

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5008 OF 2022

Rajendra Balwant Pande

.....PETITIONER

: VERSUS :

State of Maharashtra and others

....RESPONDENTS

Mr. Rahul G. Walia, for the Petitioner.

Mr. Prashant Chavan, Senior Advocate with Ms. Ruchi Patil i/b Mr. Ravindra Chile, for Respondent No. 4.

Smt. Jyoti Chavan, Addl. GP for the State, Respondent No. 1.

Mr. Anuj Jaiswal i/b Little & Co., for Respondent No. 2 & 3.

CORAM : S.M. MODAK, &

SANDEEP V. MARNE, JJ.

DATED : 25 MARCH 2026.

JUDGMENT : *(Per: Sandeep V. Marne J.)*

1) **Rule.** Rule made returnable forthwith. With the consent of the parties, the Petition is taken up for hearing and final disposal.

2) Petitioner has filed the present petition under Article 226 of the Constitution of India challenging the promotion order dated 30 November 2022 by which Respondent No.4 is promoted to the post of

Chief General Manager (HR) [**CGM (HR)**]. Petitioner seeks a direction for effecting promotions to the post of CGM (HR) in accordance with benchmark prescribed in the Administrative Circular dated 9 August 2021. Petitioner seeks his own promotion to the post of CGM (HR).

3) Briefly stated, facts of the case are that Petitioner came to initially appointed on the post of Deputy Manager (HR) in the erstwhile Maharashtra State Electricity Board (**MSEB**). The operations of MSEB were later trifurcated into 3 separate companies, Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) being one of them. Petitioner became officer of MSEDCL. He applied for selection for direct recruitment to the post of Senior Manager (HR) and was appointed as such in the year 2006. Petitioner was thereafter promoted to the position of Assistant General Manager (HR). In the year 2014, direct recruitment on the post of General Manager (HR) was conducted by the method of In-Basket Selection Process (**IBSP**) in which Petitioner and Respondent No.4 participated. According to the Petitioner, he secured merit position No.1 in the said selection and was accordingly appointed as General Manager (HR) in the year 2014. The next hierarchical promotional post is the position of Chief General Manager (HR) which is apparently an isolated post. As per the Recruitment Rules, General Manager (HR) with 2 years of service are eligible to be promoted to the position of CGM (HR). The officer occupying the position of CGM (HR) retired on 31 October 2019. According to the Petitioner, though he was eligible to be promoted as CGM (HR) in the year 2019, selection process was not conducted for considerable period of time. According to the Petitioner, Administrative

Circular No. 628 dated 9 August 2021 was issued reducing the benchmark for promotion to the post of CGM (HR) from 21 marks to 20 marks allotted on the basis of ACRs for the last 5 years. Petitioner claims to have secured benchmark of 20 marks and was looking forward to his promotion. However, since the selection process was not being conducted, the Petitioner has filed the present petition on/or about 28 November 2022 seeking a prayer for holding of selection process for promotion to the post of CGM (HR) in accordance with Administrative Circular No.628 dated 9 August 2021. Petitioner expressed an apprehension in the Petition that Respondent No.4 was being favoured and was likely to be promoted by superseding the Petitioner.

4) Few days before filing of the petition, Respondent No.2 issued Administrative Circular No. 649 dated 4 November 2022 enhancing the benchmark for promotion to the post of CGM (HR) from 20 marks to 21 marks. By applying the revised benchmark, the case of the Petitioner was considered for promotion to the post of CGM (HR). However, since Petitioner secured only 20 marks, he was not recommended for promotion. On the other hand, Respondent No.4 secured 25 marks and accordingly he came to be recommended for promotion and by order dated 30 November 2022, Respondent No.4 was promoted to the position of CGM (HR). Petitioner has accordingly amended the petition and has challenged promotion order dated 30 November 2022 and Administrative Circular dated 4 November 2022.

5) Respondent No2.-MSEDCL has appeared in the petition and has filed Affidavit-in-Reply justifying its action. Respondent No.4 has also

appeared in the petition and has filed Affidavit-in-Reply. Since pleadings in the petition are complete, the same is taken up for final disposal with the consent of the learned counsel appearing for the parties.

6) Mr. Walia, the learned counsel appearing for the Petitioner submits that promotion of Respondent No.4 in supersession of the Petitioner is *ex-facie* arbitrary and illegal. That Respondent No.2 deliberately delayed selection process for the purpose of favouring Respondent No.4. That Petitioner has been occupying the post of General Manager (HR) since 2014, whereas, Respondent No.4 has been promoted to the said post 5 years later in the year 2019. That Respondent No.4 had also participated in the 2014 selection process for direct recruitment to the post of General Manager (HR) but could not clear the same. That Petitioner cleared the said selection process and secured the position of General Manager (HR) in the year 2014. Respondent No.4, on the other hand, secured the position of General Manager (HR) only through normal promotion method based on seniority. Now he has stolen a march over the Petitioner. He submits that Petitioner had secured benchmark of 20 marks prescribed in the Administrative Circular No. 628 dated 9 August 2021 and the benchmark was deliberately enhanced to 21 marks solely for the purpose of favouring Respondent No.4 by issuing Administrative Circular No. 649 dated 4 November 2022. That Respondent No.4 played active role in issuance of the said Circular dated 4 November 2022 for benefiting himself.

7) Mr. Walia further submits that even if comparative assessment of Petitioner and Respondent No.4 is made based on

benchmark prescribed in Administrative Circular No. 649 dated 4 November 2022, Petitioner ought to have been promoted. That it is well settled that when officers belonging to different streams meet for promotion, their comparative assessment cannot be made by applying the same yardstick. He relies on judgment of the Apex Court in **P.S. Mahal Versus. Union of India**¹. He further submits that the relevant criteria for effecting promotions is consideration of confidential rating of preceding 5 years. That Petitioner had ACR ratings of the post of General Manager (HR) for all 5 years from 2017-18 to 2021-22, whereas the two ACR of Respondent No.4 were on the lower post of DY. General Manager (HR). That it is impermissible to compare performance of officers occupying 2 different hierarchical level of posts by applying the same yardstick. That in such circumstances, an officer discharging duties and responsibilities is required to be assigned one step higher grading while performing the comparative assessment. In support, he relies on judgment of Full Bench of Central Administrative Tribunal in **S.S. Sambhus Versus. Union of India and others**². He submits that the judgment has been relied upon by Division Bench of this Court in **Union of India Versus. T.R. Krishna Murthy**³. He also relies on judgment of Division Bench of Delhi High Court in **M.J. Joseph Versus. UPSC and others**⁴. In support of the contention of treating the grade one method higher than the one actually awarded for officers shouldering the responsibility of higher posts, he relies on judgment of the Apex Court in **Shiv Kumar Sharma and others**

1 1984 4 SCC 545

2 1992 19 Administrative Tribunal Cases 571

3 2005 3 Mh.L.J. 180

4 Writ Petition (C.) No. 1671 of 2002 decided on 22 September 2011

Versus. Union of India and others⁵. He submits that Petitioner falls short of just 0.4 marks for achieving arbitrarily fixed benchmark of 21 marks vide Administrative Circular No.649 dated 4 November 2022. That Petitioner deserves to be given two extra marks in respect of the years where he shouldered duties and responsibilities of higher posts. That Petitioner thus achieves even the arbitrarily fixed benchmark of 21 marks. He therefore prays for making the petition absolute in terms of the prayers made therein.

8) Mr. Jaiswal the learned counsel appearing for Respondent Nos.2 and 3 (MSEDCL) opposes the petition submitting that the selection has been conducted in a fair and transparent manner. He places on record compilation of documents to demonstrate that the decision to fix uniform benchmark criteria in respect of the three Companies of MSEDCL, MSETCL and MSPGCL has been taken by MSEB Holding Company Limited which is the holding company for all the three trifurcated companies of the erstwhile MSEB. He takes us through all the Resolutions adopted by MSEB Holding Company and submits that Administrative Circular No. 649 dated 4 November 2022 is an outcome of decision taken by MSEB Holding Company. That therefore the allegation of deliberate enhancement of benchmark for favouring Respondent No.4 levelled by the Petitioner is irresponsible and without substance. He submits that Respondent No.4 is found to be more meritorious than the Petitioner who has failed to meet the prescribed benchmark of 21 marks. He further submits that the Petitioner has failed to reach the benchmark of 20 marks even as per the Administrative Circular dated 9 August 2021 and had

5 1997 11 SCC 112

secured only 19 marks and was accordingly not considered for promotion. That after he was considered for promotion, he failed to meet the benchmark of 21 marks and has rightly not been promoted. He prays for dismissal of the petition.

9) Mr. Prashant Chavan the learned Senior Advocate appearing for Respondent No.4 also opposes the petition. He submits that Respondent No.4 is already functioning on the position of CGM (HR) since 30 November 2022. That the eligibility criteria for promotion to the said post is only 2 years of service in the feeder category of General Manager (HR). That Respondent No.4 has met the said eligibility criteria. He submits that the benchmark for promotion to the post of CGM (HR) was always 21 marks right since issuance of Administrative Circular No.256 dated 30 October 2009. That the benchmark was reduced to 20 marks only by MSEDCL for a short duration vide Administrative Circular No. 628 dated 9 August 2021. That MSEB Holding Company directed all the three companies to fix the uniform benchmark of 21 marks and accordingly Administrative Circular No. 649 dated 4 November 2022 came to be issued. That Respondent No.4 had no role to play in fixation of the said benchmark. That Respondent No.4 has been consistently graded 'outstanding' in all the 5 years and secured 25 marks in the assessment in respect of ACRs for 5 years. Having secured only 20 marks, Petitioner cannot complain in respect of promotion of Respondent No.4.

10) Mr. Chavan contests the position of any higher grading is required to be assigned to the Petitioner on account of he occupying the post of General Manager (HR) earlier than that of the Respondent No.4.

That the case does not involve officers of different streams being considered for promotion. He submits that the Reporting, Reviewing, Countersigning and Accepting Authorities for both the posts of General Manager (HR) and Dy. General Manager (HR) are same. That since same Officer reports and accepts the performance of both the level of officers, there is no question of grant of any higher grading to the Petitioner. He submits that the Administrative Circular No. 526 dated 8 December 2015 has made provision for upgradation of ACR. That the said Circular provides for review of overall performance of only 'last' year in the event overall performance during the last 5 years falls below the benchmark. That in the present case, Petitioner has secured 'Outstanding' grading in the year 2022-23 and there is no question of upgrading the same. He submits that since Respondent No.4 is occupying the post of CGM (HR) for over 3 years, there is no warrant for disturbing the same at this distant date. He prays for dismissal of the petition.

11) Rival contentions urged on behalf of the parties now fall for our consideration.

12) Petitioner has questioned his supersession while effecting promotion to the post of CGM (HR). Petitioner is undisputedly senior to Respondent No.4 in the post of General Manager (HR). There is no dispute to the position that Petitioner was appointed on the post of General Manager (HR) in the year 2014 which position Respondent No.4 secured through seniority route 5 years later on 21 February 2019. However, Respondent No.2 has promoted Respondent No.4 to the isolated post of CGM (HR) vide impugned order dated 30 November 2022. This has

resulted in a position where Petitioner securing the position of General Manager (HR) in 2014 continues to languish on that post for the last 12 years, whereas Respondent No.4 arriving on that position of General Manager (HR) 5 years later in 2019, has jumped to the position of CGM (HR) within just 3 years.

13) Appointments and promotions to various posts in MSEDCL are governed by the provisions of MSEDCL Classification and Recruitment Regulations, 2005 (**Regulation**). Regulation No.22 read with Schedule A-7 provides for appointment and promotion to various posts in MSEDCL. The prerequisite for various posts in Human Resources Department were revised vide Correction Slip No.49 dated 13 September 2012 and Correction Slip No.61 dated 10 August 2015. So far as the post of CGM (HR) is concerned, the method of filling up of the post and eligibility criteria is as under :

Sr. No.	NAME OF POST	QUALIFICATION	EXPERIENCE	METHOD OF FILLING	REMARKS
2	Chief General Manager (HR)	<u>For departmental promotion:</u> Degree in Arts, Science, Commerce, Engineering or Management from a University recognized by the UGC or Institute approved by AICTE <u>For Direct recruitment/deputation:</u> Degree of recognized	<u>For departmental promotion:</u> Two years experience in the feeder category. <u>For direct recruitment/deputation:</u> At least 15 years experience in Human Resources Development	By Departmental Promotion or by Direct Recruitment or by obtaining deputationist.	Upper Age limit 50 years (For Direct Recruitment)

		University with Two years full time or three years part time Post Graduate Degree in Business Administrative (MBA)/ Management Studies (MMS)/ <i>Personnel Management (MPM) with Specialization in Human Resources Management</i> /Development/ Personnel Management or Master of Social Work (MSW)/ Master in Labour Studies (MLS) /equivalent Management qualification in H.R. /Personnel Management from a University recognized by UGC or Institute approved by AICTE.	/Personnel Management out of which 5 years should be in a position of responsibility i.e. Dy. GM (HR) equivalent and above Note: Equivalency of outside candidates will be compared /decided on the basis of gross emoluments drawn (other than perks) and job responsibilities.		
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14) Thus, the post of CGM (HR) is to be filled up both by the method of departmental promotion or direct recruitment/deputation. For departmental promotion, the eligibility criteria is 2 years' experience in the feeder category. There is no dispute to the position that for departmental promotion to the post of CGM (HR) the feeder category post is General Manager (HR). Thus, the officers holding the position of General Manager (HR) and having experience of 2 years on that post become eligible for being promoted to the post of CGM (HR).

15) In the present case, it appears that Petitioner and Respondent were apparently not in the same seniority unit. In 2014, IBSP was conducted for filling up the post of General Manager (HR) which was to be filled up through direct recruitment method. Both Petitioner and Respondent No.4 appeared in the said IBSP. However, Petitioner was selected in IBSP and was appointed to the post of General Manager (HR). Out of the 3 posts of General Manager (HR), one post is earmarked for direct recruitment, whereas the 2 posts are earmarked for promotions. Petitioner has thus secured higher post of General Manager (HR) in the year 2014 whereas, Respondent No.4 occupied lower position of Dy. General Manager (HR) for next 5 years. Respondent No.4 was considered for regular promotion to the post of General Manager (HR) based on seniority and was promoted vide order dated 21 February 2019 as General Manager (HR). Thus, Petitioner has been occupying the post of General Manager (HR) since the year 2014 whereas Respondent No.4 has secured the said position much later in the year 2019.

16) In addition to the eligibility criteria prescribed under the Regulations, MSEDCL has fixed the benchmark from time to time for filling up various posts, which are to be filled by selection and non-selection methods. By Administrative Circular No.256 dated 30 October 2009, the benchmark for the post of Chief Engineer and its equivalent was fixed as 21 marks. There is no dispute to the position that the post of CGM (HR) is equivalent to the post of Chief Engineer.

17) For consideration of promotion to the post of CGM (HR) performance of officers is required to be considered on assessment of last 5 years ACR ratings. The Circular also provides that the Annual Confidential Report /Performance Appraisal Report of the Officer shall be rated on 5 point scale as under :

SR. NO.	Overall Grading	No. Of Marks
1	Outstanding	5 marks
2	Very Good	4 marks
3	Good	3 marks
4	Average	2 marks
5	Poor	1 marks

18) In furtherance of Resolution No. 945 dated 6 May 2021 of MSEB Holding Company Limited, the Board of MSEDCL adopted Resolution No. 2360 dated 5 August 2021 and revised the benchmark to 20 marks by reducing the same from earlier benchmark of 21 marks. Accordingly, Administrative Circular No. 628 dated 9 August 2021 was issued by MSEDCL prescribing the benchmark of 20 marks for the post of CGM (HR).

19) According to the Petitioner, he had completed requisite eligible service for the post of CGM (HR) in the year 2016. It appears that the solitary post of CGM (HR) was vacated by Mr. Sandesh Hake on account of his retirement on 31 October 2019. According to the Petitioner though the post of CGM (HR) became vacant on 31 October 2019, his case was not immediately considered for promotion to the said post.

According to him, he met the benchmark of 20 marks prescribed vide Administrative Circular No. 628 dated 9 August 2021, but the selection process was deliberately not conducted and the post was kept vacant only for the purpose of favouring Respondent No.4. In my view, it is not necessary to go into this allegation considering the conclusions reached by us in the latter part of the judgment.

20) It appears that there was no uniformity in the benchmark prescribed for various posts in the 3 companies of MSEDCL, MSETCL and MSPGCL. Accordingly, MSEB Holding Company adopted a Resolution in the meeting held on 28 September 2022 and recommended that there will be uniformity in benchmark for various posts. As per the recommendations, the benchmark for the post of CGM (HR) was prescribed uniformly as 21 marks in all the 3 companies. In pursuance of Resolution No. 1060 dated 28 September 2022 adopted by MSEB Holding Company, MSEDCL adopted Resolution No. 2572 in the Meeting held on 12 October 2022 and decided to restore the benchmark of 21 marks for the post of CGM (HR). In pursuance of the said Resolution, Administrative Circular No. 649 dated 4 November 2022 was issued prescribing the benchmark of 21 marks for the post of CGM (HR).

21) Petitioner complains that because the marks secured by him on the basis of ACRs for 5 years were 20, the benchmark was deliberately enhanced to 21 marks to favour Respondent No.4, who had active role to play for enhancement of the benchmark. This allegation is found to be factually incorrect since the enhancement of benchmark to 21 marks is

effected by MSEDCL on account of decision taken by MSEB Holding Company for bringing about uniformity in the benchmarks in all the three Companies.

22) In our view therefore there is nothing illegal or arbitrary in prescription of benchmark of 21 marks for effecting promotion on the post of CGM (HR) by MSEDCL. Even otherwise, fixation of benchmark for effecting promotions is in the exclusive domain of the employer and the Courts cannot interfere in the same in exercise of limited power of judicial review.

23) Having held that consideration for promotion of the Petitioner was neither deliberately delayed nor the benchmark was deliberately enhanced to 21 marks, we now proceed to consider the manner in which comparative assessment of Petitioner and Respondent No.4 has been made by MSEDCL. MSEDCL has placed on record the comparative assessment of the two Officers as under :

Sr. No.	Name of Officer and C.P.F. No.	Caste	Confidential Report Rating for the year					Total
			2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	
1	Pande Rajendra Balwant 2229455	OPEN	3	4	4	4	5	20
2	Kulkarni Bhushan Diwakar 2255804	OPEN	5	5	5	5	5	25

24) Thus, the Petitioner has secured only 20 marks based on his ACR ratings for the years 2017-18 to 2021-22 whereas Respondent No.4 secured 25 marks. Since the prescribed benchmark is 21 marks, the Petitioner has not been promoted to the post of CGM (HR) and since Respondent No.4 has secured 25 marks, he has been so promoted vide the impugned order dated 30 November 2022.

25) However, we notice one disturbing factor in the comparative assessment made by MSEDCL between the Petitioner and Respondent No.4. As observed above, Petitioner was directly appointed on the post of General Manager (HR) in the year 2014 after competing with Respondent No.4. While Petitioner achieved merit position no.1 in 2014 selection process, Respondent No.4 was found less meritorious than the Petitioner. While Petitioner was directly appointed on the post of General Manager (HR) in the year 2014, Respondent No.4 waited for his turn based on seniority and secured the position of General Manager (HR) only on 21 February 2019. Having reached the feeder post of General Manager (HR) 5 years after securing the said position, Respondent No.4 has been successful in stealing a march over the Petitioner within 3 years. Thus, while Petitioner continues to languish on the post of General Manager (HR) for the last 12 long years, Respondent No.4 has secured higher position of CGM (HR) within 3 years. It appears that CGM (HR) is a Reporting Authority for the post of General Manager (HR). Thus, Respondent No.4 has now started reporting performance of the Petitioner by occupying the position of CGM (HR).

26) As observed above, MSEDCL has considered ACRs of the Petitioner and Respondent No.4 for five-year block period from 2017-18 to 2021-22. In respect of the 5 years, Petitioner was occupying the feeder post of General Manager (HR) and his all five ACRs for 2017-18 to 2021-22 were on the post of General Manager (HR). On the other hand, Respondent No.4 was promoted to the post of General Manager (HR) only on 21 February 2019. Thus, the two ACRs of Respondent No. 4 for the years 2017-18 and 2018-19 were in respect of lower position of Dy. General Manager (HR). The issue for consideration is whether there can be apple-to-apple comparison between the Petitioner and Respondent No.4 in such a situation? Can performance of the Petitioner on the post of General Manager (HR) be compared with performance of Respondent No.4 on the lower post of Dy. General Manager (HR)? The answer, to our mind, appears to be in the emphatic negative. We are supported in our view by the judgment of the Apex Court in **P.S. Mahal** (supra) in which it is held that it is impossible to arrive at a comparative assessment of merit when Officers from two groups/two streams meet for seniority in the grade of Executive Engineers. It is held by the Apex Court in para-17 of the judgment as under:

The confidential reports of the officers from the two groups would not be written by the same officer or even by officers of equivalent rank, because in the case of Assistant Engineers promoted as officiating Executive Engineers in excess of their quota and consequently pushed down for being absorbed within their quota in later years, their confidential reports for the preceding three years would be written in respect of their performance as officiating Executive Engineers by the Superintending Engineers, while in the case of Assistant Executive Engineers, their confidential reports for the preceding three years would be written in respect of their performance as Assistant Executive Engineers by the Executive Engineers. Thus at the point of time when in

any particular year, the officers of the two streams meet for their seniority in the grade of Executive Engineers, their confidential reports would not be by the same officers or even by officers of equivalent rank and it would be almost impossible to arrive at a comparative assessment of their respective merits for the purpose of working out the seniority rule in para 5(ii) of the Memorandum dated December 22, 1959.

27) The judgment of the Apex Court in ***P.S. Mahal*** is sought to be distinguished by Mr. Chavan by inviting our attention to Administrative Circular No. 621 dated 2 March 2021 under which Reporting, Reviewing, Countersigning and Accepting Authorities for the posts of General Manager and Dy. General Manager are the same. In our view, however merely because same Officer reports or accepts the performance, the same would not mean that an officer shouldering higher duties and responsibilities can be assessed by applying the same yardstick than his counterpart functioning on the lower post.

28) In the present case, the anomalous situation has resulted on account of the fact that the eligibility service in the feeder grade of General Manager (HR) for promotion to the post of CGM (HR) is only 2 years, however MSEDCL has fixed the benchmark by considering performance of officers for preceding 5 years. This results in a situation where an officer acquires eligibility service of 2 years on the post of General Manager (HR) but part of his ACRs would be in respect of lower post. This is exactly what has happened in the present case. Respondent No.4 acquired eligibility service of 3 years on the feeder post of General Manager (HR) when his case was considered for promotion in the year 2022 but since ACRs of 5 years were required to be considered, two of his

ACRs for the years 2017-18 and 2018-19 are pertaining to the lower post of Dy. General Manager (HR).

29) This kind of anomalous situation can arise in myriad eventualities. One of the eventualities can be the one which has arisen in the present case. The other eventuality can be in a case where one of the officers in the zone of consideration discharges responsibilities of higher post on account of *ad-hoc* promotion. Many times, the deputation is on post higher than the one occupied in the parent department and such anomalous situation can also get created in cases involving deputation also. In such cases, it becomes difficult to have apple to apple comparison. However various judicial pronouncements have found an answer to deal with such situations. The Full Bench of Central Administrative Tribunal in **S.S. Sambhus** (supra) resolved the conflict between judgments delivered by different benches on the issue and held that when comparative assessment of performance of any officer working on higher post on *ad-hoc* basis is to be made with another officer on feeder post, the gradation of the former category during the period of such *ad-hoc* promotion should be treated as one level higher than the one awarded to him in the ACR. In **S S. Sambhus** it is held thus:

“The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicant shouldered the higher responsibilities for the higher Class-I posts of ASW/SW, their gradation of SA should be treated as one level higher than the grading awarded to them as ASW as per ACRs for that period. That is, if the ACR as ASW reflects “good” it should be taken as “very good”, and if “very good”, then it should be taken as “outstanding”. In this manner they are placed on equal footing for the purpose of assessment of comparative merits.”

30) Though ordinarily, the view expressed by the Full Bench of the Central Administrative Tribunal need not be considered as the same would not bind this Court. However, the view taken by the Full Bench of the Tribunal in **S.S. Sambhus** has been consistently taken note of and approved by the Apex Court as well as by various High Courts. In **Shiv Kumar Sharma** the Apex Court has approved the view of the Full Bench of the Tribunal in **S.S. Sambhus** by holding that when an officer shoulders responsibilities of higher posts, his grading should be treated as one level higher than the one actually awarded. The Apex Court held in paras-3, 4, 5 and 6 as under :

3. The learned counsel for both these officers invited our attention to a decision of the Full Bench of the Central Administrative Tribunal dated 29-10-1991. By that decision the Tribunal evolved a formula of categorisation. That formula was as under:

"The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities for the higher Class I posts of ASW/SW, their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is, if the ACR as ASW reflects "good" it should be taken as "very good", and if "very good", then it should be taken as "outstanding". In this manner they are placed on equal footing for the purpose of assessment of comparative merits." (See S.S. Sambhus v. Union of India 1.)

4. This formula worked out by the Full Bench of the Central Administrative Tribunal came up for scrutiny by this Court in Prem Shankar Gupta v. Union of India 2 and allied matters. This Court while disposing of the group of petitions observed as under:

"We are satisfied that the formula evolved by the Full Bench of the Central Administrative Tribunal is the proper and just one having regard to the facts and circumstances of the case and the practicalities of the situation."

5. With these words, this Court refused to interfere with the formula worked out by the Full Bench of the Central Administrative Tribunal.

6. Both the learned counsel for the officers S.K. Sharma and H.N. Srivastava contend that if this formula was adopted even on the basis of the categorisation made by the UPSC they would have been better placed insofar as assessment of their work is concerned and they would have stood the chance of being selected for entry into the IPS cadre at an earlier date when others with lesser record get the benefit. We do not propose to express any opinion on the merit of the matter, but we see no difficulty in accepting the submission of the counsel that the UPSC should be directed to reconsider their cases in the light of the judgment of the Full Bench of the Central Administrative Tribunal approved by this Court so that a proper assessment can be made by the UPSC. It is only on this limited ground that we think that the matter deserves a second look by the UPSC. We make it clear that no other point was urged by counsel for both the officers nor does any other point survive for consideration. This is the only limited point urged and examined by us and the assessment of the UPSC after remand should set the matter at rest.

31) The Division Bench of this Court in ***T.R. Krishna Murthy*** (supra) has approved the view taken by the Full Bench of the Tribunal in ***S.S. Sambhus*** by following the judgment of the Apex Court in ***Shiv Kumar Sharma***. This Court has held that employees sent on deputation and holding a post higher than the one that was held by them in the parent department are entitled to be graded at one step higher than the one awarded to them while holding higher post. This Court held in paras- 8 to 10 of the judgment as under:

8. The question, therefore, is whether the principle applied for consideration of the criteria/grading for promotion in a case where a person holds an ad hoc promotion on a higher post can also be extended to a case an Officer on deputation to a higher post. We are specifically dealing with a category of cases, where a person is sent on deputation to higher post and not to an equivalent post. Whether the same principle which is applicable in a case of ad hoc promotion, therefore, should also be made applicable to a case of persons on deputation to higher post is

the issue. It is true that in the matter of ad-hoc promotion it being to meet the exigency of the situation, the normal procedure followed is that the senior most in the seniority list is considered. It is not as if the senior most must accept the promotion. He may for various reasons choose not to accept the promotion. If he accepts the promotion then when a regular vacancy arises, the principles laid down by CAT has to be followed.

9. In a case of deputation also it is not as if an Officer is randomly selected. The normal procedure is to ask eligible officers, to volunteer for being sent on deputation. The choice is thereafter made from such officers who volunteer and may be in a case where there is a necessity the concept of voluntariness may not be there. The fact, however, remains that whether on ad-hoc promotion or on deputation the person is working in the higher post. Let us, therefore, examine the judgment firstly of CAT and then of the Apex Court to find out whether any distinction can be made. Before CAT arose a situation of comparison of a person working in the lower post. CAT in its judgment noted that the limited controversy which it was called upon to decide, was whether an officer working on ad-hoc basis in a higher post his assessment or C.R. in the higher post should be considered on a comparative merit with those working in lower posts. The Members of the Tribunal noted that sole ground for holding that selection as arbitrary is that the applicant and respondents before it were not placed in equal footing i.e. the assessment of the applicant was made on performance while working on the post of A.S.W. while on the other hand the assessment of the respondents was made while they were working on the post of Surveyor Assistant Grade I. Answering the issue the Full Bench observed that comparing the quality of performance of a candidate at Class III level of SA with the quality of performance of another at Class I level of ASW on equal footing will be comparing the incomparable and will be illogical, irrational and violative of Article 14 of the Constitution. The Full Bench then proceeded to observe that enormity of hostile discrimination suffered by the applicants in these cases, calls for serious consideration. Considering that incomparable were being compared, the learned Members of the Full Bench then proceeded to answer the issue as has been set out earlier.

10. A reading of the principle laid down in the Judgment would indicate that though the matter arose out of an ad hoc promotion, the method of appointment is immaterial. What is material is comparison of the grades of a person holding higher post and of a person holding lower post. It is this principle that was for consideration of the Full Bench of CAT. C.A.T. held that comparing incomparables is illogical, irrational and violative of Article 14 of the Constitution of India. Shiv Kumar Sharma (supra) was also a case of Officers holding dual charge or additional charge. In those

cases the Apex Court was pleased to hold that the principle carved out by the Full Bench of the CAT should also be made applicable in their cases. Having so noted in our opinion the distinction sought to be made on behalf of the petitioner Union of India, between the cases of those who were appointed by way of ad hoc promotion and by way of deputation is devoid of merit. The method by which they were appointed is immaterial. The only material consideration in our view is whether the candidates who are under consideration were holding comparable posts or rather holding similar posts. In our opinion, therefore, the principle laid down by CAT in its Full Bench judgment as approved by the Apex Court must also apply in a case of an officer sent on deputation and holding higher post. We, therefore, find no merit in this petition.

32) The Division Bench of the Delhi High Court in ***M.J. Joseph*** has also dealt with the similar issue. Following the judgments of the Tribunal in ***S.S. Sambhus*** and of the Apex Court in ***Shiv Kumar Sharma***, the Delhi High Court held in paras-4 to 7 as under:

4. No doubt, for the years 1994-95 and 1995-96, respondent No.8 had earned "Very Good" reports as against outstanding by the petitioner and respondents No.6 and 7. However, what was found by the Tribunal was that in these two years, respondent No.8 was on deputation at a higher post and in such case, the grading earned by him had to be upgraded to next higher level. On this premise, it was concluded that „Very Good“ grading earned by him had to be treated as „Outstanding“. This view is backed by the Full Bench judgment of Central Administrative Tribunal, Hyderabad in *S.S. Shambhus v. Union of India & Ors.*, (1992) 19 ATC 571 (Hyd) (FB) which has been given the stamp of approval by the Supreme Court in the case of *Prem Shankar Gupta v. Union of India*, SLPs(C) Nos.5259- 60/1991 with SLP(C) No.14447/1992. In *S.S. Shambhus* (supra), the Tribunal had held as under:

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5. This formula was approved by the Supreme Court in *Shiv Kumar Sharma v. Union of India*, (1997) 11 SCC 112 in the following manner:

XXX

6. The aforesaid principle is applied by the Tribunal in the instant case and discussion to that effect can be found in para 23 which reads as under:

“In the present case also we are required to compare applicant’s performance as Ex. Director SAI where he was posted on deputation for the years 1994-95 and 1995-96 with that of his colleagues who remained within the cadre. Admittedly as Ex. Director SAI applicant was drawing a higher pay scale than his colleagues. As it cannot be denied that there is a direct correlation between the pay scales of a post and its grades/status, it would be unreasonable not to extend the formula contained in the Tribunal’s order in Shambus” case (supra) to the present case also, merely because applicant was sent on deputation to SAI as Ex. Director, moreso when the Hon’ble Supreme Court have themselves applied that formula in Shiv Kumar Sharma’s case (supra) and again in Prem Shankar Gupta’s case (supra). In any case respondents’ apprehension that extending this formula in cases of deputation also would result in a relative junior stealing a march over his seniors, would not be relevant in the present case, because admittedly applicant was the senior most in his batch, and therefore the question of his superseding his juniors within his batch would not arise.”

7. We are of the opinion that when the Tribunal has relied upon the formula approved by the Supreme Court and rightly held that respondent No.8 had the same service record which had to be treated as “Outstanding” throughout, he could not be downgraded in the panel prepared by the DPC. We, thus, do not find any merit in this writ petition which is accordingly dismissed.

33) Considering the law enunciated in the above judgments, we are of the view that the Petitioner deserves to be graded one level higher than the grading for the ACR 2017-18 and 2018-19 when he shouldered the responsibilities of higher post of General Manager (HR) than Respondent No 4 who functioned on lower post of Dy. General Manager (HR).

34) Reliance by Mr. Chavan on Administrative Circular No.526 dated 8 December 2015 does not cut any ice. Paras-3(a) and 3(b) of the said Circular reads thus :

3. Now, the Managing Director in consultation with Director (Finance). Director (Projects) and Director (Operations) has accorded approval as under:

(a) In case the overall performance during the period of last 5 (five) years falls below benchmark then the provision for representation for review of overall performance for the last year may be considered. The maximum time limit to file representation shall be 2 (two) months from the date of publication of proceedings of the of Competent Selection Committee meeting.

b) The up-gradation can be carried out one stage higher to the overall grading by the then concerned Countersigning and Accepting Authorities in the deserving cases after considering merit/substance in the representation of the concerned employee i.e. "Good to Very Good", "Very Good to Outstanding The then Countersigning and Accepting Authority can seek remarks of the then Reporting Officer in such cases, and deal such cases strictly based on the performance.

35) Thus, paras-3(a) and 3(b) of the Administrative Circular No.526 dated 8 December 2015 makes a special provision for officers who are unable to meet the benchmark in the overall performance for 5 years. Such employees/Officers are given an opportunity to make a representation for review of overall performance of only the last year. The Circular provides for upgradation by one stage higher to the overall grading. By relying on Clauses-3(a) and 3(b), Mr. Chavan has contended that the Petitioner could have applied for upgradation of ACR only for the year 2021-22, that too within 2 months from the date of publication of proceedings of Selection Committee meeting. Since the grading for the year 2021-22 is already 'Outstanding' (5 marks), there is no question of upgrading the same, is what Mr. Chavan contends. In our view, Administrative Circular No.526 dated 8 December 2015 cannot have the effect of nullifying the ratio of judgments in ***S.S. Sambhus, Shiv Kumar***

Sharma, T.R. Krishna Murthy and **M.J. Joseph** discussed above. There is a difference in the concept of law enunciated in the said judgments which envisage recognition of higher merit in respect of the officers working on higher posts while making comparative assessment. As against this, Circular dated 8 December 2015 merely provides an opportunity to every employee/officer not meeting the benchmark to have his/her last ACR upgraded by one stage. There is no right in the employee/officer to have the last grading upgraded and the right is only of making a representation. On the other hand, the law enunciated by the judgments discussed above is that an officer shouldering the responsibility of higher post is entitled in law to have his ACR graded in respect of the period he/she held the higher post. In our view therefore, the law enunciated in judgments discussed above operates in an altogether different sphere than what is contemplated under the Administrative Circular No. 526 dated 8 December 2015.

36) Therefore the Petitioner is entitled to have his ACRs upgraded for the years 2017-18 and 2018-19. It appears that for the year 2017-18, Petitioner was graded 'good' and has been awarded 3 marks whereas for the year 2018-19 he has been graded 'very good' and awarded 4 marks. Following the exposition of law in the judgments in **S.S. Sambhus, Shiv Kumar Sharma, T.R. Krishna Murthy** and **M.J. Joseph**, Petitioner's grading for the year 2017-18 is required to be considered as 'very good' (4 marks) and 2018-19 'outstanding' (5 marks). Thus, the overall score of the Petitioner for the last 5 years block period from 2017-18 to 2021-22 would be 22 marks. Since Petitioner meets the benchmark

prescribed in the Administrative Circular No. 649 dated 4 November 2022 of 21 marks, he deserves to be promoted to the post of CGM (HR). Consequently, the action of the Respondent-MSEDCL in promoting Respondent No.4 to the post of CGM (HR) vide order dated 30 November 2022 is indefensible and liable to be set aside. Instead, Petitioner deserves to be promoted to the post of CGM (HR) w.e.f. 30 November 2022 by directing reversion of Respondent No.4. Grant of promotion to the Petitioner to the post of CGM (HR) from 30 November 2022 would also ameliorate the situation where he has continued to languish on the post of General Manager (HR) for 12 long years and MSEDCL has enabled Respondent No.4 to jump over him within 3 years of securing the position of General Manager (HR).

37) The petition accordingly succeeds partly, and we proceed to pass the following order:

- (i) Promotion Order No. 50629 dated 30 November 2022 promoting Respondent No.4 to the post of CGM (HR) is set aside.
- (ii) Respondent Nos.2 and 3 are directed to promote Petitioner to the post of CGM (HR) w.e.f. 30 November 2022 with all consequential benefits.

38) The Writ Petition is allowed in the above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[S.M. MODAK, J.]