

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 764 OF 2013

DIST. : AURANGABAD

Chandramohan Dattatraya Bhate,
Age. 59 years, Occ. Nil – Pensioner,
R/o Sara Part, 'B' Building, Flat no. 2,
Behind Eden Garden, N-2, Mukundwadi,
Aurangabad. Presently residing at
C/o Shri Ramesh Vasudevrao Dixit,
Pradnesh Apartment, Gananjay Housing
Society, Near State Bank of Hyderabad,
Kothrud, Pune – 411 029. --

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Presenting Officer,
MAT, Aurangabad.
2. The Principal,
Govt. Pharmacy College,
Aurangabad.
3. The Joint Director of Technical
Education, Aurangabad Region,
Aurangabad.
4. The Director of Technical Education,
3, Mahapalika Marg, V.T.,
Mumbai – 400 001.
5. The Accountant General – II,
Pension Wing, Old Building,
Civil Lines, Nagpur 440 001. --

RESPONDENTS

APPEARANCE :- Shri Ajay S. Deshpande, learned Advocate
for the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**
RESERVED ON : **6.3.2019**
PRONOUNCED ON : **8.3.2019**

JUDGMENT

(Per : Justice A.H Joshi, Chairman)

1. Heard Shri Ajay S. Deshpande, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.
2. Perused the record.
3. Summary of facts pleaded by applicant is as follows :-
 - (a) Applicant joined service as Assistant Librarian under res. no. 4 in Govt. Polytechnic, Aurangabad on 1.8.1982.
 - (b) Applicant was extended benefits of Time Scale Promotion Scheme on first occasion on 1.10.1994.
 - (c) The benefit of second ACP was due on 1.10.2006, upon completion of 24 years of service, however, the same has not been extended to the applicant.
 - (d) Applicant was transferred under res. no. 2 and has served under the control of res. no. 2 till attaining the age of superannuation on 31.12.2012.

(e) Applicant received a communication on 26.5.2008 from res. no. 2 for missing of books.

(f) Applicant submitted his explanation that, from the date when he assumed the charge for the first time on 1.8.2004, there was no physical verification of books and many books were missing since beginning of his being put into charge of Library.

(g) Applicant was instructed by res. no. 2 from time to time to hand over the keys of Library whenever the applicant was deputed for election duty or had to proceed on medical leave.

(h) The process of handing over or taking over of the charge after physical verification was never done. Therefore applicant was not the exclusive custodian of Library and as such, liability of missing books cannot be fastened on the applicant.

(i) Many books were missing much before the applicant joined under res. no. 2 and still he was held responsible therefor and the price of the same is sought to be recovered from him illegally.

(j) Govt. issued G.R. for undertaking physical verification of books periodically to avoid missing of books. No such physical verification was conducted immediately preceding 1.8.2004 and even thereafter although res. no. 2 was duty bound to have it done.

(k) Res. no. 4 has also issued a Circular by recording displeasure for not conducting physical verification vide Circular dated 18.3.2011.

(l) At no point of time applicant was called to show cause against specific loss caused to Government.

(m) Despite explanations submitted by the applicant, res. no. 2 has unjustly and illegally fastened a liability on the applicant and ordered recovery of an amount of Rs. 2,55,318.18 from the applicant to be recovered from his Gratuity, which is being impugned in this application.

4. Applicant's submissions which are foundation of O.A. are seen in para nos. 6 & 16 of O.A., which reads as follows :-

"6. The applicant says that, all throughout in his career of more than 30 years, he has never been communicated any adverse remark, and therefore, he reasonably believes and presumes that, he has a good track record all throughout in his service career. Having joined service on 16.6.1982, he has been extended the benefits under Time Scale Promotion Scheme from 1.10.1994, upon completion of 12 years service, however, the second benefit under Time Scale Promotion Scheme which was due to be extended to the applicant from October, 2006 onwards, have so far not been extended to him. He was orally conveyed by res. no. 2 that, as the C.Rs. are not up to the mark, the benefit of Time Scale Promotion Scheme on 2nd occasion from October 2006 cannot be extended to him. However, till date nothing in writing has ever been communicated to him in that regard.

16. The applicant says that, the respondents have not followed the procedure prescribed under law. The present case if indeed not a case falling within the mischief of Clause (iii) of Sub-Rule 1 of Rule 5 as the recovery ordered of the alleged pecuniary loss is indeed not on account of either negligence of the applicant or

because of breach of orders, and necessarily therefore, a short-cut as has been restored to by the respondents, while issuing the impugned order of recovery is liable to be quashed and set aside. Such a huge amount of recovery in a slip shod manner is not contemplated under Rule 5 in which principles of natural justice have been adhered to, to its bare minimum extent.”

(quoted from page 3, 6 & 7 of O.A.)

5. Applicant's pleadings as regards para 6 & 16 are answered by the respondent by filing affidavit. Reply to these paras read as follows :-

“Paragraph 6 - The respondent no. 2 has submitted the time bound scale promotion proposal to the respondent No. 3 when the applicant had completed 24 years services on the same post and the same scale. The time bound scale promotion also kept in the promotion committee meeting at that time it came to know that the applicant's confidential reports were not up to the mark and for same it was rejected by respondent No. 3.

Paragraph 16 - While handing over the charge the petitioner he himself has mentioned cost of the missing books & submitted the said report to the head of the organization and accordingly head of the organization petitioners work and behavior considered sympathetically, also other colleagues given him the opportunity to search the missing / loss of books and sufficient time was given to him but he did not respond even after retirement of four months. He did not submitted his pension papers even though the office had issued letters & even though this office had informed to him six months prior to his retirement. Exhibit X-3 (pages 1 to 30).”

(quoted from page 33 & 36 of O.A.)

6. Respondents have not disputed in eloquent terms :-
- (a) The fact that applicant was not put in charge of library after physical verification of all books.

(b) Applicant was asked to go on election duty and at the time of relieving or joining, physical verification of books was not done on each occasion of his deputation.

(c) Periodic physical verification of books though mandatory it was never done.

(d) Applicant was never in exclusive domain of Library.

(e) There was duplicity, in accession number of books. Any adverse ACR was not served on applicant.

(f) Observance of Rule 8(1) (b) to (e) of M.C.S. (Discipline & Appeal) Rules, 1979 was not done.

(g) Reckoning of exact liability based on any verification was not done and applicant did not get opportunity to represent against any liquidated liability based on a reckoned demand and hence principles of natural justice were not observed.

7. Now this Tribunal would deal with two reliefs sought by applicant one after other.

As to 2nd A.C.P.

8. It is a simple case where applicant has pleaded erroneous and unjust denial of 2nd ACP, and this plea is denied with plea as quoted in foregoing para No. 4 that applicant's ACRs were not up to benchmark (i.e. above B+).

9. This Tribunal ordered after hearing on 11.2.2019 as follows:-

“2. Upon hearing both sides, it appears that following material is required from the respondents for effective decision in the matter.

(i) Whether any show cause notice was issued or any departmental enquiry was instituted against the applicant regarding loss of books,

(ii) minutes of the DPC meeting wherein applicant's claim for second time bound promotion was rejected, and

(iii) the Confidential Reports of the applicant which were considered at that time as quoted in reply of respondent nos.2, 3 and 4.

3. Learned P.O. seeks time to file additional affidavit in reply along with all the above documents.

4. At her request, S.O. to 6th March, 2019 for compliance of the above order.

5. Parties to act on the Steno Copy of the order”
(quoted from order of Tribunal dated 11.2.2019)

10. Today learned C.P.O. has produced with affidavit copy of proceedings of D.P.C. which had considered the case of applicant along with various other Government servants for assessment of eligibility for 2nd ACP. Said column is at page 130. In column no. 18 of the minutes of ACP endorsement is incorporated which reads as follows :-

“सरासरी प्रतवारी (ब+) पेक्षा कमी असल्यामुळे अपात्र.”

(quoted from page 130 column 18 of O.A.)

11. It is thus evident that applicant is denied 2nd ACP because of applicant's adverse ACRs.

12. It is however undisputed and rather tacitly admitted fact that any adverse ACR was not communicated / served on the applicant even once.

13. In the result the decision to refuse 2nd ACP to applicant decided in the meeting held on 27.8.2012 is liable to be set aside and applicant is entitled to 2nd ACP by disregarding adverse ACRs and by treating that ranking of Applicant's ACR is up to the benchmark.

About recovery of amount towards missing books –

14. It is not demonstrated that a notice specifying recovery of specific amount and causes of liability was not given to the applicant.

15. Now coming to the next issue, it has transpired from record that the respondents did not conduct any formal or even summary enquiry to arrive at a conclusion that the applicant's liability to the tune of Rs. 2,55,318.18 was based on any 'reckoning' or 'adjudication' by any forum such as domestic Tribunal after due notice to the applicant and after ruling on all point of defense agitated by the applicant.

16. Reckoning and adjudication pursuant to Rule 10(1)(a) to 10(1)(b) and consultation under Rule 10(1)(e) if applicable, was imperative, however, record relied on by the respondents does not reveal or disclose observance and compliance of any of these rules of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979

17. In the background of want of specific notice and enquiry of whatever type, we consider that the question as to whether an enquiry pursuant to procedure laid down under Rule 8 and 10(1)(a) & 10(1)(b) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 need not be gone into.

18. We, therefore, hold that impugned notice and order Exhibit-I and Exhibit-J are bad in law being issued in violation of Rule 10(1)(a) to 10(1)(e) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

19. Now, the question which this Tribunal has to consider is as to whether the matter be sent for further recourse to Rule 10(1) or Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

20. We have given peaceful and curious consideration to this aspect. We are of the view that after considering facts and law that directing fresh enquiry shall violate propriety and law since :-

(a) Record shows that applicant himself has been complaining that he was asked to take charge of library in 2008 without physical verification of books and this fact is not disputed by respondents at any point of time.

(b) Any charge for recovery due to misconduct would mean conducting an enquiry for misconduct four years former to the date of superannuation.

(c) Moreover, now the superannuation is older than 5 years and misconduct is older than four years.

(d) Sending applicant for fresh enquiry would amount to sending a retired Government servant from one pillar to post or from one butcher to another.

21. In the result, in the interest of justice, we direct that:

(A) Impugned communications Exhibit-I and Exhibit-J be and are hereby quashed and set aside.

(B) Applicant shall be entitled to refund of amount of Rs.2,55,318.18 with interest thereon @ 12% per annum from the date of applicant's superannuation till actual disbursement.

(C) We grant declaration as regards applicant's entitlement of second Assured Career Progression in terms of foregoing paragraph no.13.

(D) We direct that applicant be paid all benefits of second Assured Career Progression Scheme w.e.f. 01.06.2006, and

(E) All arrears of second Assured Career Progression Scheme and consequent arrears be paid within four months from the date of judgment and process of revision of applicant's pension and gratuity be done within 6 months from the date of this judgment.

(F) Parties are directed to bear own costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 8.3.2019