

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.690 OF 2017

DISTRICT : PUNE

Shri Kailas Govind Dhagate.)
Age : 33 Yrs., Occu.: Service, Residing at Room)
No.III At 10, At Post : Irrigation Colony,)
Sahakar Chowk, Daund, Tal.: Daund,)
District : Pune – 413 800.)...**Applicant**

Versus

1. The Secretary.)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)
2. The Superintending Engineer.)
Pune Patbandhare Mandal, 2nd Floor,)
Sinchan Bhavan, Barne Road,)
Mangalwar Peth, Pune – 411 011.)
3. The Executive Engineer.)
Khadakwasla Irrigation Division,)
3rd Floor, Mangalwar Peth, Barne Road,)
Sinchan Bhavan, Pune 411 011.)
4. The Assistant Engineer (Grade-I),)
Khadakwasla Patbhandhare, Sub-Division))
No.1, Daund, District : Pune 413 801.)...**Respondents**

Mr. V.V. Joshi, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 08.01.2019

JUDGMENT

1. The Applicant has filed this O.A. challenging the impugned orders dated 13.02.2017 and 01.03.2017 thereby rejecting his claim for absorption in the post of Peon 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 was appointed as Chowkidar by order dated 25.06.2012 from O.B.C. category and Project Affected Person as direct recruit. Presently, the Applicant is working under the control of Respondent No.4 at Daund and has completed five years' service. The Applicant contends that, during the period of five years' service, he had been entrusted the work of Peon. Therefore, on 16.10.2015, he had submitted an application to Respondent No.2 to absorb him on the post of Peon invoking Rule 27(1)(b) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as "Rules of 1981"). However, his representation has been rejected by impugned orders.

He further contends that the Respondents have transferred and absorbed some other employees viz. S/Shri Sarvade, Khot and Kamble to the post of Peon, but he has been subjected to discrimination. The Applicant has, therefore, challenged the impugned order rejecting his request for absorption on the post of Peon.

3. The Respondents 3 and 4 have filed Affidavit-in-reply resisting the claim made by the Applicant *inter-alia* denying the entitlement of the Applicant for absorption in the post of Peon. In this behalf, the Respondents contend that the Applicant was appointed as Chowkidar, and therefore, he cannot claim absorption in the post of Peon and it is not permissible under Rule 26/27 of

“Rules of 1981” as relied by the Applicant. As regard absorption of other employees, the Respondents contend that, mistakenly it was done and now steps have been taken to correct the same.

4. Heard Shri V.V. Joshi, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. In the present matter, very short issue posed for consideration is whether the Applicant is entitled to absorption in the post of Peon and the answer is negative.

6. Admittedly, the Applicant was appointed on the post of Chowkidar by order dated 25.06.2012. Here, it is pertinent to note that there is specific mention in order dated 25.06.2012 that the posting of the Applicant as Chowkidar will be final and there will be no change in his posting. The Applicant has also submitted an Undertaking thereby agreeing to the terms and conditions mentioned in the appointment letter.

7. No doubt, it appears from certain orders placed by the Applicant on record that casually the work of Peon was entrusted to the Applicant and he was asked to perform the duties of Peon occasionally. It is noticed from Page Nos.41, 42 and 43 that, occasionally, the work of Peon i.e. cleaning, fetching water, delivery of communication, etc. were assigned to the Applicant. This fact has been relied upon by the Applicant's Advocate to claim absorption in the post of Peon. In so far as this work entrusted to the Applicant occasionally is concerned, needless to mention that itself would not confer any vested right much less enforceable legal rights for absorption in the post of Peon. If in exigency and for administrative convenience, some work of Peon was done by the Applicant, then that itself will not convert is post of Chowkidar into Peon. The posts are always to be filled-in having regard to the vacancies, eligibility, etc. as per due process of law.

8. Only because in case of some of the employees, the orders of absorption were issued that itself cannot be the ground to claim absorption on the post of Peon. In fact, the Respondents have made it clear that, those orders are issued wrongly and steps have been taken to rectify the mistake. It appears that, in those cases, the orders of absorption were issued invoking Rule 26 of "Rules of 1981" which in fact not applicable in the present situation.

9. Here, it would be appropriate to reproduce Rules 26 and 27(1) which are as follows :

"26. Transfer of the lien to another post :

Subject to the provisions of the Rule 27, a competent authority may transfer to another permanent post in the same cadre the lien of a Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

27. When transfer to a post carrying less pay is permissible :

- (1) A Government servant may be transferred from one post to another, provided that, except –
- (a) on account of inefficiency or misbehaviour, or
 - (b) on his written request, or
 - (c) in anticipation of the abolition of the post on which he holds a lien, or
 - (d) where the medical certificate granted under Maharashtra Civil Services (Pension) Rules, certifies the person to be fit for service of a less laborious character than that which he has been performing."

As such, Rule 26 pertains to lien to another post whereas Rule 27 in respect of transfer to a post carrying less pay. In the present case, admittedly, the pay scale of Chowkidar and Peon is equal. This being the position, there is no question of applicability of Rule 26 or 27 of the Rules of 1981.

10. In view of above, I have no hesitation to sum-up that the claim made by the Applicant for absorption in the post of Peon is not supported by valid reasons much less legal one. The Application is devoid of any merit and deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 08.01.2019

Dictation taken by :

S.K. Wamanse.

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