

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 1038 OF 2015

DISTRICT :NASHIK

Shri Vilas Shamrao Gohane,)
Age 37 years, Occ: Nil,)
R/o. F5, Kavya Apartments,)
Jail Road, Nashik.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Information and Technology)
Department, Mantralaya,)
Mumbai.)
2. Dy. Director, (Information))
Divisional Information Office,)
Nashik Road, Nashik.)
3. Director (Administration))
Information and Public Relation)
Directorate, Mantralaya, Mumbai.)....**Respondents**

Shri N.P. Dalvi, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 2.03.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri N.P. Dalvi, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 2.12.2015 issued by the Respondent No.2 terminating his services as Clerk-cum-Typist.

3. Learned Counsel for the Applicant argued that the Respondent No.2 issued advertisement dated 17.7.2013 to fill inter-alia, 2 posts of Clerk-Typist, one of which was reserved for O.B.C. and one was Open. Condition no.25 of the advertisement provided that for the post of Clerk, there would be no interview and the selection will be based on only on written examination. The same advertisement included other posts including six posts in Group 'D' (Class- IV). The Applicant applied for the post of Clerk-Typist from O.B.C. category and appeared for the written examiantion. He was first in the merit list for Group 'C' posts and was appointed as Clerk-Typist by order dated 5.6.2014. However, by order dated 2.12.2015, his services were terminated without giving him any notice. Learned Counsel for the Applicant argued

that this is in complete violation of the principles of natural justice. Learned Counsel for the Applicant argued that the impugned order mentions letter dated 1.9.2015 from the Respondent No.3 and minutes of the Divisional Section Committee meeting dated 2.12.2015. From the information submitted by the Respondents, it appears that there were allegations of irregularities in selection of Group 'D' posts and therefore, it was decided to scrap the whole selection process. However, there was no allegations of irregularities in the selection for the post of Clerk- Typist, for which no interview was held. It was, not proper to scrap the selection of the Applicant for the post of Clerk-Typist, which was perfectly legal.


4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that in the advertisement issued by the Respondent No.2 to fill up 14 posts in Group 'C' and Group 'D' dated 18.7.2013, no horizontal reservation was provided. This was one irregularity. Written examination for various posts were held. For Group 'D' posts, oral interview was conducted on 17.7.2014. The Selection Committee refused to conduct interviews. The Respondent No.2 sought guidance from the Respondent No.3, who by letter dated 1.9.2015 directed that the whole selection process may be scrapped. The selection committee in its meeting held on 30.10.2015 decided to cancel the whole process of recruitment. The committee again met on 2.12.2015 and decided that the services of the Applicant may be terminated as the whole selection process was scrapped, as it was

irregular. Learned P.O. argued that the Applicant's services were terminated as the selection process was irregular. He cited judgment of Hon'ble S.C. in Civil Appeal No.1326 of 2002 dated 19.2.2002 in support of his contention that in case the whole selection process is scrapped due to irregularities, it is not necessary to give notice of termination of services to individual candidates.

5. We find that the Divisional Selection Committee has taken the following objections in its meeting held on 17.7.2014, viz:

- (i) No horizontal reservation was shown in the advertisement issued for the recruitment though it was necessary.
- (ii) It was required to call the candidates for interview in the ratio of 1:5. But this was not followed.
- (iii) The list for interview should have been made taking into account the merit of the candidates and also as per reserved categories, such as S.C., S.T., O.B.C. and open. This has not been followed.
- (iv) The candidates for driver's post were called for an interview without taking prior technical test.

6. From these objections, it is clear that the objections at (ii) to (iv) didnot apply to the selection for the post of Clerk, which was to be done only on the basis of written examination. As regards horizontal reservation, as



per Government circular dated 16.3.1999, it is compartmentalised i.e. for each vertical reservation category, horizontal reservation for different categories is to be provided. Maximum vertical reservation is for Women, which is 30%. Two posts of Clerk, one each from O.B.C. and Open category were to be filled. 30% reservation for one post from O.B.C. would come to 0.3, which has to be ignored, as it is less than half. Horizontal reservation cannot be carried forward. So, there is no question of any back log. It is quite clear that one post from any vertical reservation category cannot have any horizontal reservation. The committee's objection in this regard for the post of Clerk-Typist was totally without any basis.

7. We have perused the minutes of the Divisional Selection Committee dated 17.7.2014 (Exhibit 'R-1), 30.10.2015 (R-3) and 2.12.2015 (R-4). There is no mention that there was any irregularity in the selection of the Applicant. In fact, in the meeting held on 30.10.2015, it is mentioned that it was decided not to take any action as regards selection for the Applicant, as it was made on the basis of only the written examination as per condition no.25 of the advertisement dated 17.7.2013. However, in the subsequent meeting dated 2.12.2015, it was decided to terminate the services of the Applicant on the ground that the advertisement itself was cancelled. From the above discussion it is quite clear that there was no irregularity in selection of the Applicant for the post of Clerk-Typist. He was given appointment on 5.6.2014, before the meeting of

the Selection Committee dated 17.7.2014 was held. In the said meeting and subsequent meeting of the committee held on 30.10.2015, note was taken regarding appointment given to the Applicant. In the meeting held on 2.12.2015, the committee decided to terminate his services only on the ground that the advertisement was cancelled. There is no positive finding that his selection was irregular. No notice was given to the Applicant before his services were terminated. All these facts can lead to only one conclusion viz. there was no valid ground to terminate the services of the Applicant. The Respondent No.2 erred in terminating the Applicant's services without any valid ground, as well as for violating the principles of natural justice.

8. Having regard to the aforesaid facts and circumstances of the case, the order dated 2.12.2015 terminating the services of the Applicant is quashed and set aside. The Applicant will be entitled to all the service benefits, except back wages, as if the aforesaid order was not passed. The Respondents are directed to take the Applicant back in service within two weeks 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 : 2.03.2016

Place : Mumbai

Dictation taken by : SBA

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