

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 1375 of 2021**

1. The Union of India, through the Controller General, Indian Bureau of Mines, 2nd Floor, Indira Bhawan, Civil Lines, P.O.- Bureau of Mines, P.S.-Sadar, Nagpur (Maharashtra)- 440001.
2. The Controller of Mines, Indian Bureau of Mines, 2nd Floor, Indira Bhawan, Civil Lines, P.O.- Bureau of Mines, P.S.- Sadar, Nagpur (Maharashtra)-440001.
3. The Senior Administrative Officer & Head of Office, Indian Bureau of Mines, 2nd Floor, Indira Bhawan, Civil Lines, P.O.- Bureau of Mines, P.S.- Sadar, Nagpur (Maharashtra)-440001.
4. The Senior Accounts Officer, Pay & Accounts Office, Indian Bureau of Mines, 2nd Floor, Indira Bhawan, Civil Lines, P.O.- Bureau of Mines, P.S.- Sadar, Nagpur (Maharashtra) 440001.
5. The Regional Controller of Mines, Indian Bureau of Mines, Ranchi Region, 318/B, Ashok Nagar, Road No. 3, P.O. Ashok Nagar, P.S. - Argora, Ranchi-834002.
6. The Assistant Administrative Officer, Indian Bureau of Mines, Ranchi Region, 318/B, Ashok Nagar, Road No. 3, P.O.- Ashok Nagar, P.S. - Argora, Ranchi-834002

... .. **Petitioners/Respondents**

Versus

- 1.(a).Neelu Kumari, D/o-Late Pachu Sao
 - (b).Raju Kumar, S/o Late Pachu Sao
 - (c).Mamta Kumari, D/o-Late Pachu Sao
 - (d).Titu Kumar, S/o-Late Pachu Sao
- All R/o-C/o Shri Jag Lal Sahu, Savitri Colony Shivdayal Nagar, Argora By Pass Road, P.O.-Ashok Nagar, P.S. Argora, Distt-Ranchi-834002.

... .. **Respondents/Applicants.**

**CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Petitioners : Mr. Prabhat Kumar Sinha, Advocate
For the Respondents: Mr. Sanjay Kumar Thakur, Advocate

Order No. 05 : Dated 6th December, 2023
Per Sujit Narayan Prasad, J:

1. The instant writ petition, under Article 226 of the Constitution of India, is directed against order dated 19.09.2019 passed in OA/51/00245/2018 with

MA/051/00/2018 by Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) whereby and whereunder while allowing the Original Application, the prayer made on behalf of applicant regarding up-gradation in pay-scale under Modified Assured Career Progress (MACP) Scheme has been allowed.

- 2.** Brief facts of the case, as per the pleading made in the writ petition based upon the pleading made before the Tribunal, reads as under:
- 3.** It is the case of the applicant (respondent herein) that even though he was eligible to get the benefit of up-gradation under 3rd MACP Scheme but he has not been given such benefit, hence he approached learned Tribunal seeking direction upon the respondents (writ petitioner herein) to consider the case of the applicant for grant of 3rd financial up-gradation under MACP Scheme. The respondents were called upon, who filed their written statement raising objection to the prayer made by the applicant by taking two-fold grounds – (I).the application filed before the tribunal is barred by limitation since it was filed beyond the period of one years; and (II).there was adverse entry against the respondent-applicant and as such she cannot be said to be eligible for getting regular promotion hence he became ineligible to get progression in pay-scale.

- 4.** Learned tribunal has answered both the issues. The learned tribunal has given the finding on the issue of limitation by taking into consideration the fact that the progression in pay-scale will have consequential repercussion in pensionary benefit hence the same will be recurring cause of action. Due to the reason of non-consideration of the aforesaid fact, the respondent-applicant had been found to be sufferer and hence said ground of limitation was discarded.
- 5.** Second ground has been taken of adverse entry against the respondent-applicant for which he was not granted the 3rd financial up-gradation under MACP Scheme.
- 6.** In this regard, submission has been made on behalf of applicant that he was not knowing about the fact that there was adverse entry in the service record recorded in the year 2007-08 as it was not communicated at the relevant period of time.
- 7.** Learned Tribunal discarded the said ground based upon the reason that the said adverse entry was communicated sometimes in the year 2015, therefore once the adverse entry has not been communicated at the time when the respondent-applicant became eligible to get the benefit of up-gradation then on the date of eligibility i.e., the date when the respondent-applicant has completed 30 years of service he became eligible

and entitle for up-gradation in the pay-scale and the subsequent communication of adverse entry will not come in the way. The aforesaid order along with finding so recorded by the learned tribunal has been assailed by filing the instant writ petition.

8. Mr. Prabhat Kumar Sinha, learned counsel for the writ petitioner has assailed the impugned order reiterating the ground as agitated before the learned Tribunal. It has been submitted that while accepting the original application by condoning the delay cannot be said to be proper order since the applicant admittedly has approached the learned Tribunal after lapse of 9 years from the date when it was communicated.
9. In support of his submission, he has referred to the judgment rendered by Hon'ble Apex Court in the case of ***Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand [1995 Supp (4) SCC 593]***.
10. Second ground has been taken that even though adverse entry was communicated subsequent to the date of eligibility the same cannot be given go by since the conduct of the public servant is to be seen before granting up-gradation in pay-scale as per scheme of MACP but the said aspect of the matter has not been considered by the tribunal, therefore, the impugned order passed by learned tribunal suffers from error.

11. While on the other hand, learned counsel appearing for the respondent-applicant has defended the order passed by learned Tribunal. It has been submitted that since the learned tribunal has come to the conclusive finding by accepting the said Original Application on the ground that up-gradation will have got paramount importance in the matter of fixation of pension, as such there is no error in the order passed by learned tribunal. Herein, the applicant has approached the learned Tribunal after superannuation from service sometimes in the year 2012, hence if the learned tribunal has come to the conclusion that up-gradation in the pay-scale has got bearing in fixation of pension, which is recurring cause of action, therefore, if the learned tribunal after taking note of the aforesaid fact has accepted the original application it cannot be said to be perverse finding.

12. So far as second ground that there was adverse entry against the appellant is concerned, it is also not fit to be accepted reason being that the applicant has become eligible on 01.09.2008 from the date when MACP Scheme has come into force. Therefore, even accepting the fact that adverse entry is of 2007-08 but as per legal requirement the same ought to have been communicated to the concerned public servant, herein

the applicant, in order to follow the principles of natural justice but it is admitted case of the writ petitioner that it was communicated to the petitioner sometimes in the year 2015 hence the said communication will not come in the way of consideration and decision of up-gradation.

13. Learned counsel for the applicant based upon the aforesaid ground has submitted that the learned tribunal since has come to the conclusive finding therefore it cannot be said to suffer from an error, hence, the present writ petition is fit to be dismissed.

14. We have heard learned counsel for the parties, gone across the pleading as available on record and the finding recorded by learned tribunal.

15. Admitted fact herein is that the respondent-applicant while working as 'Field Orderly' superannuated from service on 30.11.2012. His grievance is that even though MACP scheme has been floated by virtue of circular dated 01.09.2008 made effective from 01.09.2008 but the benefit of 3rd up-gradation has not been extended to him and in the meanwhile he has superannuated from service on 30.11.2012. Thereafter he approached to the learned tribunal for redressal of his grievance.

16. The learned tribunal has accepted the Original Application on the ground of recurring cause of action since up-gradation in pay-scale was found to affect his pensionary benefit. The second ground has been taken while allowing the original application is that the adverse entry, which has been taken as a ground that non-consideration of the aforesaid claim, cannot be said to be a valid reason since on the due date of eligibility of 3rd up-gradation adverse entry was not communicated.

17. This Court on the basis of pleading available on record is of the view that following issues are required to be answered:

I. Whether the direction which has been given by the learned tribunal allowing the claim of the applicant by holding him entitle for 3rd MACP can be said to suffer an error on the ground of adverse entry said to be there?

II. Whether accepting the original application after lapse of 9 years as a ground is being taken can be said to be proper on the part of learned tribunal?

18. Issue No. 1: So far as issue no. I is concerned justification has been sought to be given by referring to the contention as stipulated under the MACP Scheme wherein one of the conditions is that one or the other public servant if found to be eligible to get the

substantive/regular promotion then only up-gradation in the pay scale will be extended.

19. There is no dispute about the fact that parameter to grant pay-scale in the up-graded pay-scale either under Assured Career Progression or Modified Assured Career Progression and the regular promotion has been kept at par. But herein it is not a case of punishment rather the ground is of adverse entry found to be there in the service record of the petitioner for the year 2007-08.

20. Law is well settled, as has been settled by the three-judge Bench of Hon'ble Apex Court in the case of **Sukhdev Singh v. Union of India and Others** reported in **(2013) 9 SCC 566** as also in the case of **Dev Dutt v. Union of India, (2008) 8 SCC 725** that if adverse entry is made the same is mandatorily to be communicated to the concerned public servant so that an opportunity of being heard be given by filing objection and then only a decision is required to be taken by the authority concerned by delving upon the said objection and if the authority finds that the objection so filed by the employee concerned is not proper then the adverse entry will remain intact and in that circumstance the said adverse entry or decision so taken by the authority concerned has not been reversed by the Court of law the

said adverse entry can be taken as a ground for not granting promotion or up-gradation in pay-scale by way of Assured Career Progression or Modified Assured Career Progression. The relevant paragraph of judgment rendered in **Sukhdev Singh v. Union of India and Others (supra)** is quoted hereinbelow:

“3. Subsequent to the above two decisions, in Dev Dutt v. Union of India [Dev Dutt v. Union of India, (2008) 8 SCC 725] , this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two Judge Bench [Dev Dutt v. Union of India, (2008) 8 SCC 725] on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in U.P. Jal Nigam [U.P. Jal Nigam v. Prabhat Chandra Jain, (1996) 2 SCC 363] and principles of natural justice expounded by this Court from time to time particularly in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] ; Maneka Gandhi v. Union of India [(1978) 1 SCC 248] ; Union of India v. Tulsiram Patel [(1985) 3 SCC 398]; Canara Bank v. V.K. Awasthy [(2005) 6 SCC 321] and State of Maharashtra v. Public Concern for Governance Trust [(2007) 3 SCC 587] concluded that every entry in the ACR of a public servant must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court observed in paras 17 and 18 of the Report in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725] at SCC p. 733:

“17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the

assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence noncommunication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.” (emphasis in original)

*5. In paras 37 and 41 of the Report this Court then observed as follows: (Dev Dutt case [Dev Dutt v. Union of India, (2008) 8 SCC 725], SCC pp. 737-38) “37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible. ****

41. In our opinion, non-communication of entries in the

annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

6. *We are in complete agreement with the view in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725] particularly paras 17, 18, 22, 37 and 41 as quoted above. We approve the same.*

7. *A three-Judge Bench of this Court in Abhijit Ghosh Dastidar v. Union of India [(2009) 16 SCC 146] followed Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725] . In para 8 of the Report this Court with reference to the case under consideration held as under: (Abhijit Ghosh Dastidar case [(2009) 16 SCC 146] , SCC p. 148)*

“8. Coming to the second aspect, that though the benchmark ‘very good’ is required for being considered for promotion, admittedly the entry of ‘good’ was not communicated to the appellant. The entry of ‘good’ should have been communicated to him as he was having ‘very good’ in the previous year. In those circumstances, in our opinion, noncommunication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the abovereferred decision (Dev Dutt case [Dev Dutt v. Union of India, (2008) 8 SCC 725] , SCC p. 738, para 41) relied on by the appellant. Therefore, the entries ‘good’ if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”

21. Fact herein is of not of punishment against the writ petitioner rather the case of the applicant is that there was adverse entry which was of the year 2007-08 and the same was communicated in the year 2015. The question therefore would be that when the applicant became eligible from 01.09.2008 then merely because adverse entry was of year 2007-08 and the same was communicated after inordinate delay of eight years in the year 2015 can the right created in favour of applicant be snatched away for no fault of the applicant.

22. We are of the view that any subsequent punishment or the subsequent decision from the due date of eligibility will not come in the way of the concerned public servant otherwise the punishment or the adverse entry which has been communicated and after dealing with the objection if the same will remain intact will also have the mode of punishment then the same will be nothing but having its retrospective application which is not permissible.

23. The law since has been laid down by Hon'ble Apex Court that adverse entry be communicated which means that immediately after recording of adverse entry the same be communicated to the public servant concerned so that objection, if any, be filed and the same be dealt with in order to protect the interest of

public servant concerned as also the establishment concerned. But herein even though the applicant became eligible from 01.09.2008 but knowing the fact that there was adverse entry for the year 2007-08 the reason best known to the authority concerned the same was not communicated immediately rather it was communicated sometimes in the year 2015. As such according to our considered view the writ petitioner has committed gross laches on two grounds.

24. First is that even though the law has been laid down by Hon'ble Apex Court to communicate the adverse entry forthwith but giving complete go by to the said law of land which binds the party under Article 141 of the Constitution of India but the authority has remained silent for about seven years and when the issue has been raised by the applicant by claiming 3rd MACP then only the ground of adverse entry has been raised by the authority concerned. Therefore we are of the view that there is gross laches on the part of writ petitioner in not communicating the adverse entry within reasonable time.

25. Second laches is that the writ petitioner-authority has committed wrong and as such he cannot be allowed to take advantage of his wrong as per the settled

position of law that the wrong doer cannot be allowed to take advantage of his own wrong.

Reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh v. State of Bihar and Others*** reported in **(2007) 11 SCC 447** has held that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong. For ready reference paragraphs 15 and 16 are being quoted hereunder as:-

"15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated: "It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and

this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

*16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. **To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.***

Similar view has been reiterated by Hon'ble Apex Court in the case of **Indore Development Authority v. Shailendra (Dead) through legal representatives and others** reported in **(2018) 3 SCC 412** at paragraph 143 which is being quoted hereunder as:-

“143. When once the court has restrained the State authorities to take possession, or to maintain status quo they cannot pay the amount or do anything further, as such the consequences of interim orders cannot be used against the State. It is basic principle that when a party is disabled to perform a duty and it is not possible for him to perform a duty, is a good excuse. It is a settled proposition that one cannot be permitted to take advantage of his own wrong. The doctrine commodum ex injuria sua nemo habere debet means convenience cannot accrue to a party from his own wrong. No person ought to have advantage of his own wrong. A litigant may be right or wrong. Normally merit of lis is to be seen on date of institution. One cannot be permitted to obtain unjust injunction or stay orders and take advantage of own actions. Law intends to give redress to the just causes; at the same time, it is not its policy to foment litigation and enable to reap the fruits owing to the delay caused by unscrupulous persons by their own actions by misusing the process of law and

dilatory tactics.”

26. This Court on the basis of aforesaid discussion is of the view that since the adverse entry is of the year 2007-08 which was communicated to the applicant-respondent in the year 2015 and in the meanwhile the applicant became eligible to get the up-gradation in pay-scale by way of 3rd MACP hence the subsequent decision/communication cannot be allowed to be taken as the adverse decision/entry.

27. Keeping the aforesaid facts into consideration the learned Tribunal has allowed the Original Application directing the writ petitioner to grant benefit under 3rd MACP, which in our considered view, cannot be said to suffer from error.

28. Issue No. II-

So far as the issue of limitation i.e., approaching the tribunal by the applicant after lapse of period of limitation is concerned, we are conscious of the fact that the tribunal is to be approached within a period of one year but tribunal has been conferred with the power, to condone the delay if sufficient cause is shown by the party concerned.

29. We are also conscious of the fact that salary does not come under the fold of recurring cause of action but pension comes under the fold of recurring cause of

action. However, before delving upon the issue, we deem it fit and proper to deal with recurring cause of action. "Recurring" means suffering of the litigant, particularly, the public servant if the suffering is continuing day by day, the same will be said to be recurring cause of action. Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. A recurring or successive wrong, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint.

30. Reference in this regard, be made to the judgment rendered by the Hon'ble Apex Court in the case of ***M.R. Gupta Vs. Union of India & Ors [(1995) 5 SCC 628]***, wherein at paragraph 5, it has been held as under:

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other

words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

31. Further, the Hon'ble Apex Court in the case of ***Union of India & Ors Vs Tarsem Singh [(2008) SCC 648]*** at paragraph 4 held as under:

4. *The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan [AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)*

"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury

caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.”

32. Herein also it is not in dispute that the benefit of 3rd up-gradation if would have been released in favour of applicant, although the writ petitioner has retired on 30.11.2012 but the same will have its implication in the pensionary benefit therefore, this Court on the basis of ratio laid down by Hon’ble Apex Court in the case of ***M.R. Gupta Vs. Union of India & Ors*** (supra) is of the view that it is not the case where there is lack of recurring cause of action rather it is a case where the applicant since is suffering from month to month basis due to less fixation of pension in consequence of non-grant of 3rd up-gradation under MACP Scheme, hence, according to our considered view it is a case of ‘recurring cause of action’.

33. We after discussing the aforesaid issue and coming to the order passed by learned Tribunal has found that the aforesaid aspect of the matter has been considered by considering the case to be recurring cause of action. While coming to such conclusion the finding has been given by the tribunal that the same has got implication in fixation of pension. Accordingly and on the basis of

aforesaid fact, we are of the view that since it is recurring cause of action on the facts of the case, therefore, objection so raised regarding the issue of limitation is not sustainable.

34. In support of his argument, Mr. Sinha, has relied upon the judgment rendered in the case of ***Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand (supra)***. We have gone through the said judgment.

35. But it is settled position of law that judgment has got no universal application rather the judgment is to be tested on the basis of fact of each case. Reference in this regard be made to the judgment rendered in the case of ***Dr. Subramanian Swamy v. State of Tamil Nadu and Ors., (2014) 5 SCC 75***, in particular paragraph-47 which reads as under:

“47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.”

36. We are now proceeding to examine the factual aspect as was in the case of ***Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand (supra)*** and found therefrom that it is a case of

promotion where the issue of promotion of denial was raised after lapse of 15 years.

37. In such circumstances, the Hon'ble Apex Court has considered the matter and quashed the order passed by tribunal on the ground of delay. The issue of promotion is to be considered on different pedestal since it is after lapse of 15 years the issue of promotion was agitated and if order of promotion will be passed then the consequence will be jeopardized the interest of persons who were already granted promotion 15 years ago and in consequence thereof their seniority which has been settled long ago will be unsettled.

38. But herein the case is not of promotion rather it is a case of up-gradation in pay scale wherein there is no question of unsettling of seniority etc. jeopardizing the interest of other public servant as it only pertains to up-gradation in pay-scale by way of MACP which remains confined to the concerned public servant.

39. Therefore, the judgment rendered in ***Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand (supra)*** will not be applicable in the case at hand.

40. Accordingly issue no. II is decided.

41. Now coming to the order passed by learned Tribunal we are of the view, by taking into consideration

the settled proposition fact as has been held by Hon'ble Apex Court in the case of ***L. Chandrakumar Vs. Union of India [(1997) 3 SCC 261]***, wherein it has unequivocally opined, that the power of judicial review under Article 226 is part of the basic structure of the Constitution and all the decisions of a tribunal, would be subject to the High Court's writ jurisdiction under Article 226 of the Constitution.

42. We on the basis of discussion made hereinabove is of the view that the writ petitioner has failed to point out any perversity in the order passed by learned tribunal therefore, it is not a case where the power of judicial review can be exercised and accordingly in view thereof, the instant writ petition stands dismissed.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)