

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.791 OF 2017

DISTRICT : MUMBAI

Shri Pradeepkumar U. Rathod.)
Retired Assistant Commissioner of Sales Tax,)
Office of Joint Commissioner of Sales Tax)
(Legal), M.S, Mazgaon, Mumbai and residing at)
A-805, Sanskar, Neelam Nagar, Phase-II,)
Gavanpada Road, Mulund (E), Mumbai – 80.)...Applicant

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)
2. Government of Maharashtra.)
Through Addl. Chief Secretary (Services),)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
3. Commissioner of Sales Tax.)
M.S, having office at Vikrikar Bhavan,)
Mazgaon, Mumbai – 400 010.)...Respondents

Mr. M.D. Lonkar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.05.2019

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JUDGMENT

1. The issue posed for consideration in the present O.A. is whether after the grant of deemed date for the promotion on the post of Assistant Commissioner, Sales Tax and Deputy Commissioner, Sales Tax by impugned order dated 14.03.2017 and 21.07.2017, the monetary benefits for the promotional post can be denied on the basis of Rule 32 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules 1981').

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

The Applicant belongs to Reserved Category (VJ-A). He was appointed in Sales Tax Department on the post of Clerk w.e.f.21.08.1979. Having regard to his good performance, he was promoted to the post of Senior Clerk on 02.01.1986 with deemed date of promotion to the post of Senior Clerk as 31.12.1983. Later, he came to be promoted to the post of Sales Tax Inspector w.e.f. 03.09.1986 with deemed date of promotion w.e.f. 31.01.1985. However, later, dispute started about the seniority list. In view of the said dispute revolving around 'Banjara' and 'Vanjari' issue the seniority position of the Sales Tax Inspectors throughout the State has undergone change, but ultimately, it was crystalized in the year 1994 and the Applicant was shown in the cadre of Sales Tax Inspector. The Applicant contends that in subsequent period of service on account of his positive service performance, he was promoted to the post of Sales Tax Officer w.e.f. 25.05.2004. He further contends that the persons junior to him viz. Shri M.S. Rathod and Smt. A.D. Rajput though belonging to same reserved category were accorded deemed date of promotion as 23.03.2001. Thereafter, he was promoted to the post of Assistant Commissioner of Sales Tax w.e.f. 07.12.2002. However, Shri M.S. Rathod, who was junior to Applicant was promoted to the rank of Assistant Commissioner of Sales Tax w.e.f. 11.02.2007. As such, he contends that he was eligible and qualified for the promotion to the rank of Sales Tax Officer

w.e.f.23.03.2001, but he was promoted only on 25.05.2004. The Applicant, therefore, made various representations to ventilate his grievances and for consequential service benefits, but the issue was kept in abeyance for no fault on his part.

3. As he was due to retire on 31.10.2016 and no decision was taken on his representations, he approached the Tribunal by filing O.A.440/2016. In the said O.A, the Respondents have filed written statement stating that as per the Judgment of Hon'ble Supreme Court, the seniority list of Sales Tax Inspectors for the period from 01.09.1995 to 31.12.2001 was published on 24.03.2006 wherein the name of Applicant was at Serial No.3777. However, later, the Corrigendum was issued on 02.08.2010 and as per the Corrigendum, the seniority of the Applicant was refixed at Serial No.3091. With this pleading, the Respondents sought three months' time to complete the process for giving deemed date of promotion to the Applicant on the post of Sales Tax Officer as well as on the post of Assistant Commissioner of Sales Tax. Accordingly, the Tribunal disposed of O.A.440/2016 by order dated 10.12.2016 with directions to the Respondents to complete the process of grant of deemed date of promotion to the Applicant within a period of three months. The Applicant then again made representations dated 23.12.2016, 24.01.2017 and 22.02.2017 in pursuance of the directions issued by the Tribunal in O.A.440/2016. The Respondents failed to observe the time limit given by the Tribunal in O.A.440/2016.

4. It is on the above background, the Respondent No.1 belatedly by order dated 14.03.2017 granted deemed date of promotion to the post of Assistant Commissioner as 22.01.2008 against the actual date of promotion 07.12.2012. However, the monetary benefits have been refused relying upon Rule 32 of 'Rules 1981'. The Applicant had again submitted representation on 05.04.2017 for grant of arrears of pay and allowances, but in vain. In the meantime, the Applicant stands retired w.e.f.31.10.2016. After his retirement, the Respondent

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No.1 by order dated 21.07.2017 granted deemed date of promotion to the post of Deputy Commissioner of Sales Tax as on 02.11.2015, but again denied monetary benefits on the basis of Rule 32 of 'Rules 1981'.

5. Being aggrieved by orders dated 14.03.2017 and 21.07.2017, the Applicant has filed the present O.A. for grant of monetary benefits, which has been denied to him on the basis of Rule 32 of 'Rules 1981' contending that his promotion to the post of Assistant Commissioner and thereafter to the post of Deputy Commissioner has been delayed on account of administrative lapses and lethargy on the part of Respondents. Though he was eligible and entitle to the said promotions as per his placement in seniority list, later only he was given deemed date of promotion without monetary benefits, which is contrary to the service jurisprudence. He contends that the Respondents themselves are responsible for this delay, and therefore, they cannot take shelter of Rule 32 of 'Rules 1981'. The Applicant, therefore, seeks directions to the Respondents to pay monetary benefits from 22.01.2008 to 07.12.2012 for the post of Assistant Commissioner, Sales Tax and for the period from 02.11.2015 to 31.10.2016 for the post of Deputy Commissioner, Sales Tax.

6. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.116 to 131 of P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The factual aspects of various promotions given to the Applicant with deemed date of promotion is not in dispute. The Respondents contend that there was serious dispute and litigation about the seniority list. As per the Judgment of Hon'ble Supreme Court, the caste 'Banjara' and 'Vanjari' were to be treated as par till the final decision in this regard is taken by the Government of Maharashtra. Thereafter, the Government of Maharashtra appointed Wadhva Committee to decide the issue. The Committee accordingly submitted report that 'Banjara' and 'Vanjari' are two different casts. The recommendation of Wadhva Committee was accepted by the Government. Thereafter, some Sales

Tax Inspectors belonging to Banjara Caste made representation that the seniority be given to them by cancelling seniority given to the candidates belonging to Vanjari caste. Accordingly, the Government by letter dated 06.07.2009 communicated its decision to the Sales Tax Department, who in turn accepted the recommendations of Tribal Development Department and decided to cancel the placements given to Vanjara and Dhangar community in the seniority list published on 23.03.2006 and 24.03.2006 and it was decided to be given to the candidates of Banjara caste. Accordingly, the Additional Commissioner of Sales Tax issued Corrigendum on 02.08.2010 and seniority of the Applicant was re-fixed from 3777/96 to 3091/94. The Respondents, therefore, contend that the Applicant was rightly promoted to the post of Sales Tax Officer on 25.05.2004 as per the then seniority list of Sales Tax Inspector and there is no supersession of the Applicant. After issuance of Corrigendum dated 02.08.2010, the Applicant made representation for deemed date of promotion. Accordingly, the Respondent No.1 by order dated 08.11.2016 gave deemed date of promotion to the post of Sales Tax Officer as 27.03.2001. Later, as per the direction given in O.A.440/2016, the Respondents by impugned order dated 14.03.2017 accorded deemed date of promotion to the post of Assistant Commissioner, Sales Tax w.e.f. 22.01.2008 i.e. the date on which his junior Shri Tandale was promoted. However, as he has not worked on the promotional post, he is held not entitled to the monetary benefits in view of Rule 32 of 'Rules 1981'. In so far as the deemed date of promotion to the post of Deputy Commissioner of Sales Tax is concerned, by order dated 21.07.2017, he was given deemed date of promotion to the post of Deputy Commissioner of Sales Tax w.e.f. 02.11.2015 without the monetary benefits in view of Rule 32 of 'Rules 1981'. The Respondents thus contend that, as per seniority, the deemed date of promotions were granted to the Applicant. However, he is not entitled to the pay and allowances for the promotional post, which carries enlarge responsibilities in the light of Rule 32 of

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'Rules 1981' and prayed to dismiss the application. The Respondents denied that there is inaction or delay on it's part to consider the claim of the Applicant.

7. Shri M.D. Lonkar, learned Advocate for the Applicant vehemently urged that the refusal to pay monetary benefits to the Applicant to the promotional post of Assistant Commissioner of Sales Tax and Deputy Commissioner of Sales Tax on the basis of Rule 32 of 'Rules 1981' is totally misplaced and unsustainable in view of various decisions rendered by this Tribunal as well as the law laid down by Hon'ble High Court and Hon'ble Supreme Court. He emphasized that, had the Respondents took action at appropriate time on the various representations made by the Applicant, he was eligible and entitle to the promotional post. He contends that the Respondents took three years to rectify the mistake and belatedly corrected it on 02.08.2010. He has further pointed out that, by order dated 21.04.2007, the G.A.D. had rectified the mistake in the seniority list by cancelling the placement given to the candidates belonging to Vanjari caste and to replace them by the candidates belonging to Vimukta Jatis (Banjara Caste). However, the Sales Tax Department failed to act upon it within reasonable time and the matter was simply kept hanging fire. He, therefore, submits that only because of lethargy and inaction on the part of Respondents, the Applicant has been deprived of the promotions and opportunity to work as Assistant Commissioner of Sales Tax as well as Deputy Commissioner of Sales Tax and it is only after the representations and directions by this Tribunal in O.A.440/2016, the Applicant was granted deemed date of promotion without monetary benefits. He, therefore, urged that in such situation, the Respondents cannot take shelter of Rule 32 of 'Rules 1981' to deny monetary benefits to the Applicant. To substantiate his submission, he referred to various decisions.

8. Shri M.D. Lonkar, learned Advocate for the Applicant referred to the following decisions :-

- (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

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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.

- (v) Lastly, he referred to the Judgment passed by this Tribunal in **O.A.No.102/2017 (Ashok Khamkar Vs. Commissioner of Police, Greater Bombay) decided 10.07.2017** wherein on the basis of Judgment delivered by the Tribunal in **O.A.1010/2016 (Manda Deshmukh Vs. State of Maharashtra)** and relying upon the Judgment of Hon'ble Supreme Court in **Ramesh Kumar's** case, the Applicants were held entitled to all monetary benefits from deemed date of promotion to the post of A.S.I.

9. Per contra, Shri A.J. Chougule, learned Presenting Officer urged that, admittedly, the Applicant having not worked upon the promotional post, he is not entitled to the monetary benefits in view of Rule 32 of 'Rules 1981' and the stand taken by the Respondents in this behalf cannot be faulted with. He further submitted that, earlier, the Applicant was at Serial No.3777 in the seniority list dated 24.03.2006 of Sales Tax Inspectors. However, later by Corrigendum dated 02.08.2010, the seniority list dated 24.03.2006 was corrected and Applicant's seniority was re-fixed from 3777 to 3094. He submitted that the earlier caste of Banjara and Vanjari were treated at par till the final decision in this regard is

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taken by the Government of Maharashtra and later, the Government had appointed a Committee to decide the issue. However, the Committee in its report opined that Banjara and Vanjari are two different castes and the recommendations were accepted by the Government. Thereafter, certain Sales Tax Inspectors belonging to Banjara Caste made representation to give them seniority in place of candidates belonging to Vanjari Caste. It is on this backdrop, the Sales Tax Department corrected the seniority list of Sales Tax Inspectors by Corrigendum dated 02.08.2010. He, therefore, submitted that the Department thereafter examined the representations made by the Applicant for grant of promotion on the basis of his re-fixed seniority and appropriate promotions were given to him and there is no such inordinate delay. As regard impugned orders, he urged that the Applicant was granted deemed date of promotion to the post of Assistant Commissioner, Sales Tax from 22.01.2008 vide order dated 14.03.2017 and again he was granted deemed date of promotion on 02.11.2015 for the post of Deputy Commissioner, Sales Tax by impugned order dated 21.07.2017, but having not worked on the promotional post, the monetary benefits have been rightly declined.

10. The learned P.O. also referred to the Judgment of Hon'ble Supreme Court in **1996 Scale (1) 602 (State of Haryana Vs. O.P. Gupta)**. In that case, there was dispute about *inter-se* seniority regarding promotion to the higher post. In the first round of litigation, directions were given to the Government to prepare the seniority list in accordance with Rules. According to the directions, the seniority list was prepared and accordingly, promotions were given to all eligible persons without giving monetary benefits. It is in this context, the Hon'ble Supreme Court declined to give monetary benefits with the observation that unless the seniority list is prepared and finalized and promotions are made on the basis of final seniority list, the question of entitlement to work in the promotional post does not arise and consequently, the question of monetary benefits also did not

arise, having not worked on the promotional post during that period. In so far as this authority is concerned, it is very much clear from the perusal of Judgment that in that matter, the seniority list itself was not finalized, which delayed promotions. Whereas, in the present case, the seniority list for the post of Sales Tax Inspector was already rectified, but thereafter, no steps to have been taken by the Respondents to consider the Applicant for further promotional avenues for long period.

11. The learned Presenting Officer further referred to the decision of Hon'ble Supreme Court in **1991 AIR SC 958 (Virendra Kumar Vs. Avinash Chandra)** wherein on the principle 'no work no pay', the monetary benefits were refused on the ground that during the relevant period, higher posts were not vacant and where manned by incumbents concerned to whom the emoluments of the said posts were paid. Therefore, in fact situation, for want of non-availability of posts, the principle of 'no work no pay' was invoked and monetary benefits were declined. In so far as this authority is concerned, it is very much clear that the monetary benefits were refused on the ground of non-availability of vacant posts for promotions. Whereas, in the present case, the facts are quite distinguishable as there is no such defence of non-availability of post. On the contrary, the impugned order itself shows that the person junior to the Applicant was promoted.

12. In view of submissions advanced at the Bar, now question posed whether the Applicant is entitled to the monetary benefits from 22.01.2008 to 07.12.2012 for the post of Assistant Commissioner, Sales Tax as well as monetary benefits for the period from 01.11.2015 to 31.10.2016 for the post of Deputy Commissioner, Sales Tax which has been declined to him while granting deemed date of promotion by order dated 14.03.2017 and 21.07.2017 respectively.

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13. At this juncture, it would be apposite to refer the order dated 14.03.2017 whereby deemed date of promotion to the Applicant has been granted w.e.f.22.01.2008. While granting deemed date of promotion to the Applicant, the Respondent No.1 granted the said benefit to him in the manner the said benefit was granted to his junior Shri Shrimant Tandale. Shri Tandale was promoted to the post of Assistant Commissioner, Sales Tax by order dated 11.12.2017 on the basis of his seniority in select list of Sales Tax Officers. It was found that the Applicant is also entitled to deemed date of promotion on the basis of select list of 2006-2007. Accordingly, meeting of DPC was conveyed on 01.12.2016 and having found that the Applicant is eligible and having fulfilled all criteria, the DPC recommended for giving deemed date of promotion of Shri Tandale i.e. 22.01.2008 to the Applicant. At this juncture, it would be relevant to see the minutes of the meeting dated 01.12.2016 which has been produced for the perusal. What is important to note that the DPC found that the Applicant is entitled to promotion to the post of Assistant Commissioner of Sales Tax on the basis of select list of 2006-2007 and further found that the Applicant can be given deemed date of promotion at par with Shri Tandale w.e.f. 22.01.2008 as out of select list of 206 posts, the promotions were granted to 201 candidates only and further recorded that in case, the Applicant is promoted to the post of Assistant Commissioner of Sales Tax, there would be no prejudice to the persons already promoted. Thus, what is material to note that, admittedly, Shri Tandale was junior to the Applicant, but he was promoted w.e.f. 22.01.2008 to the post of Assistant Commissioner, Sales Tax and on that basis, only the Applicant was given deemed dated of promotion from 22.01.2008.

14. Now, turning to the order dated 21.07.2017, here again deemed date of promotion was given to the Applicant w.e.f. 02.11.2015 on the basis that his junior Shri Tandale was already promoted to the post of Deputy Commissioner, Sales Tax w.e.f. 02.11.2015 on the basis of select list of 2013-2014, as the

Applicant stood retired on 31.10.2016 from the post of Assistant Commissioner, Sales Tax, he was only held entitled to the promotional pay for retiral benefits and monetary benefits from 02.11.2015 to 31.10.2016 till the date of retirement were declined relying on Rule 32 of 'Rules 1981'.

15. It is thus quite clear from the impugned orders that, though the Applicant was eligible and fulfilled all requisite criteria for the promotional post to the post of Assistant Commissioner, Sales Tax as well as Deputy Commissioner, Sales Tax, he was not promoted earlier though his junior Shri Tandale was promoted on the said post. It is on this background, the Respondent No.1 issued impugned orders by giving deemed date of promotion which was given to his junior Shri Tandale, but declined to grant monetary benefits relying on Rule 32 of 'Rules 1981'.

16. As such, it is nowhere the case of Respondents that the Applicant was not eligible for want of seniority or eligibility or non-availability of a promotional post. Indeed, the impugned order itself makes it quite clear that the junior official viz. Shri Tandale was promoted meaning thereby the claim of the Applicant has ignored at the relevant time.

17. True, earlier there was dispute about the seniority, but it was crystallized and settled long ago. It seems that, way back in 1992, by G.R. dated 04.08.1992, Dhangar Caste and Vanjari Caste were included in VJ(NT) category and on that basis, the Sales Tax Department prepared seniority list of Sales Tax Inspectors on 23.03.2006 for the period from 1972 to 31.08.1995 by clubbing the candidates of Vanjari and Dhangar community in the list. Thereafter, Wadhva Committee was set up, who submitted the report with the opinion that the Banjara caste and Vanjari caste are two different casts. The Government accepted the report of Wadhva Committee on 23.03.1994. It is on this background, the candidates belonging to Banjara community and originally falling in VJ category made

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representations for re-fixing their seniority in the various cadres of services. On that basis, the Government took decision by order dated 06.07.2009 to replace the candidates of Vanjari community and to fill-in those posts from the candidates belonging to VJ category. In fact, earlier to this development, the GAD, Government of Maharashtra by letter dated 21.04.2007 issued necessary directions correcting the seniority of the Desk Officers working in Mantralaya. However, similar action was not taken by Finance Department for correction of seniority list of Sales Tax Inspectors working in Sales Tax Department. It is only in 2010, by order dated 02.08.2010, the Sales Tax Department issued Corrigendum whereby the Applicant's seniority was re-fixed from 3777 to 3094. As such, there is an inordinate delay on the part of Respondents to take remedial measures. Had they took remedial measures in 2007 or within reasonable time, the Applicant would have got an opportunity to work on promotional post. Even after Corrigendum Order dated 02.08.2010 and despite various representations made by the Applicant as referred and reflected in his final representation dated 20.04.2016, no action was taken and the matter was kept hanging fire from 2007. The Applicant was constrained to approach this Tribunal by filing O.A.No.440/2016 seeking direction to decide his representation for promotions and deemed date of promotion to the post of Assistant Commissioner of Sales Tax and Deputy Commissioner of Sales Tax. The O.A. was disposed of on 15.12.2016 with direction to complete the exercise within a period of three months. It is on this background, the Respondent No.1 passed the impugned orders dated 14.03.2017 and 21.07.2017 granting deemed date of promotion, but declined the monetary benefits relying on Rule 32 of 'Rules 1981'.

18. It is thus explicit clear that the Applicant was deprived of to function on promotional post though he was eligible for promotion. In other words, it is only because of laxity and inaction on the part of Respondents, immediate remedial measure were not taken and thereby deprived the Applicant from promotional

post on the basis of seniority which was corrected in 2010 itself. Suffice to say, no fault lies on the part of Applicant, but it is because of laxity and delay on the part of Respondents, the Applicant has been deprived of an opportunity to work on promotional post. There is absolutely no justification to deny monetary benefits to him to attract principle of 'no work no pay'.

19. In *Ramesh Kumar's* case (cited supra), the Hon'ble Supreme Court was dealing with the matter of Army Personnel, who was discharged from service. There were disciplinary proceedings against him and he was discharged from service. However, he was reinstated and then promoted in the year 2000. His claim for arrears for the promotional post from 01.08.1997 was the subject matter before the Hon'ble Apex Court. In that matter also, the arrears were denied to him and unlike the present matter, it was a case where the disciplinary proceeding was instituted against him. The Hon'ble Supreme Court held that, when the Appellant was granted anti-dated seniority along with his batch mates, there is no reason for denying pay and allowances in the promotional post. The Hon'ble Supreme Court ultimately held that rule 'no work no pay' will not be attracted.

20. In case of *Jankiraman* (cited supra), the issue before the Hon'ble Supreme Court was pertaining to the principle 'no work no pay' in the matter where employee was completely exonerated from departmental proceedings. The Hon'ble Supreme Court held that the normal rule of 'no work no pay' would not apply to the cases where the employee was willing to work, but kept away from the same by authorities for no fault on his part. It has been further observed that, if the employee did not himself keep away from the work, then the principle of 'no work no pay' cannot be used against him.

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21. As such, the legal principles expounded in *Ramesh Kumar's* case, *Jankiraman's* case, *Bhaskaran Pillai's* case, which was later followed in *Shobha Ram Raturi's* case are fully attracted to the present situation and I see no reason to deprive of the Applicant from the monetary benefits of the promotional post. This being the position, injustice meted out to the Applicant needs to be undone by granting monetary benefits to him.

22. The totality of aforesaid discussion leads me to sum-up that the defence of the Respondents that there was no delay on their part to consider the case of the Applicant, is without any substance. There is an inordinate delay on the part of Respondents to take remedial measures. Had they took such remedial measure and appropriate action in 2007 or thereafter within reasonable time, the Applicant would have got actual promotion with monetary benefits at appropriate time. As such, the decision taken belatedly for grant of deemed date of promotion, but without monetary benefits is definitely arbitrary and unsustainable in law. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release monetary benefits to the Applicant which have been declined by impugned orders dated 14.03.2017 and 21.07.2017 for the promotional post of Assistant Commissioner of Sales Tax and Deputy Commissioner of Sales Tax within two months from today, failing which, they will have to pay interest at the rate of 9% p.a. from the date of impugned orders till actual payment.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.05.2019

Dictation taken by :

S.K. Wamanse.

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