

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.180/2016

Smt. Alka w/o Pravin Sheware,
Aged major, Occ. Service,
R/o Type-III, Block No.3, Quarter No.21
Ravi Nagar, Nagpur

..Applicant

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Industries, Energy & Labour Department,
Mantralaya, Mumbai 400032
- 2) The Director of Geology & Mining,
Plot No.27, Khanij Bhavan,
Shivaji Nagar, Nagpur-10
- 3) The Senior Deputy Director of Geology & Mining,
Regional Office, Plot No.27, Khanij Bhavan,
Shivaji Nagar, Nagpur-10

..Respondents

Shri D.M. Kakani - Advocate for the Applicant

Shri P.N. Warjurkar – Presenting Officer for the Respondents

Coram :- Hon'ble Shri A.D. Karanjkar, Member (J)

Dated :- 30th October 2018.

J U D G M E N T

Heard Shri D.M. Kakani, learned Advocate for the Applicant and Shri P.N. Warjurkar, learned Presenting Officer for the Respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The case of the applicant is that she was appointed in service on 22.7.2004 as a Asst. Draftsman. In 2006 Government of Maharashtra has taken a policy decision to remove the disparity in the pay scales which were applicable to the technical post. Consequently, vide Annexure A-2 dated 27.2.2006 pay scales of some of the posts were revised. Later on it came to the notice of the Government that pay scales of some posts were not revised, therefore, the Government issued corrigendum to Annexure A-2 vide Annexure A-3. As per Annexure A-4 second corrigendum dated 2.1.2007 again corrections were made and as per Annexure A-4 GR dated 28.7.2009 pay scale of the Draftsman and Asst. Draftsman came to be revised. Earlier pay scale of the Draftsman was Rs.4500-7000 and higher pay scale of Rs.5500-9000 after completion of 4 years of service. The Government revised the pay scale as Rs.5200-20200 plus Grade Pay of Rs.2800 as initial pay and Rs.9300-34800 plus Grade Pay of Rs.4300 after completion of 4 years of service. The name of the post was changed as Draftsman Grade-I.

3. Similarly, the Government revised the pay scale of Assistant Draftsman. Earlier pay was Rs.4000-6000 which was revised to Rs.5200-

20200. The Assistant Draftsman in the old pay scale was entitled to higher pay scale of Rs.5000-8000 and on completion of 5 years of service and in the revised pay scale of Rs.9300-34800 plus Grade Pay of Rs.4200. The name of the post of Assistant Draftsman was changed as Draftsman Grade-II after completion of 5 years of service.

4. It is contention of the applicant that the Government of Maharashtra published staffing pattern on 7.4.2007 in which the nomenclature of the post of Draftsman was changed. Accordingly the post of the Draftsman was named as Geological Information System Assistant (GIS Assistant).

5. It is contention of the applicant that after completion of 5 years the applicant was entitled for the higher pay scale of Rs.9300-34800 plus GP of Rs.4300 as per the GR. It is submitted that the applicant repeatedly made requests to the authorities to provide that scale as she had completed 5 years of service in the year 2009, but the respondents did not take cognizance, consequently the applicant submitted this application for issuing necessary directions.

6. The respondents have filed their reply at page 64 of the paper book and they have challenged the application. It is contention of the respondents that the applicant is trying to mislead this Tribunal by suppressing GR dated 4.4.2007 issued by the Industries, Energy and Labour Department. It is contended that this GR was issued by the Government and as per this GR the post of Draftsman / Asst. Draftsman no

more exists and therefore, the applicant is not entitled for the pay scale as per the GR dated 24.1.2007 and 28.7.2009. It is submitted that GR dated 7.4.2007 is a guiding factor and as per this GR now there is no post of Draftsman / Asst Draftsman, therefore, the applicant is not entitled for any benefit. The next contention of the respondents is that the application is barred by limitation as there is delay of 9 years, therefore, it is liable to be dismissed.

7. In view of the above facts two question arises for consideration:

- (a) Whether the applicant is entitled to the pay scale of Rs.9300-34800 plus Grade Pay of Rs.4200 after completing 5 years of service?
- (b) Whether the application is barred by limitation?

8. I have heard submissions on behalf of the applicant and the respondents. It seem from the reply of the respondents that as per GR dated 7.4.2007 the post of Draftsman / Asst Draftsman came to be abolished and now there is no post of Asst. Draftsman in the Directorate of Geology and Mining Department and therefore, the applicant is not entitled for any relief. It is also contended that the applicant has suppressed the GR dated 7.4.2007.

9. In reply it is submitted on behalf of the applicant that vide GR dated 7.4.2007 the new staffing pattern came into existence. GR dated 7.4.2007 issued by the Ministry of Industries, Energy and Labour Department is

Annexure A-5 at page 32 of the paper book. It is pertinent to note that the applicant has referred this GR and also placed its copy on record, therefore, there is no substance in the contention that it is attempt of the applicant to mislead the Tribunal.

10. On perusal of the GR dated 7.4.2007 it seems that after verification of various posts in various departments the Government decided to publish the staffing pattern for 480 posts. In para 2.2 of this GR it is specifically cleared by the Government that excess post were 165. The Government decided to abolish the post, but it was decided by Government to give posting to those employees in the same pay scale till their absorption in the same pay scale or till retirement of the permanent employee, whichever would occur earlier. It is also covered in the GR for that period the Government granted permission to create the same post in the same pay scale. After reading this GR it is not possible to accept the contention raised by the respondents.

11. My attention is invited to Annexure of the GR which is at page 52. It seems that nomenclature of the post of Draftsman was changed as Geological Information System Assistant. As per GR issued by Finance Department dated 28.7.2009 pay scale of the Asst. Draftsman came to be revised to Rs.5200-20200 plus Grade Pay of Rs.2400 and after completion of 5 years as Rs.9300-34800 plus Grade Pay of Rs.4200. On completion of 5 years of service the Asst. Draftsman was entitled for higher pay under the name of Draftsman Grade-II. Clause (3) of GR is very which specific. It

says that though the name of the post was changed but there would not be any effect on the pay scale. After reading GR dated 7.4.2007 particularly para 2.2 it is not possible to accept the contention of the respondents that the post of Draftsman was abolished but on the other hand it seems that the nomenclature of the post was changed as GIS Assistant. It is important to note that till today the applicant is working with the respondents and he is receiving the pay scale admissible to the post of Asst. Draftsman i.e. Rs.5200-20200 plus GP of Rs.2400. It is not the contention of the respondents that the applicant is working not as Asst. Draftsman but she is absorbed on any other post. Therefore, there appears no substance in the contention of the respondents that the applicant is not entitled for the higher pay scale after completing 5 years of service.

12. It is important to note that in GR dated 28.7.2009 it is specifically mentioned that it was in the mind of the Government to prepare the staffing pattern and to give one nomenclature to the various posts in the different department though work was the same. In para 2 of the GR the Government specifically stated that as per the staffing pattern the names of the different posts were changed, the pay scale admissible to the different posts, old and new are also mentioned. Had it been intention of the Government not to give benefit of higher pay scale to the Draftsman and Assistant Draftsman there was no reason to change the nomenclature of the post and to mention the higher pay scale. It is pertinent to note that detailed statement at page 51 of the paper book is applicable to Directorate

of Geology and Mining and in this detailed statement there is specific mention of Draftsman and Assistant Draftsman. The sanctioned posts are also mentioned.

13. In view this position, I am unable to accept the contention of the respondents that the applicant is not entitled for the higher pay scale after completion of five years qualifying service. It appears that the applicant joined duty as Asst. Draftsman on 22.7.2004, therefore, on completion of five years of service i.e. 22.7.2009 she became entitled to revised higher pay scale of Rs.9300-34800 plus Grade Pay of Rs.4200.

14. So far as contention of the respondents that application is barred by limitation is concerned, it must be remembered that instead of following the legal remedies the applicant honestly requested the respondents to do justice but it was in vain. As a matter of fact the wrong is continuous one, in every month the applicant has right to claim salary as per higher pay scale but it is not done. Keeping in view of this background, I hold that there is no substance in the claim of the respondents that the application is barred by limitation. I therefore, accept the submission of the applicant that the respondents committed error not granting her higher pay scale after completion of 5 years qualifying service. Hence, I pass the following order.

ORDER

The Original Application is allowed. The Respondents are directed to release the pay of the Applicant as per higher pay scale of Rs.9300-34800

plus Grade Pay of Rs.4200 w.e.f. 1.8.2009. The Respondents are directed to comply with this order within four months. No order as to costs.

(A.D. Karanjkar)
Member (J)

*Dictation taken by: SGJawalkar