

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.868 OF 2016

DISTRICT : DHULE

Mr. Kailas Gokul Patil,)
Aged : 42 years, Worked as Clerk-typist,)
In the office of District Soldier Welfare)
Office, Pune, having office at Pune 1,)
R/o. A/P. Warshi, Tal. Sindhkheda,)
District Dhule)

...Applicant.

Versus

1. The Director,)
Soldier Welfare Department,)
M.S. Pune having office at 'Raigad')
Opp. National War Memorial,)
Ghorpadi, Pune 1)
2. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department)
Having office at Mantralaya,)
Mumbai 400 032)

...Respondents

Mr. Bhushan A. Bandiwadekar, learned Advocate for Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **21.03.2023**

J U D G M E N T

1. Applicant prays that the impugned order dated 28.06.2016 terminating the services of the Applicant passed by the Respondent No.1, the Director, Soldier Welfare Department on the ground that he failed to produce the Government Commercial Certificate for a speed of not less than 30 w.p.m. in Marathi Typewriting Examination within a period of 11 months from the date of his appointment should be quashed and set aside.

2. Applicant was appointed on the post of Clerk-cum-Typist on 29.06.2015 and therefore he was supposed to produce the said certificate till 23.05.2016. However, he did not produce. Learned Advocate for the Applicant has submitted that the Applicant was Ex-serviceman and 50% disabled due to IED Blast injuries on face. There was Reconstruction of Mabdile Teeth Plates and Reorif Wound Debridement. Learned Advocate relied on paragraph 3 (b)(iii) (page 19 of the Clerk-Typist in Government Offices Outside Greater Bombay (Recruitment) Rules, 1993 dated 03.09.1993 of which paragraph 3 (b)(iii) (page 19) reads as follows :

3 (b)(iii)

“possess the Government Commercial Certificate for speed of not less than 30 words per minute in Marathi Typewriting or, 40 words per minute in English typewriting, as the case may be; or”

Learned Advocate has submitted that the Applicant acquired the certificate of 40 w.p.m. in English Typewriting on 22.02.2016 and was prior to 23.05.2016 i.e., within 11 months from the date of appointment. The Recruitment Rules are silent about consequences of non-production of the certificate at the time of appointment. No

show cause notice was issued to the Applicant when the order of termination was passed. The 30 w.p.m. Marathi Typewriting Examination was held on 17.06.2016 by the State of Maharashtra i.e., before the order of termination of the applicant was passed.

3. Learned Advocate for the Applicant has submitted that on 29.04.2016 the Applicant made representation for extension of time to submit to the authority of District Sainik Welfare Board the said certificate. The typewriting examination is conducted by the authority twice in a year i.e. in the month of December and June. Learned Advocate has pointed out that in this letter he has mentioned that he could not clear the Typewriting Examination in December, 2015. He appeared for the said Examination in the month of June, 2016 and he subsequently cleared the said examination. Learned Advocate has submitted that the Applicant's fingers are injured and disfigured so it is not possible for him to cope with the speed of typing. The said application was forwarded to the Retired Major, District Sainik Welfare Officer, Pune for acquiring extension of time for acquiring the said certificate.

4. Learned C.P.O. for the Respondents while opposing this O.A. has relied on serial No.4 of the appointment order dated 25.06.2015. She further pointed out to paragraph 6(4) of the Notification dated 29.10.2001 issued by the G.A.D., wherein, for the appointment of Clerk-cum-typist the candidate should hold the passing certificate of 30 w.p.m. in Marathi Typewriting.

5. Applicant is an Ex-serviceman and also 50% disabled. He has suffered injuries during the war. It is the fact that his appointment

is as per Recruitment Rules, dated 03.09.1993, wherein, earlier for the post of Clerk-cum-typist either English or Marathi passing certificate of Typewriting was required. However, by Notification dated 29.10.2001 the State of Maharashtra insisted passing Marathi Typewriting compulsory as Marathi being State language and not English. All the other facts contended by the Applicant are not disputed. Applicant could not acquire 30 w.p.m. Marathi Typewriting Examination within 11 months from the date of his appointment. Submissions of learned Advocate that there is no provision of facing the consequences for not acquiring the certificate within 11 months, was not mentioned in the order or in the Recruitment Rules is correct. However, in the order it is specifically mentioned that if the said certificate is not acquired then the appointment order is given subject to the conditions mentioned therein and one of the conditions was securing proficiency in Marathi Typewriting @ 30 w.p.m. and if it is not given then the Appointing Authority has power to terminate the service of such employee. The whole issue is whether such Clause is to be considered as mandatory. On considering the language and force used in it, it is not mandatory for the Appointing Authority to terminate the service of such person, but the provision enabling the Appointing Authority to take action of the termination, which is not to be construed as it is mandatory to remove such person. The discretion is left to the Appointing Authority which is required to be used in view of the facts and circumstances.

6. In the present case, the Appointing Authority ought to have considered that the Applicant is Ex-serviceman and had suffered injuries on duty. He holds 50% permanent disability certificate. He

has made representation on 29.04.2016 requesting that he be given some more time in view of the fact that he was unsuccessful in the earlier attempt of December, 2015 and he would appear immediately in the next examination in June, 2016. The record discloses that he appeared for the said examination on 17.06.2016. The Appointing Authority thereafter passed order dated 28.06.2016 terminating the service of the Applicant. However, the Applicant has passed the 30 w.p.m. Marathi Typewriting Examination on 30.08.2016. This is the order wherein our indulgence is necessary. The Appointing Authority should have considered this case sympathetically especially when the Applicant is having 50% disability. In view of above, we pass the following order:

ORDER

- (a) The impugned termination order 28.06.2016 is hereby quashed and set aside.
- (b) Applicant is to be reinstated in service.
- (c) Applicant is not entitled to pay during the period from 28.06.2016 till his reinstatement on the principle of 'No Work No Pay'.
- (d) The period of termination is to be considered for notional pension, for the purpose of seniority and increments.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson