

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1010 OF 2016

DISTRICT : NASHIK

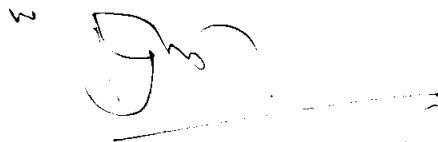
Smt. Manda V. Deshmukh.)
Retired Joint Commissioner, Tribal)
Development Department, Mantralaya,)
Mumbai 400 032 and residing at D-401,)
Archit Royal Apartment, Mahatma Nagar,)
Nashik - 422 007.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai - 400 032.)
2. Government of Maharashtra.)
Through Principal Secretary,)
General Admn. Department (Services))
Mantralaya, Mumbai - 400 032.)
3. Government of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

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

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents.



P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 06.04.2017

JUDGMENT

1. The issue thrown up for determination in this Original Application (OA) brought by a retired Joint Commissioner of Tribal Development Department is as to whether after the grant of the deemed dates for various promotional posts from time to time, the arrears could be denied relying upon Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and more particularly, Rule 32 thereof.

2. The Applicant retired in March, 2015. As already mentioned above, this OA is now restricted to the benefits consequent upon the grant of the deemed dates. The record shows that the career progression of the Applicant was interspersed by regular approaches to this Tribunal for various reliefs from time to time. She joined the services of the Government of Maharashtra in Tribal Development Department as Warden on 8.4.1980. She came to be promoted as Assistant Project Officer on 29.9.1993. The seniority list for that cadre had not been published till quite late in the day. The Applicant brought the 1st OA being **OA 553/2008 (Mrs. Manda V. Deshmukh Vs. The**



Government of Maharashtra in Tribal Development Department and 2 others).

The Bench of the then Hon'ble Chairman by its order of 8.10.2008 observed *inter-alia* that several representations of the Applicant went without any response. A statement came to be made on behalf of the Respondents that the provisional seniority list was published vide the order dated 18th February, 2008 and that it would be finalized within two months. The Commissioner of Tribal Development in the final order was directed to finalize the provisional seniority list published on 18th February, 2008 and publish the same on or before 31st December, 2008. The Bench hoped and trusted that while finalizing the seniority list, the Commissioner would consider the objections and suggestions received by him from all concerned objectively and in accordance with law.

3. The 2nd OA being **OA 46/2009 (Mrs. Manda V. Deshmukh Vs. The Government of Maharashtra and 9 others)** was brought after getting the delay condoned by way of MA No.81/2011. By the order dated 18th February, 2013, the Bench of the then Hon'ble Chairman noted *inter-alia* that the challenge therein was to the final seniority list which was apparently published on 29.12.2008 in the



cadre of Warden. The time of three months was given to comply.

4. The 3rd OA brought by the Applicant was OA 1013/2014 **(Mrs. Manda V. Deshmukh Vs. The Government of Maharashtra and one another)**. That OA was placed before the Bench of the Hon'ble Chairman. The same, vide the order dated 4th March, 2015 was disposed of with directions to decide the representation of the Applicant therein mentioned within four weeks from that date.

5. Thereafter, the Applicant was compelled to bring a Contempt Application No.60/2015 in the last mentioned **OA No.1013/2014 (Mrs. Manda V. Deshmukh Vs. The Government of Maharashtra)**. It was therein prayed that the Respondents should be punished for having committed the breach of the order of 4th March, 2015. On 21.9.2015, the Officer named there assured the Bench that he would personally look into the matter. (It appears that the said) Contempt Application is still pending.)

6. In the meanwhile, on 21st July, 2015, the Government in Tribal Development Department made an order, a copy of which is at Exh. 'H' (Page 51 of the Paper



13/4/17
Registrar
Maharashtra Administrative Tribunal
Mumbai.

Book (PB)). Thereby she was given the deemed date for the post of Assistant Commissioner which was 1st March, 2000. It was clarified that this date would be counted for the purpose of seniority and necessary steps would be taken vis-à-vis the other personnel in the list. It was, however, made clear that the arrears would not be payable.

7. Correspondence then continued between the Applicant and the Officials. By an order dated 3rd June, 2016, the Applicant was given deemed date of 12.10.2006 for the post of Deputy Commissioner and the order was exactly like the one, for the post of Assistant Commissioner, notably that the arrears would not be payable.

8. Thereafter, by the order of 27th September, 2016, the Government in Tribal Development Department made an order granting deemed date to the Applicant for the post of Joint Commissioner from 25.4.2011, but there again, the order being identical to the earlier two orders, it was clarified that the arrears would not be payable.

9. The Government in Tribal Development Department by its communication of 31st October, 2015 informed the Applicant that the Finance Department had,

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relying upon Rule 32 above referred to, held that "the arrears would not be payable to the Applicant". It is this order, as well, the orders pertaining to all the deemed dates in which arrears were declined are being called into question in this OA.

10. I have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

11. It must have become quite clear from the above discussion that the facts are more or less uncomplicated and the issue is focused as indicated hereinabove. The Rule 32 above referred to of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 reads as follows :

"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."


12. The above Rule is the main stay of the case of the Respondents. In their Affidavit-in-reply as well as in the addresses at the Bar, it was in effect contended that in as much as the Applicant did not get functional promotion to the post of Deputy Commissioner and Joint Commissioner, she would not be entitled to the arrears. According to them, the principle "no work no pay" would squarely apply, and therefore, the benefit of the deemed date for any other purpose including pensionary benefits may be admissible to the Applicant, but not the arrears. As a matter of fact, there are Judgments of the Hon'ble Supreme Court which have got binding significance on the facts of this matter, but more regrettably and in a manner unbecoming of Finance Department of any State, the Affidavit-in-reply on behalf of the 3rd Respondent – Finance Department in Para 7, the following recitals appear :

"As per provision of Rule 32 of Maharashtra Civil Services (General condition of services) Rule, 1981, the higher pay will become admissible from the date from which duties of new post are accepted by the incumbent by the dint of the occasion of taking over of charge of the new post of promotion with added



responsibilities. Copies of the relevant pages of Maharashtra Civil Service Rule are annexed hereto and marked as EXHIBIT "R-1". Right now the said notification and provision of various rules made under it are in force, hence the case of the Applicant can be considered by the provision Rule 32 made under it. Unless and until the decision of Hon'ble Supreme Court is decided to be accepted and implemented by the State Government and accordingly amendment in existing rules is carried out, by following due procedure, the said decision of Hon'ble Supreme Court can not be directly utilized to grant the benefit of arrears on account of notional pay fixation, as a result of granting of deemed dates to the Applicant and similarly placed employees."

13. How one wishes, somebody had told the Finance Department and the deponent of the Affidavit-in-reply Mr. Shrikant D. Londhe, Under Secretary that the efficacy of the order of the Apex Court by virtue of Article 141 of the Constitution is such that it is not optional for any of the Organization, citizen or even Government to obey or not to obey the mandate of the Hon'ble Supreme Court. It has got to be obeyed. One thing, however, become quite clear that implicit in the above quote is the actual fact herein that the Applicant would be entitled to the arrears as per



the Judgment of the Apex Court. But the Respondents would for some obscure reason stick on to Rule 32. **I am going to direct, a copy of this order to be forwarded to the Principal Secretary of the Finance Department or the Additional Chief Secretary, if that post exists there to take a careful note to the facts with regard to the efficacy of the Judgments of the Hon'ble Supreme Court and to pull up Mr. Shrikant D. Londhe for the kind of statement that he has made in his Affidavit.**

14. Mr. Lonkar, the learned Advocate for the Applicant relied upon **Ramesh Kumar Vs. Union of India : AIR 2015 SC 2904**. There the Hon'ble Supreme Court was dealing with the case of an Army personnel. There were disciplinary proceedings against him. He had been proceeded against and once discharged also, but was reinstated and then promoted in the year 2000. His claim for arrears for the promotional post from 1.8.1997 was the subject matter of the contention before the Hon'ble Apex Court. There also, the arrears were denied to him and it is notable that unlike the present one, that was a case where disciplinary proceedings had been initiated. In Para 10, the Hon'ble Supreme Court was pleased to hold that when the appellant of Their Lordships was granted ante-dated seniority along with his batch-mates, there is no reason as

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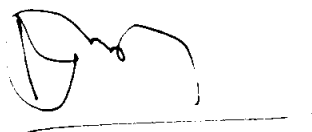

to why he should have been denied the pay and allowances in the promotional post. Their Lordships were told that, under the Rule of "no work no pay", the appellant was not entitled to claim arrears. In Para 12, Their Lordships relied upon **State of Kerala and others Vs. E.K. Bhaskaran Pillai : (2007) 6 SCC 524 = AIR 2007 SC 2645**. It will be most appropriate in my view to fully reproduce Paras 12 and 13 from **Ramesh Kumar** (supra).

"12. In normal circumstances when the respective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & Ors. V. E.K. Bhaskaran Pillai, (2007) 6 SCC 524: (AIR 2007 SC 2645), this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

".... We have considered the decisions cited on behalf of both the sides., So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various

facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent. of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeed in that and directions 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 including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay".



In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

15. The Judgment in **Ramesh Kumar** (supra) was followed by Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.539 of 2016 (Mr. Rajesh D. Waghmode Vs. The Chief Secretary, Govt. of Maharashtra and one another, dated 2nd September, 2016)**. There, the Pune Municipal Corporation ultimately granted deemed date to a physically handicapped employee and the issue of the arrears fell for consideration. The issue formulated by the Hon'ble High Court was as to whether the Petitioner was entitled to salary and other allowances admissible to the promotional post with effect



from the deemed date. **Ramesh Kumar** (supra) was cited along with **Bhaskaran Pillai** (supra).

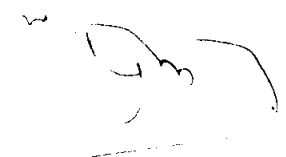
16. Further, the Hon'ble Bombay High Court was pleased to refer to the GR of the Government in GAD dated 29th October, 2001. In fact, there are GR dated 25th February, 1965, Circular of 9th September, 1969 issued by the GAD and a GR of 14th September, 1982 which have got important significant bearing on the present matter. Their Lordships in **Rajesh Waghmode** (supra) have referred to the above instruments except that of 1969. It becomes quite clear that the governmental instructions therein are that, in the event of wrongful supersession of a Government employee, he should be deemed to have been promoted to the higher post from the date from which he would have been promoted. In the absence of wrongful supersession i.e. from the date from which their juniors who were promoted by superseding them started to officiate in such posts and they should be allowed pay in such posts as if they were promoted on the dates on which their juniors were promoted and also paid arrears of pay and allowances from such dates.

17. The learned CPO told me that these are the instruments which cannot override the Statutory Rules.



He was clearly contemplating the provisions of Rule 32 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 above referred to. He naturally proceeded on assumption that the said Rule is applicable, lock, stock and barrel on its plain language hereto and also despite the law laid down by the Hon'ble Supreme Court. Apart from that, it is now very clear that these instruments have been approvingly referred to by the Hon'ble Bombay High Court in **Rajesh Waghmode** (supra) and in that view of the matter, therefore, I am unable to accept the challenge to these instruments posed by the learned CPO. I would, therefore, conclude by holding that the net result of these instruments by themselves is that the Applicant would be entitled to get the arrears.

18. Mr. Lonkar, the learned Advocate for the Applicant then relied upon a Judgment of three Judge Bench of the Hon'ble Supreme Court in **Union of India Vs. K.V. Jankiraman : AIR 1991 SC 2010 = 1991 SCR (3) 790**. There also, in the facts and circumstances of that case, post total exoneration from the DE, the issue that substantially arose was the same as it does here. Their Lordships were pleased to hold that the normal Rule of "no work no pay" would not apply to cases where the employee was willing to work, but he was kept away from the same



by authorities for no fault of his. If he did not himself keep away from the work, then the principle of 'no work no pay' cannot be used against him. The application of these principles to the present facts would make it quite clear that for some obscure reasons which according to Mr. Lonkar was the pique on account of the frequent recourse to this Tribunal by the Applicant about which I enter no finding, but the Applicant was for no fault of hers kept away from the promotional post, and therefore, those principles will apply quite clearly.

19. The learned CPO relied upon **Paluru Ramkrishnaiah and others Vs. Union of India and Anr. : (1989) 2 SCC 541** in support of his contention with regard to the efficacy of the Statutory Rules like the Rule 32 herein and the governmental instructions contained in other instruments. The Rule of "no work no pay" was also explained by Their Lordships. However, the facts therein were not like the present one to which as I have mentioned above **Ramesh Kumar** (supra) and **K.V. Jankiraman** (supra) are closer. In **Paluru Ramkrishnaiah's** case, Their Lordships referred to **Bhaskaran Pillai** which was followed by **Ramesh Kumar** (supra). Therefore, when the principles are to be applied, I find nothing in **Paluru Ramkrishnaiah** (supra) cited by the learned CPO taking any view contrary



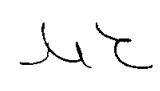
to the opinion in the earlier Judgments of **K.V. Jankiraman** which was also a three Judge Bench Judgment of the Hon'ble Supreme Court and **Ramesh Kumar** which was by two Judge Bench, but which relied upon the earlier three Judge Bench in **Bhaskaran Pillai** (supra).

20. The learned CPO relied upon **OA 199/2002 (S.S. Salvi Vs. The State of Maharashtra and 2 others, dated 1.4.2003)** and Mr. Lonkar relied upon my Judgment in **OA 201-A of 2013 (Arjun T. Gunde and others Vs. The State of Maharashtra and others, dated 16.1.2017)** where I spoke for the 2nd Division Bench. It is not necessary to closely read the facts of those two matters because I have already discussed in detail the Judgments of the Hon'ble Supreme Court and Hon'ble Bombay High Court.

21. The upshot, therefore, is that the Applicant has successfully made out a case for relief. It is hereby held and declared that the Applicant is entitled to the arrears from the dates on which she was given deemed dates. The Respondents are hereby directed to make the necessary working of the quantum payable to the Applicant for the posts that she has held and for which she was given the



deemed date within a period of three months from today. In the event, these directions are not complied with, the amounts payable shall carry interest at the rate of 12% p.a. from the date which they became payable till actual payment. A copy hereof be forwarded to the Additional Chief Secretary/Principal Secretary of the Finance Department for compliance as set out in Para 13 hereof. The Original Application is allowed in these terms with no order as to costs.


(R.B. Malik)
Member-J
06.04.2017

Mumbai

Date : 06.04.2017

Dictation taken by :

S.K. Wamanse.

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IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No.

of 20

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

O.A. No.1010 of 2016

Smt. M.V. Deshmukh

... Applicant

V/s.

The State of Mah. & ors.

... Respondents

SPEAKING TO MINUTES

This disposed of Original Application is
placed before me for speaking to minutes.

Heard Shri M.D. Lonkar, the learned
Advocate for the Applicant and Shri A.J.
Chougule, the learned P.O. for the Respondents.

In Paragraph No.5 of the said judgment
dated 06.04.2017, the words, "It appears that
the said Contempt Application is still pending."
be deleted and be substituted by the words, "The
said Contempt Application came to be disposed
of on 06.03.2017."

The appropriate corrected copy of the
judgment be placed on record and the copies be
furnished to the parties, if they have already
taken up. ^{be given} Send the copies without any extra
cost. ^{Corrected}

DATE:

11/4/17

CORAM:

Hon'ble Shri. RAHV AGARWAL

(Vice-Chairman)

Hon'ble Shri A. B. MALIK (Member)

APPEARANCE:

Shri M.D. Lonkar

Advocate for the Applicant

Shri/Smt. A.J. Chougule

P.O./P.O. for the Respondents

Order passed in the

Adj. To Tribunal's

Codebook

(vsm)

sd/-

(R.B. Malik)

Member (J)

11.04.2017

TRUE COPY

Asstt. Registrar/Research Officer
Maharashtra Administrative Tribunal
Mumbai.