

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1144/2021(D.B.)

Avanti Satish Deshmukh,
Aged about 33 years, Occupation Service,
Resident of, 202, Govind Apartment,
Bandhu Nagar, Zingabai Takli,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Home Department,
Mantralaya Mumbai- 32.
- 2) Director General of Police, Having
its office at Shahid Bhagat Singh
Marg, in front of Regal Theater
Colaba, Mumbai-400032
- 3) The Commissioner of Police,
Nagpur City, Patel Bunglow,
Chaoni Nagpur.

Respondents

Shri S.P.Bodalkar, Ld. Counsel for the applicant.
Shri A.M.Ghogre, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 19th July 2022.

JUDGMENT**Per :Member (I).****Judgment is reserved on 15th July, 2022.****Judgment is pronounced on 19th July, 2022.**

Heard Shri S.P.Bodalkar, learned counsel for the applicant and Shri A.M.Ghogle, learned P.O. for the respondents.

2. Case of the applicant is as follows.

The applicant was appointed to the post of Junior Clerk by nomination in the office of respondent no.2 on 27.07.2012. She was promoted to the post of Senior Clerk on 30.05.2016. On her request she was transferred from the establishment of respondent no.2 to the establishment of respondent no.3 vide order dated 17.12.2020 (Annexure A-1). In this order following conditions attaching to the order of transfer was incorporated.

५. तसेच, संबंधित लिपीक हे ज्या दिवशी बदलीवर कार्यालयात हजर होतील, त्यावेळी संबंधित जिल्हा लिपीक संवर्गात जे वरीष्ठ श्रेणी लिपीक नेमणूकीस असतील, त्या सर्वांचे खाली त्यांची सेवाज्येष्ठता लावण्यात येईल, पूर्वीच्या कार्यालयातील पदाच्या ज्येष्ठतेचे कोणतेही लाभ अनुज्ञेय राहणार नाहीत याची नोंद घ्यावी.

Vacant posts of Stenographer were to be filled up. In filling these posts 23 Senior/Junior Clerks including the applicant were shortlisted. By order dated 12.05.2021 (Annexure A-3) respondent

no.2 promoted 7 persons to the post of Stenographer. Grievances of the applicant in this application are –

- 1) Condition no.5 in transfer order (Annexure A-1) is violative of articles 14, 16 and 21 of Constitution of India; and
- 2) She was unjustly deprived of promotion to the post of Stenographer on the ground that by virtue of her request transfer she had lost her seniority which she had acquired during her pre-transfer tenure. Hence, this application.

3. Reply of respondent nos.2 and 3 is at pp.64 to 68. According to them, in order of transfer (Annexure A-1) Clause 5 was incorporated as per G.R. dated 15.05.2019 (Annexure R-1), by executing bond (Annexure R-2), the applicant had undertaken to abide by all the conditions, including Clause 5, by order dated 12.05.2021 (Annexure A-3) promotions were given to the post of Lower Grade Stenographer, this can be gathered from Rules 4 and 5 of the Personal Assistant Group ' B ', Higher Grade Stenographer-Group- ' B ', and Steno-Typist Group- ' C ' in the various offices of Government outside Greater Mumbai (Recruitment) Rules, 1997, the applicant had not completed three years on her transferred post at Nagpur, therefore, she was not eligible for being considered for the post of Lower Grade Stenographer, this was communicated to the

applicant by letter dated 15.10.2021 (Annexure R-4), in the judgments of this Tribunal and Hon'ble Bombay High Court sought to be relied upon by the applicant G.R. dated 26.03.2004 was interpreted, this case, on the other hand, is governed by G.R. dated 15.05.2019 and for all these reasons the application deserves to be dismissed.

4. Relevant portion of Rules 4 and 5 of Rules of 1997 reads as under-

4. Appointment to the post of Higher Grade Stenographer shall be made either-

(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst persons holding the post of Lower Grade Stenographer having not less than three years regular service in that post and possessing Government Commercial Certificate with the speed in shorthand and type-writing prescribed for appointment by nomination in sub-clause (iii) of clause (b) of this rule ;

(b) XXX

(i) XXX

(ii) XXX

(iii) XXX

5. Appointment to the post of Lower Grade Stenographer shall be made either,-

(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst persons holding

the post of Steno-typist, having not less than three years regular service in that post, possessing Government Commercial Certificate with the speed in shorthand and typewriting prescribed for appointment by nomination in sub-clause (iii) of clause (b) of this rule ; or

(b) XXX

(i) XXX

(ii) XXX

(iii) XXX

From conjoint consideration of these Rules it can be concluded that Junior/Senior Clerks were shortlisted for being promoted to the post of Lower Grade Stenographer because there was no question of Junior / Senior Clerks being directly promoted to the post of Higher Grade Stenographer since Lower Grade Stenographer having experience of not less than three years were eligible for being considered for the post of Higher Grade Stenographer.

5. According to the respondents, Clause 5 in the order of transfer effected on request of the applicant (Annexure A-1) was squarely based on G.R. dated 15.05.2019 which governs and regulates request transfers and hence, it cannot be allowed to be assailed by the applicant. This G.R. is at Annexure R-1. Heading of this G.R. is as under-

“शासकीय कर्मचा-याच्या विनंतीनुसार संवर्गांतर्गत एका नियुक्ती प्राधिका-याच्या आस्थापनेवरून दुस-या नियुक्ती प्राधिका-याच्या आस्थापनेवर कायमस्वरूपी समावेशन करण्याबाबतचे धोरण.”

G.R. further states-

प्रस्तावना-

बदली अधिनियमानुसार शासकीय कर्मचारी हा एका ठराविक परिघामध्येच (उदा.जिल्हास्तर, महसूल विभाग स्तर, राज्यस्तर)बदलीपात्र असतो. पदभरतीची जाहिरात देताना निवड होणारा उमेदवार कोणत्या स्तरावर बदलीपात्र आहे हे नमूद करण्यात आलेले असते व त्याची त्याला पूर्ण कल्पना व जाणीव असते व तो स्वेच्छेने परिक्षेद्वारे त्या पदावर शासन सेवेत नियुक्ती स्विकारतो. त्यामुळे बदली अधिनियमानुसार त्या त्या स्तरावर / परिघामध्ये करण्यात येणारी बदली स्विकारणे त्याला कमप्राप्त आहे.

तथापि, काही वेळा नियुक्तीनंतर काही वर्षांनी भविष्यात कर्मचा-यांच्या, अशा काही अपवादात्मक वैयक्तिक अडचणी निर्माण होतात की, संबंधित शासकीय कर्मचा-यास त्याच्या बदलीपात्र स्तराबाहेर/परिघाबाहेरील शासकीय कार्यालयात कायमस्वरूपी समावेशन मिळणे गरजेचे ठरते. अशावेळी बदली अधिनियमाच्या मर्यादा विचारात घेता, मानवतावादी दृष्टीकोणातून यावर तोडगा काढण्यासाठी संदर्भाधीन क.३ च्या शासन निर्णयाद्वारे संवर्गबाह्य बदलीचे धोरण निश्चित करण्यात आले होते.

या धोरणाच्या अमंलबजावणीच्या वेळी असे निदर्शनास आले की, या धोरणाचे मूळ प्रयोजन विचारात न घेता कोणत्याही सर्वसाधारण वैयक्तिक अडचणींसाठी या धोरणाचा आधार घेतला जात आहे. प्रकरणपरत्वे अपवादात्मक परिस्थिती पाहता सरसकट अश्या स्वरूपाच्या संवर्गबाह्य बदल्या केल्यामुळे, प्रशासनाच्या मूळ

संवर्गातील पदे रिक्त राहून त्याचा कामकाजावर विपरीत परिणाम होत आहे. तसेच, या धोरणाचा चुकीचा अन्वयार्थ लावल्यामुळे क्षेत्रीय स्तरावर यानुसार कार्यवाही करताना चुकीची कार्यवाही होत असल्याचे निदर्शनास आले आहे. या कारणास्तव या धोरणाचे पुनर्विलोकन /पुनर्विचार करणे आवश्यक झाले आहे.

सबब, मानवतावादी दृष्टीकोणातून केवळ अपवादात्मक परिस्थितीत कर्मचा-याचे हित विचारात घेताना, शासकीय कामकाजाच्या निकडीचाही समतोलपणे विचार करून कार्यवाही करणे आवश्यक आहे. तसेच, धोरणाचा अर्थ सुस्पष्ट करणे गरजेचे ठरत आहे. यावर साधकबाधक विचार करून, संदर्भ क्र.३ येथील शासन निर्णयातील धोरण अधिकमित करून सुधारीत नवीन धोरण निश्चित करण्याची बाब शासनाच्या विचाराधीन होती.

Clauses 9 and 10 of this G.R. read as under-

(९) संबंधित कर्मचा-याचे कायमस्वरूपी समावेशन झाल्यानंतर, समावेशनाच्या पदावरील ज्येष्ठता तो त्या पदावर रुजू झाल्याच्या दिनांकास निश्चित होईल. त्याला मूळ कार्यालयातील पदाच्या ज्येष्ठतेचे कोणतेही लाभ अनुज्ञेय राहणार नाहीत. संबंधित कर्मचारी, समावेशनाच्या कार्यालयातील त्याच्या अगोदरच नियुक्त केलेल्या कर्मचा-यांना कनिष्ठ समजण्यात यावा. तसेच, पूर्वीच्या सेवेचा लाभ, वेतननिश्चिती, रजा याकरीता वित्त विभागाच्या संबंधित नियमातील तरतूदी अनुज्ञेय होतील.

(१०) या शासन निर्णयात विहित केलेल्या सर्व अटी मान्य असल्याचे संबंधित कर्मचा-यांकडून लेखी स्वरूपात बंधपत्र घेणे आवश्यक राहिल.

Reading of this G.R. makes it clear that there were certain consequences of request transfer. However, considering the object sought to be achieved thereby, these consequences cannot be said to

be arbitrary or violative of any provision of Constitution of India. One such consequence is loss of seniority.

6. The applicant has relied on-

1) *The State of Maharashtra and Others Vs. Shri Vijay S/o Pandhari Narwade & Others (Judgment dated 18.12.2017 delivered by D.B. of Bombay High Court in W.P.No.1419 of 2011;* and

2) *Common judgment of this Tribunal delivered on 20.03.2012 in O.A. Nos. 443 to 447/2011.* In this Judgment G.Rs. dated 01.11.1999 and 26.03.2004 were considered. This Tribunal, in the aforesaid judgment observed-

The Govt. of Maharashtra formed surplus Cell pursuant to G.R. dated 01/11/1999 for taking a review of posts that were rendered surplus in various departments of the Govt. The object sought to be achieved was to abolish the surplus posts and to absorb the persons working in the excess posts in some other department of the Government. It is an admitted position that all the applicants were regularly appointed in the State service and the applicants are confirmed in permanent service of the Govt. It is also an admitted position that all applicants have been in Govt. service without any interruption. After completing the exercise under the

Govt. Resolution dated 1/11/1999, various employees were found to be surplus. The present applicants were also rendered surplus in their parent department and as such they were to be absorbed in some other department. The absorption of excess employees was to be regulated by the G.R. dated 10/09/2001 which clearly laid down that such surplus employees when absorbed in another department, will not lose their seniority and their service shall be reckoned from the initial date of their appointment under the State. We reproduce the relevant portion, i.e. Clause 20 of G.R. dated 10/09/2001 :-

“सेवा ज्येष्ठता - अशा प्रकारे सामावून घेतलेल्या अतिरिक्त ठरलेल्या व्यक्तीची समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर त्याची सेवा ज्येष्ठता तो ज्या संवर्गात अतिरिक्त ठरला त्या संवर्गातील नियमित नियुक्तीच्या दिनांकापासून नियमित करण्यात यावी.”

At a later point of time the Govt. vide G.R. dated 26/3/2004 modified Clause 20 and the modified Clause 20 reads thus :-

“२० सेवाज्येष्ठता : अशाप्रकारे अतिरिक्त ठरल्यामुळे सामावून घेतलेल्या शासकीय कर्मचारी अथवा अधिकारी यांची इतर शासकीय विभागात अथवा शासकीय कार्यालयात समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर अशा समायोजित करण्यात आलेल्या अतिरिक्त कर्मचारी अथवा अतिरिक्त अधिकारी यांची सेवाज्येष्ठता शासन अधिसूचना, सामान्य प्रशासन विभाग, क्रमांक -एसआरव्ही-१०७६/बारा, दिनांक २१ जून १९८२ च्या नियम ४(१) मधील तरतूदीनुसार , असा अतिरिक्त शासकीय कर्मचारी अथवा अधिकारी ज्या पदावर

अथवा ज्या संवर्गामध्ये सामावून घेतला जाईल त्या पदावरील अथवा त्या संवर्गामधील त्याच्या नियमित नियुक्तीच्या दिनांकापासून निश्चित करण्यात यावी.’’

The modified Clause 20 in the first place observes that the subject of seniority is regulated by Rule 4(1) of the Maharashtra Civil Services (Regulation of the Seniority) Rules, 1982 which are published on 21/6/1982 and in the second place, it provides that the employees who are rendered excess, will be granted seniority from the date on which such employee is absorbed in the new department.

This Tribunal further observed-

Thus, the question that needs determination is as to whether the employees who are rendered excess and are absorbed in some other department are entitled to have their past service counted for the purpose of seniority. This very issue has been adjudicated by the Tribunal Principal Bench at Mumbai in O.A.No.361/2009 and O.A.No.655/2005 vide judgment dated 07/09/2009. It is categorically held by placing reliance on various judgments of the Supreme Court and on interpretation of Rule 4(1) of the Regulation of Seniority Rules 1982 that the employees who are rendered excess and are absorbed in some other department, would be entitled to have their past service counted for the purpose of seniority.

In W.P.No.1419/2011 also the question was whether the past/pre-absorption services could be counted as experience for promotion and this question was answered in the affirmative.

However, the question in this case is whether pre-request transfer service could be counted for seniority on the transferred post for promotion. We have referred to G.R. dated 15.05.2019. With specific objective said G.R. is issued. It enables accommodation of candidates whose requests for transfer are found to be genuine and compelling. One consequence of such transfer is loss of seniority. Viewed from the perspective of candidates working on the establishment since prior to transfer of a person on request to said establishment, this consequence cannot be said to be arbitrary. Thus, we hold that Clause no.5 in transfer order (Annexure A-1) which is based on G.R. dated 15.05.2019 is neither harsh nor arbitrary.

Once Clause 5 is held to be neither harsh nor arbitrary, it would follow that the applicant was rightly not considered for promotional post of Stenographer because she lacked requisite experience of three years on the post on which she was working, as stipulated in Rule 5 of Rules of 1997.

7. For the reasons discussed hereinabove the application is dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)
Dated – 19/07/2022

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 19/07/2022.
and pronounced on
Uploaded on : 19/07/2022.