करण्यासाठी प्रकल्पग्रस्त व्यक्ती व त्यांच्यावर अवलंबून असणा-या व्यक्तींना सर्वोच्च प्राथम्यक्रम देण्यात यावा. यासाठी सेवायोजन कार्यालय किंवा राज्य निवड मंडळ यांच्याकडे संदर्भ करण्याची आवश्यकता नाही. मात्र या सवलतीची अंमलबजावणी करताना प्रकल्पग्रस्त कुटुंबातील फक्त एका व्यक्तीस तिचा फायदा मिळावा. या संदर्भात खालील परिच्छेद (५) मधील तरतूदही लक्षात घेण्यात यावी. हा आदेश निघण्यापूर्वी ज्या प्रकल्पग्रस्त व्यक्तींना व त्यांच्यावर अवलंबून असणा-या व्यक्तींना पाटबंधारे प्रकल्प आस्थापनेवर तसेच इतरही प्रकल्प आस्थापनेवर नोकरी देण्यात आली असेल, त्यांच्या कुटुंबात उपरोक्त प्रकल्प आस्थापनेवर नोकरी मिळालेल्या व्यक्तीची संख्या लक्षात न घेता, ते निवडणुकीच्या वेळी राज्य निवड मंडळामार्फत नेमले गेले नसले तरी, त्यांना या आदेशांचा फायदा देण्यात यावा.”

12. As stated above, there is absolutely no dispute about the status of the Applicants as project affected persons as well as their eligibility for appointment on the post of Canal Inspector. Indeed, they were selected

and deputed for training as per the then existing Rules in terms of letter dated 02.01.1986 issued by Respondent No.4, but because of some litigation initiated by the disgruntled persons, the training was cancelled and that was the beginning of the nightmare and injustice meted out to the Applicants. Their colleague filed Writ Petition No.206 of 1991 as a representative petition, which was disposed of by Hon'ble High Court on 08.04.1991 giving specific direction to the Government to consider the claim sympathetically and if vacancies are available, they should be accommodated in accordance to law, but in vain. Thereafter, two O.As i.e. O.A.No.870/1995 and O.A.No.864/1994 were filed. Notably, when O.A.No.864/1994 was taken up for hearing, the statement was made by Presenting Officer that some of the Applicants are already selected for training and because of that statement made by learned P.O, the Tribunal disposed of the O.A. that the grievance does not survive, though in fact, there was no such actual appointment for training. The Applicants then filed Contempt Application No.10 of 2001, which was decided with other O.As. 95 to 103 of 2001 and was disposed of on 20.07.2001 again giving directions to fill-up the vacancies as per the existing Rules, but no further steps were taken by the Government. On the contrary, the Government approached Hon'ble High Court by filing Writ Petition No.5389 of 2001 which was also dismissed by Hon'ble High Court on 23.06.2004 wherein Hon'ble High Court frownced upon the lethargy and inaction on the part of Government. Hon'ble High Court observed that the order of Tribunal is correct in law and needs no interference. However, even thereafter for 6 years, no steps were taken by the Government and it is only in 2010, the Government woke-up from slumber and appointed the Applicants on the post of Canal Inspector when very few years were left for attaining the age of superannuation. Resultantly, only two of the Applicants rendered 10 years' service and others could render few years' service ranging from 1 year to 9 years. All that they got penuts in the form of DCPS.



13. Notably, immediately after appointment, they made representations on 30.10.2012 contending that they shall be deemed to be appointed in Government service from 1986 [when they were initially appointed and deputed for training which was cancelled] and be given the benefit of old pension scheme with increments. However, no such decision was taken and Applicants having no option being helpless condition, continued the service for their survival. In such situation, only because they were given the benefit of DCPS, that will not come in their way to claim the benefit of old pension scheme when they were found entitled for appointment much earlier. Had their appointment continued from 1986 or had Government took necessary steps to fulfil their obligations in terms of various orders passed by the Tribunal as well as Hon'ble High Court, they would have got the appointment much earlier and would have been entitled to the benefits of old pension scheme after rendering qualified service, but for total lethargy and inaction as well as negligence on the part of executive, they are deprived of their legitimate dues and rights.

14. Indeed, Respondent No.2 – Superintending Engineer who is one of the instrumentalities of the Government in its report dated 17.02.2016 recommended the Government that they are entitled for consideration of deemed date of appointment in terms of orders passed by the Government dated 22.07.1992 and 21.12.1994 and be given the benefit of old pension scheme without giving arrears of pay and allowances. This correspondence clearly demonstrates the entitlement of the Applicants. It is not disowned by the Government. All that, the Government put forth lame excuse that since Applicants were appointed in 2010, they are not entitled to the benefit of old pension scheme. However, Government failed to see that it is because of their negligence, lethargy and total inaction, project affected persons are deprived of their rights to pay and allowances for more than two decades. As such, it is manifest and explicit from the record that this is a classic case of lethargy, inaction and inordinate delay of more than two decades

demonstrating clear injustice meted out to the Applicants. Therefore, the wrong committed by the Government needs to be rectified based on the basis of maxim of law of tort "*Ubi jus ibi remedium*" which means 'where there is a right, there is remedy'. The Courts/Tribunal recognized the maxim "*Ubi jus ibi remedium*" and it is applicable when wrongful act violates legal right of a persons and indeed, in suitable cases, Courts/Tribunal are empowered to grant compensation also. In the facts and circumstances of the case, in my considered opinion, this is a fit case to invoke the maxim and to redress the grievance of the Applicants and to undone injustice meted out to them and to restitute their rights.

15. The submission advanced by the learned P.O. that after joining service in 2010, the Applicants have not availed legal remedy within reasonable time and approached the Tribunal only after retirement amounts to acuisence and O.A. is barred by limitation holds no water. Indeed, after joining service, Applicants made representatioins claiming the benefit of old pension scheme on 13.10.2012, but it was simply kept in cold storage without any communication to the Applicants. It is only after retirement by cryptic order dated 28.09.2020, their claim is rejected stating that since they were appointed in 2012, their demand of old pension scheme is not acceptable. Apparently, the Government was oblivious of the fact that Applicants have raised their grievance time and again and it is because of their failure and apathy, appointment orders were delayed inordinately. In such situation, the Government who is supposed to model employer and to protect the rights of project affected persons is not at all expected to take such a stand. It is totally inhuman, unjust and arbitrary.

16. That apart, Applicants were hopeful of fulfillment of their legitimate expectations of getting appointment order within reasonable time and to have the benefit of old pension scheme. The Applicants were surely in legitimate expectation from the administration which is flowing from the

orders of passed by the Tribunal as well as by Hon'ble High Court, so that poor and helpless project affected perrons are accommodated in Government service in terms of G.R. dated 21.01.1980 referred to above. Such legitimate expectation can arise from express promise or consistant practice or administrative policy adopted by the Government and Government cannot disown its liability.

17. True, mere reasonable or legitimate expectation may not by itself be enforceable right, but failure to consider the same in given set of facts could be said matured in legal right, which could be enforced against arbitrariness of the Government. Therefore, merely because by 2005, the Government stopped old pension scheme and DCPS is made applicable for persons appointed on or after 01.11.2005, that would not come in the way of Applicants in view of deliberate failure and complete disregard to the orders passed by the Tribunal as well as Hon'ble High Court from time to time. I have, therefore, absolutely no hesitation to conclude that Applicants are entitled to deemed date of appointment on the post of Canal Inspector and for pensionary benefits in terms of old pension scheme, so as to remove gross injustice meted out to them and to restitute their rights. Needless to mention, the Tribunal being constituted in terms of Article 323-A and 323-B of the Constitution of India empowered to invoke powers of Hon'ble High Court for judicial review under Article 226 and 227 of the Constitution of India for issuance of mandamus in service matters.

18. Now, question comes what could be considered deemed date of appointment on the post of Canal Inspector. In the first round of litigation i.e. in Writ Petition No.206/1991 which was filed as a representative Petition, the Hon'ble High Court directed the Government to consider the claim of the Applicants as well as similarly situated persons sympathetically, if any vacancies are available and to accommodate them in service, but in vain. Then again Petitioners and similarly situated persons filed O.A.No.870/1995 which was disposed of

on 20.11.1995 with direction to prepare list of such candidates eligible for training as Canal Inspector and to take necessary steps for their appointment, but in vain. Then again, one O.A.No.864/1994 was filed which was disposed of by the Tribunal on 05.10.2000 on the statement made by P.O. that the name of son of project affected person is already in select list. As such, O.A. was disposed of under the assumption that the grievance is redressed. Then Contempt Application No.10/2001 was filed in which again, by order dated 20.07.2001, directions were given to fill-up the vacancies by taking reasonable necessary steps, but again there is failure to comply the same. On the contrary, the Government challenged the order passed in Contempt Petition by filing Writ Petition No.5389/2001 which was also dismissed on 23.06.2004. Hon'ble High Court frowned upon the Government and castigated it for failure to comply the orders. Notably, on 5<sup>th</sup> February, 2001, the statement was made before Hon'ble High Court that time be given to the State to ascertain number of vacancies as per the directions given in Contempt Application. However, nothing happened and Government and its instrumentalities were simply sitting over the matter. Despite, Governmnet letter dated 22.07.1992 for inclusion of the Applicants in training, no further steps were taken.

19. Suffice to say, there is continuous and recurring failure on the part of Government. In such situation, in my considered opinion, the order passed by the Tribunal in Contempt Application No.10/2001 decided on 20.07.2001 could be taken as a guiding factor to determine deemed date of appointment. By order dated 20.07.2001, directions were given to take necessary steps for the appointment of Canal Inspectors within two months. The said period expired on 20.09.2001. Writ Petition No.5389/2001 filed by Government against the said order was also dismissed on 23.06.2004. As such, even if Applicants were initially selected for training in 1986, which was abandoned now, some later date in terms of order dated 20.07.2001 would strike the balance. Since two months' period was expired on 20.09.2001 and even thereafter, some

latitude is given to the Government, in any case, Applicants ought to have been appointed on the post of Canal Inspectors on or before 01.01.2002 and this could be reasonably considered their deemed date of appointment on the post of Canal Inspector, so as to grant the benefit of old pension scheme without arrears of back-wages. The question of grant of benefit of Time Bound Petition, in such situation, does not survive and they will be entitled for pension which will have to be fixed as directed below. The Respondents are also liable to pay cost of this litigation, which is quantified Rs.10,000/- for each Applicant. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) Impugned communication dated 28.09.2020 is quashed and set aside.
- (C) It is hereby declared that Applicants shall be deemed to have been appointed on the post of Canal Inspector on 01.01.2002 and their service period should be counted from 01.01.2002 for the purposes of fixation of pension notionally under old pension scheme in terms of M.C.S. (Pension) Rules, 1982 as well as M.C.S. (Commutation of Pension) Rules, 1984 only. It is clarified that they are not entitled to arrears or back-wages.
- (D) The Applicants will have to forego the benefits they got under DCP Scheme and it be adjusted against the arrears or be refunded to the Government.
- (E) The last pay of the Applicants shall be calculated on the basis of notional pay and allowance inclusive of yearly increments and it be accordingly fixed and pension be paid.

- (F) The Respondents are also directed to pay cost of Rs.10,000/- to each of the Applicants.
- (G) All these directions should be carried out within two months from today and liability of the Respondents is joint and several.

Sd/-

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

Mumbai

Date : 03.04.2023

Dictation taken by :

S.K. Wamanse.

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