

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.102/2008.

(D.B.)

Dinkar Vasantrya Shendekar,
Aged about 44 years,
Occ-Service,
R/o Samarthwadi, Behind Gupta Bldg.,
Yavatmal.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Medical Education & Drugs,
Mantralaya, Extension Bhavan,
Mumbai.
2. The Director,
Medical Education & Research,
Campus of Saint Georges Hospital,
Mumbai.
3. The Dean,
Shri Vasantrya Naik Govt. College & Hospital,
Yavatmal.

Respondents

Shri R.J. Mirza, the Ld. Advocate for the applicant.
Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)
and
Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 27th day of April 2018.)

Per:-Vice-Chairman (J)

Heard Shri R.J. Mirza, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant in this case has claimed that the order dated 12.10.2007 issued by respondent No.2 promoting the applicant to the post of Steno-Typist from the post of Clerk, so also consequent order dated 25.10.2007 issued by respondent No.3 to that effect be quashed and set aside and the respondent No.2 be directed to consider the case of the applicant for promotion to the post of Lower Grade Stenographer in respect of said vacancy which had arisen prior to coming into force the Rules of 1997.

3. The Rules called, "Steno-Typists, Lower Grade Stenographers and Higher Grade Stenographers in the office of Government outside Greater Bombay (Recruitment) Rules, 1981 (hereinafter referred to as, Rules of 1981)". The said rules were amended in the year 1997 and for the purpose of convenience, amended the rules will be referred to as 'Rules of 1997'.

4. The applicant came to be appointed to the post of Clerk-cum-Typist in the establishment of Shri Vasantnao Naik Govt. College & Hospital, Yavatmal as per the Rules of 1981 on 8.10.1990. The applicant was, in fact qualified, for the post of Lower Grade Stenographer at that time. He completed three years' of service on the post of Steno-Typist and hence he was eligible to be promoted to the post of Lower Grade Stenographer as per Rules 4 and 6 of the Rules of 1981.

5. Since there were four vacancies of the post of Lower Grade Stenographers in the establishment, the respondent No.3 i.e. the Dean, Shri Vasantnao Naik Govt. College & Hospital, Yavatmal recommended the name of the applicant for promotion to the post of Lower Grade Stenographer to respondent No.2 i.e. the Director, Medical Education & Research, Mumbai. In view of the said recommendation, the applicant was promoted to the post of Lower Grade Stenographer temporarily vide order dated 18.4.1994. He joined the service on promotional post.

6. The applicant continued to work as Lower Grade Stenographer, before amendment of Rules of 1981 and in view of the said amendment, instead of promoting the applicant to the post

of Lower Grade Stenographer, the applicant was promoted to the post of Steno-Typist. Accordingly, the applicant was promoted by respondent No.2 on 12.10.2007 to the post of Steno-Typist. The said post is lower in grade than the post on which the applicant was already working on the basis of temporary promotion. The respondent No.3 called upon the applicant to give willingness for the post of Steno-Typist. According to the learned counsel for the applicant, the Hon'ble Apex Court in the judgment reported in **1983 (3) SCC 284 in case of Y.V. Rangnath and others V/s J. Shrinivasan and others and 1997 (10) SCC-419 in case of State of Rajasthan V/s R. Dayal and others**, has categorically held that, the vacancy which had arisen when the original rules were governing, cannot be filled in subsequently in accordance with the provisions of amended rules. Since the applicant was already eligible for promotion to the post of Lower Grade Stenographer as per Rules of 1981 and since he was already promoted to that post, he cannot be promoted to a lower post of Steno-Typist and, therefore, the applicant has filed this O.A.

7. The respondent Nos. 2 and 3 have filed reply affidavit. It is stated that the applicant was appointed as Clerk-

cum-Typist and was promoted to the post of Steno-Typist on temporary basis. As per the amended rules, he was eligible for the post of Steno-Typist on promotion and, therefore, the order of promotion has been issued for the post of Steno-Typist. It is stated that the applicant has been rightly promoted as per Rules of 1997.

8. The learned counsel for the applicant submits that as per Rules of 1981, the applicant was eligible to be promoted as Lower Grade Stenographer and, therefore, his name was recommended for promotion. The said recommendation was accepted and the applicant was accordingly promoted and was working in the cadre of Lower Grade Stenographer. Subsequently, rules were amended in 1997 whereby qualification criteria for promotion was changed. As per the Rules of 1997, the applicant was eligible for promotion to the post of Steno-Typist from the post of Clerk-cum-Typist and, therefore, assuming that the original post of the applicant was Clerk-cum-Typist and he was eligible for the post of Steno-Typist and as per new rules, the respondents have promoted the applicant to the post of Steno-Typist. However, this fact was ignored that as per Rules of 1981, the applicant had

possessed the qualification for being promoted to the post of Lower Grade Stenographer and, therefore, he was promoted as Lower Grade Stenographer, though temporarily. The impugned order, whereby the applicant has been promoted to the post of Steno-Typist is, in fact, nothing but the reversion order, as the applicant was already working on the promotional post of Lower Grade Stenographer and admittedly as per old rules, he was eligible to be promoted. Thus, under the garb of order of promotion, the applicant has been reverted. The learned counsel for the applicant has invited our attention to a letter dated 1.9.1993 (Annexure-II), whereby the name of the applicant has been recommended for the post of Lower Grade Stenographer, since he was eligible as per Rules of 1981. A copy of the said communication is at page Nos. 19 and 20 and in pursuance of the said recommendation, the applicant was promoted to the post of Lower Grade Stenographer. Though, in the promotion order, it is stated that the applicant was promoted till a regular candidate was appointed, fact remains that the applicant was eligible for being promoted as per old rules and he was already working on the promotional post of Lower Grade Stenographer as per those rules.

9. The learned counsel for the applicant has placed reliance on the judgment reported in **(1997) 10 SCC-419 in case of State of Rajasthan V/s R. Dayal and others.** In the said case, the Hon'ble Apex Court held as under:-

“8. Therefore, it is not in dispute and cannot be disputed that while selecting officers, minimum requisite qualifications and experience for promotion specified in the relevant column, should be taken into consideration against vacancies existing as on 1st April of the year of selection. But since the rules came to be amended and the amendment became effective with immediate effect and clause (11-B) of Rule 24-A indicates that options have been given to the Govt. or the appointing Authority, as the case may be, to revise the select list as existing as per the law as on the date of the appointment or as may be directed by a competent Court, selection is required to be made by the concerned DPC. An appointment made, after selection as per the procedure, to the vacancies existing prior to the amendment, is valid. But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in

terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in, in accordance with the law existing as on the date when the vacancies arose. Undoubtedly, the selection came to be made prior to the amendment of the Rules in accordance with law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rule 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Govt. or the appointing authority, viz., either to make temporary promotions for the ensuing financial year until the DPC meets or in exercise

of the power under Rule 24-A (11-B), they can revise the panel already prepared in accordance with the Rules and make appointments in accordance therewith.

9. It is contended by Shri Das that one of the persons, namely, H.L. Meena was appointed against a carried-forward post as per the existing Rules and, therefore, his appointment cannot be challenged. We find it difficult to give acceptance to the contention. Even a carried-forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government. As on that date, when the appointment came to be made, the selection was required to be made on the basis of the Rules as existing on the date the vacancy arose. Since, admittedly, that has not been done, the appointment of Shri Bhatnagar and H.L. Meena must be treated to be only temporary appointments pending consideration of the claims of all the eligible persons belonging to General and Reserved quota separately as per Rules.”

10. The learned P.O. has placed reliance on the judgment reported in (2017) 3 SCC-646 in case of State of Tripura and others V/s Nikhil Ranjan Chakraborty and others.

In the said case, it has been held that in absence of any accrued or

vested right to be considered for promotion under any particular rules in force at a particular time, the vacancies must be filled in invariably by law existing on the date when vacancies arise. In the present case, admittedly, there were four vacancies as per Rules of 1981 for promotion to the post of Lower Grade Stenographers. Admittedly, the applicant was eligible for promotion as Lower Grade Stenographer as per Rules of 1981 and, therefore, he was promoted to the said post, though temporarily. Unfortunately, in the meantime, the rules were amended and as per those rules, the applicant was eligible for the post of Steno-Typist, which is admittedly lower in rank of Lower Grade Stenographer. In such circumstances, so-called order of promotion of the applicant on the post of Steno-Typist is nothing but an order on a lower post than that on which he was working for more than three years. We are, therefore, of the opinion that the order dated 12.10.2007 issued by respondent No.2 and consequential order dated 25.10.2007 issued by respondent No.3 are illegal. Hence, we proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed in terms of prayer clauses 9 (a) and (b).
- (ii) No order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 27.4.2018.

pdg