

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2363 OF 2018

Union of India
Through The Secretary and Ors. ...Petitioners
Versus
Smt. R.N. Harnesswala ...Respondent

**WITH
WRIT PETITION NO. 2364 OF 2018**

Union of India
Through The Secretary and Ors. ...Petitioners
Versus
Shri. Kishore Vithal Asabe ...Respondent

**WITH
WRIT PETITION NO. 2365 OF 2018**

Union of India
Through The Secretary and Ors. ...Petitioners
Versus
Smt. M.S. Chandrachud ...Respondent

**WITH
WRIT PETITION NO. 2366 OF 2018**

Union of India
Through The Secretary and Ors. ...Petitioners
Versus
Smt. Suvarna V. Vaidya ...Respondent

Mr. Neel Helekar I/b Mr. Dushyant Kumar, Advocate for
Petitioners in all the petitions.
Mr. S.P. Saxena, Advocate for Respondent in all the
petitions.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date : 30th July, 2018.

COMMON ORAL JUDGMENT :-

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] In all these petitions, the challenge is to the common judgment and order dated 18th August, 2015 made by the Central Administrative Tribunal (CAT), Mumbai, allowing Original Application Nos. 409 of 2012, 413 of 2012, 410 of 2012 and 411 of 2012 instituted by the respondents in each of these petitions. Since, the challenge is to the common judgment and order dated 18th August, 2015, it is only appropriate that all these petitions are taken up for disposal by a common judgment and order. The learned Counsel for the parties agree to the adoption of such a course of action.

4] In terms of impugned judgment and order dated 18th August, 2015, the CAT has directed the petitioners to grant to the respondents in each of these petitions, the First

Financial Upgradation under the Assured Career Progression Scheme (ACPS) upon completion of 12 years service in the grade concern.

5] Mr. Helekar, the learned Counsel for the petitioners submits that, the objective of the ACP Scheme is to relieve the employees from the burden of stagnation which they suffer on account of non-availability of sufficient number of posts in the promotional cadre. He points out that, in the present case, each of the respondent, had in fact been offered promotions but such promotions were declined by the respondents. Mr. Helekar, submits that the petitioners, by clarification issued on 18th July, 2001 to the original ACPS had made it clear that the employees who refuse promotion will not be eligible for any benefits under the ACPS. Mr. Helekar, submits that taking into consideration the objectives of ACPS as also the specific clarification dated 18th July, 2001, none of the respondents were eligible for grant of First Financial Upgradation under the ACPS and the CAT has grossly erred in granting such benefit to them.

6] Mr. Saxena, the learned Counsel for the respondents submits that, the issue raised by the petitioners is no longer *res integra*. He placed reliance on the judgment and order dated 18th August, 2006 made by the Division Bench of this Court in ***Union of India Vs. V.R. Patil and Ors. (WP No. 2949 of 2004)***. He submits that, identical view was taken by the CAT in OA No. 129 of 2003 which was upheld by this Court in *WP No. 2949 of 2004* and therefore, the present petitions warrant dismissal. Mr. Saxena, submits that the clarification dated 18th July, 2001 can never be given any retrospective effect. He submits that if the respondents were made aware that they would be dis-entitled to benefits of ACPS if they refuse promotion on transfer, the respondents, might have as well accepted the promotion on transfer. He points out that refusal of promotions was even before ACPS was introduced. Mr. Saxena, submits that the respondents cannot be left in lurch where they neither receive any promotion nor any benefits under the ACPS. For all these reasons, Mr. Saxena submits that the present petitions may be dismissed.

7] The rival contentions now fall for our

determination.

8] The CAT, in its judgment and order dated 20th June, 2003 while disposing off OA No. 129 of 2003 has taken a view, which is identical to the view taken in the impugned judgment and order dated 18th August, 2015. The judgment and order dated 20th June, 2003 in OA No. 129 of 2003 was challenged by the Union of India by instituting *WP No. 2949 of 2004* before this Court. By judgment and order dated 18th August, 2006 the division bench of this Court dismissed *WP No. 2949 of 2004*. Thereafter, the Union of India instituted a Special Leave Petition before the Hon'ble Supreme Court, which was however withdrawn with liberty to institute a review petition before this Court. Such review petition was in fact instituted but was dismissed by the Division Bench of this Court on 19th June, 2009.

9] Thereafter, there is no record of the Union of India questioning the judgment and order dated 20th June, 2003 in OA No. 129 of 2003, which has since, attained finality.

10] The impugned judgment and order dated 18th August, 2015 records that the CAT relying upon the judgment of this Court in *WP No. 2949 of 2004*, and has taken identical view in several Original Applications decided by it on the same issue. There is no record that the Union of India has questioned such judgments and orders made by the CAT. In such circumstances, it does appear that the issues raised in the present petitions stand covered by the decision in *WP No. 2949 of 2004*. The issue is therefore, no longer *res integra*.

11] The contentions now raised by Mr. Helekar, were the precise contentions raised by and on behalf of Union of India in *WP No. 2949 of 2004*. At paragraph 4 of the judgment and order dated 18th August, 2006, this is what was observed in the context of the clarification dated 18th July, 2001 :-

"4. Even otherwise the clarifications are in the nature of administrative instructions. On the date when the respondents were granted the benefit, the administrative instructions which were in force clearly contemplated that the employee must have availed of the promotion. It is only by the clarification of 2001 was it clarified, that an employee who was offered promotion, but did not consider it before ACP was granted would be

ineligible. This, therefore, would contemplate that it has to be from the date when the clarification was issued as the position earlier was that all employees who did not avail of promotion were to be given the benefit. In other words this could only be prospective and not retrospective. Had the respondents, as an example, been informed that they will be denied ACPs if they refuse promotion, then their stand perhaps in refusing promotion would be different.

On facts, all the Respondents were offered promotion before the ACP came into force or had already been granted ACP before the clarification was issued. In these circumstances the subsequent clarification issued pursuant to which the respondents are sought to be denied the ACP, and recoveries are sought to be made in our opinion was clearly without authority of law."

12] In the facts and circumstances of the present cases as well, the respondents, on account of family reasons had declined promotion on transfer in the year 1995 that is much before the coming into force of the ACP Scheme in the year 1999. Further, by the time the ACP Scheme came into force in the year 1999, the respondents had already completed 12 years of regular service as stenographer grade - III in the year 1996 itself. The facts in the present cases are therefore, in no manner different than the facts in *WP No. 2949 of 2004*.

13] Since, the CAT, has mainly relied upon the ruling

in *WP No. 2949 of 2004*, we see no good ground to interfere with the impugned judgment and order dated 18th August, 2015.

14] These petitions are therefore liable to be dismissed and are hereby dismissed. Rule is discharged in all the petitions. There shall however be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)