

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.384 OF 2019**

DISTRICT : MUMBAI

Shri Ananda Khandu Bangar,)
Age 64 years, occ. Retired Government servant,)
R/o C/o. Rupesh Genbhau Dharade,)
H-1, Building No.15, 6th floor, Room No.187, Lake Side)
IIT, Powai, Mumbai 400076)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary,)
Industry, Energy & Labour Department,)
Madame Cama Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400032)

2. The Director,)
Govt. Printing Stationary and Publication)
Directorate, Near Charni Road Station,)
Netaji Subhash Marg, Mumbai 400004)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Shri S.D. Dole – Presenting Officer for the Respondents

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

DATE : 8th November, 2019

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Shri S.D. Dole, learned Presenting Officer for the Respondents.

2. The applicant is before this Tribunal demanding second financial upgradation w.e.f. 1.10.2006 as per the GR dated 1.4.2010.

Brief facts:

3. The applicant joined establishment of respondent no.2 as a Clerk on 15.11.1976. On 22.4.1982 he was promoted as a Reader. On 9.2.1985 he was promoted as Senior Reader. The applicant retired on 31.5.2013. After becoming Senior Reader the next promotion was as Supervisor (Head Reader). The respondent no.2 is the competent authority for promoting persons in Group C cadre. The applicant had made representations to the Director to provide him promotion in the category of Supervisor/Head Reader on 13.3.2010 (page 28). The applicant was informed by respondent no.1 on 12.2.2019 as under:

“आपण उपरोक्त माहिती अर्जामध्ये तसेच यापूर्वीच्या सन २०१५ पासूनच्या माहिती अर्जान्वये सातत्याने एकाच विषयाबाबत म्हणजेच तांत्रिक पदांची अर्हता शिथिल करून आश्वासित प्रगती योजनेचे लाभ लागू करण्याबाबत मागणी करित आहात. तथापि, प्रचलित सेवाप्रवेश नियमानुसार तांत्रिक अर्हतेची अट शिथिल करण्याची तरतूद नाही व याबाबतीत यापूर्वीचा ब-याचशा कर्मचा-यांकडून न्यायालयात दावे दाखल करण्यात आलेले आहेत. सबब, तांत्रिक अर्हता शिथिल करण्याबाबतच्या प्रस्तावावर निर्णय घेणे तूर्तास शक्य नाही. तसेच सुधारित सेवाप्रवेश नियम तयार करण्याची बाब वि-त विभागास सादर करण्यात आलेली आहे. त्यानंतर याबाबत उचित निर्णय घेता येईल.”

(Quoted from page 83 of OA)

4. The applicant has challenged this impugned communication and prayed that he should be declared as eligible for second financial

upgradation w.e.f. 1.10.2006 as per the scheme stated in the GR dated 1.4.2010.

5. In support of the same he has submitted following grounds:

(1) The applicant has relied on the provisions in the rules called, “Head Reader or Head Examiner, Head Reader (Grade II), Senior Reader, Examiner, Proof Examiner, Reader and Copy Holder (Class III) in the Government Printing Presses under the Directorate of Government Printing and Stationary (Recruitment) Rules, 1990”. The relevant portion of the same reads as under:

“3. Appointment to the post of Head Reader or Head Examiner in the Government Printing Presses under the Directorate 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 posts of (i) Head Reader (Grade-II), (ii) Senior Reader, (iii) Examiner, (iv) Proof Examiner for not less than three years after appointment to the post on regular basis and who possess qualifications and experiences prescribed for appointment by nomination in sub-clauses (ii), (iii) and (v) to (viii) of clause (b) of this rule; or

(b) by nomination from amongst candidates who—

(i) unless already in the service of Government are not more than thirty five years of age,

(ii) have passed Secondary School Certificate Examination,

(iii) hold a diploma in Printing Technology or certificate in Typography (printing) or certificate of National Apprenticeship

or any other qualification declared by Government to be equivalent thereto,

- (iv) possess specialized knowledge connected with reading and practical experience gained after acquiring the qualification mentioned in sub-clauses (ii) and (iii) above as proof reader for a minimum period of ten years,*
- (v) possess practical experience of book and job proof reading, type faces and lay-outs,*
- (vi) understand principles of display, the format of book, the principles of imposition, editing of copy preparation of index, erratum and paper sizes,*
- (vii) able to control and guide readers and copy holders and to get expeditious outturn,*
- (viii) sound knowledge of English, Marathi and Hindi:*

Provided that the Government may relax the qualification mentioned in clause (iii) of clause (b) above on the recommendation of the Selecting authority, in respect of departmental candidate having a good record of service and possessing necessary technical competence.”

(Quoted from page 16-17 of OA)

(2) On 24.3.2014 the Director under his chairmanship convened a meeting to consider cases of persons eligible for Head Reader. The minutes of the same are furnished by the Ld. Advocate for the applicant during final hearing. The minutes reads that the applicant along with two others has completed 12 years of service and as per the GR dated 1.4.2010 he is eligible for the same. However, as he does not have technical qualifications, guidance from Government may be obtained before giving him promotion.

(3) Accordingly on 14.7.2014, the Director recommended the case of the applicant and recommended relaxation of the condition of technical qualification.

(4) The Ld. Advocate for the applicant relies on the judgment given by this Tribunal in similar circumstances in OA No.1294 of 2010 decided on 4.1.2012 (Shri Tanaji Lobha Sonawane Vs. State of Maharashtra & Ors.). The relevant portion from the same reads as under:

“8. it is clear from the record that the applicant was entitled to time bound promotion as he had completed 12 years service as a Senior Reader and he was rightly given the said time bound promotion by an order dated 11.1.1996 with effect from 1.10.1994. There is no logical explanation for staying the said order of grant of time bound promotion. Perusal of the aforesaid Rule 3 of Head Reader or Head Examiner, Head Reader (Grade II), Senior Reader, Examiner, Proof Examiner, Reader and Copy Holder (Class III) in the Government Printing Presses under the Directorate of Government Printing and Stationary (Recruitment) Rules, 1990 specially proviso therein makes it abundantly clear that the applicant is entitled to such relaxation specially when the Selecting Authority has already recommended such relaxation to the Government. There is a total non application of mind by the Government holding that the applicant must possess a diploma in Printing and Technology. If that be so, the very proviso would be rendered totally meaningless as the said proviso is clearly meant for the departmental candidate like the applicant. The respondents also could not explain how in the cases of Mr. A.T. Gaikwad, A.N. Rasankute, A.C. Ghawate and M.M. Bhandare they were granted promotion of Head Reader though they did not possess diploma in Printing and Technology. Another vital aspect is that the applicant was holding charge and working as a Head Reader since the year 2000 till his retirement on 31.5.2010.

9. *Having regard to the aforesaid facts and circumstances, we direct the respondents to consider granting notional promotion to the applicant in the post of Head Reader.”*

(Quoted from page 43-44 of OA)

(5) Ld. Advocate for the applicant submits that this order was complied by the respondents on 10.7.2013 (page 45-46 of OA).

(6) The State had moved the Hon'ble Bombay High Court against the said order in Writ Petition No.6934 of 2013 and the Hon'ble High Court dismissed the same on 3.9.2013. Relevant portion of the same reads as under:

“15. It is pertinent to note that the Tribunal has rightly concluded that the proviso to Rule 3 of the Recruitment Rules, would be rendered meaningless and redundant, as it clearly envisages the exigencies meant for a departmental candidate like the respondent. We find, that the Tribunal has rightly come to the conclusion, that there is non application of mind by the Government, that the respondent must possess a Diploma in Printing and Technology.”

(6) The Ld. Advocate for the applicant therefore submits that the applicant may also be extended the same benefits as mentioned in the above judgment and provided second financial upgradation w.e.f. 1.10.2006 as per the scheme in the GR dated 1.4.2010.

(7) Ld. Advocate for the applicant submits that the GR dated 1.4.2010 reads as under:

“(क) योजनेचा दुसरा लाभ :

(9) पहिल्या लाभानंतर १२ वर्षांची नियमित सेवा पूर्ण केलेल्या कर्मचा-यास पदोन्नतीच्या पदाची वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल. तथापि, या योजनेतील पहिला लाभ म्हणून ज्या

पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदाला विवक्षित सेवाकालावधीनंतर, त्या पदाच्या कर्तव्ये व जबाबदा-यांत वाढ न होता, अकार्यात्मक वा तात्सम उच्च वेतनसंरचना मंजूर करण्यात येत असेल तर ती अकार्यात्मक वा तत्सम उच्च वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.

(२) दुसरा लाभ मंजूर कोल्यानंतर पहिल्या लाभाप्राणेच पदोन्नतीच्या नियमांनुसार विकल्प देण्याची मुभा देऊन वेतननिश्चिती करण्यात येईल, पदोन्नतीनंतर पुन्हा वेतननिश्चितीचा लाभ अनुज्ञेय असणार नाही.

(३) “सुधारित सेवांतर्गत आश्वासित प्रगती योजना” दिनांक १ ऑक्टोबर २००६ पासून लागू राहिल. परंतु १ ऑक्टोबर २००६ ते या आदेशांच्या दिनांकापर्यंत काल्पनिकरित्या वेतननिश्चिती करून प्रत्याक्ष लाभ या आदेशाच्या दिनांकापासून देण्यात येतील. मात्र थकबाकी अनुज्ञेय असणार नाही.”

(Quoted from page 25 of OA)

(8) The Ld. Advocate for the applicant contends that the applicant fulfills the terms and conditions required for being eligible for second financial upgradation.

Submissions by the respondents:

6. Respondent no.2 has filed affidavit and contested the claim being made by the applicant. According to the affidavit the applicant does not fulfill the terms and conditions of existing Recruitment Rules and is not eligible for second time bound promotion. The respondents admit that as per the directives of the Tribunal in respect of Shri T.L. Sonawane he was given promotion. But in the present case the applicant does not fulfill the condition of Recruitment Rules and therefore he is not eligible. The affidavit further submits that at any stage of selection, selection committee presumes that no candidate is available with required qualification and experience, then committee can relax the condition and select the same reserved category candidate who is eligible as per requirement. The respondents have therefore submitted that the applicant is not eligible and therefore not entitled for any relief as prayed.

Observations:

7. I have examined the Recruitment Rules which specifically provide that the Government may relax the qualification regarding holding of Diploma in Printing Technology or certificate in Typograph (Printing) on the recommendation of the selecting authority, in respect of a departmental candidate having good record of service and possessing necessary technical competence. The Director who is the competent authority had examined the record of the applicant and recommended relaxation of the term technical competence in case of the applicant so that he can be given the benefit of Assured Career Progression Scheme in the rank of Head Reader.

8. In a similar situation this Tribunal had given the judgment in OA No.1294 of 2010, that the Recruitment Rules quoted above make it abundantly clear *that the applicant is entitled to such relaxation specially when the Selecting Authority has already recommended such relaxation to the Government. ... the very proviso would be rendered totally meaningless as the said proviso is clearly meant for the departmental candidate like the applicant.* (supra). Hon'ble High Court has also upheld the same and pointed out, "insistence on Diploma, is non application of mind" (supra).

9. The ratio explained in the above judgment is identical in the present case as well. Though the applicant does not possess formal technical competence such as Diploma or certificate, being a departmental candidate he has acquired necessary expertise. The Director is satisfied with the same and has recommended his case for relaxing the term of technical competence viz. possessing diploma or certificate in printing technology.

10. In view of the above it would be appropriate that the respondents consider granting second financial upgradation to the applicant equivalent to the post of Head Reader.

11. I therefore direct the respondents to consider the case of the applicant for extending him benefits of second financial upgradation.

12. In the light of the above discussion the respondents are directed to consider the case of the applicant and pass suitable orders within a period of two months from the date of issue of this order. OA disposed off accordingly. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
8.11.2019

Dictation taken by: S.G. Jawalkar.