

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1047 OF 2015

DISTRICT : A' NAGAR

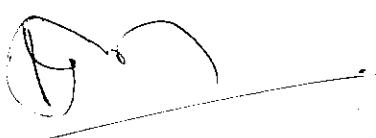
Shri Ramesh Yashwant Tanpure.)
Age : 49 years, Occ.: Nil, Ex-Serviceman,)
R/o. Plot No.9, Sriram Nagar, Pipe Line)
Road, Savedi, Ahmenagar.)...**Applicant**

Versus

1. The Member Secretary.)
Regional Selection Committee,)
Pune cum Superintending Engineer,)
Koyana Construction Circle and)
Zone Officer, Kolhapur Zone, Satara,)
Having Office at Sinchan Bhawan,)
Krishna Nagar, Satara.)
2. The Regional Selection Committee,)
Pune cum Chief Engineer (Special)
Project), Water Resources Dept.,)
Pune - 11.)
3. The State of Maharashtra.)
Through the Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

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



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

DATE : 08.08.2016

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

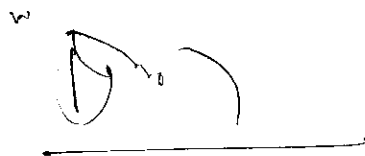
JUDGMENT

1. The Applicant, an Ex-serviceman is aggrieved by the order dated 21.7.2012 made by the Respondent No.2 – The Regional Selection Committee, Pune cum Chief Engineer (Special Project), Water Resources Department whereby the Applicant was held disqualified for being appointed to the post of Daphtar Karkoon, Canal Inspector and Measurer (the said post) on the ground that he had not obtained the Certificate of MSCIT.
2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.
3. Be it noted right at the outset that the present Applicant is totally and completely at par with his three other colleagues S/S Shivaji H. Patil, Sunil N. Naikare and Shri Bhaskar T. Darade whose Original Application Nos. 933/2012, 1140/2013 and 12.8.2015 on exactly similar



set of facts was allowed by us. The Bench spoke through one of us (R.B. Malik, Member-J), it was held that to those OAs, the G.R. of Water Resources Department, dated 30.7.2008 and not the G.R. of Water Resources Department, dated 28.11.2011 would apply. It needs to be noted that if the 2011 G.R. was the governing one, then the Applicants there as well as here would have no case. Under 2008 G.R, within two years of joining, the incumbent could have submitted the said Certificate. The significance of the applicability of the said G.R. lies in this fact.

4. The said post was advertised vide Clause 3.23 Advertisement No.2/2011, dated 4.1.2012. This date is extremely relevant because the 2011 G.R. came to be issued on 28th November, 2011. As the discussion progresses, we may have to elaborate on this aspect of the matter. The Applicant responded and ultimately cleared the examinations. The merit list came to be published on 21st July, 2012. He was called with required documents on 1st July, 2012 and it was at that stage that he was informed that since he did not have the MSCIT Certificate, he was disqualified from being appointed. According to the Applicant, in fact, on 30th August, 2012, he passed the said examination scoring quite heavily (77 out of 100). The



stand of the Respondents obviously was that this Certificate should have been there with the Applicant, when he came for document verification. Now, it is in this background that the Applicant has brought this OA for the relief aforesaid.

5. On the crucial aspect of the matter, the case of the Applicant is that the G.R. of 2008 would be applicable and not of 2011 because the vacancies were of a period before 28th November, 2011 and to those vacancies, 2008 G.R. would be applicable. This precisely was the issue involved in the earlier OAs detailed hereinabove.

6. The Respondents through the Affidavit-in-reply of Mr. Shashikant S. Mane, Deputy Superintending Engineer has resisted the claim in this OA. The facts with regard to the applicability of the G.R. are set out in Para 6.12 of the OA and that Paragraph has not been dealt with at all in the Affidavit-in-reply paving way for the invocation of constructive admission of those facts. Paras 13 and 13.1 of the Affidavit-in-reply deal with Para 6.11 of the OA and Para 14 straightaway deals with Para 6.13.

7. However, as far as the earlier OAs are concerned, the case of the Respondents has been that the Applicant



has filed this OA simply to take advantage of the Judgment in those matters. It is pointed out that every select list is valid for a period of 1 year after the declaration of the results and it is followed by another recruitment process.

8. Now, as to the above aspect of the matter, we find that this OA was preceded by an application for condonation of delay being **M.A.593/2015 in O.A.1047/2015 (Ramesh Tanpure Vs. Member Secretary and 2 others)**. By our order of 18th March, 2016, the delay was condoned. Therefore, if the matter is ripe and live, then the judicial forum cannot be held to be barred from examining and entering findings on the issues, regardless of whatever may have happened in the earlier OAs.

9. Returning now to the main issue, we find that in our order 12.8.2015 in the above referred disposed of OAs to be hereinafter called **Patil's OA**, the facts as already mentioned above were exactly similar. We noted there that in 2011 GR, there was neither express nor implied recital to suggest retro-activity, and therefore, by the normal cannon of interpretation, that instrument will have to be treated as prospective. One fall out would be that 2008 G.R. would continue to govern the parties concerned. The



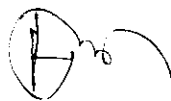
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same is the state of affairs here as well. We then referred to the Judgment in the matter of **Kulwant Singh and others Vs. Daya Ram and others, (2015) 1 SCC (L & S) 625 = (2015) 3 SCC 177**. Two other Judgments of the Hon'ble Supreme Court that have been referred to in **Kulwant Singh's** case were also referred to. A passage came to be extracted in Para 8 therefrom. It will be most appropriate in our view to reproduce Para 8 from **Patil's OA** for ready reference.

“8. As far as the principles of interpretation of statute are concerned, generally speaking in the absence of clear language suggestive of retroactivity either directly or by implication, the enactments would have prospective effect. Now, here we are concerned with the Rules framed by the Department of Water Resources I 2008 which came to be modified (सुधारीत सेवाप्रवेश नियम). However, they are by issuance of G.R. They do not appear to have been issued under the proviso of Article 309 of the Constitution of India. Now, in this background, in our view, a judgment of the Hon'ble Supreme Court in **Kulwant Singh and others Vs. Daya Ram and others, (2015) 1 SCC (L & S) 625 = (2015) 3 SCC 177** would provide




conclusive guidelines. The legal issue to be determined was precisely the same as is the case over here. Therefore, it is really not necessary to examine the facts in that matter. It has been held by the Hon'ble Supreme Court that in case of amendments of the Rules, the applicability thereof will be ordinarily prospective. The vacancies which occurred prior to the amendment of the rules would be governed by the unamended Rules and vacancies occurring after the amendment would be governed by the amended Rules. The perusal of the observations of the Hon'ble Supreme Court generally and with particular emphasis on Paras 32 to 44 would be apposite. Relying upon an earlier judgment in the matter of Y.V. Rangaiah Vs. J. Sreenivasa Rao (1983) 3 SCC 284, Their Lordships in Kulwant Singh (supra) were pleased to approvingly note the law laid down in that matter which *inter-alia* was, "that the vacancies which had occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules and the Court further reiterated that it did not have the slightest doubt that the posts which fell vacant prior to the amended

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Rules would be governed by the old Rules and not by the new Rules.” To the same effect, was the principle of law culled out in Para 39 of **Kulwant Singh’s** case (supra). In Para 40, Their Lordships were pleased to reproduce a passage from **State of Rajasthan Vs. R. Dayal (1997) 10 SCC 419**. The said Para may usefully be reproduced here as well.

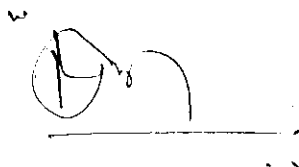
“8. But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinabove. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specially laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would



be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled-in in accordance with the law existing as on the date when the vacancies arose.”

10. We then referred to an unreported Judgment of the Hon'ble Bombay High Court in **Writ Petition No.6212/11 (State of Maharashtra Vs. Ananda, dated 9th November, 2011)**. That was in the context of the fact that there is a GAD G.R. of 19th March, 2003 laying down that post 19th March, 2003 except in case of Drivers for the selection of all the other personnel, the said Certificate would have to be produced within two years of the date of joining, and therefore, a provision inconsistent therewith in the G.R. of any other Government Department just as the case here, would have to be subordinated to the G.R. issued by the GAD.

11. We further noted that the Regional Committees under the same umbrella of the Respondents at Nagpur were adopting a course of action which the Applicant wants us to adopt herein, and therefore, between the two



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Committees of the same establishment, there was discriminatory treatment, which was unacceptable. For all those reasons, we upheld the OA as already indicated above.


12. It is, therefore, very clear that this OA will also have to be decided in the same line as we did **Patil's OA**. We must, however, make one point very clear. Here, the 2011 G.R. was made effective from 28th November, 2011. The advertisement was just about one month thereafter (2nd January, 2012). Therefore, there is not just a broad probability, but almost a certainty that regard being had to the manner in which the business is conducted in the Government Offices, the vacancy which the Applicant responded to, could not have been of a period during 28.11.2011 and 2.1.2012. It was quite clearly of a period much before 28.11.2011. 2008 G.R. was already holding the field, and therefore, there is no question of holding that there was no legal source in existence at that time. That source was 2008 G.R. In our opinion, in **Kulwant Singh's** case also, the issue with regard to the applicability of the Rules arose. When the facts made it clear that the vacancies were quite surely of a period, when the old Rules held the ground. In that sense, therefore, the question as to the applicability of Rules should in our view be fact



specific. The fact of the vacancies being pre 28.11.2011 is quite clear here. Therefore, the matter is uncomplicated. But generally, in such matters, there must be material to enable a finding to be safely reached as to which rules would apply. The burden and / or onus aspect of the matter will also be fact specific. We need not discuss that aspect any further because on peculiar facts hereof as well as in **Patil** (supra), the applicability of 2008 Rules is beyond the shadow of doubt. Therefore, the present facts are squarely governed by the law laid down by **Kulwant Singh's** case (supra).

13. The upshot, therefore, is that we will have to decide this OA exactly in the same line as we did **Patil's OA**.

14. It is hereby held and declared that the claim of the present Applicant will have to be decided in accordance with the G.R. of Water Resources Department, dated 30.7.2008 and not in accordance with the G.R. of Water Resources Department, dated 28.11.2011. The Respondents are hereby directed to act in accordance herewith and if there was no other objection, then to appoint the Applicant to the said post within eight weeks

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from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
08.08.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
08.08.2016

Mumbai

Date : 08.08.2016

Dictation taken by :

S.K. Wamanse.

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