

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 1795/2020

Union of India and ors. ...Petitioners

Versus

Smt. Shehal Vijay Wanaskar W/o Shri Vijay Wanaskar ...Respondent

Ms. N.G. Choube, Advocate for the Petitioners

Shri Mohan Sudame, Advocate for the Respondent

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 01 MARCH 2021

P.C.:

Heard learned Counsel for the parties.

2. The Petitioner-Union of India is before us challenging the order passed by the Central Administrative Tribunal, Mumbai (for short the "Tribunal") dated 23 April 2019 allowing the original Application filed by the Respondent.

3. The Respondent had filed an original Application before the the Tribunal to set aside the order dated 27 November 2014 to the extent of withdrawal of the First A.C.P. and to quash the order dated 09 June 2015 rejecting the request for first financial up-gradation. The Respondent also sought refund of the amount of Rs.1,06,348/- as

recovered. The Petitioner had retired on 31 November 2014 and the Respondent took steps against the Petitioners on the ground that an error was discovered later in the year 2014 in respect of the first A.C.P. granted on 09 August 1999. The Tribunal by the impugned order allowed the original Application.

4. The monetary effect of the impugned order is refund of Rs.1,06,348/-. It is for the amount of around 1 lakh that the Union of India has filed the Writ Petition. Not only the amount is small, the Union of India has also not considered the ground on which the impugned order was set aside by the Tribunal. The Tribunal has followed the decision rendered by its Bench at Jaipur in the matter of identical situated employees of the Ministry of Agricultural. This decision was confirmed by the High Court of Rajasthan. The Tribunal in the impugned order in paragraph nos. 4, 5 and 6 has observed thus:

“4. The learned counsel for the applicant has argued with reference to a previous decision of this Bench in OA No. 91/2011 decided on 05.08.2013 of Ganesh Bhavrao Shrote Vs. Union of India & Ors., decided on 05.08.2013 which was adopted by the Jaipur Bench in OA No. 69/2017 dt. 08.09.2017. Subsequently, the orders of the Jaipur Bench were taken to the Hon’ble High Court of Rajasthan at Jaipur and the orders were upheld with certain modifications to the extent that the period of debarment of one year from 1998 to 1999 was adopted as a period of debarment due to refusal of promotion and was also adopted for denying ACP benefit until completion of the debarment period and upon completion of this debarment period, the ACP benefit was held to be granted and this continued to be the position until regular promotion was granted to the applicant in the case a

few years later. The present application is identical to the case of those applicants except for changes in the dates by which the present applicant refused the promotion granted on 16.11.1998 and this debarment took effect for one year till 14.11.1999 after which, the applicant became entitled to the First ACP that had been wrongly granted w.e.f. 09.08.1999. This ACP benefit would then continue until her regular promotion which is stated to have been granted on 01.07.2003 and she continued as UDC from that date up to her retirement on 30.11.2014.

5. We respectfully abide by the decision of this Bench and Hon'ble High Court of Rajasthan.

6. We respectfully follow the position settled by the Hon'ble High Court of Rajasthan in WP No. 23921/2017 and allow the OA partly with following directions."

Thus, the Tribunal followed the decision of its Bench at Jaipur. The Union of India challenged the decision before the Rajasthan High Court. The challenge was dismissed by the Rajasthan High Court. It is not stated on record that the order of the Rajasthan High Court was challenged further. Thus, the position was accepted by the Petitioner-Union of India.

5. In Writ jurisdiction, we are not inclined to interfere with the impugned order which bring about the parity amongst similarly situated employees. The Tribunal has referred to the decision of the Apex Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih*¹ in respect of the belated recovery after retirement and has rightly ordered that the amount should be refunded.

6. The Writ Petition is accordingly rejected.

¹ (2015)4 SCC 334

7. The period given in the impugned order for refund of the amount of three months will commence from today.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]