

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

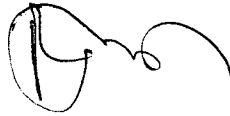
ORIGINAL APPLICATION NO.837 OF 2014

DISTRICT : SANGLI

Smt. Ratnamala Dattatraya Pethkar.)
Occ. Nil, Ex. Jr. Clerk in the office of the)
Tahasildar, Tasgaon, Dist : Sangli,)
R/o. A/P. Kundal, Tal.: Palus,)
District : Sangli.)
Address for Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
9, "Ram-Kripa", Lt. Dilip Gupte, Marg,)
Mahim, Mumbai 400 016.)...**Applicant**

Versus

1. The District Collector, Sangli,)
Having office at Sangli.)
2. The Divisional Commissioner,)
Pune Division, Pune having office at)
Old Council Hall, Pune-1.)
3. The State of Maharashtra.)
Through the Principal Secretary)
(Revenue) Revenue & Forest Dept.,)
Mantralaya, Mumbai - 400 032.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 06.01.2016

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

JUDGMENT

1. This Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (Act hereinafter) calls into question the order of dismissal of the Applicant *inter-alia* on the allegations that she ill-procured the job as a Clerk in the category of a nominee of Freedom Fighter.

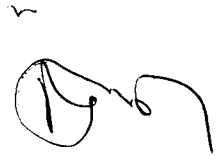
2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) for the Respondents.

3. It is not in dispute that the Applicant secured the job of Junior Clerk as a nominee of the Freedom Fighter on 11.12.1987 for which she had applied on 12.3.1985. We find that along therewith was an Affidavit of Shri Bhikoba G. Kavitkar, a Freedom Fighter. In the application and



also in the Affidavit, it was mentioned that the Applicant was the daughter of the sister of the said Freedom Fighter and was fully dependent on him. In fact, in the application dated 12.3.1985, the Applicant had initially requested for the job on her own merit as it were and then set out the facts about she being the niece of the Freedom Fighter named above.

4. She having secured the job as above continued till 18.10.2004 when a FIR was lodged against her invoking Sections 467, 468, 470, 471 and 420 of the Indian Penal Code. The gravamen of allegations was that she fabricated the documents and took the Government for a ride in as much as she was not really related to the said Freedom Fighter. She was ultimately made to stand trial before the learned Judicial Magistrate 1st Class, Palus vide RCC No.257/2008. Pending prosecution, she was suspended on 2nd February, 2007. On 6.2.2007, the disciplinary proceedings went underway and a charge-sheet was served on her. An Enquiry Officer came to be appointed and the Applicant participated in the said enquiry. In the DE, charges were held proved against her. A show cause notice was issued indicating the proposal to dismiss her from service. Despite her reply thereto dated 7.1.2012, the order of dismissal which is herein impugned came to be



made which was unsuccessfully challenged in appeal. Both the orders are the subject matter hereof. In fact, a Revision under Rule 25-A of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 also came to be dismissed on 1.1.2013. However, the learned Magistrate was pleased to acquit the Applicant by his judgment and order of 28.9.2012.

5. It is already mentioned above that the Applicant initially secured the job on the ground that she was a niece of the Freedom Fighter named above. However, it will be found that this relationship was not accurately stated and ultimately, the Applicant came up with a case that the said Freedom Fighter was the Father-in-law of her cousin Suwarna. We have carefully perused the record of the proceedings, etc. and we find that granting all latitude to the Applicant, she does not qualify for being appointed in the category that she was appointed to.

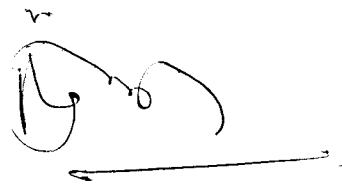
6. There is a CIRCULAR of 12th October, 1965. Reading thereof would show that the predominant object thereof was to give concession to the Freedom Fighters and that too, in the matter of recruitment to Clause III and Class IV posts. It envisaged, preference to be given to the Freedom Fighters for the said posts, if they were otherwise



found suitable. It was further provided that in the event of they having become over-aged, the Government sanction could be obtained before appointing them. There was some concession in the matter of educational qualification also provided to them. Thereafter, there was a note which along with Paragraph 2 of the said Circular needs to be fully quoted.

“Note:- For the purpose of these orders “Freedom Fighter” mean those persons who have suffered imprisonment or detention of an aggregate period of not less than one month or who were fined Rs.200/- or more, or who died or were killed in action or in detention or were awarded capital punishment or became permanently incapacitated due to firing or lathi charge or lost their jobs or means of livelihood or part or whole of their property on account of their participation in the notional movement for the emancipation of India.

2. For the purpose of claiming the foregoing concessions in respect of employment in Government service the persons concerned should produce a certificate issued by Government (General Administration

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Department) declaring them as Freedom Fighters.”

It would, therefore, become very clear that the policy was to grant concessional appointment to the Freedom Fighters, if they answered the requirements therein mentioned and if they had requisite Certificate issued by the Government declaring them as Freedom Fighters. At this stage itself, we may note that it is very clear that there is no such Certificate on record to indicate that the said Freedom Fighter was as such certified by the Government. We proceed further and in doing so, we may reproduce Para 3 of the said Circular fully.

“3. It is possible that some of the persons who are eligible for these concessions may not actually be able to avail themselves of them for reasons like old age, illness, etc. Government is, therefore, pleased to direct that such persons viz. those who are eligible for the concessions but are unable owing to illness, disability or old age to take advantage of time, should be allowed to nominate a near relative who is solely dependent on them for taking advantage of the concessions. On such nomination being made the nominee

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should be held eligible for the concessions granted to the Freedom Fighters in the matter of recruitment to Government service.”

7. Assuming the present case was governed by the above referred Para 3 there ought to have been material to show that the Freedom Fighter himself was unable on account of the one or other reason therein mentioned to take up the job. He could have then appointed, “a near relative”, “who is solely dependent on him” in order to become entitled for the said concession.

8. It is very clear from the above discussion on facts that the Applicant was by no means a near relative because it ultimately transpires from record that her cousin assuming, she was her cousin got married in 1979 and the Applicant could not have been a relative of her cousin's Father-in-law before that and precisely, for this reason, there was no question of she being solely dependent on the Father-in-law of her so called cousin. Therefore, reading the Circular dated 12th October, 1965 ex-facie, no benefit could be claimed by the Applicant at any time, regardless of whether her intentions and motives were honourable or dishonourable.



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9. But that is not all. On 10th January, 1985, the GAD issued a G.R. (in Marathi) whereby the word "near relative" was defined. The same needs to be reproduced in Marathi.

“२. स्वातंत्र्य सैनिकावर अवलंबून असलेली नातेवाईक व्यक्ती कोण याबाबत स्पष्ट खुलासा करण्याचा प्रश्न शासनाच्या विचाराधीन होता. ह्याबाबत साकल्प विचार करून शासन असे आदेश देत आहे की, स्वातंत्र्य सैनिकाशी खाली निर्देशित नाते असलेली व स्वातंत्र्य सैनिकावर अवलंबून असलेली व्यक्ती स्वातंत्र्य सैनिकाच्या जवळच्या नात्याची अवलंबित गणण्यात येईल:-

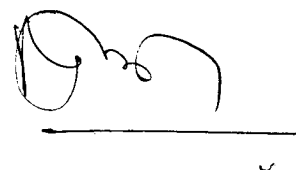
स्वातंत्र्य सैनिकाची पत्नी, स्वातंत्र्य सैनिकाचा पती, मुलगा, अविवाहित किंवा घटस्फोटीत मुलगी, सख्खी अविवाहित किंवा घटस्फोटीत त्याचप्रमाणे सख्ख्या भावाचा किंवा बहिणीचा स्वातंत्र्य सैनिकावर अवलंबून असलेले मुलगा किंवा अविवाहित वा घटस्फोटीत मुलगी.”

10. Nothing more needs to be said having reproduced the above Paragraph against the Applicant's claim. She secured the job in 1987 on which date, the clarificatory G.R. just referred to had already come into force, and therefore, even if we were to scrutinize the claim of the Applicant independently of the orders impugned herein, we are very clearly of the view that we also would reach the same conclusion as did they.

11. Now, in the above background, as far as the failure of the prosecution against the Applicant is concerned, we have carefully perused the judgment of the

learned J.M.F.C. and we find that the scope of those proceedings was guilt determination and the learned Magistrate was pleased to hold ultimately that the prosecution had failed to establish that the Applicant did the act of omission and commission personally, so as to come within the mischief of the Sections of the Indian Penal Code that were invoked against her viz. Sections 181, 182, 199, 200, 420 read with 34 of the IPC. That judgment of the learned Magistrate was unsuccessfully challenged before the Court of Sessions.

12. However, it is a clear position of law that in a given set of circumstances, though the findings in a criminal trial would be relevant, but there is an essential difference between those proceedings and the DE. It is the DE from which the present OA arises. At least, in the present set of circumstances, the scope of the prosecution was as we mentioned above the determination of guilt while here, it is to find out if in the ultimate analysis, the Applicant made good her case for being entitled to secure the job from the Freedom Fighters quota. There she fails on the basis of the facts discussed above and again on these facts, her case cannot be redeemed by her acquittal by the Courts of Criminal jurisdiction.



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13. Our attention was invited to the fact that some similarly placed persons who were similarly treated initially as the Applicant were ultimately became the beneficiaries of the governmental soft peddling. Now, in our opinion, although there cannot be any hostile discrimination and no dissimilar treatment could be meted out to similarly placed persons, but here, we have to act on the basis of the peculiar fact situation. The Applicant fails quite clearly to establish the main ingredients to establish her entitlement on both major counts of relationship and dependence and therefore, in the absence of the details and the facts, such as they were in those other cases, we cannot produce a result that without there being any concrete evidence of relationship or dependence, we will have ended up conferring benefit on the Applicant which could fly in the face of the clear language of the relevant instruments. In fact, here, there is no concrete material even to suggest that the said Freedom Fighter was a Freedom Fighter as the term is understood in the context hereof, but he is not now alive and therefore, we would leave the matter at that. However, there is no way, the case of the Applicant could be either redeemed or salvaged and we ultimately find nothing wrong with the impugned orders and we find no scope for interference therewith.

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14. For the foregoing, the Original Application is hereby dismissed with no order as to costs.

Sd/-

Sd/-

(R.B. Malik)
Member-J
06.01.2016

(Rajiv Agarwal)
Vice-Chairman
06.01.2016

Mumbai

Date : 06.01.2016

Dictation taken by :

S.K. Wamanse.

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