

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 125 OF 2015

DISTRICT : MUMBAI

Shri Dilip Baburao Karande,)
[Ex. Assistant Supervisor Standard/)
Planning], having office at Government)
Central Press, Charni Road, Mumbai-4.)
R/o: Navratna C.H.S, Santacruz,)
Mumbai - 55.)
Add for service of notice :)
Shri A.V Bandiwadekar,)
Advocate, having office at 9, "Ram Kripa")
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

1. The Director,)
Government Printing, Stationery and)
Publication Directorate,)
Having office at Charni Road,)
Mumbai 400 004.)

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2. The Manager,)
Government Printing, Stationery)
And Publication Directorate,)
Having office at Charni Road,)
Mumbai 400 004.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Industries, Energy & Labour Dept,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 12.04.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, who was promoted from the post of Monocaster, to that of Senior Monocaster on 1.4.1985, posted as Junior Assistant (Standards) on 1.4.1992 and promoted as Senior Assistant (Standards) on 1.7.1992. He was granted benefit of

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Assured Career Progression (A.C.P) scheme by order dated 8.1.2008 but with effect from 1.7.2004. However, the benefits of A.C.P Scheme, were withdrawn later, as it was held that he had already secured promotions twice and was not eligible for benefits of A.C.P scheme in terms of G.R dated 20.7.2001. The Applicant has challenged the order dated 20.8.2014 denying him benefit of A.C.P Scheme and also recovery of Rs. 1,35,906/- from his pensionary benefits.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Monocaster on 1.3.1979. He was promoted to the post of Senior Monocaster on 1.4.1985. He was transferred as Junior Assistant (Standards) after the Applicant passed the departmental Examination on 1.4.1987. The Applicant was promoted as Senior Assistant (Standards) on 1.7.1992. On 12.9.1989, the Applicant made an application for appointment to the post of Instructor. The Applicant was, however, not appointed to that post. Learned Counsel for the Applicant argued that the Applicant was promoted as Senior Monocaster on 1.4.1985. He was, thereafter posted by transfer to Standards section after passing the necessary examination. His designation was changed to Junior Assistant. His promotion to the post of Senior Assistant was, in fact, his first promotion in Standards section, and he was eligible to get benefit of A.C.P Scheme after completion of 12 years in the post of Senior Assistant from 1.7.1992 to 1.7.2004 in terms of G.R dated 20.7.2001. Learned Counsel for the Applicant argued that the Respondents themselves should have granted benefit of A.C.P Scheme to the Applicant. However, the Applicant was

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considered for benefit of A.C.P in the Departmental Promotion Committee (D.P.C) held on 15.11.2007 after he represented. He was granted A.C.P benefit w.e.f 1.7.2004. Learned Advocate for the Applicant stated that the Applicant was eligible for regular promotion to the post of Supervisor and he, therefore, made a representation on 8.2.2011 for promotion to that post. Though the Applicant was given additional charge of the post of Supervisor from 7.3.2011 he was not given regular promotion. The Applicant retired on 30.9.2011. He sought second benefit of A.C.P Scheme from 1.10.2006 in terms of G.R dated 1.4.2010. However, by order dated 18.3.2014, the request of the Applicant to grant him second benefit of ACP Scheme and not to withdraw first benefit was rejected. He was held ineligible to get first benefit of ACP Scheme from 1.7.2004, as the Respondents claim that he had already got two promotions and was not eligible for benefit of A.C.P Scheme. Learned Counsel for the Applicant argued that the Applicant was given only one promotion in standards section and was, therefore, fully eligible for first benefit of A.C.P Scheme. He was also eligible for regular promotion to the post of Supervisor, but he was not promoted. Learned Counsel for the Applicant relied on judgments of this Tribunal in O.A no 1294/2010 and O.A no 20/2013 where similarly placed persons were held to be eligible for promotion. Learned Counsel for the Applicant also relied on the judgment of Hon. Supreme Court in **STATE OF PUNJAB & ORS Vs. RAJIQ MASHI (white washer) & OTHERS : (2015) 4 SCC 334**, regarding non-recovery of excess payment paid to a Government servant.

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4. Learned Presenting Officer (P.O) argued that the Applicant was granted first promotion in the post of Senior Monocaster on 1.4.1985. Thereafter, his designation was changed to Junior Assistant in the Standards department. He was promoted to the post of Senior Assistant on 1.7.1992. He was, therefore, ineligible for grant of benefit of A.C.P Scheme as terms of G.R dated 20.7.2001. He was, by mistake, granted, benefit of A.C.P scheme on completion of 12 years in the post of Assistant Supervisor from 1.7.2004. The Applicant was given additional charge of the post of Supervisor (Standard/Planning) from 7.3.2011, though he did not hold the requisite educational qualification of Diploma in Printing Technology required for regular promotion. He was, therefore, not granted promotion as no relaxation in qualifications was permitted under the rule. Such relaxation was not granted after 1988. Learned Presenting Officer argued that the Applicant was ineligible to get promotion as Supervisor and he was also not eligible to be given benefit of A.C.P scheme from 1.7.2004, so the excess payment made to him, was rightly recovered from him.

5. The Applicant was appointed as Monocaster Group 'C' in the pay scale of Rs. 260-420 on 1.3.1979. He was promoted to the post of Senior Monocaster on 1.4.1985 in the pay scale of Rs. 1200-1800. These facts are given in the synopsis of O.A by the Applicant himself. He, thereafter, appeared for the written examination for transfer to the Standard section. The Applicant claims that he was transferred to Standard section by changing his designation to 'Junior Assistant'. He was promoted as Senior Assistant

on 1.7.1992. By order dated 8.1.2008, the Applicant was granted benefit of Assured Career Progression (A.C.P) Scheme w.e.f 1.7.2004 and his pay was fixed in the pay scale of Rs. 5000-8000, which was the pay scale of Supervisor (Standards/Planning). He was given additional charge of the post of Supervisor (Standards) by order dated 11.3.2011 w.e.f 7.3.2011. It appears that the Pay Verification Unit pointed out that the Applicant was not eligible to get benefit of A.C.P Scheme, as he was already promoted twice. The same benefit was, accordingly, withdrawn. Para 2(3) of G.R dated 20.7.2001 reads as follows”-

“(३) सेवत दोन किंवा त्याहून अधिक वेळा पदोन्नी मिळालेल्या कर्मचा-यांना या योजनेचा लाभ अनुज्ञेय होणार नाही.”

The Applicant has admitted that he was promoted from the post of Monocaster to that of Senior Monocaster on 1.4.1985. He has also admitted that he was promoted to the post of Senior Assistant on 1.7.1992 in Standard section. His claim is that he was posted to Standard Section by transfer after passing an examination. The promotion to the post of Senior Assistant in Standards section, was therefore, his first promotion. In his application dated 6.7.2004, the Applicant had stated this fact (Exhibit 'C' on page 29 of the Paper Book) and he prayed for granting him Time Bound Promotion (now called A.C.P benefit under G.R dated 20.7.2001). The Applicant has not placed the copy of order transferring him from the post of Senior Monocaster to the post of Junior Assistant on record. However, in his application dated 6.7.2004, he has clearly mentioned that he was transferred to

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Standards section as Junior Assistant. He has placed no material on record which will support his claim that he was posted to Standards section by 'nomination' or his promotion as Senior Assistant in Standards Section was his first promotion is not supported by any material on record. There is no doubt that he has been working under the control of the Respondent throughout his working life. His claim that he was not promoted twice cannot be accepted when he has himself admitted that he was promoted to the post of Senior Monocaster on 1.4.1985 and to the post of Senior Assistant on 1.7.1992. It appears that the post of Senior Assistant was redesignated as Assistant Supervisor. This can be inferred if order dated 12.6.1992 (Exhibit R-2 on page 63 of the Paper Book) is read together with order dated 29.12.2007 (Exhibit R-3 on page 64). By order dated 12.6.1992, the Applicant was promoted as Senior Assistant from 1.7.1992. The order dated 29.12.2007 stated that the Applicant was working as Assistant Supervisor and completed 12 years on 1.7.2004. The Applicant was working in the same department, he was given two promotions and he was clearly ineligible to be given benefit of A.C.P Scheme from 1.7.2004 as per G.R dated 20.7.2001. The Respondent has extended this benefit to the Applicant, for which the Applicant had applied to the Respondent to grant him the same by letter/representation dated 6.7.2004 (Exhibit 'C'). After the retirement of the Applicant, this benefit was withdrawn and excess amount of Rs. 1,35,906/- was recovered from him. The Applicant in prayer clause 9(b) has prayed that the Respondent be directed to refund the recovered amount to the Applicant. He has relied on the judgment of Hon'ble Supreme Court in

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RAFIQ MASIH's case (supra). In para 3 of the judgment, Hon'ble Supreme Court has observed that:-

“For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.” (emphasis supplied).

In para 2 of the same order, Hon'ble Supreme Court has held that:

“2. Another essential factual component in this bunch of cases is that the respondent employees were not guilty of furnishing any incorrect information, which had led the competent authority concerned, to commit the mistakes of making a higher payment to all the employees. The payment of higher dues to the private Respondents in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents in the mistakes committed by the employer in extending the underserved monetary benefits to the respondents employees, is totally ruled out. It would, therefore, not be incorrect to record that private respondents were as innocent as their employer in the wrongful discrimination of their inflated emoluments.”

Hon'ble Supreme Court has held that there should not be any participation by an employee in the mistake committed by the


employer. In the present case, the Applicant not only participated, but also misrepresented as is evident from Exhibit 'C' in which he claimed that he was eligible to get Time Bound Promotion from 1.7.2004. He is, clearly, not eligible for the benefit of the aforesaid judgment of the Hon'ble Supreme Court.

6. The Applicant has claimed that some other employees were extended benefits of Time Bound Promotion in similar circumstances. It is clearly held by me that the Applicant was not eligible for Time Bound Promotion. If some other employees were wrongly given Time Bound Promotion, this Tribunal cannot direct the Respondent to commit the same mistake in this case also.

7. The Applicant has another claim that he was eligible to be granted regular promotion to the post of Supervisor (Standards) on the basis of his qualifications and experience. As per Rules for the Recruitment and Promotion of the Industrial Staff in Government Presses, for the post of Planning Overseer (which is same as the post of Supervisor [Planning /Standards] the following educational qualifications are required, viz:

“(2) Diploma or Certificate in Typography Course”.

This Diploma is now has to be construed as the Diploma in Printing Technology.



For the post of Composing Overseer, the qualification is Diploma in Letter Press Printing or a course of training for a period of four years in a large Printing Press. The Applicant claims that he has passed National Apprenticeship Scheme in the trade of Monocaster, which should be treated as equivalent to Diploma (Para 6.21 of the O.A). The Respondent has placed on record a letter dated 21.12.2012 from Director, Maharashtra State Technical Education Board, Mumbai, which state Technical Education Board, Mumbai which states that the Diploma in Printing Technology is a three years' full time course approved by the All India Council of Technical Education (AICTE) while the National Apprenticeship Certificate is a Certificate course and the latter is not equivalent to Diploma in Printing Technology. The Respondent has rightly held that the Applicant did not have technical qualifications required for the post of Supervisor Planning/Standards.

8. The Applicant has relied on the following judgments of this Tribunal.

(i) Judgment dated 4.1.2014 in O.A no 1294/2010. That judgment is based on interpretation of Head Reader or Head Reader or Head Examiner, Head Reader (Grade-II), Senior Reader, Examiner, Proof Examiner, Reader and Copy Holder (Class-II) in the Government Printing Presses under the Directorate of Government Printing and Stationary (Recruitment) Rules, 1990. Rule 3(b)(iii) ibid prescribes inter alia Diploma in Printing Technology or Certificate of National Apprenticeship Certificate as requisite qualification. The

present case, is governed by entirely different set of rules, where there is no mention of Apprenticeship Certificate. The case is clearly distinguishable.

(ii) Judgment dated 17.4.2015 in O.A no 20/2013. In this case, the Applicant was promoted to the post of Planning Supervisor on the basis of D.P.C meeting held on 16.9.1997 by relaxing the educational qualifications. Later on, he was reverted in 2012. That decision was not upheld by this Tribunal. In the present case, the Respondent has claimed that since 1988, no relaxation in educational qualifications has been granted. (Para 15 of the affidavit in reply dated 24.4.2015). This may not be correct as the Applicant in O.A no 20/2013 was promoted as Supervisor-Planning by relaxing educational qualifications in 1997. However, the facts are entirely different here. The Applicant was never considered eligible for promotion as he did not have requisite educational qualification. He cannot claim relaxation in educational qualification as a matter of right. The last time, such relaxation was granted was apparently in 1997, when the Applicant in O.A no 20/2013 was promoted after relaxing his qualifications. This Tribunal cannot direct the Respondent to relax educational qualifications of the Applicant, especially, as he has already retired. The case is clearly distinguishable.

9. The Applicant has not sought relief of regular promotion to the post of Supervisor-Planning, as can be seen from the prayer clause 9(a) and 9(b). He has challenged order dated 20.8.2014, rejecting his request for Time Bound Promotion to the post of Supervisor Planning. In fact, he was

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already granted such Time Bound Promotion by order dated 29.12.2007 (Exhibit R-3 on page 64 of the Paper Book). This same was withdrawn as he was already given two promotions. In para 5 of this judgment, the action of the Respondent has been held to be correct. The Applicant was also ineligible to be given Time Bound Promotion to the post of Supervisor-Planning, as he did not have requisite qualification for promotion to that post which is an essential condition under G.R dated 20.7.2001.

10. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-
(**Rajiv Agarwal**)
Vice -Chairman

Place : Mumbai
Date : 12.04.2016
Dictation taken by : A.K. Nair.