

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 390/2018 (D.B.)

Ajay S/o Prahallad Kadu,
Aged 41 years, Occu. Govt. servant
PWD Dept., R/o Official Quarters,
Government Rest House (B&C),
PWD Office, Kalmeshwar, Dist. Nagpur.

Applicant.

Versus

- 1) The Secretary,
Public Works Department,
State of Maharashtra, Mantralaya,
Mumbai-32.
- 2) The Superintending Engineer, PWD,
Old Secretariat Building, Civil Lines,
Nagpur-01.
- 3) The Deputy Engineer (Technical),
Sub Regional PWD Office (Technical),
Sadar, Nagpur.

Respondents.

Shri S.M. Khan, Advocate for the applicant.
Shri A.M. Ghogre, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 6th January,2022.

Date of Pronouncement of Judgment : 18th January,2022.

JUDGMENT**Per : Member (J).****(Delivered on this 18th day of January, 2022)**

Heard Shri S.M. Khan, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

3. The applicant was appointed as Chaukidar (Grade-D) in the pay scale of Rs. 750-12-780-14-940. As per appointment order dated 18/12/1996, the applicant is working with the department / respondent. His work is sincere, diligent and honest. He has not received any adverse remarks during his service. He belongs to OBC and having obtained Secondary School Certificate of 10th fail in March, 1994 (9th pass). The said Certificate was submitted to the respondents / department and it was duly verified.

4. Due to sincere and diligent service of the applicant in the department for almost 20 years, he was given promotion as a Driver by elevating him from Grade-C to D vide promotion order dated 2/8/2017. The applicant is working on the post of Vehicle Driver after promotion w.e.f. 11/8/2017.

5. On 14/05/2018, the respondent no.2 issued letter and relieved him from the post of Driver. The applicant came to know that

the department has taken decision of cancelling the promotion on the basis of G.R. dated 2/3/2017. The applicant has been appointed in the year 1997 on compassionate ground. He has completed 20 years long service. He was promoted as a Driver as per order dated 2/8/2017. The respondents have not issued any show cause notice while reverting the applicant from the post of Driver to the post of Chaukidar, therefore, prayed to quash and set aside the impugned order and take back him to his previous position.

6. The application is opposed by the respondent no.2 by filing reply. In the reply, it is submitted that the applicant was appointed on compassionate ground in a permanent vacant post. As per the rules framed in the year 1980 i.e. Non-gazetted staff rules for the Drivers of Motor Cars and Jeeps in Govt. Offices (Recruitment) Rules,1980, the following conditions are given –

“(a) by promotion from amongst the members of staff in class-IV Govt. Service, who possess qualifications and experience mentioned in sub-clause (ii), (iii), (iv), (v) and (vi) of clause (c) :

(b) by transfer of a member of State in Class III Govt. Service who possess a qualification and experience mentioned in sub-clause (ii) to (vi) of clause c or

(c) by nomination from amongst candidates who

(i) unless already in the service of the Govt. of Maharashtra are not more than thirty five years,

(ii) possess an effective driving licence to drive a heavy vehicle or a motor car or a jeep under the Motor Vehicle Act, 1939.

(iii) have passed at least IV standard examination of any recognized school and can speak in Marathi and Hindi language;

(iv) possess not less than three years experience of driving motor vehicles other than a motor cycle,

(v) have clean record and working knowledge of repairs of a motor car or, as the case may be of a jeep and

(vi) possess a good physique and knowledge of topography of the concerned area.”

7. It is submitted that at the time of giving promotion to the applicant and while posting him as a Driver, the department has relied upon the above mentioned rules.

8. It is submitted that at the time of promotion, the applicant was eligible for the post of Driver, but the Government issued Notification dated 2/3/2017 and amended the said rules. As per sub clause (iii) of rule (c) of the amended rules, the applicant is not entitled for the post of Driver. The amended sub clause (iii) of rule (c) reads as under -

“(iii) have passed Secondary School Certificate examination from recognized school;”

9. It is submitted that due to inadvertence, at the time of issuance of promotion and posting order of the applicant, the

respondent was not aware of the amended rules dated 2/3/2017. The applicant has not passed the SSC examination and therefore he is not entitled for the post of Driver. Hence, the application is liable to be rejected.

10. Heard learned counsel for the applicant. He has submitted that the applicant was not given any show cause notice before reverting him from the post of Driver. The amended rule dated 2/3/2017 was published on 3/3/2017. The applicant was promoted as per order dated 2/8/2017. The learned counsel has pointed out following Judgments—

“i) SUPREME COURT - (1994) 6 SCC 154.

ii) SUPREME COURT - (2006) 6 SCC 57.

iii) HIGH COURT (Rajasthan) -- CPA (Writ) No- 1437 /2007.

iv) MAT, MUMBAI -- OA No - 70/2017 & 786/2017.

v) MAT, MUMBAI -- OA No - 237 /2015.

vi) MAT NAGPUR -- OA Nos - 421 to 425/2017.”

11. Heard the learned P.O. He has pointed out the G.R. dated 2/3/2017 and submitted that the applicant has not possessed the required qualification and therefore he cannot be continued on the post of Driver. The applicant was appointed as Chaukidar on compassionate ground vide order dated 18/12/1996. The applicant has completed 20 years service. He was promoted on the post of Driver as per order dated 2/8/2017. While issuing the promotion order

dated 2/8/2017, the Recruitment Rules on the post of Driver of the year 1980 show that the candidate who has possessed driving licence of light motor vehicle and having certificate of IV Standard examination of any recognized school and he can speak in Marathi and Hindi language was eligible for the post of Driver. As per the new amended rules dated 2/3/2017 which was published on 3/3/2017. The qualification for the post of Driver is passing Secondary School Certificate examination from the recognized school (10th Standard). The applicant had appeared for 10th Standard examination, but failed. He is having 9th Standard passed Certificate.

12. It is pertinent to note that the new amended rules dated 2/3/2017 was published in the Govt. Gazette on 3/3/2017. The applicant cannot be reverted only because he is not having 10th Standard pass certificate. He was not given any show cause notice.

13. The learned counsel for the applicant pointed out decision of Hon'ble Supreme Court in case of **Bhagwan Shukla S/o Sarabjit Shukla Vs. Union of India & Ors. (1994) 6 SCC,154.** The Hon'ble Supreme Court has held that *"the appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any*

procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Therefore, the impugned order by which the pay of the appellant fixed on his promotion as Guard-C from the post of Trains Clerk was sought to be reduced is not sustainable.”

14. In the present matter, no any show cause notice / opportunity of hearing was given to the applicant. Directly, the order of reversion was passed by the respondents, therefore, the impugned order is liable to be set aside. The learned counsel for the applicant has pointed out decision of **Union of India & Ors. Vs. M. Mathivanan (2006) 6 SCC 57** and **Baldev Singh & Ano. Vs. State of Rajasthan & Ors.** The Division Bench of Rajasthan High Court has held that “Appellant’s who were Class-IV employees, were promoted to the post of LDC --Promotion as LDC on basis of their Prathma qualification which qualification came to be derecognised subsequently by amendment of relevant rules--Order of reversion passed without giving opportunity to appellants--It would be harsh and unjust to the appellants, who have by now completed almost one and a half decade from the date of promotion if they are now reverted against the post of Class-IV—Order of reversion along with judgment of single Judge, dismissing writ petitions, set aside.” The learned counsel for the

applicant has pointed out the decision of M.A.T., Principal Bench, Mumbai on the same point.

15. From the above cited Judgments, it is clear that reversion of the applicant without giving any opportunity to show cause is illegal. The applicant was promoted by order dated 2/8/2017 and he is reverted as per impugned order dated 14/5/2018. The applicant has worked on the post of Driver. He was promoted because of his clean record and having long continuous service of 20 years. The new Recruitment Rules published in the Government Gazette on 3/3/2017. The applicant was promoted to the post of Driver. He was having required qualification as per the Rules of 1980. The only difference made in the Recruitment Rules that for the post of Driver, he should have passed 10th Standard examination. The applicant has passed 9th Standard examination. The impugned order of reversion is passed by the respondents without issuing any show cause notice to the applicant. In view of the cited Judgments, the impugned order dated 14/5/2018 and order dated 6/6/2018 are liable to be quashed and set aside. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 14/5/2018 and order dated 6/6/2018 are hereby quashed and set aside.

(iii) The respondents are directed to take the applicant to his previous position.

(iv) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 18/01/2022.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 18/01/2022.

Uploaded on : 18/01/2022*