

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.138 OF 2017**

1. Shri Haridas Bhagwan Suryawanshi, )  
Age 47 years, Room Boy, )  
Sahyadri Guest House, Malbar Hill, Mumbai )  
R/o 8/462, Kohinoor Mill Chawl, Jotiba Phule )  
Road, Naigaon, Dadar, Mumbai 400014 )
2. Shri Umesh Mahadeo Koli, )  
Age 44 years, Room Boy, )  
Sahyadri Guest House, Malbar Hill, Mumbai )  
R/o House No.184-A, Waman Nivas, )  
Dharavi Koliwada, Dharavi Main Road, )  
Near Holi Maidan, Dharavi, Mumbai 400017 )
3. Shri Shankar Vaijnath Kale, )  
Age 40 years, Pantry Man, )  
Sahyadri Guest House, Malbar Hill, Mumbai )  
R/o. B/301, Sanghvi Tower, Hatkesh, )  
Mira Bhayandar Road, Near Eden Bakery, )  
Mira Road (East), District Thane )..Applicants

Versus

The State of Maharashtra, )  
Through Principal Secretary, )  
General Administration Department (Protocol), )  
Sachivalaya Annex (Gymkhana), 1<sup>st</sup> Floor, )  
Opp. Mantralaya, Mumbai 400 032 )..Respondent

Shri Bhushan A. Bandiwadekar – Advocate for the Applicants

Smt. K.S. Gaikwad – Presenting Officer for the Respondent

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 23<sup>rd</sup> March, 2021

### **J U D G M E N T**

1. Initially this OA was filed only for directions to the respondents to issue corrigendum to the order dated 19.10.2013 to grant pay scale of Rs.5200-20200 with Grade Pay (GP) of Rs.2000/- w.e.f. 1.8.2009 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Short stated facts giving rise to the OA are as under:

The applicants were appointed on the post of Room Boy/Pantry Man at Sahyadri Guest House, Mumbai under the control of General Administration Department (GAD), Government of Maharashtra in 1997 as Group 'D' employees. After completion of 12 years of service they were given the first benefit of Modified Assured Career Progression Scheme (MACPS) and by order dated 19.10.2013 they were placed in pay scale of Rs.5200-20200 with GP of Rs.1600/-. However, they came to know that respondents, in the matter of Shri Sachin Waman Pagare, have given the first benefit of MACPS to the post of Telephone Operator carrying pay scale of Rs.5200-20200 with GP of Rs.2000/- whereas applicants were given pay scale of Rs.5200-20200 with GP of Rs.1600/- and therefore they felt discriminated. Thus, on this background initially OA was filed for direction to the respondents to place them in pay scale of Rs.5200-20200 with GP of Rs.2000/-.

3. However, during the pendency of OA certain developments have taken place. Since applicants have raised ground of discrimination pointing out pay scale granted to Shri Pagare, respondents by order dated 25.4.2017 cancelled pay scale granted to Shri Pagare as well as also cancelled order of MACPS dated 19.10.2013 on the ground that applicants were not possessing educational qualification for the next promotional post. The applicants, therefore, amended the OA and challenged the said order dated 25.4.2017.

4. Heard Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicants and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

5. In view of the submissions advanced at Bar, issue posed for consideration is whether applicants were entitled to pay scale of Rs.5200-20200 with GP of Rs.2000/-?

6. The Perusal of Recruitment Rules viz. Manager (Group B) Non-gazetted, Assistant Manager, Telephone Operator or Receptionist, Head Butler (Group C), Butler 1, Butler 2, Khansama 1, Khansama 2, Storeman, Telephone Attendant, Room Attendant, Chowkidar, Butler, Room Boy, Pantryman, Plate Washer, Hamal, Helper, Waiter, Maid Servant in (Group D), in the State Guest House, under the General Administration Department (Protocol), Government Maharashtra (Recruitment) Rules, 2007 (hereinafter referred to as 'Recruitment Rules of 2007' for brevity), reveals that for the persons holding the post of Waiter or Room Boy or Pantry Man (Group 'D') there is channel of promotion to the post of Butler-1 and from Butler-1 there is channel of promotion to Butler-2. Butler-1 and Butler-2 are Group 'D' posts. Besides Recruitment Rules of 2007 further provides for promotion to the post of Telephone

Operator or Receptionist (Group C) in State Guest House by promotion and nomination.

7. Here it would be apposite to reproduce Rules 5, 6, 7 and 8 of Recruitment Rules of 2007 which are material in the present matter:

*“5. Appointment to the post of “Telephone Operator” or “Receptionist” (Group C), in the State Guest House shall be made either,-*

*(a) By Promotion of a suitable person, on the basis of seniority subject to fitness from, amongst the person holding the post of Waiter or Room Boy or Pantryman (Group D) and having three years minimum regular service in that post and possesses qualification mentioned in clause (ii) of sub-rule (b) of rule 5; or*

*(b) By Nomination from amongst the candidates, who,-*

*(i) are not more than thirty-three years of age (thirty-three years for reserved categories); and*

*(ii) have passed the Higher Secondary School Certificate Examination; and*

*(iii) possesses Diploma in Telephone Operation recognized by the Government.*

6. *Appointment to the post of “Head Butler” (Group C), in the State Guest House shall be made either,-*

*(a) By Promotion of a suitable person, on the basis of seniority subject to fitness from, amongst the persons holding the post of Butler-1 (Group D) and having three years minimum regular service*

*in that post and possesses qualification mentioned in clause (ii) of sub-rule (b) of rule 6; or*

*(b) By Nomination from amongst the candidates, who,-*

*(i) are not more than thirty-three years of age (thirty-three years for reserved categories); and*

*(ii) have passed the Higher Secondary School Certificate Examination; and craftsmanship course in food and beverages service; and*

*(iii) having at least two years work experience of the post of Butler, in three star hotel or Government Guest House.*

*7. Appointment to the post of “Butler-1” (Group D), in the State Guest House shall be made either,-*

*(a) By Promotion of a suitable person, on the basis of seniority subject to fitness from, amongst the persons holding the post of Butler-2 (Group D) and having three years minimum regular service on that post and possesses qualification mentioned in clause (ii) of sub-rule (b) of rule 7; or*

*(b) By Nomination from amongst the candidates, who,-*

*(i) are not more than thirty years of age (thirty-eight years for reserved categories); and*

*(ii) have passed the Higher Secondary School Certificate Examination and craftsmanship course in food and beverages service.*

8. *Appointment to the post of "Butler-2" (Group D), in the State Guest House shall be made either,-*

*(a) By Promotion of a suitable person, on the basis of seniority subject to fitness from, amongst the persons holding the post of Waiter or Room Boy or Pantryman (Group D) and having not less than three years regular service and possesses qualification mentioned in clause (ii) of sub-rule (b) of rule 8; or*

*(b) By Nomination from amongst the candidates, who,-*

*(i) are not more than thirty years of age (thirty-eight years for reserved categories); and*

*(ii) have passed the Higher Secondary School Certificate Examination and craftsmanship course in food and beverages service."*

(Quoted from page 23-24 of OA)

8. Thus, for promotion to the post of Butler-2 (Group D) feeder cadre is Waiter or Room Boy or Pantryman and having not less than three years regular service and possesses qualification of Higher Secondary School Certificate Examination (HSSCE) and Craftsmanship course in food and beverages services. Whereas interestingly, for promotion to the post of Telephone Operator or Receptionist feeder cadre is also of Waiter or Room Boy or Pantryman in Group D having 3 years minimum regular service and who have passed HSSC Examination. In so far as appointment by nomination to the post of Telephone Operator or Receptionist is concerned, eligibility criteria is passing of HSSC Examination and Diploma in Telephone Operation recognized by the Government. Significant to note that for promotion from the cadre of Waiter or Room Boy or Pantryman to the post of Telephone Operator there is requirement of qualification of

passing HSSC Examination only and passing of Diploma in Telephone Operation is not required.

9. There is no denying that initially after completion of 12 years service applicants were given benefit of next promotional post w.e.f. 2009 by order dated 19.10.2013. Interestingly, order dated 19.10.2013 is silent as to what was the next promotional post for which benefit of non-functional promotion was given. For this purpose it is necessary to see the minutes of the meeting of Departmental Promotion Committee (DPC) on the basis of which benefit of MACPS was given to the applicants. In this behalf perusal of minutes of DPC (page 134-138 of paper book) is material. Reading of minutes of DPC reveals that while putting proposal before DPC, department was conscious that applicants have not passed HSSC Examination. However, it appears that proposal for amendment and deletion of requirement of passing HSSC Examination was under consideration of the Government and, therefore, Secretary had proposed that subject to said proposal, benefit of MACPS can be granted. Accordingly, DPC granted benefit of MACPS to the applicants w.e.f. 2009. What is material to note is that there is specific mention in the minutes of DPC as well as chart appended thereto (page 138 of paper book) that next promotional post given to the applicants in hierarchy was to Butler-2 and consequently by implication pay scale granted to the applicants for the benefit of MACPS was of Butler-2 and not of Telephone Operator. Pay scale for the post of Telephone Operator was Rs.5200-20200 with GP of Rs.2000/- whereas pay scale for the post of Butler-2 was Rs.4440-7440 with GP of Rs.1600/- as seen from notification issued by GAD in terms of recommendations of 6<sup>th</sup> Pay Commission (page 172-173 of paper book).

10. It is thus explicit that first benefit of MACPS granted to the applicants was of the post of Butler-2 carrying different pay scale and not

of Telephone Operator which was carrying higher pay scale and falls in Group 'C' category.

11. However, in the matter of Shri S.W. Pagare, who was Room Boy, he was directly placed in pay scale of Telephone Operator and it was foundation of OA filed by the applicants on the ground of parity. Realizing the mistake, respondents during pendency of OA cancelled the order of Shri Pagare by order dated 25.4.2017 and simultaneously by same order cancelled the benefit of MACPS granted to the applicants (by order dated 19.10.2013) on the ground that applicants were not possessing requisite qualification of passing HSSC Examination.

12. Another material development which has taken place during the pendency of OA is that applicants appeared for HSSC Examination and passed in 2014, 2013 and 2012 respectively. They have submitted certificates to the department and, therefore, respondents again granted first benefit of MACPS that too w.e.f. 2009 itself by passing order on 31.7.2019, which is at page 115-117 of paper book. By this order applicants were given pay scale of Rs.4440-7440 with GP of Rs.1600/-. Thus, in effect earlier benefit of MACPS which was granted subject to proposal of relaxation of requisite educational qualification is again restored since later applicants passed the examination. They were again granted the said benefit w.e.f. 2009.

13. Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicants sought to canvass that in view of Recruitment Rules of 2007 applicants were entitled to promotion to the post of Telephone Operator (Group C) as provided under Rule 5 of Recruitment Rules of 2007. True, for the post of Telephone Operator there is channel of promotion from feeder cadre of Waiter or Room Boy or Pantryman subject to passing of HSSC Examination. At the same time there is channel of promotion to the post



of Butler-2 from feeder cadre of Waiter or Room Boy or Pantryman subject to possessing qualification of HSSC Examination and craftsmanship course in food and beverages services. As stated earlier it is explicit from minutes of DPC that applicants were given benefit of promotional post of Butler-2. No doubt, they had no craftsmanship course in food and beverages services required in terms of Rule 8. However, fact remains that they were given benefit of the promotional post of Butler-2 and not Telephone Operator. Rule 5 of Recruitment Rules of 2007 makes it clear that post of Telephone Operator is Group 'C'. In other words first there has to be promotion from feeder cadre of Waiter or Room Boy or Pantryman to the post of Butler-2 and then there is channel of promotion to the post of Butler-1 from Butler-2. All these posts of Butler-1 and Butler-2 are Group D posts whereas post of Telephone Operator is of Group C and it is totally different post having regard to the nature and duties required to be performed by Telephone Operator. Only because Rule 5 provides channel of promotion from feeder cadre of Waiter or Room Boy or Pantryman that itself cannot confer any right on the persons who are in feeder cadre to claim promotion to the post of Telephone Operator.

14. In any case it is explicit from the minutes of DPC meeting that what was granted was benefit of next promotional post of Butler-2. However, mistakenly in formal order dated 19.10.2013 their promotional pay scale was shown Rs.5200-20200 with GP of Rs.1600/- which is obviously incorrect in view of notification issued by GAD after the implementation of 6<sup>th</sup> Pay Commission report when pay scale of Butler-2 was in fact Rs.4440-7440 with GP of Rs.1600/-. It is as clear as sunshine that in order dated 19.10.2013 wrong pay scale of Rs.5200-20200 with GP of Rs.1600/- was shown instead of Rs.4440-7440 with GP of Rs.1600/-. Government's authority or right to rectify the mistake cannot be questioned. If there is mistake in applying wrong pay scale then it has to be corrected whenever noticed. In present case, respondents accordingly

rectified the mistake initially by cancelling order dated 19.10.2013 and simultaneously also cancelled pay scale granted to Shri Pagare on which applicants were heavily banking.

15. Needless to mention, there cannot be discrimination in illegality, if pay scale was granted wrongly to one employee, then it could not be taken ground for discrimination otherwise it would amount to perpetuate the illegality. There is no such protection of law in illegal orders. Apart, respondent has already cancelled the pay scale granted to Shri Pagare. Therefore, question of discrimination does not survive.

16. Ld. Advocate for the applicants further raised ground of discrimination on the basis of pay scale granted to Shri Khandekar and Shri Hadkar (Waiters) for the post of Telephone Operator by order dated 17.9.2010 (page 30 of paper book). A perusal of order reveals that respondents have granted promotional pay scale of Telephone Operator carrying pay scale of Rs.3200-4900 to Shri Khandekar and Shri Hadkar, which was existing as per 5<sup>th</sup> Pay Commission. The order further reveals that respondents had relaxed the condition of educational qualification. Here again if promotion was wrongly granted for the post of Telephone Operator to Shri Khandekar and Shri Hadkar contrary to Recruitment Rules of 2007 that ipso facto does not entitle the applicants' claim for benefit of MACPS for the post of Telephone Operator. In this respect Ld. PO submits that department will take necessary action to rectify the mistake. The Tribunal hopes that respondents should act in fair and transparent manner and may take remedial measure so that there should be no occasion of raising grievance of discrimination. As stated above here again the acceptance of applicants' contention that they were entitled to pay scale of Telephone Operator on the basis of pay scale granted to Shri Khandekar and Shri Hadkar would amount to perpetuate illegality

which cannot be countenanced by Court of law. It is also contrary to Recruitment Rules of 2007.

17. In this view of the matter there is no escape from the conclusion that applicants were not entitled to claim monetary benefits in the promotional post of Telephone Operator and they were entitled to the benefit for the post of Butler-2 which was initially granted to them by relaxing condition of educational qualification but again restored in view of acquiring HSSC Examination certificate by the applicants. I, therefore, see no merit in the OA and it deserves to be dismissed.

18. Original Application is dismissed. No orders as to cost.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**  
**23.3.2021**

Dictation taken by: S.G. Jawalkar.

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