

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.896 OF 2017**

**DISTRICT : SANGLI**  
**Sub.:- Promotion**

Shri Anmol Shivaji Shinge. )  
Age : 45 Yrs, Working as Sr. Clerk in )  
I.T.I, Tasgaon, District : Sangli and )  
R/o. Chinmay Arcade-1, Flat No.A/3, )  
Chinmay Park, Yashwant Nagar, Sangli. )...**Applicant**

**Versus**

1. The Joint Director. )  
Vocational Education and Training, )  
Regional Office at Ghole Road, )  
Pune – 5. )
2. The Director of Vocational Education )  
and Training, Having Office at 3, )  
Mahapalika Marg, P.B.No.10036, )  
Mumbai – 1. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
Skill Development and )  
Entrepreneurship Department, )  
Mantralaya, Mumbai – 400 032. )
4. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. S.P. Manchekar, Chief Presenting Officer for Respondents.**

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

**DEBASHISH CHAKRABARTY, MEMBER-A****DATE : 07.08.2023****PER : A.P. KURHEKAR, MEMBER-J****JUDGMENT**

1. The Applicant has challenged the communication dated 10.04.2017 issued by Respondent No.2 – Director of Vocational Education and Training, Mumbai thereby rejecting his claim of promotion to the post of Lower Grade Stenographer stating that in terms of Rule 5(a) of “PA Group ‘B’, Higher Grade Stenographer, Group ‘B’, Lower Grade Stenographer, Group ‘B; and Steno-typist, Group ‘C’ post (Recruitment) Rules, 1997 (hereinafter referred to as Recruitment Rules of 1997’ for brevity), he is not eligible for promotion to the post of Lower Grade Stenographer. Apart, Applicant has also challenged the legality of Rule 5(a) which exclude Clerk-cum-Typist for the promotion to the post of Lower Grade Stenographer which was inexistence earlier in terms of “Steno-typist, Lower Grade Stenographers and Higher Grade Stenographers in the Government Offices of Government outside Greater Bombay (Recruitment) Rules, 1981” (hereinafter referred to ‘Recruitment Rules of 1981’ for brevity). As per Rules of 1981, promotional post to the Lower Grade Stenographers was to be filled-in by promotion of Clerks, Clerk-Typists, Typists and Steno-typists who possesses requisite shorthand qualification and type-writing speed for the post of Lower Grade Stenographer. Thus, there was channel of promotion to the Clerk-cum-Typist, Clerks, etc. to the post of Lower Grade Stenographers as per Rules of 1981.

2. However, the channel of promotion available to Clerk-cum-Typist was taken away in view of Rules framed in 1997. Government framed Rules for Greater Bombay as well as for Offices outside greater Bombay in 1997. As per Rules of 1997, the promotional post of Lower Grade Stenographer is required to be filled-in from the post of Steno-typist with

minimum three years' service. Whereas, as per old Rules of 1981, the Clerk-cum-Typist was the feeder cadre for promotion to the post of Lower Grade Stenographer. The Applicant made representation on 11.11.2016 for promotion to the post of Lower Grade Stenographer stating that during service, he acquired necessary qualification. However, his representation is turned down by impugned communication dated 10.04.2017 in view of new Recruitment Rules of 1997 which exclude the cadre of Clerk-cum-Typist from the zone of consideration for the promotion to the post of Lower Grade Stenographer.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of communication dated 10.04.2017 *inter-alia* contending that the exclusion of feeder cadre of Clerk-cum-Typist in new Rules of 1997 is totally irrational and arbitrary. He, therefore, challenged the legality of 'Rules of 1997' which exclude Steno-typist for the promotion to the post of Lower Grade Stenographer. He further raised grievance of discrimination and has pointed out that one Smt. Kadam was promoted to the post of Lower Grade Stenographer on 31.05.2008 which is after the enforcement of new Recruitment Rules of 1997. On this line of submission, he urged that the exclusion of cadre of Clerk-cum-Typist from the channel of promotion from the zone of consideration by 'Rules of 1997' is without any rational and arbitrary. He emphasized that when in earlier Rules of 1981, the Clerk-cum-Typists were eligible for promotion to the post of Lower Grade Stenographer, there was no reason or any rational to exclude the cadre of Clerk-cum-Typist in Rules of 1997.

4. Smt. S.P. Manchekar, learned Chief Presenting Officer sought to justify the impugned order dated 10.04.2017 *inter-alia* contending that in view of Rule 5(a) of 'Rules of 1997', the Applicant is not eligible for consideration of promotional post of Lower Grade Stenographer. As regard exclusion of cadre of Clerk-cum-Typist from the feeder cadre, she submits that the Government in its wisdom framed 'Rules of 1997', in

supersession of Rules of 1981, exercising powers under Article 309 of the Constitution and there is nothing to term it as irrational or arbitrary much less violative of fundamental rights of the Applicant. As regard promotion given to Smt. Kadam by order dated 31.05.2008, all that she submits that it was wrongly given though not eligible in view of 'Rules of 1997' and Applicant cannot take the benefit of wrong order, otherwise it would amount to perpetuate the illegality.

5. At this juncture, it would be apposite to reproduce old Rules as well as new Rules. Rule 4 of old Rules i.e. "Steno-typist, Lower Grade Stenographers and Higher Grade Stenographers in the Government Offices of Government outside Greater Bombay (Recruitment) Rules, 1981" is as under :-

**"4. Recruitment to the post of Lower Grade Stenographer – Appointment to the post of Lower Grade Stenographer shall be made either :-**

(a) by the promotion of a suitable person holding the post of clerk, Clerk-Typist, Typist and Steno-typist who possesses a Government Commercial Certificate for a speed in shorthand and typewriting prescribed for appointment by nomination in sub-clause (iii) of clause (b) or

(b) by nomination from amongst candidates who –

i) unless already in the service of Government are not more than thirty years of age

ii) have passed the Secondary School Certificate Examination any other examination recognized as equivalent thereto by Government; and

iii) Possess a Government Commercial Certificate for a speed of not less than 100 words per minute in shorthand and speed of not less than 40 words per minute in English typewriting or 30 words per minute in Marathi Typewriting."

6. Whereas Rule 5 of 'Rules of 1997' is as under :-

**"५.** निम्नश्रेणी लघुलेखक या पदावर पुढीलपैकी कोणत्याही एका मार्गाने नेमणूक करता येईल.-

(अ) लघुटंकलेखक या पदावर किमान तीन वर्षांची नियमित सेवा पूर्ण केली असेल आणि या नियमांच्या खंड (ब) च्या उपखंड (३) नुसार विहित लघुटंकलेखनाच्या आणि टंकलेखनाच्या वेगाचे शासकीय वाणिज्य प्रमाणपत्र धारण केले असेल अशा व्यक्तींची "जेष्ठता अधिन पात्रता" या निकषावर पदोन्नतीने नेमणूक करता येईल.

किंवा

(ब) पुढील व्यक्तीमधून नामनिर्देशनाने,

- (१) ज्या व्यक्तीचे वय १८ वर्षांपेक्षा कमी नाही आणि तीस वर्षांपेक्षा जास्त नाही,
- (२) ज्या व्यक्तीचे माध्यमिक शालांत प्रमाणपत्र परीक्षा उत्तीर्ण केली आहे, आणि
- (३) जी व्यक्ती लघुलेखनाचा वेग किमान १०० शब्द प्रति मिनिट आणि इंग्लिश टंकलेखनाचा वेग किमान ४० शब्द प्रतिमिनिट किंवा मराठी टंकलेखनाचा वेग किमान ३० शब्द प्रति मिनिट या अर्हतेचे शासकीय वाणिज्य प्रमाणपत्र धारक करित असेल.”

7. The reason for rejection of claim of the Applicant in impugned communication dated 10.04.2017 is as under :-

“सामान्य प्रशासन विभाग, मंत्रालय मुंबई ४०० ०३२ (सेवा प्रवेश नियम १९९७) दि. २४ जून १९९७ मधील नियम ५(अ) नुसार आवश्यक ते निकष श्री. शिंगे पूर्ण करित नसल्याने त्यांच्या लघुलेखक निम्न श्रेणी या पदावर पदोन्नतीसाठी केलेल्या उपरोक्त संदर्भीय अर्जाचा विचार होऊ शकत नाही.”

8. In view of submissions, the issue posed for our consideration is whether exclusion of cadre of Clerk-cum-Typist from feeder cadre in ‘Rules of 1997’ suffers from voice of irrationality or arbitrariness.

9. Indisputably, in the Rules of 1981, the post of Clerk, Clerk-cum-Typist was feeder cadre for promotion to the post of Lower Grade Stenographer as provided in Rule 4 of the Rules. However, later fresh Recruitment Rules were framed in 1997 and the post of Clerk, Clerk-cum-Typist were excluded from feeder cadre. As per Rule 5(a) of ‘Rules of 1997’, Steno-typist who rendered three years’ regular service and possesses requisite qualification of stenography and type-writing is only eligible for promotion to the post of Lower Grade Stenographer. Resultantly, the chances of Applicant for promotion to the post of Lower Grade Stenographer are taken away. However, at the same time, notably, there is different channel for promotion to the post of Clerk-cum-Typist and admittedly, Applicant is promoted in the cadre of Senior Clerk. As such, it is not a case that there is no channel of promotion to the Clerk-cum-Typist. Suffice to say, his channel of promotion to the Senior Clerk, Head Clerk, Office Superintendent, etc. is in-tact. That apart, there is no prohibition or bar to apply for the post of Lower Grade

Stenographer whenever vacancies are advertised by nomination. Thus, the Applicant can very well avail the opportunity of appointment on the post of Lower Grade Stenographer by nomination provided if apply through proper channel, so that his earlier service is continued.

10. Needless to mention, when Government framed Rules exercising powers under Article 309 of the Constitution of India, such Rules cannot be questioned unless there is enough evidence/material to establish that the Rules framed by the Government are violative of fundamental rights of a person or suffers from total arbitrariness or *malafides*. In the present case, there is no question of *malafides*. All that, learned Advocate for the Applicant submits that since in old Rules of 1981, there was availability of channel of promotion to Clerk-cum-Typist for the post of Lower Grade Stenographer, it is excluded in 'Rules of 1997' without any reasons. In our considered opinion, mere exclusion of Clerk-cum-Typist for promotion to the post of Lower Grade Stenographer is hardly enough to challenge the legality or virus of 'Rules of 1997'. The exclusion of Clerk-cum-Typist from Rules of 1997 cannot be termed mistaken omission as canvassed by the learned Advocate for the Applicant. The Government in its wisdom framed new Rules of 1997 may be for the reasons to get better candidates from the feeder cadre of Steno-Typist, so as to have efficient Lower Grade Stenographer because of experience of three years' work on the post of Steno-Typist.

11. That apart, as per 'Rules of 1997' itself, the Applicant is eligible for promotion to the post of Steno-Typist as provided in Rule 6 and after three years' experience as a Steno-Typist, then he can become eligible for next promotional post of Lower Grade Stenographer. As such, it is not a case that the chance of promotion to the post of Lower Grade Stenographer is taken away.

12. Indeed, once Government framed Rules exercising powers under Article 309 of the Constitution, it's virus or legality cannot be challenged

unless Applicant establishes total arbitrariness, violation of his fundamental rights or contravention of any other statutory provision or malice in framing such Rules. The burden is upon the Applicant to establish so. However, no such material in this behalf is forthcoming except stating that in old Rules of 1981, Clerk-cum-Typist was eligible for promotion to the post of Lower Grade Stenographer, but in Rules of 1997, it is taken away. In our considered opinion, mere exclusion of Clerk-cum-Typists for the promotion to the post of Lower Grade Stenographer itself cannot be equated to arbitrariness or irrationality. There must be patent illegality, arbitrariness or malice in the action which is completely lacking in the present case. Suffice to say, 'Rules of 1997' cannot be said illegal or arbitrary as prayed for.

13. Indeed, the legal position is no more *res-integra* in view of decision of Hon'ble Supreme Court in **1967 AIR 1889 [Roshan Lal Tandon Vs. Union of India]**. Hon'ble Supreme Court turned down the contentions raised by the employee that his service conditions cannot be altered by new Rules. Hon'ble Supreme Court held that the legal position of Government servant is more one of status than of contract and the hallmark of status is the attachment to the legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. It is further held that the emoluments of Government servant and his terms of service are governed by statute or statutory Rules which can be unilaterally altered by the Government without the consent of the employee. This being so, the challenge to the Rules of 1997 is totally devoid of merit.

14. Insofar as promotion given to Smt. Kadam is concerned, admittedly, she joined in 1992 on the post of Junior Clerk and was promoted to the post of Lower Grade Stenographer by order dated 31.05.2008. In view of 'Rules of 1997', her promotion is apparently incorrect. However, it appears that since her appointment was of 1992, she might have been considered as per Rules of 1981 which were in force

at the time of her joining. Whereas, Applicant joined on the post of Clerk-cum-Typist on 10.01.2000 i.e. after enforcement of 'Rules of 1997'. This being so, for promotion 'Rules of 1997' hold the field. That apart, there cannot be plea of discrimination in illegality or wrong orders. One cannot be allowed to take the benefit of wrong orders passed by the Department. It is trite law that there cannot be equality in illegality, otherwise it would amount to perpetuate wrong which is totally impermissible in law. It will be also negation of Rule of law. It is only in a case lawful orders are passed, then the benefit of such order cannot be extended to a person if found similarly situated.

15. The totality of aforesaid discussion leads us to conclude that the challenge to the order dated 10.04.2017 is devoid of any merit. Similarly, the relief to declare Rule 5(a) of 'Rules of 1997' illegal is also without any merit and O.A. is liable to be dismissed. Hence, the order.

### **ORDER**

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

Sd/-  
**(DEBASHISH CHAKRABARTI)**  
**Member-A**

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

Mumbai

Date : 07.08.2023

Dictation taken by :

S.K. Wamanse.

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