

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.344 OF 2019

DISTRICT : SANGLI

Shri Ramesh Sitaram Rathod.)
Age : 51 Yrs., Working as Water Tanker)
Driver in the office of Sub-Divisional)
Engineer, Public Works Sub-Division,)
Jath, District : Sangli and residing at)
Kismat Chowk, Bhuyar Wada, Jath,)
District : Sangli.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 400 032.)
2. The Executive Engineer.)
Public Works Division, Miraj,)
District : Sangli.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.03.2022

JUDGMENT

1. The challenge is to the communication dated 16.08.2018 issued by Respondent No.1 thereby rejecting the claim of the Applicant to change the nomenclature of his post from Vehicle Driver to Roller Driver

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant claims to have joined service as Roller Driver on daily wages in view of his appointment on 27.01.1986. He rendered the services as Roller Driver. However, he is being paid salary as Vehicle Driver. In the year 2021, in view of policy decision taken by the Government to convert services of daily wages workers on regular establishment in the light of Kalelkar Award, the proposals were called from Superintending Engineer, Public Works Department, Kolhapur. In the said proposal, the name of the Applicant was shown as Vehicle Driver. The Government by G.R. dated 04.08.2002 accordingly accorded sanction to the proposal. While doing so, the Government directed to Superintending Engineer to confirm the correctness of the names and designation of daily wagers with further specific instruction that it be brought to the notice of all daily wages workers and if any discrepancy found, it be reported to the Government. According to Applicant, no such exercise was carried out by Superintending Engineer and he was not made known that his services were converted on the post of Vehicle Driver instead Roller Driver. Thereafter, he made representations to rectify mistake claiming designation as Roller Driver as well as pay and allowances for the said post. The Superintending Engineer, PWD, Kolhapur forwarded proposal to the Government on 10.04.2018. However, the same is rejected by the Government by impugned order dated 16.08.2018, which is under challenge in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that Applicant's contention that he was appointed as Roller Driver and served as Roller Driver throughout his career is well supported by the documentary evidence in the form of correspondence of the Department itself. But Government mechanically rejected his claim

on the ground of delay though blame lies with the Superintending Engineer, PWD, Kolhapur.

4. Whereas, Smt. K.S. Gaikwad, learned Presenting Officer sought to support the impugned order inter-alia contending that Applicant was appointed as Vehicle Driver though as per requirement of Department, he was given assignment to drive Roller Driver as and when required. She has further pointed out that when the post of daily wagers was converted into regular establishment in terms of Kalelkar Award, the Applicant's post was converted into Vehicle Driver w.e.f. 21.07.1992, but Applicant has not raised in grievance for long time and there being no such appointment on the post of Roller Driver, he cannot claim service benefits of the said post. On this line of submission, she prayed to dismiss the O.A.

5. Indisputably, initially Applicant was appointed as daily wages worker in 1986 and later in 2001, the daily wagers were brought on regular establishment by converting their post in regular post. The discrepancy occurred in the proposal forwarded by the then Superintending Engineer, PWD, Kolhapur, this aspect will be dealt with a little later.

6. At this juncture, let us see the pleadings and reply of the Respondents. In Para Nos.6.2 and 6.3 of O.A, the Applicant specifically pleaded as under :-

“6.2 The Petitioner states that he was born on 10.01.1968. That he is 7th Std. passed by the qualification. That on 21.07.1986, the Petitioner joined the Government service as Roller Driver [said post] on daily wages basis. That accordingly the Petitioner started working as such upto 20.02.1988, whereafter his Service Book came to be opened which contains all such relevant entries. Hereto annexed and marked as **EXHIBIT – B** is the copy of the said Service Book dated 30.06.1992.

6.3 The Petitioner states that the fact that he rendered the duties as Roller Driver between March 1988 to May 1989 is clear from the letter dated 9.1.1992 **EXHIBIT-C** addressed by the Assistant Engineer Grade-1, Radhanagari to the Deputy Engineer, Public Works Sub Division,

Gadhinglaj. The Petitioner states that order dated 27.2.1995 is passed by the Executive Engineer, Public Works South Division, Kolhapur to the Sub Divisional Engineer, Radhanagari.

While giving reply of this pleadings in Para Nos. 12 and 13, the Respondents stated as under :-

12. With reference to contents of paragraph No.6.2, I say that, except the Applicant contention that he was born on 10/1/1968, all other contents are partly correct.

13. With reference to contents of paragraph No.6.3, I say that the contents therein are not disputed. But it is mentioned as "Daily Wage Driver".

7. Suffice to say, there is no specific denial to the contentions raised by the Applicant that he was appointed as Roller Driver and worked in that capacity.

8. At this juncture, it would be apposite to see the reasons mentioned in impugned order while rejecting the claim of Applicant to correct his designation as Roller Driver, which are as under :-

“उपरोक्त विषया संदर्भात आपल्या संदर्भातील पत्राच्या संदर्भाधिन पत्राच्या अनुषंगाने कळविण्यात येते की, या विभागाच्या दि. २४.०८.२००१ च्या शासन निर्णयानुसार श्री. रमेश सि. राठोड यांना वाहनचालक या पदावर दिनांक २१.०७.१९९२ पासून त्यांना रूपांतरित अस्थायी आस्थापनेवर घेण्यात आले व तशी नोंदही त्यांच्या सेवा पुस्तकात घेण्यात आलेली असून त्यावर त्यांनी इंग्रजीमध्ये स्वाक्षरी केलेली आहे. तसेच श्री. राठोड यांनी सदर पदास अनुज्ञेय असणारी वेतनवाढ व तदनुषंगिक आश्वासित प्रगती योजनेअंतर्गतचे दोन्ही लाभही वेळीच स्वीकारलेले आहेत. यावरून श्री. राठोड यांची वाहनचालक या पदावरची मान्यता असल्याचे दिसून येते. तसेच शासन निर्णय दि.२४.०८.२००१ मधील स्वयंस्पष्ट सूचना व शासन पत्र दि. ०९.०५.२००२ अन्वये कळविण्यात येऊनही श्री. राठोड यांनी त्यावेळेस विहित मुदतीत पदनाम व दिनांक बदल करणेबाबत कोणतेही निवेदन उपविभागास सादर केले नाही. तसेच श्री. राठोड यांच्या नावाचा उल्लेख असलेला त्यांच्या पदाच्या दुरुस्तीबाबत किंवा दिनांकाबाबत कोणताही प्रस्ताव शासनास प्राप्त झालेला नाही. तदनंतर ज्या कर्मचा-यांच्या नावात व पदनामात झालेल्या दुरुस्तीच्या अनुषंगाने दि.२५.०७.२००२ अन्वये शुद्धिपत्रक निर्गमित करण्यात आले होते. तथापि आता ब-याच कालावधीनंतर श्री. राठोड यांच्या पदनाम दुरुस्ती तसेच रूपांतरित अस्थायी आस्थापनेवर घेतल्याच्या दिनांकात दुरुस्तीबाबतची बाब विचारात घेणे पर्याप्त ठरत नाही. सबब आपण सादर केलेल्या वस्तुस्थितीमध्ये स्पष्टता आढळून येत असल्याने आता श्री. रमेश सि. राठोड यांना वाहनचालक या पदाऐवजी रोलर चालक या पदावर घेण्याबाबतच्या केलेल्या मागणीनुसार कार्यवाही होणे शक्य नसल्याबाबत त्यांना कळवावे. सदर प्रकरण शासन स्तरावर आता बंद करण्यात येत आहे.”

9. As stated above, the proposal was forwarded by Superintending Engineer, PWD, Kolhapur for the approval of Government for the conversion of post in view of Kalelkar Award. The Government by G.R. dated 24.08.2002 (Page No.58 of P.B.) approved the proposal with caution that the list forwarded with the proposal about the conversion of

post shall be brought to the notice of all employees, so that they have knowledge and notice as to on which post they are converted and if any such discrepancy is pointed out, it be reported immediately to the Government. Furthermore, it was further instructed that Superintending Engineer, PWD, Kolhapur shall take undertaking from the workers that they have no grievance about the conversion of post, date of conversion as proposed by the Government in G.R. dated 24.08.2001 and undertaking to that effect should be taken from the workers and it be placed in Service Book. The contents of G.R. dated 24.08.2001 to that effect are required to be reproduced, which are as under :-

“अधीक्षक अभियंता यांनी या देशातील सर्व अटी व शर्ती या आदेशातील विचारात घेऊन कोणतीही त्रुटी राहणार नाही याची दक्षता घ्यावी आणि योग्य ते व्यक्तीनिहाय सविस्तर आदेश या शासन निर्णयाच्या दिनांकापासून एक महिन्याचे आत निर्गमित करून ते संबंधित व्यक्तीच्या व्यक्तिशः निदर्शनास आणावेत. शासनाने या निर्णयाच्या परिशिष्ट ‘अ’ व ‘ब’ मध्ये दिलेल्या तपशीलामध्ये संबंधित कर्मचा-याचे नाव, पदनाम, त्याच्या प्रथम नियुक्तीचा दिनांक किंवा त्याला रूपांतरित अस्थायी आस्थापनेवर ज्या दिनांकापासून आणण्यात आले आहे तो दिनांक यामध्ये कोणतीही चूक वा त्रुटी आढळून आल्यास क्षेत्रीय अधिकारी-यांनी अशी बाब शासनाच्या निदर्शनास तात्काळ आणावी. क्षेत्रीय अधिका-यांनी सदर आदेशात स्वतःच्या अधिकारात कोणतेही फेरबदल करू नयेत, तसेच या परिशिष्टांमध्ये स्पष्ट केल्याप्रमाणे हे आदेश संबंधित कर्मचा-यांच्या व्यक्तिशः निदर्शनास आणून शासनाने निर्गमित केलेल्या आदेशाच्या बाबतीत संबंधित कर्मचा-याची (नाव, पदनाम, त्याच्या प्रथम नियुक्तीचा दिनांक तसेच रूपांतरित अस्थायी आस्थापनेवर आणण्याच्या दिनांकात दुरुस्ती इ. बाबतीत) कोणतेही तक्रार होणार तक्रार नाही अशा आशयाचे प्रपत्र ‘ब’ मधील दिलेल्या नमुन्यात हमीपत्र (Undertaking) घेऊन ते त्या कर्मचा-यांच्या सेवा पटात/सेवापुस्तकात चिटकवून ठेवावे आणि सर्व कार्यवाही पूर्ण केल्याचा अनुपालन अहवाल या आदेशाच्या दिनांकापासून तीन महिन्यांच्या आत शासनाकडे पाठविला जाईल याबाबतीत संबंधित अधीक्षक अभियंत्यांनी सतर्क राहावे. तीन महिन्यांनंतर कोणतेही दोषदुरुस्ती प्रस्ताव विचारात घेतले जाणार नाहीत आणि त्याच्या परिणामी भविष्यात शासनाला अतिरिक्त वित्तीय भार सोसावा लागल्यास त्याची भरपाई संबंधित जबाबदार कर्मचारी/अधिका-यांकडून करून घेतली जाईल.”

10. In the present case, no such exercise was carried out by Superintending Engineer, PWD, Kolhapur to bring the said list to the notice of Applicant and no such undertaking as required has been obtained from him to show that he accepted conversion of the post as Vehicle Driver or has given undertaking to that effect. In this O.A. also, no such record is produced to show the compliance of G.R. dated 24.08.2001.

11. Indeed, when the representation of the Applicant along with letter of Superintending Engineer, PWD, Kolhapur was forwarded, the Government by letter dated 31.05.2016 called explanation of the Superintending Engineer, PWD, Kolhapur as to why undertaking from the Applicant was not taken in terms of G.R. dated 24.08.2001 when his

post was converted in the post of Vehicle Driver. In Para Nos.4 and 5 of letter dated 31.05.2016 issued by Government, it is stated as under :-

“४. श्री. रमेश सि. राठोड यांच्या सेवापुस्तकावरून तसेच इतर कागदपत्रांवरून ते रोलर चालक या पदाचे काम करत आल्याचे इथुन येते. पण दिनांक ११ एप्रिल, २००१ च्या प्रस्तावामध्ये श्री. राठोड यांचे पदाचे नाव वाहन चालक दर्शविण्यात आले आहे व त्यांच्या नियुक्तीचा दिनांक २१.७.८७ दर्शविण्यात आला आहे. (प्रत संलग्न) यावरून शासनास चुकीचा प्रस्ताव सादर करण्यात आला असे दिसून येते, याबाबत खुलासा सादर करावा.

५. दिनांक ११ एप्रिल २००१ च्या प्रस्तावामध्ये जर श्री रमेश सिताराम राठोड यांची चुकीची माहिती शासनास सादर करण्यात आली असल्यास या जबाबदार अधिकारी कर्मचारी यांचे विरुद्ध काय कारवाई करण्यात आली या बाबतचा अहवाल सादर करावा.”

12. On receipt of said letter, the Superintending Engineer, PWD, Kolhapur made correspondence with Executive Engineer, Miraj calling his clarification about the non-compliance of G.R. dated 24.08.2001.

13. Later, Superintending Engineer, PWD, Kolhapur by his letter dated 10.04.2018 informed the Government that the then Deputy Engineer, Shri S.S. Bansode and Shri A.S. Choughle, the then Clerk have not followed the instructions given in G.R. dated 24.08.2001 and have not obtained undertaking from the Applicant accepting conversion of his post as Vehicle Driver. Even he suggested for disciplinary action against the concerned. As such, there is clear admission of lapses. The contents from letter dated 10.04.2018 to that effect are material, which are as under :-

“श्री. राठोड यांचे मूळसेवापुस्तकात शासन निर्णय दिनांक २४/८/२००१ अन्वये नमूद केलेप्रमाणे शासन आदेश संबंधित कर्मचारांच्या व्यक्तिशः निदर्शनात आणून शासनाने निर्गमित केलेल्या आदेशांच्या बाबतीत संबंधित कर्मचा-यांची (नाव, पदनाम, त्यांच्या प्रथम नियुक्तीचा दिनांक तसेच रूपांतरित अस्थायी आस्थापनेवर आणण्याच्या दिनांकात दुरुस्ती इ. बाबतीत कोणतीही तक्रार नाही असे आचार आशयाचे प्रपत्र ‘ब’ मधील दिलेल्या नमुन्यात हमीपत्र (Underetking) घेऊन ते त्या कर्मचा-यांच्या सेवापटात/सेवापुस्तकात चिटकून ठेवणेबाबतची कार्यवाही श्री. एस.एस. बनसोडे तत्कालीन उप अभियंता व श्री. ए.एस. चौगुले, तत्कालीन कनिष्ठ लिपिक यांचेकडून झाली नसल्याची दिसून येते. सबब संबंधितांचेविरुद्ध शिस्तभंगविषयक कार्यवाही अंतर्गत प्रारूप दोषारोपपत्रे विभागीय कार्यालयाकडून प्राप्त करणेबाबत सूचित केलेले असून ती प्राप्त होताच प्रादेशिक कार्यालयास अलविदा सादर करणेत येत आहे.”

14. It is in response to said letter of Superintending Engineer, PWD, Kolhapur, the Government has passed the impugned order dated 16.08.2018 reproduced above.

15. It is thus explicit that when the post of Applicant was converted as Vehicle Driver and proposal of hundreds employees was sent, no such undertaking was obtained from the Applicant accepting and acknowledging the situation that his post is being converted into the post of Vehicle Driver instead of Roller Driver. *Ex-facie*, there was failure on the part of concerned to ascertain the correctness of the proposal regarding conversion of the post of Applicant and to obtain his undertaking to that effect. Indeed, there is clear admission to letter dated 10.04.2018 as stated above that no such compliance was made.

16. Apart, as rightly pointed out by learned Advocate for the Applicant, Department's own report makes it quite clear that Applicant was working as Roller Driver. In this behalf, the contents of letter of Superintending Engineer, PWD, Kolhapur dated 06.05.2016 is material, which is as under :-

“या कार्यालयाचा जा.क्र.आस्था३/ १११६४ दि. २४/१२/१९९२ चे प्रस्तावानुसार श्री. रमेश सिताराम राठोड यांचा रोलर चालक पदाचा रोजंदारी आस्थापना दि.२१/७/१९८६ पासून नियुक्ती असलेने दि. २१/७/१९९१ पासून रूपांतरित आस्थापनेवर घेणेबाबतचा प्रस्ताव या कार्यालयामार्फत शासनास सादर केलेला आहे. परंतु शासन आदेश सा.बां. विभाग, मंत्रालय, मुंबई यांचा शासन निर्णय क्र.रुअआ १०२००१/प्र.क्र.१३५/२००१/सेवा ५/दि.२४/८/२००१ अन्वये श्री. रमेश सिताराम राठोड यांना वाहनचालक पदावर दि.२१/७/१९९२ पासून रूपांतरित आस्थापनेवर घेणेत आलेले आहे असे निदर्शनास येत आहे. तसेच सदरबाबत का.अ.सा.बां. (द) विभाग कोल्हापूर यांचा जा.क्र.आ१/६९५६ दि. ०७/९/१९९२ नुसार श्री. रमेश सिताराम राठोड यांचा रोलरचालक पदाचा रोजंदारी आस्थापना दि. २१/७/१९८६ पासून नियुक्ती असलेने दि. २१/७/१९९१ पासून रूपांतरित आस्थापनेवर घेणेबाबतचा प्रस्ताव मंडळ कार्यालयास प्राप्त झाल्याचे निदर्शनास येत आहे. रोजंदारी आस्थापनेवरील नियुक्ती विभागीय कार्यालयामार्फत झालेली असलेने विभागीय कार्यालयाचे प्रस्तावाचे अनुषंगाने या कार्यालयामार्फत तत्कालीन कालावधीत शासनास प्रस्ताव सादर केलेला आहे.”

17. Apart, the Applicant had obtained information under RTI Act, which is at Page No.40 of P.B. and the information given by the Department makes it quite clear that Applicant was working on the post of Roller Driver. The information sought under RTI Act is as under :-

१	दि.२१/७/१९८६ ते दि.२३/७/२००१ या कालावधीमध्ये श्री. आर.एस. राठोड हे आपल्या उपविभागामध्ये कार्यरत होते का. असल्यास कोणत्या पदावर कार्यरत होते.	:-	होय, रोलर चालक या पदावर काम केले आहे.
२	श्री. आर.एस. राठोड हे आपल्या उपविभागाकडे हजर होताना कोणत्या व कोणाच्या आदेशाने हजर झाले. सदर आदेशांमध्ये त्यांना आपल्या उपविभागाकडे कोणत्या पदावर तसेच कोणत्या वाहनावर हजर होण्यास सांगितले होते. सदर आदेशाची व श्री.एस.आर. राठोड यांच्या आगमन अहवालाची व आपल्या उपविभागांतर्गत	:-	म. कार्यकारी अभियंता सा.बां.(प) विभाग, सांगली यांचे कार्यालयीन आदेश क्र.प्रशा/आस्था-१/११७१/९५ दि. ७/३/१९९५ नुसार रोजंदारी आस्थापनेवर सा.बां.(रोहयो) उपविभाग जत येथे रोजंदारी आस्थापनेवर रोलर चालक या पदावर हजर झाले. तसेच श्री.आर.एस. राठोड यांना शासकीय नियमानुसार कुशल कामगाराच्या रोजंदारीवर

	कार्यरत असताना त्यांना कोणत्या पदाचा पगार देण्यात आला याची सविस्तर माहिती साक्षांकित प्रत मिळावी.		वेतन देण्यात आले होते.
३	श्री.आर.एस.राठोड, यांना रोजंदारी आस्थापनेवरून रुंपातरीत आस्थापनेवर (कालेलकर) वर घेणेसाठी आपल्या उपविभागाकडून कोणत्या पदाबाबत शासनास प्रस्ताव पाठवणेत आला होता त्याची साक्षांकित प्रत मिळावी.	:-	सदरची माहिती सदयस्थितीत उपलब्ध नाही.
४	रोलर चालक या पदावरून वाहन चालक या पदावर श्री. आर.एस.राठोड यांना पदानवती करण्याचा अधिकारी आपल्या उपविभागाला आहे का. असल्यास तसे शासन परिपत्रक आदेशाची साक्षांकित प्रत मिळावी.	:-	श्री.आर.एस.राठोड, यांना रोजंदारीवरून कालेलकर आस्थापनेवर घेत असताना शासनाकडून वाहनचालक पदी आदेश देणेत आलेने त्यामुळे उपविभागीय स्तरावरून पदानवती करण्याचा प्रश्न उदभवत नाही.
५	श्री.आर.एस.राठोड यांनी रोलर चालक या पदावर आपल्या उपविभागाकडे काम केले आहे का. असल्यास कोणकोणत्या रोलरवर काम केले आहे त्या रोलरच्या लॉगबुकची साक्षांकित प्रत मिळावी.	:-	श्री.आर.एस.राठोड यांनी या उपविभागाकडे रोलर चालक म्हणून काम केलेले होते. त्या लॉगबुकच्या साक्षांकित प्रती सोबत सादर करित आहे.

18. In view of above, it is explicit from the record of the Department itself that though Applicant was working on the post of Roller Driver at the time of conversion of post, his post was shown Vehicle Driver, which has caused serious prejudice to the Applicant. There is absolutely nothing on record to establish that the Applicant had acquiesced to accept the post of Roller Driver or has given undertaking to that effect as contemplated in G.R. dated 24.08.2001. Therefore, the Applicant cannot be blamed for delay in raising grievance. The ground mentioned in impugned order that the Department has not forwarded the corrected proposal by way of Corrigendum within reasonable time and much period is lapsed till date cannot be the ground to reject the Applicant's claim. In fact, there was mistake on the part of Department, but now Respondents want to pass buck. Indeed, the Respondents ought to have realized that the situation has arisen due to mistake of the Department itself. The impugned order is, therefore, being bad in law and arbitrary liable to be quashed. However, insofar as pay and allowances of the post of Roller Driver is concerned, it should be restricted to 3 years before the date of filing of O.A. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned communication dated 16.08.2018 is quashed and set aside.

- (C) The nomenclature of the post of Applicant shall be treated as Roller Driver in place of Vehicle Driver.
- (D) The Applicant shall be paid difference in pay and allowances restricted to 3 years preceding to the date of filing of O.A.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.03.2022

Dictation taken by :

S.K. Wamanse.

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