

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.663 OF 2019**

**DISTRICT : MUMBAI**

Shri Sitaram Shankar Panindre. )  
Age : 59 Yrs., Retired from Office of )  
Respondent and residing at 711, )  
Swapnpurti Co-op.Hsg.Soc, Sagar Nagar, )  
Manasrovar Complex, Upper Depo Pada )  
Parkside, Ghatkopar (W), Mumbai – 86. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai. )  
2. Director General of Police. )  
Shahid Bhagatsing Marg, Mumbai. )  
3. Commissioner of Police, Mumbai. )  
Crawford Market, Mumbai. ) **...Respondents**

**Mr. M.B. Kadam, Advocate for Applicant.**

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

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

**DATE : 22.01.2021**

**JUDGMENT**

1. The Applicant has challenged the communication dated 15.05.2019 issued by Respondent No.1 to the extent of denial of pay and allowances for the period of deemed date of promotion from 03.08.2015

to 31.12.2016 for the post of Assistant Police Inspector (API) invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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

- (i) Applicant was appointed as Police Constable on 10.05.1978.
- (ii) On 21.04.2006, he was temporarily promoted to the post of Resident PSI.
- (iii) On 22.03.2011, he was suspended in view of registration of Crime No.13/2011 by Anti-Corruption Bureau for the offences under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988.
- (iv) On 20.07.2011, he was regularly promoted to the post of PSI.
- (v) Applicant came to be acquitted by learned Special Judge in Special Case No.69/2013 in Anti-Corruption case by Judgment dated 30.04.2014.
- (vi) In view of acquittal, the Applicant was reinstated in service on 14.10.2014.
- (vii) Though Applicant was acquitted in Criminal Case, in departmental enquiry, the punishment of stoppage of an increment was imposed on 20.11.2015 and the same was confirmed in appeal decided on 08.07.2016.
- (viii) Being aggrieved by punishment in DE, the Applicant has filed O.A.No.959/2016 before this Tribunal.
- (ix) Applicant stands retired on 31.12.2016 on attaining the age of superannuation.
- (x) O.A.No.959/2016 decided by this Tribunal by Judgment dated 24.04.2017 whereby the order of punishment passed in DE was quashed and the period of suspension was also regularized as duty period for all purposes.

(xi) Since juniors to the Applicant were promoted and the promotion of the Applicant was denied, he filed O.A.No.1065/2017 for grant of deemed date w.e.f.03.08.2015 i.e. the date on which juniors were promoted.

(xii) During the hearing of O.A.1065/2017, it was transpired that the proposal was already forwarded to Respondent No.1 – Government by the Office of Respondent No. – Director General of Police for granting of deemed date of promotion and it was under consideration. Therefore, O.A.1065/2017 was disposed of with direction to decide the proposal within six weeks from the date of order.

(xiii) Respondent No.1 decided the proposal by order dated 15.05.2019 thereby granting deemed date of promotion in the cadre of API w.e.f.03.08.2015 i.e. the date on which his juniors were promoted but denied monetary benefits for the period of deemed date of promotion from 03.08.2015 to 31.12.2016.

3. It is on the above background, the Applicant has challenged the communication dated 15.05.2019 to the extent of denial of pay and allowances for the period from deemed date of promotion i.e. from 03.08.2015 to 31.12.2016 contending that he was deprived of the promotional post illegally, and therefore, entitled to monetary benefits of the said period.

4. The Respondent No.2 resisted the O.A. by filing Affidavit-in-reply (Page Nos.29 to 34 of Paper Book). Para Nos.3.3, 3.4 and 3.5 are as under :-

**“3.3** Before that the P.S.Is., who have been found “Fit” by the D.P.C. on the Select List for the year’ 2014 were given promotions to the posts of A.P.I. vide this office order dated 22.06.2015. The name of the Applicant was considered by the said D.P.C. However, since, an offence vide A.C.B., Mumbai C.R.No.13 of 2013 u/s 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 was registered against him on 22.03.2011, he was placed under suspension w.e.f. 22.03.2011. Hence, he was found Unfit and hence he was not given promotion to the post of A.P.I. Thereafter, the case of the Applicant was again considered by the D.P.C. for the year

2015. However, because of the aforesaid offence, he was found Unfit and hence was not promoted to the post of A.P.I.

**3.4** The Applicant was also inflicted with a punishment of stoppage of his increment for a period of one year by the Commissioner of Police, Mumbai City vide order dated 20.11.2015. However, the said punishment has been cancelled vide order dated 19.08.2017. The Applicant also came to be acquitted in the aforesaid offence by the Hon'ble Special Court, Mumbai City vide order dated 30.04.2014. Hence, he came to be released from suspension and his period undergone under suspension w.e.f.22.03.2011 to 13.10.2014 has been treated as "period of duty for all purposes".

**3.5** Hence, his case was placed before the Review D.P.C. for grant of deemed date of promotion in the cadre of A.P.I., as in the meantime the Applicant came to be retired on superannuation w.e.f. 31.12.2016. He was found fit for promotion to the post of A.P.I. on the D.P.C. for the year 2014. After retirement for grant of deemed date of promotion as per Rule 32 of the M.C.S. (General Conditions) Rules, 1981, the State Government is only competent. Hence, this office submitted a proposal to the State Government for grant of deemed date of promotion to the Applicant as on 03.08.2015 in the cadre of A.P.I. on 20.01.2018."

5. It is explicit that after retirement, the Respondent Nos.1 and 2 have examined the eligibility of the Applicant for promotion and notably, in the select list of the year 2014 itself, he was found eligible for promotion.

6. At this juncture, material to note that during the course of hearing, it was transpired that the minutes of DPC meeting were not produced and directions were given to produce minutes of DPC Committee by order dated 15.12.2020. Initially, Respondent No.2 took a stand that the minutes of DPC are not available due to shifting of record and the same will be produced soon. Therefore, in order dated 15.12.2020, the Tribunal has observed that there are lapses on the part of concerned for not maintaining the record of DPC Committee and Additional DGP, Mumbai was directed to file Affidavit as to why minutes of DPC are not forthcoming and also to satisfy proposed action against the concerned for loss of record.

7. In reference to order passed by the Tribunal on 15.12.2020, Shri Kulwant Kumar Sarangal, Additional DGP (Establishment) has filed

Affidavit on 24.12.2020. In Affidavit-in-reply, it is stated that the enquiry was made and it was found that the minutes of DPC were not at all prepared by the concerned Officials, and therefore, it cannot be produced. In Para No. 5 & 8, it is stated as under:-

**“5.** I say and submit that after having gone through the statements of the aforesaid concerned officers/employees who were related to the work of DPC-2014-15, from which it transpires that the minutes of D.P.C. dated 10/02/2015 were not prepared by the concerned officers/employees, due to which minutes cannot be produced before this Hon’ble Tribunal.

**8.** With reference to paragraph no.8, I say and submit that the order dated 15.12.2020, I further say and submit that respectfully submit as under :-

(a) that the case of the applicant was again considered for promotion for the year 2015-2016 in the D.P.C. which was held on 14/07/2016 and 15/07/2016 wherein he was found “unfit”, as he was undergoing punishment as per order dated 20/11/2015 passed by Respondent No.3 and his suspension period was also not regularized at the relevant point of time. However, unfortunately, the minutes for the said D.P.C. have also not been found to have been prepared by the concerned staff at the relevant point of time. However, a copy of D.P.C. Sheet of DPC 2015-16 is annexed hereto and marked as **Exhibit R-1** for kind perusal of this Hon’ble Tribunal.

(b) In the meantime, the applicant retired on superannuation w.e.f. 31.12.2016. Thereafter, the applicant’s case was again placed before the Review D.P.C. which was held on 26/12/2017 for examining his “eligibility” and fitness for promotion” on the Select List for the year 2014-15 and he was found “fit”.”

8. On going through the Affidavit, this Tribunal passed following order on 24.12.2020.

“Shockingly in Affidavit, it is stated that in fact no such minutes were drawn about the meeting dated 10.02.2015 and it remains to be prepared by the then Desk Officer.

Initially stand was taken by the Respondent Nos.1 and 2 i.e. Director General of Police that the Minutes are not traceable due to shifting of the record. As the Minutes were relevant and material, the directions were given to trace the Minutes and to produce the same.

It is on this background, today Affidavit is filed that in fact no such Minutes of the meeting dated 10.02.2015 were prepared which is nothing

but shocking and discloses very sorry state of affairs about the administration of the Respondent No.2. In affidavit, attempt was made to make clerks scapegoats stating that they have not prepared the Minutes forgetting that it was the responsibility and duty of the officials presided over the meeting to dictate the Minutes and it was not for clerk to prepare the Minutes.

Suffice to say, the stand taken by the Respondent No.2 that the clerk has not prepared Minutes is highly deplorable and shows very casual approach of the officials who attended the meeting.

As per the information tendered by the learned C.P.O., the meeting was attended by Shri D. Kanakratnam, Additional Director of General of Police (Estt), Shri Atulkumar Kulkarni, Special Inspector of General (Estt), Shri More, Additional Commissioner of Police and A.C.B. Mumbai and Shri Vijay Chavan, Additional Commissioner of Armed Force, Mumbai and except Shri Atulkumar Kulkarni all are retired.

In view of above, the O.A. needs to be decided on its own merit without Minutes.

The Tribunal hope that the Respondent No.2 should take remedial measures in this behalf and may take appropriate action against the concerned officials who are responsible for not recording the Minutes. The order shall be communicated to Director General of Police, State of Maharashtra, Mumbai.”

9. Thus, the state of affairs of administration in the Office of Respondent No.2 are far from satisfactory and the concerned officials appears totally ignorant about the procedure of recording minutes of DPC. Be that as it may, the issue now posed for consideration is whether the Applicant is entitled for monetary benefits during the period of deemed date of promotion.

10. As per the Affidavit filed by Respondent No.2 itself, firstly the issue of promotion of the Applicant was considered in the meeting of DPC dated 10.02.2015 and Applicant, according to DPC found unfit because of pendency of Criminal Case filed by ACB. In this behalf, the perusal of Annexure 'B' (Page No.51 of P.B.) is material. It seems to be a Chart placed before the DPC and there is signature of Additional Director General of police (Establishment) only and there are no signatures of other 3 members of DPC. It is left blank. Furthermore, the column of gradation of ACR is not filled-in. All that, it is stated in remark column

that the Applicant is facing Criminal case and matter is subjudice. This is totally erroneous, as the Applicant was already acquitted in Criminal Case on 30.04.2014. The DPC seems was ignorant about result of Criminal Case. In deed DPC ought to have called for information of the status of Criminal Case before making any such endorsement of pendency of Criminal Case. There is absolutely nothing in the sheet about the legibility or illegibility of the Applicant for promotion. As stated above, the minutes of meeting dated 10.02.2015 were not at all prepared, which were required to be prepared giving reasons about eligibility of the Applicant for promotion. It is only in reply, the Respondent No.2 comes with a version that in DPC meeting dated 20.02.2015, the Applicant was found unfit, which is traceable to the endorsement on Page No.1 about the pendency of Criminal Case. Thus apparently there was lack of care and wrong endorsement was made about pendency of Criminal Case, which was in fact already disposed of by acquitting the Applicant on 30.04.2014. As such, the pendency of Criminal Case was seems to be the only ground for refusing promotion, which is totally incorrect in view of acquittal of Applicant on 30.04.2014, which was much before 10.02.2015.

11. Suffice to say on 10.02.2015, there was nothing against the Applicant in view of his acquittal in Criminal Case. In other words, there was no hurdle in the way of promotion, but the same was wrongly denied under wrong impression of pendency of Criminal Case.

12. As per the Affidavit of Respondent No.2, the issue of promotion of the Applicant was again considered in the meeting of DPC on 14.07.2016 and 15.07.2016, the minutes of which were also not prepared. In this behalf, it is necessary to see the Chart, which is at Page No.52 of P.B. As per the title of this Chart, the Applicant's eligibility was again examined in select list of 2015-16. As per the Affidavit filed by Respondent NO.2, the DPC was held on 14.07.2017 and again on 15.07.2017. As no date is mentioned on Chart at Page No.52, it seems to be pertaining to DPC

meeting held on 14.07.2017 and 15.07.2017. In the column of remark, again it is stated that there is crime registered against the Applicant, which is totally erroneous in view of his acquittal in Criminal Case on 30.04.2014. Second reference is that the Applicant is undergoing punishment of withholding of increment for one year imposed by order dated 20.11.2015. Thus, because of these two reasons, the Applicant was held ineligible for promotion.

13. Now, interesting to note that when Applicant's case was considered on 10.02.2015, there was nothing against him since Criminal Case was already decided in acquittal and on that date, there was no punishment of withholding one increment as it was imposed later by order dated 20.11.2015. In so far as the aspect of punishment of withholding one increment is concerned, the perusal of record reveals that it is only after acquittal, show cause notice was issued to the Applicant on 16.09.2015 as to why one increment should not be withheld and the period of suspension (22.03.2011 to 13.10.2014) should not be treated suspension as such. The Applicant had furnished reply to the show cause notice, and thereafter, by order dated 20.11.2015, the punishment of withholding one increment without cumulative effect was imposed and the period of suspension was treated as such.

14. Being aggrieved by the order of punishment dated 20.11.2015, the Applicant had filed appeal unsuccessfully and then challenged the same by filing O.A.No.959/2016 in this Tribunal, which came to be decided by this Tribunal on 24.04.2017. The Tribunal heavily came down upon the Respondents for imposing punishment and treating the period of suspension as such, despite clean and clear acquittal of the Applicant in Criminal Case. This Tribunal has specifically observed that it is not a case of acquittal on benefit of doubt but rather it is a case of total failure of prosecution to prove the guilt of Applicant. The Tribunal has also observed that the punishment of withholding increment was withheld in preliminary enquiry without conducting regular enquiry. The Tribunal



had also observed that the observation of disciplinary authority made in order dated 20.11.2015 that the Applicant was caught raid-handed is totally erroneous in view of clear observations and findings recorded by the learned Special Judge while acquitting the Applicant. The Tribunal has also frowned upon the Respondents in its attempt to scrutinize the Judgment of competent Criminal Court to draw inference of guilt of the Applicant for imposing punishment of withholding one increment.

15. Thus, what emerges from record is that on 10.02.2015, when Applicant's case was considered for promotion, it was denied on non-existing ground, as the reason mentioned of pendency of Criminal Case was contrary to the record. In other words, the promotion was denied on non-existing ground. The punishment of imposition of one increment and order of treating the period of suspension as such for all purposes has been quashed and set aside by this Tribunal in O.A.No.959/2016 on 24.04.2017. In the meantime, on 14.07.2016 and 15.07.2016, the DPC held him not eligible pointing out the punishment of withholding of an increment by order dated 20.11.2015 which was later quashed and set aside. As such, the net result would be there was nothing legally sustainable against the Applicant to deny promotion. Indeed, after retirement, surprisingly, the Respondent No.2 found Applicant eligible for promotion in select list of 2014 itself and granted deemed date of promotion from 03.08.2015 i.e. the date on which junior was promoted. However, the monetary benefits of the period of deemed date of promotion was denied. It is on this background, now the claim of the Applicant for monetary benefits needs to be decided.

16. The only contention raised by learned P.O. is that, in view of Rule 32 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity), the Applicant is not entitled for pay and allowances on the principle of 'no work no pay'. In impugned order, the Respondent No.2 all that stated that in

view of Rule 32 of 'Rules of 1981', the Applicant will not be entitled for pay and allowances for the period of deemed date of promotion.

17. Rule 32 of 'Rules of 1981' is as under :-

**"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."

18. In so far as the applicability of Rule 32 is concerned, it is general Rule applicable to normal situation. It is not Rule of thumb and the issue of grant of pay and allowances for the period of deemed date of promotion needs to be considered on the facts and circumstances of the case. Where a person is deprived of from promotion or illegally denied to work on promotional post, the principle of 'no work no pay' would not attract.

19. At this juncture, it would be apposite to see the decisions of Hon'ble Supreme Court in this behalf, which are as follows :-

(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."*

- (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."

20. Furthermore, reference of **AIR 2007 SC 3100 (The Commissioner, Karnataka Housing Board Vs. Shri Muddaiah)** would be apposite wherein again the contention raised by employer on the principle of 'no work no pay' has been turned down 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.”*

21. The principles expounded in these authorities are squarely attracted to the present case.

22. Thus, what ultimately turned out is that the promotion was denied to the Applicant on non-existing ground and thereby he is deprived of pay and allowances of promotional post. True, the Applicant cannot claim promotion as of right. However, he has right of consideration for promotion and where promotion is found denied on non-existing ground, the principle of ‘no work no pay’ would not attract. Therefore, in fact situation, I am inclined to grant monetary benefits for the period of deemed date of promotion. However, considering the facts and circumstances of the case, in my considered opinion, the payment of 50% of pay and allowances for the said period would meet the ends of justice.

23. The totality of aforesaid discussion leads me to conclude that the impugned order dated 20.11.2017 rejecting pay and allowances for the period of deemed date of promotion is unsustainable and O.A. deserves to be allowed partly. Hence, I proceed to pass following order.

### **ORDER**

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 20.11.2017 is quashed and set aside.
- (C) The Respondents are directed to extend the benefit of pay and allowances for the period of deemed date of promotion (03.08.2015 to 31.12.2016) to the extent of 50%.

- (D) Monetary benefits in terms of above be released within two months from today.
- (E) No order as to costs.

Sd/-

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

Mumbai

Date : 22.01.2021

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\January, 2021\O.A.663.19.w.1.2021.Recovery.doc

Uploaded on