

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.270 OF 2016

DISTRICT : MUMBAI

Shri Ashwin Jaywant More,)
Age 30 years, occ. Govt. Service,)
R/at Plot No.29/C/5, Bainganwadi, Gowandi)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Planning Department, Mantralaya,)
Mumbai 400032)
2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)
3. The Secretary,)
Home Department, Mantralaya,)
Mumbai 400032)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Miss N.G. Gohad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.P. Kurhekar, Member (J)

RESERVED ON : 17th July, 2019

PRONOUNCED ON : 24th July, 2019

PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Miss N.G. Gohad, learned Presenting Officer for the Respondents.

Admitted facts:

2. The applicant came to be appointed on 17.8.2005 on compassionate ground as a Clerk-Typist. It was necessary on his part to pass the Typing examination within a period of two years from the date of his appointment. As the applicant did not pass the examination within 2 years, his services were terminated by order dated 3.12.2007. As per the provisions he was reappointed as a Peon on 5.12.2007 and thereafter by passage of time again promoted as Clerk-Typist through the quota reserved for Group D employees on 5.7.2011. He is taking exception to the order of termination dated 3.12.2007 and rejection of his representation by order dated 11.7.2013.

3. The applicant has therefore prayed in prayer clause 9(a) to declare the impugned orders dated 3.12.2007 and 11.7.2013 as bad in law and to quash the same and in prayer clause 9(b) to regularize his services as a Clerk.

4. In support he has furnished the following grounds:

(i) *The applicant was discriminated in not condoning the delay occurred in passing the Typing examination. (para 6.5 of OA)*

(ii) *His representation dated 20th and 29th November, 2007 were not forwarded to the GAD. Had said representations been forwarded his name would have been considered sympathetically. (para 6.6 of OA)*

(iii) *His application was not forwarded by respondent no.1 maliciously. (para 6.7 of OA)*

(iv) *Applicant states that for all reasons stated above the impugned orders dated 11.7.2013 and 3.12.2007 are bad in law, especially for the reasons that there was no ground before the respondents to discriminate the applicant from other employees and the orders are suffered from malicious acts i.e. non submission of the representation to the committee of senior secretaries and thereafter for the reason that the directions of the committee were not complied with. The both orders are therefore required to be quashed and set aside. (para 6.9 of OA)*

5. The Ld. Advocate for the applicant refers to the judgment and order dated 30.6.2016 passed by this Tribunal in MA No.122 of 2016 in OA No.270 of 2016 (Shri Ashwin Jaywant More Vs. The State of Maharashtra & 2 Ors.) The MA was for condoning the delay and the delay has been accordingly condoned in view of "hostile discrimination".

6. The Ld. Advocate for the applicant has tendered a list of 12 persons in the chart enclosed showing how the similarly situated persons submitted their certificates of Typing and action taken in each of these cases. The applicant submits that similar consideration may be shown in his case.

7. The Ld. Advocate for the applicant has also relied on the judgment and order dated 14.3.2013 passed by Aurangabad Bench of the Hon'ble Bombay High Court in Writ Petition No.4872 of 2012 (Sachin V. Kshirsagar Vs. The State of Maharashtra & Ors.) and W.P. No.6676 of

2012 Gajanan K. Sahane Vs. The State of Maharashtra & Ors.). In the said matters the Hon'ble High Court has quashed the termination order and directed the respondents to reinstate the petitioners in service with continuity of service for all purposes except the back wages.

8. The respondent no.1 has filed affidavit in reply. The relevant portion of the same reads as under:

“3. With reference to Para 3, I say that the Applicant was appointed on compassionate ground on the post of Clerk-Typist on 17th August, 2005. The Applicant had to produce typing certificate within 2 years from joining date. The applicant could not produce the typing certificate within the prescribed time. Hence he services of the applicant were terminated by order dated 03.12.2007. After termination of service as clerk on 3rd December, 2007, a letter addressed to the Applicant on 11.07.2013 and not an Office Order by which his representation against the termination order was rejected. From 5th December, 2007 to 4th December, 2011 the applicant was practically working as Peon. His request of regularizing his service, as if his service as a clerk was not terminated, does not have any practical base. The request of Applicant that he should supposed to be on the post of Clerk-Typist from the date of his first appointment date i.e. 17th August, 2005; not only refuges but also perverse the factual position. Thus, the request of the Applicant is baseless, illegal and unacceptable from administrative as well as legal angle. The Application is liable to be rejected with cost.

9. With reference to Para 6.4, I say that in this para the applicant has mentioned some facts in tabular form which are replied as under :-

<u>Date of Event</u>	<u>Comments</u>
18.11.2011	As per the office record, the date of application is 29.11.2007 and not 20.11.2007 as stated by the

	<p><i>Applicant. By application dated 29th November, 2007 Applicant applied for extension for producing typing certificate. But the then Additional Chief Secretary (Planning), in his own authority, did not consider the request of the Applicant. The proposal of the Applicant for extension of time for producing typing certificate was not submitted before the High power Committee, his service as a clerk was terminated, he was appointed as peon and subsequently he was promoted as Clerk-Typist is a factual position.</i></p>
07.10.2014	<p><i>Shri R.K.Ranpise and Smt.S.S.Shirsat were appointed in this department on compassionate ground on 18th march, 2013 and 25th march, 2013 respectively. As per the contentions in G.R. of G.A.D. dated 6th December, 2010 they were supposed to produce typing certificate within six months from the date of appointment i.e. on 17th March, 2013 and 24th March, 2013 respectively. As they were unable to produce the typing certificate they applied for extension to submit the typing certificate. After the approval of the then Additional Chief Secretary (Planning) the proposal for granting extension of time was submitted to the Sr. Secretary Committee. Sr. Secretary Committee in the meeting held on 7th October, 2014 decided to condone the delay of Smt. Shirsat in submitting the typing certificate and give one additional opportunity to Shri Ranpise. As stated in comments to incident dated 18th November, 2011 above Applicant applied on 29th November, 2007 for extension for producing typing certificate. But then Additional Chief Secretary (Planning) did not consider the request of the Applicant. Therefore the Applicant's proposal was not submitted to the Sr. Secretary Committee.</i></p>

10. With reference to Para 6.5, I say that the Applicant was appointed on 17th August, 2005. As per the provisions in Government Resolution dated 23rd August, 1996 the Applicant was required to produce typing certificate within 2 years from joining date i.e. upto 16th August, 2007. There is no provision in the Government Resolution to allow extension of time for producing typing certificate. Grant of time extension to furnish the typing test certificate is a concession offered by the Government in its own power. Any employee cannot claim this concession as his right. Secretary of the concerned Administrative Department is Head of the Department. And hence he is competent to decide whether to put forth the Application asking such concession before the High Power Committee or not. The, then Additional Chief Secretary (Planning), the Appointing Authority in his own authority, did not consider the request of the Applicant to grant concession. Thus there is no question of any discrimination.

11. With reference to Para 6.6, I say that as stated in the above paragraph there is no provision in the Government Resolution to allow extension of time for producing typing certificate. Grant of time extension to furnish the typing test certificate is a concession offered by the Government in its own power. Any employee cannot claim this concession as his right. There doesn't seem any purpose behind this action. The applicant has many if's and but's in his say. Further he has anticipated High Power Committee's decision in his favour without any precedent or substantial material.

12. With reference to Para 6.7, I say that as stated in comments to incident dated 06.04.2010 above, Sr. Secretary Committee in the meeting held on 6.4.2010 asked the Department to scrutinize the proposal with reference to Vaishali Kalelkar. The concerned file was received on 29.4.2010 from Home Department. In the next meeting dated 28.01.2011 the Committee postponed the subject. Copy minutes of meeting held on 28.1.2011 is annexed hereto and marked as EXHIBIT "R-5". Finally in the meeting held on 3.5.2011 Committee recommended to give promotion to the Applicant. And accordingly the Applicant was promoted on the post of

Clerk-Typist vide order dated 5.7.2011. The applicant himself is responsible for his loss and nobody other could be blamed for it.

13. *With reference to Para 6.8, I say that the contention of the applicant in this para is Applicant's own say. This Department is not comparing the applicant's case with any other case. This department do not agree with the say of the applicant. Except the representation dated 29.11.2007 all other representations of the applicant are latter to termination of his service.*

14. *With reference to Para 6.9, I say that although the representation of the applicant dated 29.11.2007 was not submitted to the High Power Committee, after passing the typing examination in May, 2008, the applicant made a representation on 12th September, 2008 asking for the post of Clerk-Typist with retrospective effect, was put fourth before the High Power Committee. And as stated in comments to para. 6.7 above, in the meeting held on 3.5.2011 Committee recommended to give promotion to the Applicant. And accordingly the Applicant was promoted on the post of Clerk-Typist vide order dated 5.7.2011. There is no illegality committed by this office. The action taken by this Department was as per the Rules. The say of the Applicant is baseless. Taking into account all the factual position mentioned above the Application is liable to be rejected.*

14.1 *A committee of Sr. Secretaries is set-up to advice the Government in the special cases which cannot be covered under general rules. Copy of formal orders of formation committee vide circular dated 12.2.2001 is annexed hereto and marked as EXHIBIT "R-6". Secretary of the concerned department may put forth the proposal, which he deems fit to for consideration; before the Committee. The applicant had argued that "had his proposal been submitted to high power committee, his services could not have terminated", but the fact is that the then Additional Chief Secretary, in his own authority did not consider the request of the Applicant. Therefore the proposal of the Applicant for extension of time for producing typing certificate was not submitted before the High power Committee and subsequently his service was terminated. Even after passing of typing*

examination, taking into account the practicality of the case; the request of the applicant for retrospective posting on the post of Clerk-Typist has been turned down by the high power committee.

14.2 *It is a ground reality in this case that after termination of service as Clerk on 3rd December, 2007, for the period from 5th December, 2007 to 4th December, 2011 the applicant was practically working as Peon. His request of regularizing his service, as if his service as a Clerk was not terminated, does not have any practical base. The request of Applicant that he should supposed to be on the post of Clerk-Typist from the date of his first appointment date i.e. 17th August, 2005; not only refuges but also perverse the factual position. Thus, the request of the Applicant is baseless, illegal and unacceptable from administrative as well as legal angle. The Application is liable to be rejected with cost.”*

(Quoted from pages 58-66 of OA)

Discussion and findings:

9. We have perused the documents on record. The documents reveal that the applicant was appointed on 17.8.2005. He was directed to produce Typing certificate within two years i.e. up to 16.8.2007. Since he did not pass the Typing examination, his services were terminated on 3.12.2007 as Clerk but he was appointed as a Peon in Group D category on 5.12.2007 and worked in the same capacity till 4.12.2011. The argument of the Ld. Advocate for the applicant that there was discrimination against him is not supported by factual position. While working as a Peon the applicant passed the Marathi Typing examination and submitted a representation on 12.9.2008 to allow him to work as Clerk-Typist with retrospective effect. The same was submitted to the High Power Committee for consideration immediately. The High Power Committee during its meeting on 3.5.2011 recommended promotion of the applicant and he was promoted as Clerk-Typist vide order dated 5.7.2011.

There does not appear to be any illegality in the action taken by the department. The fact is that the applicant passed Typing examination after prolonged period than the stipulated time mentioned above. His request for retrospective posting on the post of Clerk-Typist was considered by the High Power Committee and rightly rejected since there was a considerable gap of time. In fact looking at the circumstances that the applicant was appointed on compassionate ground he was posted as Peon in Group D and when he passed the Typing examination he was promoted as well. The available record does not justify that there was any maliciousness or arbitrariness by the respondents. In fact, the respondents have shown leniency by continuing him in government job.

10. The applicant has raised the issue of discrimination against him by mentioning that extension was granted to one Vaishali Kalelkar to pass the typing examination (para 6.4 page 4 of OA). The affidavit filed by the respondents submits in para 12 (page 64 of OA) that the said Vaishali Kalelkar had continued in her posting and in the meeting held on 3.5.2011 the committee considered her case and recommended her promotion. In the same meeting the applicant in the present OA was also promoted to the post of Clerk-Typist on 5.7.2011. The case of the applicant cannot, therefore, be equated with other person as in the case of the applicant he was asking for the post of Clerk-Typist with retrospective effect, which was considered unacceptable. Thus, the issue of discrimination is not tenable.

11. The applicant has failed to demonstrate any illegality, arbitrariness or discrimination in the action taken by the respondents.

12. The judgment relied upon by the Ld. Advocate for the applicant has different facts and, therefore, not considered relevant.

13. For the reasons stated above, the OA is without any merit and, therefore, dismissed with no order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)
24.7.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
24.7.2019

Dictation taken by: S.G. Jawalkar.