

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 586 OF 2015

DISTRICT :Raigad

Shri Manoj Manohar Surve,)
Aged 32 Yrs, Working as Peon in)
the office of Sub Treasury, Pali,)
Tal. Sudhagad, Dist. Raigad,)
R/O. Behirechi Wadi, Tal. Mangaon,)
Dist. Raigad.)...**Applicant**

VERSUS

1. The Joint Director,)
Accounts and Treasuries,)
Konkan Bhawan, Navi Mumbai.)
2. The Treasury Officer,)
Raigad-Alibaug, Having Office)
at Hira Kot Tank, Alibaug,)
Dist. Raigad.)....**Respondents**

Shri G.A. Bandiwadekar, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri R.B. Malik, Member (J)**

DATE : 26.07.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri G.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

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2. This Original Application has been filed by the Applicant challenging orders dated 17.3.2015 passed by the Respondent No.1, based on order dated 9.4.2015 passed by the Respondent No.2 holding the Applicant will not be considered for appointment to Group 'C' post under any circumstances.

3. Learned Counsel for the Applicant argued that the Applicant was appointed to a class III post on 11.4.2005 on compassionate basis. The Applicant was required to pass requisite Marathi/English Typing Examination within two years. However, the Applicant could not do so. The Applicant was removed from service by the Respondents. The Applicant challenged the said order by filing O.A.No.127 of 2009 and this Tribunal by order dated 15.12.2009 directed the Respondents to appoint the Applicant in a Group 'D' post. The Applicant was appointed in a Group 'D' post on 29.3.2010. The Applicant has been working in Group 'D' post since then. The Applicant is eligible for promotion to Group 'C' post as he fulfills all the conditions for promotion from Group 'D' to Group 'C' post as per G.R. no. RTR-1085/853/PC no.72-85/13 dated 15.4.1991 issued by G.A.D. A Group 'D' employee, who has passed S.S.C. and has also passed requisite Marathi/English Typing Examination is eligible for promotion to Group 'C' posts on the basis of his seniority. 50% posts in Group 'C' are to be filled by promotion of eligible Group 'D' employees. Learned Counsel for the Applicant argued that the Respondents by impugned communications dated 17.3.2015 and 9.4.2015



have informed that the Applicant that he cannot be appointed to Group 'C' post under any circumstances in view of G.R. dated 8.9.1997. Learned Counsel for the Applicant argued that the G.R. dated 8.9.1997 prohibits fresh appointment of a person on compassionate ground, to a Group 'C' post, who is appointed on Group 'D' post in the circumstances mentioned in the said G.R. However, this G.R. cannot be applied to block promotion prospects of a Group 'D' employee, if he is found eligible for such promotion. Such an interpretation of G.R. dated 8.9.1997 will be highly illogical, arbitrary and discriminatory.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was initially appointed on 11.4.2005 on a Group 'C' post. However, he could not pass requisite Marathi/ English Typing Examination within two years of joining service. His services, therefore, came to be terminated. The Applicant was given Group 'D' appointment by order dated 29.3.2010 pursuant to judgment of this Tribunal dated 15.12.2009 in O.A.No.127 of 2009 filed by the Applicant. Learned P.O. stated that the appointment letter itself mentioned that the Applicant was not eligible to be considered for Group 'C' post under any circumstances. Learned P.O. argued that G.R. dated 8.9.1997 makes it very clear that a person who was first appointed in Group 'C' post and whose services was terminated due to failure to pass requisite typing test can be appointed as a fresh appointee in a Group 'D' post. However, such a person cannot be considered for Group 'C' post under any circumstances.

5. The relevant portion of G.R. dated 8.9.1997 is reproduced below:-

“लिपिक- टंकलेखक पदावरील नियुक्ती टंकलेखनाच्या वेगमर्यादेच्या प्रमाणपत्राअभावी संपुष्टात आणण्यात आलेल्या उमेदवारांच्या कुटुंबास आर्थिक हलाखीत रहावे लागू नये या उद्देशाने त्यांचा गट 'ड' मधील पदासाठी विचार करावा काय याबाबतचा प्रश्न शासनाच्या विचाराधीन होता. याबाबत असा निर्णय घेण्यात आलेला आहे की, जे लिपिक-टंकलेखक नियुक्तीनंतर टंकलेखनाची विहित वेग मर्यादेची परीक्षा पास होऊ शकले नाहीत म्हणून त्यांच्या सेवा संपुष्टात आणल्या आहेत. अशा उमेदवारांना गट 'ड' मधील नियुक्तीसाठी पदांची उपलब्धता विचारात घेऊन नव्याने नियुक्ती देण्याबाबत विचार करण्यात यावा. मात्र अशा रितीने गट 'ड' मधील पदावर नियुक्ती स्वीकारल्यानंतर कुठल्याही परिस्थितीत गट 'क' मधील पदासाठी त्यांचा विचार करता येणार नाही. ही बाब त्यांना नियुक्तीपूर्वी स्पष्ट करावी.”

It does appear in the first blush that the Applicant cannot be considered for Group 'C' post under any circumstances. His appointment letter also mentioned this condition. However, the aforesaid G.R. is for compassionate appointment. The title of the G.R. reads as follows:-

“ शासकीय सेवेत असताना दिवंगत, अकाली सेवानिवृत्त झालेल्या कर्मचा-यांच्या नातेवाईकांस अनुकंपा तत्वावर नियुक्ती देण्याबाबत.”

It is not a disputed fact, that once a person is given appointment on compassionate basis, the source of recruitment is not considered relevant for granting him any service related benefit. He is treated as par with other directly recruited employees. In the present case, the Applicant is given appointment to Group 'D' posts. Persons working in Group 'D' posts become eligible for promotion to Group 'C' posts on completion of 3 years of service or passing S.S.C. examination, whichever is later. G.R. dated 15.4.1991 stipulated additional condition of passing Marathi/English Typing tests. There is no doubt that the Applicant meets all these requirements and can be considered for promotion to Group 'C' post on the basis of G.R. dated 15.4.1991 as

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amended from time to time. These G.R.s dated 8.9.1997 and G.R. dated 15.4.1991 (as amended from time to time) are required to be interpreted harmoniously. If a person, once appointed on compassionate basis, fails to pass requisite Typing examination in time, he can be terminated and appointed in a Group 'D' post. As per G.R. dated 8.9.1997, he cannot be given fresh compassionate appointment in Group 'C' post, even if he subsequently passes requisite Marathi/English Typing Examinations. However, the stipulation in the aforesaid G.R. that such a person can never be considered for Group 'C' post will not exclude consideration of his promotion to Group 'C' post, if he is eligible for such a promotion in terms of G.R. dated 15.4.1991 as amended from time to time.

6. The Applicant is eligible to be considered for promotion to Group 'C' if he satisfies all the conditions for such promotion, in the basis of his seniority. The impugned communications dated 17.3.2015 and 9.4.2015 are quashed and set aside. The Respondents are directed to consider the Applicant for promotion to Group 'C' post if he is eligible for such promotion in terms of relevant G.R.s and on the basis of his seniority. This should be done within 3 months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 26.07.2016

Place : Mumbai

Dictation taken by : SBA

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