

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.962 OF 2021
WITH
MISC. APPLICATION NO.521 OF 2019**

DISTRICT : MUMBAI

Sub.:- Denial of Service benefits

Smt. Maya Pradip Khadilkar.)
Age : 53 Yrs, Working as Lower Grade)
Stenographer in the Law and Judiciary)
Department, Mantralaya, Mumbai – 32.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 0032.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

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

DATE : 20.06.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. In this second round of quite unusual litigation after loosing first round of litigation in O.A.No.842/2011, the Applicant has again filed this

O.A.No.962/2016 on 29.09.2019 challenging the communication dated 17.02.2016 issued by Government. He also filed M.A.No.521/2019 for condonation of delay of two years caused in filing O.A. Considering the issues involved in the matter, O.A. and M.A. are heard together and being decided by common order.

2. While Applicant was in service as Lower Grade Stenographer in Mantralaya, she has initially filed O.A.No.842/2011 challenging the communication dated 14.06.2011 whereby request for inclusion of her name in the cadre of Clerk-Typist and promotion to the post of Assistant was rejected. The Tribunal heard the matter and dismissed the O.A. on merit by order dated 07.07.2014. The Applicant did not challenge the order of dismissal of O.A. either by filing Writ Petition or Review Application in accordance to law. Instead of adopting legal recourse, she made representation to the Government on 01.11.2014 alleging that the Respondent – Government suppressed real facts and mislead the Tribunal by filing incorrect Affidavit-in-reply though the facts were otherwise. Thereafter again, she made representation on 17.06.2015 reiterated her claim for inclusion of her name in the cadre of Clerk-cum-Typist and promotion to the post of Assistant and Desk Officer in the channel. However, her request has been again rejected by the Government by communication dated 17.02.2016.

3. The Applicant, therefore, filed this O.A.No.962/2016 challenging the order dated 17.02.2016 again claiming the relief of inclusion of her name in the channel from the post of Clerk-Typist and to grant further promotions of Assistant and Desk Officer with deemed date of promotion and to grant all consequential service benefits. She also prayed to recall the order dated 07.07.2014 passed by the Tribunal in O.A.No.842/2011.

4. Before dealing with the submissions and contentions raised in this O.A, let us see uncontroverted facts of the matter giving rise to these litigations.

- (i) The Applicant joined Government service as Typist on 11.07.1984. That time, the cadre of Typist and Clerks were two different cadre.
- (ii) The Government had taken policy decision by G.R. dated 26.11.1990 for merger of cadre of Clerk and Typist into joint cadre of Clerk-Typist. Those who were working on the post of Typist were given 60 days' time to give option for continuation as Typist or to join joint cadre of Clerk-cum-Typist.
- (iii) The Applicant gave option on 02.01.1991 for the cadre of Clerk-cum-Typist.
- (iv) G.R. dated 26.11.1990 was challenged before Hon'ble High Court and implementation of G.R. was stayed upto 05.01.1995. Later it was implemented from 06.01.1995.
- (v) In the meantime, the Government temporarily promoted the Applicant on the post of Steno-Typist by order dated 15.07.1994.
- (vi) The Applicant made representation on 22.08.1995 for promotion to the post of Stenographer stating that she possesses requisite qualification for regular promotion. The Applicant then again made representation to the Government on 15.02.1996 reiterating her claim for promotion to the post of Lower Grade Stenographer stating that she possesses requisite qualification and has been superseded. The Government by order dated 09.04.1996 temporarily promoted the Applicant to the post of Lower Grade Stenographer.
- (vii) The Government by order dated 06.07.1998 regularized the promotion on the post of Steno-Typist w.e.f. 15.07.1994.

- (viii) The Applicant for the first time raised grievance by letter dated 12.08.1999 for inclusion her name in Clerk-cum-Typist cadre and then to promote her on the post of Assistant.
- (ix) The Applicant then again made representation on 05.09.2000 stating that though she got regular promotion on the post of Steno-Typist from 15.07.1994 because of injury to hand, she cannot do the work of Steno-Typist and Stenographer efficiently. She further raised grievance and requested to give her benefits for the post of Assistant. Thus, it was a request for repatriation in the original stream of Clerk-cum-Typist and then promotion in that stream upto to Assistant.
- (x) However, Applicant again by letter dated 12.03.2001 gave letter to the Government for withdrawing her application dated 05.09.2000 made earlier for promotion in the post of Assistant.
- (xi) Later, Applicant again by letters dated 27.07.2001 and 14.03.2002 revived her claim for promotion on the post of Assistant by repatriating her in that stream.
- (xii) The Government, however, by letter dated 19.05.2006 rejected her claim for repatriation in the stream of Clerk-cum-Typist and Assistant.
- (xiii) The Government by order dated 25.03.2011 promoted the Applicant to the post of Lower Grade Stenographer as a temporary promotion and posted her in Law and Judiciary Department.
- (xiv) However, Applicant again made representations which were again turned down by communication dated 14.06.2011.

5. It is on the above background, the Applicant has challenged the communication dated 14.06.2011 by filing O.A.No.842/2011 i.e. first round of litigation which was dismissed on merit by order dated 07.07.2014.

6. Instead of challenging the decision rendered by the Tribunal in O.A.No.842/2011 by filing Writ Petition before Hon'ble High Court or by filing Review Application, the Applicant continued to raise the grievance with the Government and made representation to the Government on 01.11.2014. In representation, she alleged that Government has suppressed certain material facts while filing Affidavit-in-reply in O.A.No.842/2011. She further alleged that she obtained certain information under RTI Act which supports her claim for suppression of facts and misrepresentation to the Tribunal by Government. She again made representation on 17.06.2015.

7. However, Government by communication dated 17.02.2016 rejected the representation for inclusion of her name in the cadre of Clerk-cum-Typist and then promotion in that cadre upto the post of Assistant and Desk Officer. It is on the above background, the Applicant had again challenged the communication dated 17.02.2016 by filing this present O.A.NO.962/2016.

8. In this O.A, the Government raised plea of litigation amongst others ground in their Affidavit-in-reply stating that the communication dated 17.02.2016 is not challenged within the period of one year of limitation. Therefore, Applicant filed M.A.No.521 of 2019 on 25.09.2019 for condonation of delay of two years and one and half month caused in filing O.A. In O.A, Respondent has filed the Affidavit-in-reply denying that case is made out for condonation of delay. In O.A. also, the Respondent has filed Affidavit-in-reply resisting the relief claimed and also challenged the maintainability of such O.A. filed for recalling the

order passed by the Tribunal in first round of litigation i.e. in O.A.No.842/2011.

9. Here, it would be apposite to see the relief prayed by the Applicant in this O.A.

- (a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to set aside the order dated 17.2.2016 passed by the Respondent under which he declined the demand of the Petitioner to include her name in the cadre of Clerk-Typist with effect from 1.1.1986 as per her option dated 2.1.1991 and give her promotion to the post of Assistant [alongwith the deemed date of promotion] in the promotional channel from the post of Clerk-Typist and to grant to her all the consequential service benefits, as if the impugned order had not been passed.
- (b) By a suitable order or direction, this Hon'ble Tribunal may be pleased to recall its order dated 7.7.2014 rendered in the O.A.No.842 of 2011, by invoking the powers under section 22[3][f] of the Administrative Tribunals Act, 1985 r/w Rule 25 of the Maharashtra Administrative Tribunal [Procedure] Rules, 1988 in the light of the admission of the Respondent contained in para 7 of the office noting to the effect that the request of the Petitioner for promotion to the post of Assistant through the Clerk-Typist cadre can be accepted but the same may ultimately result in change in the existing seniority list and accordingly it be declared as ineffective the said decision of the Hon'ble Tribunal, thereby restraining the Respondent from in any manner giving effect thereto adverse to the Petitioner.
- (c) By a suitable order or direction, this Hon'ble Tribunal may be pleased to hold and declare that the Respondent secured the decision on 7.7.2014 in O.A.No.842 of 2011 against the Petitioner by getting the same dismissed on the basis of total misleading and false pleadings in the form of the Affidavit-in-Reply dated 23.1.2012 filed in the said O.A. and thus practiced fraud upon the Petitioner and the Hon'ble Tribunal and accordingly, the said decision be recalled, declaring the same to be ineffective and the Petitioner be granted all the consequential service benefits."

10. At this juncture, before adverting to the contentions raised by the parties, it would be apposite to see conclusions and findings recorded by the Tribunal in O.A.No.842/2011 in Para Nos. 6 and 7, which are as under :-

"6. We have perused the material on record and considered the arguments on behalf of the Applicant and the Respondent. The case of the Applicant is based on admitted fact that she had opted for Clerk-

Typist joint cadre way back in 1991. This cadre has two channels for promotion viz. (a) Steno-Typist, Lower Grade Stenographer etc. and (b) Assistant, Under Secretary etc. The Applicant was promoted as Steno-Typist in 1994, when implementation of relevant G.R. dated 26.11.1990 was stayed by this Tribunal. The Applicant, therefore, cannot be faulted for accepting the promotion as Steno-Typist in 1994 when the G.R. continued to be stayed till 5.1.1995. However, if the Applicant wanted promotion in the stream of Assistant, U.S. etc. she should have sought reversion after 5.1.1995 from the post of Steno-Typist and sought promotion as Assistant. The Applicant, however, sought promotion to the post of Lower Grade Stenographer by letters dated 22.8.1995 and 15.2.1996. This clearly shows that she wanted to continue in the Stenography stream. Only by letter dated 12.8.1999, the Applicant sought promotion to the post of Assistant, admitting honestly that she was not likely to get early promotion as Lower Grade Stenographer as her name was low in the seniority list. (माझी सेवा जेष्ठता क्रमांक ९१ आहे त्यानुसार मला निम्नश्रेणी लघुलेखक पदावर लवकर पदोन्नती मिळेल असे वाटत नाही.), she was happy to function as Steno-Typist as long as she had expectation of promotion as Lower Grade Stenographer. When she realized that the said promotion is not to be given soon, she sought reversion to the post of Clerk-Typist on 12.8.1999 when by order dated 6.7.1998, she was confirmed in the post of Steno-Typist w.e.f. 15.7.1994, her initial date of promotion. The Respondent claims that once she was confirmed in the cadre of Steno-Typist, her lien in the earlier post was terminated as per Rule 20 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The Applicant claims that she was given regular appointment by order dated 6.7.1998 in the post of Steno-Typist but it was not a substantive appointment. Learned Counsel for the Applicant contended that there is difference between regular and substantive appointment. The Substantive appointment can be made only on a permanent post (and not a temporary post). Her promotion order did not mention that the Applicant was given substantive appointment. The Applicant also relies on letter dated 22.4.2008 (page 54 of the paper book) from the G.A.D. in response to her application under the Right to Information Act. It was clarified that: (त्यामुळे लिपिक टंकलेखक संयुक्त संवर्गात विकल्प दिलेल्या कर्मचा-यास लघुलेखक संवर्गात पदोन्नती देणे ही कार्यवाही चुकीची आहे.) and letter dated 3.1.2009 from G.A.D. to the Medical Education and Drugs Department, where G.A.D. has advised that Dept. that the Applicant's request for promotion to the post of Assistant may be considered, as she had given option for Clerk-Typist post and the Home Department should have informed the Applicant that if she accepts promotion as Steno-Typist, she would not be eligible for promotion as Assistant etc. The two letters dated 22.4.2008 and 3.1.2009 presume that option once given by the Applicant could not be altered subsequently as the G.R. dated 26.11.1990, in clause 3(3) made it clear:

“(एकदा दिलेला विकल्प अंतिम राहिल)”

It seems that the issue was later examined by the Respondent in depth. It is seen that the Applicant herself has requested for promotion as Steno-Typist and later as lower grade Stenographer. She had honestly admitted that she changed her mind and requested for promotion as Assistant as the chances of getting promotion in the post of Lower Grade

Stenographer at an early date were low. Whether the Applicant has a right to get promotion in one stream and also agitate for promotion in another stream is a moot point. In our view, a Government Servant cannot be allowed to do so. The Applicant had accepted promotion as Steno Typist. It is an admitted fact that the said appointment was regularized by order dated 6.7.1998 (Page 35 of the paper book). The Respondent claims that this was substantive appointment of the Applicant in the post of Steno-Typist. Her lien in the earlier post therefore cases Rule 20 of the M.C.S. (General Conditions of Services /Rules, 1981 reads :

"2. Acquiring and ceasing of a lien.- Unless in any case it be otherwise provided in these rules, a Government Servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post."

The Applicant states that regular appointment is different from substantive appointment. A regular appointment is substantive only when the post is permanent. We hold that when the Respondent states that the appointment of the Applicant in the post of Steno-Typist is substantive it has to be accepted as such. We have to assume that the post in which the Applicant is posted is permanent. We have no reason not to accept the assertion made by the Respondent in this regard.

Rule 25(2) reads as follows:

"(2) A Government Servant cannot be appointed substantively to two or more separate and permanent posts at the same time."

As the Applicant was substantively appointed as Steno Typist, she cannot claim lien on any other post i.e. that of Clerk Typist. The communications of G.A.D. dated 22.4.2008 and 3.1.2009 were not be final decision given by the Respondent. We find that after the Applicant as per her own request was promoted regularly to the post of Steno-Typist which is accepted by her and she wanted further promotion as Lower Grade Stenographer, she cannot claim promotion in the post of Assistant. It seems that she has since been promoted as Lower Grade Stenographer as the title of this O.A. suggest and as stated in para 14 of the written argument submitted on her behalf.

7. Having regard to the aforesaid facts and circumstance of the case, we find no fault in the impugned order and the O.A. stands dismissed with no order as to costs."

11. Now reverting to the contentions raised by learned Advocate for the Applicant in the present O.A, Shri Bandiwadekar, learned Advocate tried to persuade us with vehemence that the observation/finding recorded by the Tribunal while deciding O.A.842/2011 is based upon the misrepresentation made by the Respondents and such order can be recalled by the Tribunal. He further submits that the Tribunal blindly

accepted Respondents' contention that the appointment of the Applicant in the post of Steno-Typist was substantive, and therefore, her lien on the post of Clerk-cum-Typist ceases. According to him, there was no such specific material on record to establish affirmatively that the post of Steno-Typist on which Applicant was promoted was substantive. In this behalf, he tried to refer certain file notings of the Department. He, therefore, submits that the Respondents erred in not accepting the Applicant's request for repatriation in the stream of Clerk-cum-Typist and then to promote her upto the post of Assistant and Desk Officer, etc.

12. As regard powers of the Tribunal to recall the order, he referred the following decisions.

- (i) ***(1999) 4 SCC 396 [Budhia Swain & Ors. Vs. Gopinath Deb & Ors.];***
- (ii) ***(2014) 14 SCC 77 [State of Rajasthan & Anr. Vs. Surendra Mohnot & Ors.];***
- (iii) ***(2007) 14 SCC 108 [Deepa Gourang Murdeshwar Katre Vs. Principal, V.A.V. College of Arts & Ors.];***
- (iv) ***2019(2) SCC (L & S) 685 [Kelvin Jute Company Ltd. Workers Provident Fund & Anr. Vs. Krishna Kumar Agarwala & Ors.];***
- (v) ***2016(1) SCT 765 [State of U.P. & Ors. Vs. Ravindra Kumar Sharma & Ors.];***
- (vi) ***AIR 1994 SC 853 [S.P. Chengalvaraya Naidu Vs. Jagannath & Ors.];***
- (vii) ***2019(6) Bom.C.R.392 [Meena Popat Mhaske & Anr. Vs. Manager, Bajaj Allianz General Insurance Co. Ltd. & Ors.];***
- (viii) ***Judgment of Delhi High Court in Civil Writ Petition No.8840 of 2003 [Sher Singh Vs. Union of India & Ors.] decided on 07.03.2006;***
- (ix) ***(1996) 5 SCC 550 [Indian Bank Vs. Satyam Fibres (India) Pvt.Ltd.].***

13. The conspectus of these decisions is that, in following situations, the Tribunal/Court can recall the order :-

- (a) the procedure culminated into an order suffers from inherent lack of jurisdiction and such lack of jurisdiction is patent;
- (b) there exists fraud or collusion in obtaining the judgment;
- (c) there has been a mistake of the court prejudicing a party;
- (d) judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented;
- (e) Court's process is abused by making an erroneous statement or concession which is brought to the notice of same Court;
- (f) fraud is played to obtain the order and such order can be subject matter of review even if said order is maintained by Appellate Court in an appeal arising from original order which was obtained by fraud;
- (g) vital documents are withheld, it amounts to fraud and order/decreed obtained by playing fraud is vitiated.

14. In reference to Judgment of Delhi High Court in **Sher Singh's** case (cited supra), the learned Advocate for the Applicant submits that the Tribunal is empowered to recall its earlier order since power of recall is distinct and separate from power to review and can be exercised under certain circumstances as enumerated above.

15. Per contra, Shri A.J. Chougule, learned Presenting Officer challenged the very maintainability of this O.A. inter-alia contending that the order passed by the Tribunal in O.A.842/2011 had attained finality, since neither Writ Petition was filed nor Review Application was made as contemplated under Order 47 Rule 1 of Code of Civil Procedure. He has further submitted that the Applicant already availed promotional benefits

for the post of Steno-Typist and later for the post of Lower Grade Stenographer and stands retired on 31.05.2021 as Lower Grade Stenographer, and therefore, now Applicant cannot claim any such relief of repatriation in the stream of Clerk-cum-Typist and then to seek notional promotions on the post of Assistant, Desk Officer, etc. He has further pointed out that Applicant herself had requested for promotion to the post of Stenographer and once she accepted the said promotion and received all the monetary benefits till retirement, now such relief of repatriation is totally incomprehensible and untenable. He further submits that the issue involved in this O.A. was directly and substantially the issue in earlier O.A.No.842/2011 and it being adjudicated by the Tribunal, now it cannot be reopened being hit by principle of res-judicata embodied in Section 11 of CPC and there has to be end of litigation.

16. There could be no dispute about the legal principles enunciated from these Judgments as elaborated above about the powers of Tribunal to recall the order in certain circumstances. However, material question is whether any such circumstance exists to recall the order passed by the Tribunal in such manner. The main contention of the learned Advocate for the Applicant is that the post of Steno-typist was not substantive, but the Tribunal wrongly assumed that the post of Steno-Typist was substantive. Indeed, the Applicant has also not produced any material to show that the post of Steno-Typist was not substantive and it was temporary. Notably, though initially Applicant was temporarily promoted on the post of Steno-Typist by order dated 15.07.1994, later Government by order dated 06.07.1998 regularized the promotion of the Applicant on the post of Steno-Typist w.e.f. 15.07.1994 itself. For five years, Applicant did not raise any grievance and for the first time, by letter dated 12.08.1999 requested for inclusion of her name in Clerk-cum-Typist cadre by way of repatriation and then to promote her on the post of Assistant. Thereafter, by letter dated 05.09.2000, she changed her mind citing injury to hand and requested for repatriation in the original

stream, but again subsequently, by letter dated 12.03.2001 withdrew her application dated 05.09.2000. Thereafter, in due course, she was promoted to the post of Lower Grade Stenographer by order dated 25.03.2011. As such, there was no consistency in the claim of Applicant and it is only when she realized less chances of promotion in the stream of Stenographer, she again changed the stand and claimed repatriation. True, in file noting (Page No.112), the concerned Desk Officer mentioned that the request of the Applicant for repatriation cannot be said totally incorrect. This sentence in file noting was heavily relied upon by the learned Advocate for the Applicant to contend that it amounts to admission of the acceptance of the claim of the Applicant. Needless to mention, something mentioned in the file noting cannot be treated *ipso-facto* decision of the Government. In O.A.842/2011, the Tribunal has already considered this file noting and rejected the claim. That apart, in file noting itself, the Department made it clear that if Applicant is given promotion in the cadre of Assistant, then it would result in change of seniority of 400 to 500 persons being cascading effect which may give rise to serious litigation. Ultimately, Respondents rejected the claim of the Applicant for repatriation.

17. Even assuming for a sake of argument that the post of Steno-Typist was not substantive post, once Applicant had accepted the promotion on the post of Stenographer and then also accepted further promotion on the post of Lower Grade Stenographer and availed of the service benefits, it amounts to acquiescence and rule of estoppel is attracted. Now, she cannot claim repatriation in the original stream of Clerk-cum-Typist with retrospective effect which is bound to have cascading effect on hundreds of employees. Notably, Applicant herself made representation for promotion in the post of Stenographer on 22.08.1995 and asserted her claim for the post of Stenographer. Now, she also retired from the post of Stenographer on 31.05.2021. She availed the benefits for the post of Lower Grade Stenographer during service period as well as also got retiral benefits on the post of Lower

Grade Stenographer. In such situation, her claim for repatriation in the stream of Clerk-cum-Typist can hardly be accepted. Indeed, this issue of repatriation was the issue directly and subsequently in O.A.842/2011 and her claim was dismissed. If the findings recorded by the Tribunal was erroneous, the remedy was to challenge the same by filing Writ Petition before Hon'ble High Court or to seek review of order on the grounds mentioned in Order 47 Rule 1 of CPC, if available. However, instead of adopting appropriate legal procedure, the Applicant choose to file this O.A. to recall the order passed by the Tribunal in earlier O.A. along with M.A. for condonation of delay. In facts and circumstances of the case, no case is made out to condone the delay caused in filing this O.A.

18. Apart, even if delay caused in filing this O.A. challenging the communication dated 17.02.2016 is found condonable, in that event also, the claim of the Applicant that Respondents have played fraud on misrepresenting the Tribunal is totally absurd. This is nothing but abuse of the process of law. The Applicant is claiming repatriation in the stream of Clerk-cum-Typist and notional benefits of promotion on the post of Assistant and Desk Officer though she accepted the post of Steno-Typist and then got promotion upto the post of Lower Grade Stenographer and stands retired. In such situation, the claim of notional benefits of promotion in another stream in which she did not work is totally illogical and untenable.

19. The totality of aforesaid discussion leads us to sum-up that the challenge to the communication dated 17.02.2016 holds no water. The claim of the Applicant is already adjudicated by the Tribunal in O.A.No.842/2011 and attained finality. This O.A. is, therefore, hit by principle of *res-judicata* and not maintainable. Suffice to say, the claim of the Applicant is totally preposterous and O.A. and M.A. both are liable to be dismissed. Hence, the order.

ORDER

The Original Application as well as Miscellaneous Application stand dismissed. No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTI)
Member-A

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

Mumbai

Date : 20.06.2023

Dictation taken by :

S.K. Wamanse.

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