



REPORTABLE

MISCELLANEOUS APPLICATION NO. 2228 OF 2026
[Arising out of Diary No. 17219 of 2024]

HIGH COURT OF JUDICATURE FOR RAJASTHAN **... APPLICANT**

VERSUS

ABHAY JAIN **...OPPONENT**
/NON-APPLICANT

IN

CIVIL APPEAL NO. 2029 OF 2022
[Arising out of Special Leave Petition (Civil) No. 6107 of 2020]

ABHAY JAIN **...APPELLANT**

VERSUS

**HIGH COURT OF JUDICATURE
FOR RAJASTHAN & ANR.**

...RESPONDENTS

JUDGMENT

J. B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

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A. FACTUAL MATRIX:

1. Delay condoned.
2. This Miscellaneous Application has been filed by the High Court of Judicature of Rajasthan on its administrative side (hereinafter referred to as the '**Rajasthan HC**'), original respondent no. 1, seeking clarification of the judgment & order dated 15.03.2022 rendered by this Court in the main matter i.e. Civil Appeal No. 2029 of 2022. The short question that falls for our consideration is whether the directions contained in the said judgment, whereby the opponent/non-applicant Judicial Officer, original appellant, was ordered to be reinstated with continuity of service, seniority and all consequential benefits, necessarily entitle him to the grant of Selection Scale or Super Time Scale, despite the absence of the requisite number of Annual Confidential Reports ("**ACRs**") for six of the seven years immediately preceding the date on which his case came to be considered by the Higher Judiciary Committee.
3. The factual background giving rise to the present miscellaneous application is as follows:
 - a. The opponent was appointed as a Judicial Officer in the District Judge Cadre of the Rajasthan Judicial Service in the year 2013. Upon being discharged from service in the year 2016, he had filed a writ petition in the Rajasthan High Court challenging the

discharge order. Since the writ petition was dismissed by the High Court *vide* its judgment dated 21.10.2019, the opponent had come before this Court by way of Civil Appeal No. 2029 of 2022, in which the present miscellaneous application has now been filed for our consideration.

- b. This Court, *vide* Judgment & Order dated 15.03.2022 (hereinafter referred to as the “**subject judgment**”), allowed the appeal, by quashing the discharge order and awarding the opponent reinstatement with all consequential benefits including continuity of service and seniority, along with 50% back wages. The operative paragraph of the subject judgment reads thus:

*“72. Accordingly, the appeal is allowed and the impugned order of the High Court dated 21.10.2019 is set aside and the discharge order dated 27.01.2016 is quashed. Keeping in view that the appellant has not worked as judicial officer after he was discharged, we direct that while the **appellant be reinstated with all consequential benefits including continuity of service and seniority**, but will be entitled to be paid only 50% back wages, which may be paid within a period of four months from today.”*

(Emphasis supplied)

- c. Following this Court’s order, referred to above, the opponent Judicial Officer was reinstated on 13.04.2022, and his name was inserted at S.No. 255A in the Revised Seniority List dated

22.06.2020, on the basis of his original seniority as per Government Cyclic Order dated 15.07.2013.

- d. Thereafter, a representation was filed by the opponent before the Higher Judicial Committee for the grant of Super Time Scale claiming that he had come within the zone of consideration for the same. However, when the name of the opponent Judicial Officer was considered for grant of super time scale by the Higher Judiciary Committee, it was decided *vide* resolution dated 19.05.2023, that an application seeking clarification be filed before the Supreme Court. The Higher Judiciary Committee, concluded its meeting dated 19.05.2023, with the following observations:

“[...] As Shri Abhay Jain remained out of service, out of last seven years (i.e. from the year 2015 to 2021), except ACR for the year 2015, as he did not actually perform judicial work, the ACRs' for the remaining six years are not available.

Upon detailed deliberation, the Committee is of the view that it would be appropriate to seek clarification of the order of the Hon'ble Supreme Court in case of Shri Abhay Jain as to whether consequential benefits would include grant of Selection Scale/Super Time Scale automatically, even without availability of ACRs of six years out of last seven years. However, in order to protect the interest of Shri Abhay Jain, till appropriate application for clarification is filed and decided by the Hon'ble Supreme Court, one post in the Selection Scale is kept reserved, so that after decision in the matter by the

Hon'ble Supreme Court, the case of Shri Abhay Jain may be considered accordingly.”

(Emphasis supplied)

- e. Accordingly, the High Court decided to file the present miscellaneous application, praying for the following:

“Clarify as to whether the consequential benefits awarded by this Hon'ble Court vide order dated 15.03.2022 in Civil Appeal No. 2029/2022 titled as ‘Abhay Jain vs. The High Court of Judicature at Rajasthan & Anr.’ would include grant of Selection Scale/Super Time Scale without the availability of the ACRs of six years out of last seven years;”

4. When the present miscellaneous application came up for hearing on 12.07.2024, this Court was of the considered view that the High Court on its own should have looked into the directions issued by this Court and ought to have taken an appropriate decision for the purpose of giving effect to such directions. It was added that if the opponent Judicial Officer would find himself aggrieved in any manner with the decision that the High Court on its administrative side may take, then in such circumstances, this Court shall hear both the sides on merits and resolve the matter.
5. Accordingly, the Higher Judiciary Committee held a meeting on 03.08.2024 to discuss the matter. However, the Higher Judiciary Committee was of the opinion that since the parameters of grant of

Selection Scale and Super-Time Scale have been demarcated by the Full Court of the Rajasthan High Court by way of its Resolution dated 15.01.2011, therefore, any application of Selection Scale and Super-Time Scale, which has mandatory ACR criteria laid down by the Full Court, has to be considered by the Full Court itself.

6. Hence, on 21.08.2024, a Full Court Meeting of the Rajasthan High Court was convened for deliberation upon the above-mentioned agenda. However, as the minutes of the meeting dated 21.08.2024 reflects, the opponent Judicial Officer was not found suitable for grant of selection scale or Super Time scale, but no reasons were stated for arriving at such a decision. The relevant portion of the minutes of the meeting dated 21.08.2024 reads thus:

“The case of Shri Abhay Jain was considered for grant of selection scale. Taking into consideration the ACRs, it is found that till date Shri Abhay Jain has been assessed for the years 2013, 2014, 2015 and 2022. The ACRs for the year 2013, 2014 and 2015 were under consideration of the Hon’ble Supreme Court and the same has been considered. The officer was graded ‘Very Good’ in the year 2022. The ACRs for the period ending 31st December, 2023 are not made available as they are pending consideration and not finalised. The grant of selection scale as well as super-time scale is governed by provisions contained in Rules 49 and 50 of the RJS Rules, 2010 respectively. The Full Court, vide its resolution dated 15th January, 2011, also laid down criteria for grant of Selection scale and Super

Time scale. Rules 49 and 50 of the RJS Rules and relevant part of Full Court resolution dated 15th January, 2011 read as under:

“(Rajasthan Judicial Service Rules, 2010: Rules 49 and 50):

49. Grant of selection scale to District Judges. - *The Officers of the District Judge cadre, who have put in not less than 5 years service shall be granted selection scale by the Court on the basis of merit to the extent of 35 percent of the effective strength of District Judges.*

50. Grant of super-time scale to District Judges. - *The Officers of the District Judge cadre, who have put in not less than three years service in the selection scale shall be granted super-time scale by the court on the basis of merit after taking into consideration the entire service record to the extent of 15 percent of effective strength of District Judges."*

(Relevant portion of Resolution dated 15th January, 2011):

“The incumbents who are having at least five good, very good or outstanding entries with no adverse remarks in the preceding seven years are entitled for grant of selection scale. However, in case the continuous service of the officer in order of seniority is five years or more but less than seven years than the assessment be made on the basis of available record.

The incumbents who are having at least two outstanding or very good and three good entries with no below average entry in the preceding seven years and on consideration of entire service record, are entitled for grant of Super Time Scale.”

Upon consideration of the records and ACRs, Shri Abhay Jain is not found suitable for grant of selection scale or super time scale.

The meeting ended with the Vote of Thanks to the Chair.”

(Emphasis supplied)

7. Since the opponent Judicial Officer was aggrieved by the above-mentioned decision rendered at the Full Court Meeting dated 21.08.2024, both the parties appeared before this Court on 06.09.2024 and 25.10.2024 respectively and placed their respective submissions before us.

B. SUBMISSIONS ON BEHALF OF THE PARTIES

(i) Submissions on behalf of the Judicial Officer:

8. Mr. P.S. Patwalia, the learned senior counsel appearing for the Judicial Officer, fairly submitted that in part compliance with the subject judgment, the Judicial Officer was granted the benefit of seniority with effect from the date of his initial appointment in the year 2013. However, despite the grant of seniority, the selection scale or super time scale have been denied to the Judicial Officer arbitrarily since the

recommendations of the Higher Judiciary Committee dated 03.08.2024 had simply stated that the Judicial Officer was not found suitable for grant of Selection Scale/ Super Time Scale, without assigning any reasons for the same.

9. He submitted that this Court in the subject judgment clearly directed that the Judicial Officer be reinstated with all consequential benefits including continuity of service and seniority, and therefore he cannot be denied the benefit of Selection Scale or Super Time Scale. He submits that denying such scale to the opponent amounts to rendering this Court's direction of granting 'all consequential benefits' to the Judicial Officer otiose.
10. The learned senior counsel vehemently argued that the Judicial Officer cannot be held responsible or be blamed for the non-availability of ACRs for the period 2016 to 2021 since he was unlawfully kept away from service for the period 27.01.2016 to 13.04.2022. He submitted that the Judicial Officer had been wrongfully discharged and therefore, the applicant cannot now seek to derive any advantage of its own wrongdoing to deny him the benefit of the pay scale to which he would have been entitled, had he been allowed to perform his duties.
11. He further submitted that the direction of this Court in the subject judgment leaves no manner of doubt that while considering the grant of Selection Scale or Super Time Scale, the period of discharge, i.e.

27.01.2016 to 13.04.2022 shall be considered as period rendered in service by the Judicial Officer. He argued that any other interpretation would be in derogation of the express direction of the subject judgment. Furthermore, he submitted that Rule 54 of the Rajasthan Service Rules, 1951, provides that where an officer has been fully exonerated, the period of absence from duty shall be treated as period spent on duty for all purposes.

12. The learned senior counsel placed strong reliance on this Court's judgment in ***Central Bank of India & Ors. v. Dragendra Singh Jadon* [(2022) 8 SCC 378]** to submit that the employer cannot take advantage of its own wrong of wrongfully dismissing the employee from service and denying him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties. Thus, he argued that, in the present matter as well, the judicial officer cannot be denied the benefit of Selection Scale or Super Time Scale for non-availability of ACRs as he cannot be blamed for the same.
13. The learned senior counsel drew our attention to the fact that officers junior to the opponent have been granted the benefits of Selection Scale and Super Time Scale in the years 2019 and 2023 respectively, while the opponent remains deprived of such consequential benefit. In this regard, the learned senior counsel relied on this Court's judgment in ***Gurpal Singh v. High Court of Judicature of Rajasthan* [(2012) 13**

SCC 94] wherein it was held that the petitioner therein was entitled to be considered for the promotion notionally when an officer junior to him was promoted and also directed that the officer would be entitled to all consequential benefits.

14. Furthermore, the learned senior counsel also placed reliance upon this Court's judgment in ***Union of India v. K.V. Jankiraman* [(1991) 4 SCC 109]** wherein, it was held that when an employee is completely exonerated, he has to be given all consequential benefits from the date on which he would have normally been promoted but for the disciplinary proceedings.
15. The learned senior counsel submitted that in cases where ACRs of an officer are not available for any reason (such as non-communication of ACRs, non-preparation, etc.), the decision regarding promotion / grant of scale ought to be taken on the basis of available ACRs of the officer. However, he added that uncommunicated and uninitiated ACRs of an officer cannot be used to his prejudice and have to be excluded while considering the grant of consequential benefits. In this regard, he further submitted that this Court's decisions in ***Prabhu Dayal Khandelwal v. Chairman, UPSC & Ors.* [(2015) 14 SCC 427]** and in ***R.K. Jibanlata Devi v. High Court of Manipur & Ors.*, [2023 SCC OnLine SC 178]** respectively are of significant relevance. In ***Prabhu Dayal*** (*supra*), the applicable rules therein had provided that the last

five ACRs were to be taken into consideration for promotion. However, since the ACRs for some of the years in the subject time period were uncommunicated, it was held that the case for promotion had to be considered on the basis of the two ACRs which had been communicated and valid. Similarly, in the case of **R.K. Jibanlata Devi** (*supra*), wherein the ACRs for two out of the required four years were not communicated, this Court had directed that the promotion of the petitioner therein be considered on the basis of the available ACRs of the remaining years.

16. Thus, the learned senior counsel submitted that in the present case as well, since the Judicial officer cannot be blamed for the non-availability of ACRs for the period 2016 to 2021, he ought to be given the benefit of Selection Scale/Super Time Scale on the basis of the available ACRs. He drew this Court's attention to the fact that the available ACRs of the Judicial Officer are as under:

S.No.	Period	Remarks in ACR
1	2013	Very good
2	2014 (Part I)	Very good
3	2014 (Part II)	Good
4	2022	Very good

17. The learned senior counsel in his detailed submissions further added that in the ACR for the year 2014 (Part II) the remark 'Good' was

qualified with another comment regarding the requirement to improve judicial work. However, the learned senior counsel submitted that such remarks made in the ACR for 2014(PartII) were based upon the enquiry initiated against the Judicial Officer vide chargesheet issued on 07.08.2015, and not for the period of 2014 for which it was meant to be. He submitted that as far as the ACR for the year 2015 is concerned, the said ACR was prepared after the Judicial Officer was discharged. As the said ACR was never communicated to the Judicial Officer, the subject judgment had held that the non-communication of the ACR for the year 2015 was arbitrary and violative of Article 14 of the Constitution of India, and that the said ACR could not have been the basis of the discharge order passed against the Judicial Officer.

18. Furthermore, the learned senior counsel also highlighted the following findings recorded by this Court in paragraph no. 71 of the judgment, as being relevant to the determination of the present MA:

a. That the Judicial Officer was competent to pass the bail order dated 27.04.2015 and the Hon'ble Rajasthan High Court has not been able to prove any extraneous consideration or ulterior motive on the part of the officer.

b. That there was no material to showcase unsatisfactory performance of the Judicial Officer in terms of the requirement under Rule 45 and 46 of Rajasthan Judicial Service Rules, 2010.

19. Having put forth the submissions as mentioned hereinabove, the learned senior counsel prayed that the applicant/Rajasthan HC on its administrative side, be directed to grant the benefit of Selection Scale and Super Time Scale to the Judicial Officer, in terms of the subject judgment.

(ii) Submissions on behalf of the Rajasthan High Court, on its administrative side:

20. Mr. Gopal Jha, the learned Advocate-on-Record, appearing for the applicant, Rajasthan High Court on its administrative side, submitted that the Full Court in its meeting convened on 21.08.2024, found that the opponent was not suitable for grant of Selection Scale or Super Time Scale for want of requisite number of 'Outstanding/Very Good/Good' entries in his available ACRs of the preceding years.
21. The learned counsel submitted that the opponent has only four ACRs, i.e. 2013, 2014, 2015 & 2022 respectively, as he remained out of service from January, 2016 to May, 2022.
22. With regard to the communication of the ACR for the year 2015, the learned counsel submitted that the ACR had not been conveyed since it was still in the process of being filled up and could not be completed by the time the opponent was discharged from service in August 2016.

Since the prevalent practice is to not convey ACRs to officers who have retired or not in service, the ACR for the year 2015 could not be conveyed to the opponent when he remained out of service.

23. In such circumstances referred to above, the learned counsel prayed that taking into consideration the recommendation dated 03.08.2024 of the Higher Judiciary Committee, and the resolution of the Full Court of the Rajasthan HC dated 21.0.2024, this Court may clarify the order dated 15.03.2022 as regards the granting of Selection Scale or Super Time Scale to the Judicial Officer.

C. ISSUE FOR DETERMINATION

24. Having heard the learned counsel appearing for the parties, and having gone through the materials on record, the following question falls for our consideration:

Whether the ‘consequential benefits’ awarded to the Judicial Officer in the present matter, vide Judgment and Order dated 15.03.2022, would include the grant of Selection Scale or Super Time Scale without the requisite number of Annual Confidential Report(s)?

D. ANALYSIS:

25. Our adjudication essentially revolves around the core issue whether the opponent Judicial Officer is entitled to the grant of Selection Scale or Super Time Scale, despite the non-availability of the requisite number of ACRs. The principal submission advanced on behalf of the applicant Rajasthan HC is that, although the opponent has been reinstated with the consequential benefits of seniority and continuity of service, yet the absence of the requisite number of ACRs for the intervening period nevertheless disentitles him from being considered for the grant of Selection Scale or Super Time Scale.
26. The question whether the Judicial Officer could have been denied the benefit of Selection Scale or Super Time Scale for want of the requisite ACRs has to be considered in the backdrop of the circumstances which led to the non-availability of those ACRs. In other words, before examining the legal effect of the absence of the requisite ACRs, it becomes necessary to ascertain whether such absence is attributable to the Judicial Officer or not. It is in this context that the decisions of this Court in ***K.V. Jankiraman*** (*supra*) and ***Dragendra Singh Jadon*** (*supra*) respectively, relied upon by the learned senior counsel appearing for the Judicial Officer, assume considerable significance. Both the decisions embody the principle that the consequential benefits of seniority, pay, promotion and the like, cannot be refused merely because

fulfilment of the eligibility conditions had been rendered impossible by the employer's own wrongful act of causing impediment in the service tenure of the employee.

27. In **K.V. Jankiraman** (*supra*), a three-Judge Bench of this Court recognised that where an employee is completely exonerated and is not blameworthy in the least, he ought not to be deprived of the benefits which would have ordinarily accrued to him in the normal course of service. It was held that such an employee is entitled not only to the notional promotion, but also to the salary and all consequential benefits of the promotional post from the date on which he would have ordinarily been promoted but for the disciplinary intervention. The underlying rationale is that an employee cannot be prejudiced by the circumstances for which he bears no responsibility and which have subsequently been found to be unjustified. The relevant observation of this Court in **K.V. Jankiraman** (*supra*), reads thus:

“23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. [...]

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25. We are not much impressed by the contentions advanced on behalf of the authorities. **The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.** It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that **when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings.** However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary

for the intervening period is to undermine discipline in the administration and jeopardise public interests. [...]”

(Emphasis supplied)

28. This Court in ***Dragedra Singh Jadon*** (*supra*), similarly endorsed the view that the employer cannot deny the consequential benefits arising out of employment, when the dismissal itself was wrongful. The relevant observation of this Court in ***Dragedra Singh Jadon*** (*supra*) reads thus:

“21. The appellant Bank cannot take advantage of its own wrong of wrongfully dismissing the respondent from service, to deny him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties.”

(Emphasis supplied)

29. Therefore, it is necessary to first ascertain whether the opponent Judicial Officer can be held liable for the non-availability of the requisite ACRs, and for that it is imperative to refer to the subject judgment. In the present matter, this Court had quashed the discharge order, with the observation that though the opponent might have been negligent in the sense that he did not carefully go through the case file and had failed to take notice of the order of the High Court, which was on his file, yet such negligence cannot be treated to be a misconduct. It was observed

that merely because a wrong order has been passed by the opponent or the action taken by him could have been different, the same by itself without anything more did not warrant initiation of disciplinary proceedings against the Judicial Officer. It was also noted that the present case did not involve a string of continuous illegal orders that might have been alleged to be passed for extraneous considerations. Rather, the present case revolved around only a single bail order, and that too was passed with competent jurisdiction. It was categorically noted that in the present case, there was no material to showcase unsatisfactory performance of the opponent in terms of requirement under Rules 45 and 46 of the Rajasthan Judicial Service Rules, 2010 (“**RJS Rules, 2010**”) respectively. It was emphatically stated by this Court that this is not the case where there are strong grounds to suspect the opponent’s bona fide and even if the opponent’s act is considered to be negligent, it cannot be treated as “misconduct”. The relevant observation of this Court made in the judgment & order dated 15.03.2022, reads thus:

*“69. In light of the above judicial pronouncements, we hold that **the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct.** Moreover, the enquiry officer virtually sat as a court of appeal picking holes in the order granting bail, even when he could not find*

any extraneous reason for the grant of the bail order. **Notably, in the present case, there was not a string of continuous illegal orders that have been alleged to be passed for extraneous considerations. The present case revolves only around a single bail order, and that too was passed with competent jurisdiction.** As has been rightly held by this Court in **Sadhna Chaudhary (supra)**, mere suspicion cannot constitute “misconduct”. Any ‘probability’ of misconduct needs to be supported with oral or documentary material, and this requirement has not been fulfilled in the present case. These observations assume importance in light of the specific fact that there was no allegation of illegal gratification against the present appellant. As has been rightly held by this Court, such relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.

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71. **To conclude, we are of the firm view that in the present case there was no material to showcase unsatisfactory performance of the appellant in terms of requirement under Rule 45 and 46 of the RJS Rules, 2010.** Moreover, the appellant’s discharge was not simpliciter, as claimed by the respondent. **The non-communication of the ACRs to the appellant has been proved to be arbitrary** and since the respondent choose to hold an enquiry into appellant’s alleged misconduct, the termination of his service is by way of punishment because it puts a stigma on his competence and thus affects his future career. In such a case, the appellant would be entitled to the protection of Article 311(2) of the Constitution. Moreover, the adverse comments in the ACR for the year 2015 could not have been the

basis on which the appellant was discharged from service. **The appellant was never granted an opportunity to improve and there was no intimation to him about his performance being unsatisfactory. Importantly, no verifiable complaint was filed against the appellant that could form the basis of the disciplinary proceeding against him. After perusing all the relevant record, we hold that the appellant was competent to pass the bail order dated 27.04.2015 and that the Respondent has not been able to prove the presence of any extraneous consideration or ulterior motive on the part of the appellant.** It should also be highlighted here that neither the bail order dated 27.04.2015 was ever challenged by the State before any Court of law, nor was any complaint received against the appellant regarding the said bail order. **This is not the case where there are strong grounds to suspect the appellant's bona fides. Even if appellant's act is considered to be negligent, it cannot be treated as "misconduct".**

72. Accordingly, the appeal is allowed and the impugned order of the High Court dated 21.10.2019 is set aside and the discharge order dated 27.01.2016 is quashed. Keeping in view that the appellant has not worked as judicial officer after he was discharged, **we direct that while the appellant be reinstated with all consequential benefits including continuity of service and seniority but will be entitled to be paid only 50% back wages, which may be paid within a period of four months from today.**

(Emphasis supplied)

30. Thus, it has already been held by this Court in the present case that the opponent was wrongfully discharged from service. It is but a natural and inevitable corollary of such such wrongful discharge that the opponent could not have earned the requisite number of ACRs for the relevant period of time, since he was kept out of service by the applicant itself. The absence of the requisite ACRs, therefore, is not attributable to any omission, default or deficiency on the part of the opponent, but is solely the direct consequence of the applicant's wrongful action. In such circumstances, it would be manifestly unjust to permit the applicant to rely upon a shortcoming which it itself created in order to deny the opponent of the consequential service benefits that would otherwise have accrued to him. The law does not permit a party to derive an advantage from its own wrongful act. Consequently, the opponent cannot be made to bear the adverse consequences of the wrongful discharge, by being denied consideration for the grant of the Selection Scale or the Super Time Scale on the ground of non-availability of the requisite number of ACRs, for the period during which he was unlawfully kept out of service.
31. This Court in a plethora of its decisions has held that even when the requisite number of valid ACRs are not available, that in itself should not make the employee ineligible for the pay scale or promotion involved. Rather, in circumstances where the employee is found to be not responsible for the default, the evaluations for the respective pay scale

or promotion are to be undertaken based on the remaining ACRs which are valid. We may refer to this Court's judgment in **Prabhu Dayal** (*supra*) and **R.K. Jibanlata Devi** (*supra*) respectively to expound the position of law on this issue. In both **Prabhu Dayal** (*supra*), and **R.K. Jibanlata Devi** (*supra*) respectively, this Court held that when, due to the employer's fault, the ACRs are short of the number required to meet the eligibility criteria, the employee would nevertheless have to be considered for the promotion or pay scale based on the other remaining valid ACRs.

32. The relevant observation of this Court in **Prabhu Dayal** (*supra*) is as follows:

*"7. In the above view of the matter, we are satisfied that the impugned order passed by the High Court, deserves to be set aside, inasmuch as, the claim of the appellant could not be ignored by taking into consideration, uncommunicated annual confidential reports for the years 1995-1996, 1996-1997 and 1998-1999, wherein the appellant was assessed as "good". **In the absence of the aforesaid entries, it is apparent, that the remaining entries of the appellant being "very good", he would be entitled to be considered fit for the promotion,** to the post of Chief Commissioner of Income Tax, **on the basis of the then prevailing DoPT guidelines, and the remaining valid annual confidential reports.***

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9. **In the above view of the matter, we are satisfied, that the respondents ought to be directed to reconsider the claim of promotion of the appellant,** to the post of Chief Commissioner of Income Tax, for the vacancies which arose during the years 2000-2001 and 2001-2002 **on the basis of the communicated reports for the years 1997-1998 and 1999-2000,** within a period of three months from today. Ordered accordingly.

10. In case the appellant is found to be entitled for promotion to the post of Chief Commissioner of Income Tax, he shall be promoted to the said post, with effect from the date of his entitlement. In such an eventuality, he shall also be entitled to all arrears of salary, as would have been payable to him, if he had been promoted as Chief Commissioner of Income Tax at the right time. Simultaneously, he would be entitled to revision of his retiral benefits.

11. In case the appellant is found suitable for the promotion, this order should not be taken as permitting the authorities to interfere with the promotions already made. Suffice it to state that, to accommodate”

(Emphasis supplied)

33. Similarly, this Court in **R.K. Jibanlata Devi** (*supra*) had held that when certain ACRs were found to be invalid due to non-communication by the employer, the employee deserved to be considered for promotion in issue therein, based on the ACRs for the remaining years. The relevant observation of this Court in **R.K. Jibanlata Devi** (*supra*) reads thus:

*“22. In view of the above and for the reasons stated above, **the case of the petitioner for promotion** to the post of Assistant Registrar as on 9-4-2021 **is required to be considered afresh ignoring the uncommunicated ACRs for the years 2016-2017 and 2019-20 and her case is required to be considered afresh taking into consideration the ACRs for the years 2017-2018 and 2018-2019 for which the petitioner was having "Very Good" gradings.***

*23. In view of the above and for the reasons stated above, present petition is allowed. The DPC proceedings dated 9-4-2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. The case of the petitioner for promotion to the post of Assistant Registrar as on 9-4-2021 i.e. the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRs for the years 2016-2017 and 2019- 20 and thereafter **the DPC/competent authority to take a fresh decision in accordance with law and taking into consideration the ACRS of remaining years i.e. 2017-2018 and 2018-2019.** Such an exercise be completed within a period of six weeks from today.*

24. In case after fresh exercise as above the petitioner is promoted to the post of Assistant Registrar, it goes without saying that she shall be entitled to all the consequential benefits including the arrears, seniority, etc. w.e.f. 9-4-2021 the day on which the juniors came to be promoted.”

(Emphasis supplied)

34. Applying the aforesaid principles to the facts of the present case, we are of the considered view that the opponent could not have been denied the benefit of Selection Scale or Super Time Scale merely because the requisite number of ACRs were unavailable for the period during which he was kept out of service pursuant to his wrongful discharge. As noted hereinabove, this Court in the present matter has categorically held that the opponent's discharge was wholly unsustainable. In such circumstances, consistent with the principle enunciated by this Court in ***Prabhu Dayal*** (*supra*) and ***R.K. Jibanlata Devi*** (*supra*) respectively, the opponent's entitlement is required to be assessed on the basis of the valid ACRs and cannot be allowed to be defeated on account of the absence of requisite number of ACRs occasioned solely by the applicant's own wrongful action.
35. We may turn to the relevant paragraphs of the subject judgment wherein this Court had referred to the opponent's ACRs for the years 2013, 2014 and 2015 respectively, in order to arrive at its decision. The same reads thus:

*“43. The material placed before the Higher Judicial Committee, which recommended the discharge of the appellant, **clearly shows that no adverse remarks were made against the appellant except in relation to the grant of bail on 27.04.2015. The said material consisted of Bi-Annual Reports/Special Reports and the ACRs of the appellant. The Bi-annual/Special Reports for the period of July 2013-January 2014, January 2014-July***

2014 and July 2014-January 2015, which were placed before the committee makes it clear **that the work and conduct of the appellant was “good” and his integrity was never doubted.** Furthermore, **the ACR of the appellant for the year 2013 contains the comment “very good” and mentions that the integrity of the appellant was never in doubt.** Similarly, **the ACR for the year 2014(Part-I) records the comment “very good” for the appellant and also provides him with an integrity certificate.**

44. **The ACR for the year 2014(Part-II) contains the remark “good” for the appellant.** During this period, the appellant was working as the Presiding Officer, Labour cum Industrial Tribunal. In this context, it is pertinent to note that the comment by the Inspecting Judge regarding the requirement to “improve judicial work” is based upon the enquiry initiated against the appellant vide chargesheet issued on 07.08.2015, which related to his functioning as Special Judge, ACD cases Court, Bharatpur and not for the period of 2014. Additionally, the aforesaid comment by the Inspecting Judge is contrary to the comments made by him in the Special Report for the contemporaneous period which clearly records his conduct, performance and work throughout the period to be “good”. **Lastly, no adverse remark is made even by the Administrative Judge, who only added an advisory remark for the officer to concentrate on judicial work and improve the quality. Notably, no remark was made against the integrity of the appellant.**

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46. In our opinion, to argue that the comments and observations in this 2015 ACR were the basis on which the appellant was discharged, is misplaced and erroneous. Firstly, a bare perusal of the ACR reveals that the top of this ACR itself carried a comment that read “Discharged from Service”. Secondly, the Higher Judicial Committee had, even prior to the submission of the 2015 ACR, already recommended the discharge of the appellant. Notably, the ACR for the year 2015 was filled and submitted by the appellant on 20.01.2016, while the Higher Judicial Committee had already recommended the discharge of the appellant on 24.11.2015 itself and the impugned order of discharge was passed on 27.01.2016, admittedly, in pursuance of a Full Court meeting on 20.01.2016. Additionally, although the learned counsel for the respondent had submitted before us that the Integrity Certificate of the Appellant was withheld by the Inspecting Judge, he failed to highlight that the reason for the certificate being withheld was that the appellant had been served with a chargesheet and not because of the appellant’s service record.

47. Moreover, **it is not disputed that the ACRs were not communicated to him within reasonable time.** In this context, a 3-Judge Bench of this Court in **Sukhdev Singh vs Union of India [(2013) 9 SCC 566]** has held that:

“In our opinion, the view taken in *Dev Dutt* [*Dev Dutt vs Union of India*] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the

entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR-poor, fair, average, good or very good-must be communicated to him/her within a reasonable period.”

(emphasis supplied)

*Hence, **in light of the above, the non-communication of the ACRs to the appellant in the present case is arbitrary** and as has been held by this court in *Maneka Gandhi vs Union of India* [(1978) 1 SCC 248], such arbitrariness violated Article 14 of the Constitution of India.*

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51. We also find merit in the submission of the appellant that the adverse comments in the ACR for the year 2015 could not have been the basis on which the appellant was discharged from service. Additionally, it is pertinent to note that the learned counsel for the Respondent has himself submitted that the ACR for the year 2015 was recorded after the discharge order was passed and that the comments of the Administrative Judge were made on 08.06.2016 and are based upon the enquiry and the subsequent discharge of the appellant. Moreover, upon the perusal of the ACR for the year 2015, it is revealed that despite the comments recorded, the overall performance of the Appellant was rated as “good” by the Inspecting Judge himself. Part-II of the said ARC also contains the comment “good” on the appellant’s capacity of handling files systematically

and the comment “Yes” on whether the appellant is fair and impartial in dealing with the public and the bar. Therefore, we are of the opinion that the submissions of the learned counsel of the appellant holds merit that **there was no material on record to showcase unsatisfactory performance of the appellant in terms of requirement under Rule 45 and 46 of the RJS Rules, 2010.**

52. **There appears to be no infirmity in the appellant’s record** and the entire recommendation of discharge by the Higher Judicial Committee is based upon the passing of the bail order dated 27.04.2015. Moreover, it is also pertinent to note that the Enquiry Judge of the Disciplinary Proceeding against the appellant was also a part of the Higher Judicial Committee which had to provide recommendations regarding discharge/confirmation of judicial officers.

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54. We are in agreement with the ratio laid down in the case of **Ishwar Chand Jain (supra)** that every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service, which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be over-looked by the High Court and proper guidance should be provided to him. In the present case, admittedly there was no intimation to appellant about his performance being unsatisfactory and hence he was deprived of his opportunity to improve as a judicial officer.

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69. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct.[...]"

(Emphasis supplied)

36. Thus, we find that this Court has held that the adverse remarks contained in the opponent's ACR for the year 2015 could not have formed the basis of his discharge and further held that the non-communication of the said ACR was arbitrary. In view of the law laid down by this Court in ***Sukhdev Singh vs Union of India [(2013) 9 SCC 566]***, an uncommunicated ACR cannot be relied upon to the detriment of the employee while determining his entitlement to promotion, pay scale or any career advancement. Consequently, the ACR for the year 2015 cannot be taken into consideration for determining the opponent's entitlement to Selection Scale or Super Time Scale. Therefore, as already explained hereinabove, it is in line with the principle enunciated by this Court in ***Prabhu Dayal*** (*supra*) and ***R.K. Jibanlata Devi*** (*supra*), respectively, we hold that the opponent is liable to be assessed on the basis of the remaining valid ACRs i.e. those for the years 2013 and 2014 (both Part I & Part II), which contain the following remarks:

S.No.	Period	Remarks in ACR
1	2013	Very good
2	2014 (Part I)	Very good
3	2014 (Part II)	Good

37. As the above-quoted findings of this Court clearly indicate, the service record of the opponent, as it stood prior to his wrongful discharge, has been found to be free from any material warranting denial of career progression, but rather contain the remarks “Very good” and “Good” along with integrity certificates.
38. Therefore, upon perusal of the ACRs for the year 2013 and 2014 (Part I & Part II), we hold that in order to give full effect to the relief of reinstatement as granted by this Court, the opponent shall be entitled to the grant of the Selection Scale and Super Time Scale with effect from the dates on which he first became due for such consideration in the normal course of service as per Rule 49 and Rule 50 of the RJS Rules, 2010, respectively, read with the Full Court Resolution of the Rajasthan HC dated 15th January, 2011.
39. The materials on record indicate that the opponent was appointed as an Additional District Judge vide order dated 15.07.2013 [*Order no. F.19(8)Nyaya/2011*], issued by the Law & Legal Affairs Department, Government of Rajasthan. Since he was reinstated in service with the

consequential benefits of continuity of service and seniority, he can be said to have completed five years of service on 15.07.2018. Therefore, as per Rule 49 of the RJS Rules, 2010, the earliest point in time when the opponent can be said to have become due for consideration for the grant of Selection Scale, is 16.07.2018. It is not in dispute that vide order dated 16.07.2019 [*Order No. Estt. (RJS) 55/2019*], the Registrar General, Rajasthan High Court, granted the benefit of Selection Scale to the officers recruited alongside (and even those junior to) the opponent in accordance with their respective dates of eligibility starting July, 2018 onwards. Accordingly, we hold that the opponent is entitled to the grant of Selection Scale with effect from 16.07.2018.

40. Once the opponent is held entitled to Selection Scale with effect from 16.07.2018, the period notionally spent in Selection Scale must necessarily be reckoned for the purpose of granting Super Time Scale. Consequently, upon completion of the period of three years in Selection Scale, as prescribed in Rule 50 of the RJS Rules, 2010, the earliest point in time when the opponent can be said to have become due for consideration for the grant of Super Time Scale is **16.07.2021**. It is also not in dispute that vide order dated 12.09.2023 [*Order No. Estt. (RJS) 62/2023*], the Registrar General, Rajasthan High Court, granted the benefit of Super Time Scale to the officers appointed alongside (and even those junior to) the opponent in accordance with their respective dates of eligibility, starting July, 2021 onwards. The opponent is, therefore,

equally entitled to the said benefit. Accordingly, we hold that the opponent is entitled to the grant of Super Time Scale with effect from 16.07.2021.

E. CONCLUSION:

41. Thus, for the reasons stated hereinabove, we hold that since the applicant was itself responsible for the opponent's wrongful discharge and the resultant non-availability of the requisite number of ACRs, the said circumstance could not have been relied upon by it to deny the opponent the grant of Selection Scale or Super Time Scale. In consonance with the principles laid down by this Court in ***Prabhu Dayal*** (*supra*) and ***R.K. Jibanlata Devi*** (*supra*) respectively, we hold that where the non-availability of the requisite ACRs is attributable to the employer, the employee's entitlement to the promotion/pay in question is required to be assessed on the basis of the remaining valid ACRs. Accordingly, we hold that the opponent's entitlement to the Selection Scale and Super Time Scale is liable to be determined on the basis of his valid ACRs for the years 2013 and 2014 (Part I & Part II), respectively.

42. Having regard to the opponent's valid ACRs for the years 2013 and 2014 (Part I & Part II), read with the findings recorded by this Court whereby the opponent was granted reinstatement with continuity of service, seniority and all consequential benefits, we hold that the opponent is

entitled to the grant of Selection Scale with effect from 16.07.2018 and Super Time Scale with effect from 16.07.2021.

43. We further clarify that the arrears arising from the grant of Selection Scale and Super Time Scale respectively, shall be computed by giving effect to the direction contained in the judgment and order dated 15.03.2022 of this Court, with regard to payment of 50% back wages. The applicant shall accordingly re-fix the opponent's pay, revise all consequential benefits and disburse the arrears payable to the opponent within a period of three months from the date of this judgment.
44. With the aforesaid, the miscellaneous application stands disposed of.
45. Pending application(s), if any, shall also stand disposed of.
46. Registry shall forward one copy each of this judgment to all the High Courts.

.....J.

(J.B. PARDIWALA)

.....J.

(MANOJ MISRA)

New Delhi

29th July, 2026