

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

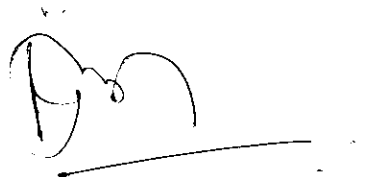
ORIGINAL APPLICATION NO.1063 OF 2014

DISTRICT : KOLHAPUR

Shri Vinayak Pandurang Patil. )  
Occ.: Government Service as Modi- )  
Knowing Assistant, Now reverted as )  
Clerk-Typist and having office at )  
Department of Archives, Kolhapur )  
Archives, Kolhapur and residing at )  
Yadav Wadi, Shirol (Pulachi) Kolhapur. )  
Address of Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...Applicant

**Versus**

1. The Director. )  
Directorate Archives, M.S, Having )  
Office at Elphistone College, Fort, )  
Mumbai - 32. )
2. Shri S.S. Latkar. )  
Occ. Government Service as Modi- )  
Knowing Assistant being posted from)



the post of Research Assistant, Having)  
Office at Department of Archives, )  
Kolhapur Archives, Kolhapur. )...**Respondents**

**Shri B.A. Bandiwadekar, Advocate for Applicant.**

**Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 29.06.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. An order of reversion from the post of Modi-Knowing Assistant to the post of Clerk-Typist has stung the Applicant who is up before us thereagainst by way of this Original Application (OA).

2. We have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. The Applicant came to be appointed on compassionate ground as Office Peon in Group 'D' post on

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1.10.1996. While still in service, he took training in Modi Script between 28.2.2004 and 7.3.2004 and got thorough in 1<sup>st</sup> Class. The case of the Applicant is that he also passed out MS-CIT (Regular Mode) securing 64% marks which examination was conducted by the State through MKCL. On 15.9.2005, the Applicant vide Exh. 'C' (Page 24 of the paper book) came to be promoted as Clerk-cum-Typist in Group 'C' (Class-III). He was selected by the Departmental Promotion Committee in its meeting of 15.9.2005. In the said order, it was clearly mentioned that the Applicant and 4 others were eligible and qualified on the basis of the education qualification and experience. The exact Marathi words were as follows :

“खाली नमूद केलेले कर्मचारी पदोन्नतीसाठी विहित केलेल्या सेवा कालावधी व शैक्षणिक अर्हता धारण करित असल्याने त्यांना खालीलप्रमाणे तात्पुरत्या स्वरूपात पदोन्नत्या देण्यात येत आहेत.”

4. The said order concluded by the recitals that those promotions were temporary (तात्पुरत्या स्वरूपाच्या) and liable to be terminated at any time.

5. Quite pertinently, neither in that order (Exh. 'C') nor in any other document of contemporaneous vintage was there any conditionality that the Applicant would have



to clear any examination of Typing or even MS-CIT. This may have some relevance as the discussion progresses. But for the present, we may only note it as a fact and proceed further.

6. By an order of 17<sup>th</sup> May, 2010 (Exh. 'D', Page 26 of the paper book), the Applicant came to be promoted from the post of Clerk-Typist to Modi Assistant. In that order, it was *inter-alia* mentioned that one Shri S.A. Wagh, Research Assistant had been transferred to Pune and the resultant vacancy was filled up by Shri S.S. Latkar, Modi Knowing Assistant by transfer and the Applicant was transferred vice Shri Latkar.

7. In the meanwhile, some correspondence ensued calling upon the Applicant to produce the documents of having cleared MS-CIT examination and Marathi and English Typing Certificates, but we shall to the extent necessary turn to that aspect of the matter a short while from now. Having set out the facts as above, we may note at this stage itself that most of the facts are not in dispute if one were to peruse the Affidavit-in-reply on behalf of the Respondent-Director, Directorate of Archives, Mumbai for whom the Affidavit-in-reply has been filed by Smt. Swati Y. Mhase-Patil. We may not therefore narrate again those



facts which have been admitted and which have been set out hereinabove almost in the form of a narration. Pertinently, however, in Para 5 of the Affidavit-in-reply, it has been clearly admitted that in September, 2005, the DPC found the Applicant fit for the promotion as Clerk-Typist in Class-III. In Para 6, it has been clearly admitted that on 17.5.2010, the Applicant was "further promoted" to the post of Modi-Knowing Assistant on being found suitable candidate to that post as Applicant had completed Modi-Training.

8. Reading the Affidavit-in-reply above referred to further it is mentioned therein that Marathi / English Typing Certificate was necessary to be submitted, and therefore, he was called upon to give an explanation on 16.9.2014. The consideration of that aspect of the matter to the extent necessary has been deferred as already mentioned above. In Para 8 of the Affidavit-in-reply, the facts of the promotions of the Applicant which have already been referred to above and set out. Now, as far as the impugned order is concerned, a conjoint reading of Paras 10, 11, 11.1 and 12 would show that the said reversion was made in view of the promotion of some other employees having been found to be contrary to Rules, but pertinently, subject to the discussion about the Typing

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Certificate, etc., the case of the Applicant did not suffer from any such vice. It is, therefore, pleaded that since those employees had not completed three years in feeder cadre, their transfers were required to be made and then a reference was made to the transfer orders of the trio viz. the Applicant and Shri Jadhav and presumably Shri Latkar. In Para 11.1, it is pleaded that the reversion of the Applicant was made due to effective reversion and/or posting of the five Class III employees working in the post of Record Keeper, Research Assistant, Complier and Modi-Knowing Assistant because their promotions that were not found to be regular. Paras 12 and 13 of the said Affidavit-in-reply in fact need to be fully reproduced.

“12. With reference to ground no.6.10, I say and submit that as per Recruitment Rule, 2010 at serial no.7 (A) it is clearly mentioned that, “by promotion of a suitable person on the basis of seniority subject to fitness from amongst the person holding the post of Clerk-Typist in the Directorate having not less than three years service in the post.....” Since the applicant has completed a period of three years on the post of Clerk-Typist he was promoted to Modi-Knowing Assistant on a vacant post. But the five

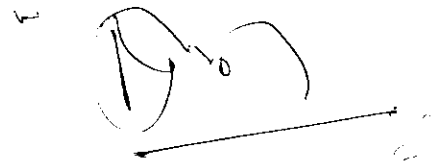


employees who have been reverted back have not fulfilled the above condition and hence they are reverted but this has reversal effect and consequently the applicant is reverted back.

13. With reference to ground no.6.11, I say and submit that Shri S.B. Aawle has been reverted back from Record Keeper to Research Assistant, Shri S.S. Latkar has been posted to Modi-Knowing Assistant, and accordingly in consequence thereof the applicant being a most junior one has been reverted back to Clerk-Typist. Copy of seniority list showing the position of applicant is enclosed herewith and marked as EXHIBIT "R-9".

9. The contents of Paragraph 20 of the Affidavit-in-reply are also significant and the said Para is also reproduced for facility.

"20. With reference to ground no.6.18, I say and submit that the promotion to the applicant has been given on being found him suitable candidate and have completed a service period of three years on the post of Clerk-Typist. Such



promotion is given to applicant on the post of candidates who are further promoted. But on being found those employees have not fulfilled the condition and have not completed a service period of three years in the feeder cadre, they are being reverted and consequentially applicant has been reverted.”

10. The above quotes are self-explanatory requiring no elaboration whatsoever and it is in that background that we may now turn to the impugned order. The said order in its entirety in Marathi needs to be reproduced.

“ संदर्भ:- जा.क.इएसटी-१०१४/३७५३, दिनांक ३१.१०.२०१४

कार्यालयीन आदेश

उपरोक्त संदर्भाधिन आदेशानुसार खालील प्रमाणे बदल करण्यांत येत आहेत.

अ.क्र.	कर्मचा-यांचे नांव	सध्याचे पद	पदावन्त/बदलीचे पद व त्याचा दिनांक	शेरा
१.	श्री. स.स.लाटकर	संशोधन सहा-यक	मोडीज्ञात सहा-यक ०१.११.२०१४ (म.पू.)	श्री. सं.भू. आवळे यांची संशोधन सहा-यक या मूळ पदावर नियुक्ती झाल्यामुळे श्री. स.स. लाटकर यांना मोडीज्ञात सहा-यक पदावर नेमणूक करण्यांत येत आहे.
२	श्री. वि.पा.पाटील	मोडीज्ञात सहा-यक	लिपिक -टंकलेखक ०१.११.२०१४ (म.पू.)	श्री. स.स. लाटकर यांची मोडीज्ञात सहा-यक पदावर नियुक्ती झाल्यामुळे श्री. वि.पा. पाटील यांना लिपिक-टंकलेखक पदावर पदावन्त करण्यांत येत आहे. त्यांची पूर्ण पुरालेखागार पुण कार्यालयात रिक्त असलेल्या लिपिक-टंकलेखक पदावर



				बदलीने नेमणूक करण्यात येत आहे.
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संचालक  
पुराभिलेख संचालनालय, महाराष्ट्र शासन”

11. Now, quite pertinently much as the issue of the Typing Test, etc. was sought to be canvassed on behalf of the Respondents at the time of hearing, the impugned order proceeded on the basis that the same was made only as a consequence of the “reversion of Shri Latkar” and no other cause was assigned. In fact, this aspect of the matter gets further fortified, if one were to refer to the contents of the Affidavit-in-reply above quoted. The crux of the matter, therefore, is that the reversion was made only for the cause assigned in the formal order which is impugned herein and if that be so, then in accordance with the law laid down by the Hon’ble Supreme Court in **Mahinder Singh Gill and another Vs. The Chief Election Commissioner, AIR 1978 SC 851**, the validity of that particular action manifested by Exh. ‘A’ will have to be judged by the reason therein mentioned and not by any reason that is sought to be supplemented dehors the express order by way of the facts like the Typing Examination, etc. In the present set of facts, therefore, the only aspect of the matter that needs to be scrutinized is the



justification for the reasons assigned in Exh. 'A' and in that sense, Exh. 'A' is exhaustive of the reasons and it is not as if, it is illustrative as one amongst several other reasons. It is not necessary for us to enter into the academics of the matter, but then in certain circumstances, it is possible that certain facts may be so implicit as to be very obvious in the expression clearly used in which event, even those incidental facts can also be taken note of. This, however, is not the state of affairs herein.

12. If that be so, then it is quite clear that on the basis of the contents in the Affidavit-in-reply itself, the case of the Applicant's reversion cannot be supported. Because there was nothing wrong with him and that is something which even the Respondents do not dispute. Further, even if it had become necessary for the Respondents to remove the Applicant so as to accommodate Mr. Latkar, there is no reason why the possibility of accommodating the Applicant to the equivalent post should not have been explored. In fact, in the Affidavit-in-reply itself, it has been clearly mentioned as to the duration of time which was considerable which the Applicant had been promoted to, to the two posts for. It needs to be emphasized that reversion as a consequence is an administrative action which has to be taken recourse



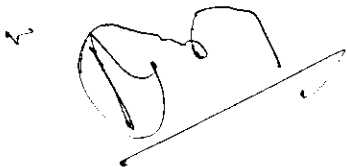
to as a last resort and that too for good and justifiable reasons. That is more so when this is not a case where the reversion has any disciplinary overtones in any manner whatsoever. The action of the Respondents, therefore, is clearly vulnerable to the judicial interference, regardless of the width of the jurisdiction of this Tribunal which exercises power of judicial review of administrative action. After-all, there can be very few, if any, instances of great moment, than to revert a person from a post that he held by the dint of his own merit to a lower post which he had been transferred from quite a while ago. We would, therefore, hold that the impugned action manifested by the impugned order is unsustainable. That is, if one were to go by the reasons mentioned, and on the authority of **Mahinder Singh Gill** that is what we are bound to do.

13. Assuming, however, that it was possible for us to examine the worth of the support tried to be secured by the Respondents to their case on the ground of the Applicant allegedly having not submitted the Typing Examination Certificate, etc., we find that having promoted in the year 2005, not till the year 2014 did it even occur to the Respondents that the Applicant was liable to produce those Certificates. As a matter of fact, as far as MS-CIT Examination is concerned, it was already cleared by the

Applicant and we do not think there is any objection in that behalf raised by the Respondents. As far as the Typing Examination is concerned, granting all latitude to all concerned, at least in the year 2014 even that examination was cleared by the Applicant. That was the requirement for the first promotional job in the year 2005. The Applicant having worked and also got promotion for about 9 years thereafter and in any case, having obtained even those Certificates now, in our view, should not be penalized and in any case even by the impugned order, he is being sought to be reverted and not removed.

14. Although, it was not specifically cited before us in this OA, but we are aware of a Judgment of the Division Bench of the Hon'ble the Chief Justice of the Bombay High Court in Aurangabad Bench in **Sachin Vs. State of Maharashtra and 2 others in Writ Petition No.4872/2012, dated 14.3.2013** wherein in more or less same set of circumstances, Their Lordships had in effect held that in such matters, the approach should be by and large liberal and in that matter as well, the concession with regard to the time was also granted.

15. It is, therefore, very clear that in the first place, the Typing Examination aspect of the matter was not the



cause for reversion but going a step ahead, even if it was so still such an action was not warranted in so far as the Applicant was concerned.

16. In view of the foregoing, we hold that the impugned action manifested by the impugned order is unsustainable and is liable to be quashed and set aside. The same is accordingly quashed and set aside. The Respondents are directed to reconsider the case of the Applicant for being reposted as Modi-Knowing Assistant or equivalent post, if any. Compliance within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**29.06.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**29.06.2016**

Mumbai

Date : 29.06.2016

Dictation taken by :

S.K. Wamanse.

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