

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1069 OF 2014

Shri Sanjay Vethu Nandgaonkar)
 Occ : Driver but now as Watchman,)
 In the office of Deputy Controller)
 Civil Defence, Uran, Dist. Raigad)
 R/o. Ganesh C.H.S., A/P. Uran,)
 Tal. Uran, Dist. Raigad : 400 702)

Address for Service of Notice :

Shri B.A. Bandiwadekar,)
 Advocate, having office at)
 9, "Ram-Kripa", Lt. Dilip Gupte Marg,)
 Mahim, Mumbai 400 016)

...Applicant

Versus

1. The Director,)
 Civil Defence, (M.S.), Mumbai)
 Having office at Old Secretariat)
 Annex, Fort, Mumbai 32)

2. The State of Maharashtra,)
 Through Principal Secretary,)
 Home Department,)
 Having office at Mantralaya,)
 Mumbai 400 032)

..Respondents

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Shri B.A. Bandiwadekar, learned Counsel 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 : 16.02.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard B.A. Bandiwadekar, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant, who has challenged order dated 16.12.2013 reverting him to the post of Watchman from the post of Driver on the ground that his promotion to the post of Driver was invalid as he did not hold the requisite qualification. Appeal against the order dated 16.12.2013 was dismissed by order dated 17.09.2014.

3. Learned Counsel for the Applicant argued that the Applicant had earlier filed O.A.No.81 of 2014 before this Tribunal challenging the order dated 16.12.2013. This O.A. was disposed of by order dated 14.08.2014 with the directions

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to the Respondents to decide the Applicant's appeal on or before 15.09.2014. The Applicant then filed M.A.No.465 of 2014 in O.A.No.81 of 2014, claiming that his appeal was already disposed of on 20.02.2014, and therefore, order dated 14.08.2014 passed by this Tribunal may be reviewed. By order dated 13.11.2014, the Misc. Application was dismissed. However, liberty was given to the Applicant to bring in a fresh O.A. for redressal of his grievances. The present O.A. has accordingly been filed.

4. Learned Counsel for the Applicant contended that the impugned order dated 16.02.2013 is passed on the ground that the Applicant did not have requisite qualification to be promoted as Driver, on 31.08.1999. However, the Applicant was fully qualified to be appointed as Driver in terms of the Drivers of Motor Cars and Jeeps in Government Offices (Recruitment) Rules, 1980 notified on 14.11.1980. As for Rules 2 a Class IV employee is eligible to be appointed as Driver on promotion, if he possesses an effective driving licenses to drive a heavy vehicle or a motor car or a jeep under the Motor Vehicles Act, 1939. Learned Counsel for the Applicant argued that the Applicant held a valid driving licence for driving a Light Motor Vehicle (L.M.V) since 1996 and also licence to driver a Heavy Motor vehicle (H.M.V.) from 2000. The Applicant was promoted as Driver by order dated

31.08.1999. He was fully qualified to be appointed as a Driver. The impugned order dated 18.12.2013 holding that the Applicant was not qualified to be appointed as Driver is palpably wrong. Learned Counsel for the Applicant stated that the Respondent No.2 has passed order dismissing the appeal without application of mind.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the rules governing appointment of Drivers of Motor Cars and jeeps in Government offices were notified on 14.11.1980. The Applicant did not fulfill the conditions in the aforesaid notification, and therefore, he was reverted by order dated 16.12.2013. At the time, when the Applicant was appointed as Driver, he did not have licence to driver H.M.V. He was, therefore, not eligible to be promoted as Driver. Learned P.O. argued that the impugned orders are legal and proper and there is no substance in this O.A.

6. We find that the impugned order reverting the Applicant to the post of 'Watchman' from the post of Driver is passed on 16.12.2013. It mentions that the Applicant was promoted as Driver on 31.08.1999, as per the Recruitment Rules notified on 14.11.1980 but he did not fulfill the requirement of such promotion as per rules. Rule 2 of the Drivers of Motor Cars and Jeeps in Government Offices (Recruitment) Rules 1980, reads as follows :-

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“2. Appointment to the post of drivers of Motor Cars and Jeeps in Government Offices shall be made either :-

(b) by promotion from amongst the members of staff in Class IV Government Service, who possesses qualification and experience mentioned in Sub-classes (ii), (iii), (iv), (v) and (vi) of clause (c);

(c) (ii) possess an effective driving license to driver a heavy vehicle or a motor car or a jeep under Motor vehicles Act, 1939 (emphasis added).

It is seen that a person should possess a licence to drive a H.M.V. or a motor car (or a jeep). The rule does not provide that a person should hold licence to drive both H.M.V. and L.M.V. In exhibit R-2 of the affidavit-in-reply filed by the Respondent No.2 on 25.02.2015, it is mentioned that :

“सन १९९९ मध्ये श्री. संजय वे. नांदगांवकर यांना पहारेकरी पदावरून पदोन्नती दिली, परंतु त्यावेळी जड वाहन चालकाच्या परवाना नव्हता. त्यांनी सन २००० मध्ये सदर केला आहे. ”

7. This appears to be only ground on which it is held by the Respondents that the Applicant did not have requisite qualification to be promoted as Driver in 1999. From the rules, it is quite clear that the Applicant was qualified to be promoted as Driver as he held L.M.V. driving licence since 1996. It was not necessary for him to also hold driving licence

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for H.M.V. The order dated 16.12.2013 has been issued by wrongly interpreting Recruitment Rules dated 14.11.1980 and is clearly bad in law. Similarly, the order in appeal dated 17.09.2014 cannot be sustained as it is also based on the same misconception that a Driver requires licences to driver both H.M.V. and L.M.V.

8. Having regard to the aforesaid facts and circumstances of the case, the order dated 16.12.2013 and 17.09.2014 are quashed and set aside. The Respondents will reinstate the Applicant as Driver within one week from today. The Applicant will be deemed to be in service as Driver as if there orders were not passed. He will be entitled to all service benefits except back wages. This O.A. is allowed accordingly with no order as to costs.

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Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 16.02.2016
Typed by : PRK