

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.621/2011

DISTRICT – AURANGABAD

Sunil s/o Baburao Wagh,
Age : 40 years, Occ : Steno Typist,
In the Office the Dy. Secretary,
Maharashtra State Board of Technical
Education, Regional Office,
Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Department of Technical Education,
Mantralaya, Mumbai.
2. The Director,
Technical Education,
3, Mahapalika Marg,
Post Box No.1967,
Mumbai-400 001.
3. The Joint Director,
Technical Education,
Regional Office,
Osmanpura, Aurangabad.
4. The Joint Director,
Technical Education,
Regional Office, Nashik.
5. P.A.Pohnerkar,
Age : 45 years, Occ : Stenographer,
Government Polytechnic,
Nashik.

...RESPONDENTS

APPEARANCE :Shri Milind Patil, learned Advocate for the applicant.

Smt. Sanjivani Ghate, learned Presenting Officer for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 20th October, 2016.

ORDER

[PER: MEMBER (J)]

Applicant is working as Steno-Typist in the office of Deputy Secretary, Maharashtra State Board of Technical Education, Regional Office, Aurangabad. He was appointed as Steno-Typist on 16th February, 1996. Since there was no promotional post available, the applicant was given benefit of time scale promotion on 15-02-2008. However, he is not actually promoted till today.

2. Applicant has prayed as under (page 11):

“(A) This application may kindly allowed and it may kindly be declared that, the

applicant is entitle to promotion on one of the post of Stenographer out of two vacant posts available in Aurangabad Division under the supervision of Joint Director, Technical Education, Regional Office, Aurangabad.

(B) This original application may kindly be allowed and the respondent authorities may kindly be directed to strictly follow clause-6 of the Recruitment Rules published in the Government Gazette dated 31st December, 1981 and to maintain ratio of 50% each from promotion category as well as from nomination category regarding post of Stenographers available under the supervision of the Joint Director, Technical Education, Regional Office, Aurangabad.

(C) This Original Application may kindly be allowed and the order dated 2nd September, 2011 thereby transferring the respondent No.5 from the Government Polytechnic, Nashik, to Government Polytechnic, Jalna, may kindly be quashed and set aside.”

3. It is stated that the Recruitment Rules applicable to the post of Steno-Typist provides that promotions shall be effected by filling 50% posts available; in the ratio of 50%

from nomination quota and 50% from promotion quota to the post of Stenographer (L.G.).

4. It is submitted that, roster is maintained as regards promotion and nomination quota on the basis of posts available at the Divisional level and not at State level. In Aurangabad Division, there are only 4 posts available in the category of Steno-Typist and 8 posts in the category of Stenographer (L.G.). Stenographer (L.G.) is a promotion post available for Steno-Typist.

5. As per Rule 6 of the Recruitment Rules published in the Government Gazette dated 31st December, 1981 (Exhibit-A, page 15), out of 8 posts of Stenographer (L.G.) only 4 posts are to be accommodated by way of promotion of in-service Steno-Typists.

6. Further, it is submitted that, applicant is eligible for promotion to the post of Stenographer (L.G.) from 15th February, 2008. He was eagerly waiting for vacancy to the post of Stenographer (L.G.), so that he can be actually promoted. Out of 8 available posts of Stenographers, 1 is newly created, while another is vacated due to retirement of Smt. S.R.Sawale on 30th June, 2011. However, respondent

authorities have transferred respondent no.5, namely Shri P.A.Pohnerkar on a vacant post of Stenographer. Shri Ponherkar has joined his service on 16th March, 1989 in Mumbai Division. On request, he was transferred to Nashik Division. He again requested for transfer in Aurangabad Division. As per his request, he was transferred from Government Polytechnic, Nashik to Government Polytechnic, Jalna under Aurangabad Division vide order dated 2nd September, 2011. Because of the said transfer, applicant's right for promotion on the post of Stenographer is infringed, and therefore, this O.A.

7. Respondent nos.1 to 4 have submitted that the transfer of the respondent no.5 was essential due to exceptional circumstances or special reasons, and therefore, he was transferred to Aurangabad. As regards Recruitment Rules and promotion quota, it is stated that there are only 7 posts of Stenographer (L.G.) sanctioned in Marathwada region and all the posts are filled up. It is, further admitted that Smt. S.R.Sawale was to retire on superannuation on 30-06-2011. It is stated that the applicant has already got benefits of time bound promotion, and therefore, there is no financial loss to him. A reference

has been made to one G.R. dated 3rd June, 2011 and stated that Shri Ponherkar can be appointment to the post available from nomination quota in Aurangabad Region.

8. Applicant has filed rejoinder affidavit denying justification of the respondent no.5's transfer in Aurangabad Division. Respondent nos.1 to 4, thereafter, filed additional affidavit and admitted that out of 7 sanctioned posts of Stenographers at Aurangabad Division 6 are filled by nomination and only 1 is filled by promotion. It is submitted that considering urgency of the recruitment, if found necessary, the ratio of nomination can be relaxed by Government while filling the post.

9. Applicant filed additional affidavit in rejoinder to this statement of the respondents and submitted that Shri Pohnerkar has been favored by the respondent authorities. It is stated that respondent no.5 has been conveniently transferred in Aurangabad Division.

10. We have heard Shri Milind Patil, learned Advocate for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer for the respondent nos.1 to 4. None appeared for respondent no.5. We have perused memo of O.A., affidavits

in reply, affidavits in rejoinder, short affidavit, additional affidavit in rejoinder as well as various documents placed on record by the parties.

11. Material points to be considered are; (1) whether the applicant is entitled to be promoted to the post of Stenographer as claimed by him ? and (2) whether transfer of respondent no.5 has adversely affected applicant's right of promotion, and therefore, same is required to be quashed or otherwise ?

12. Learned Advocate for the applicant has invited our attention to the recruitment rules published by the General Administration Department, Mantralaya, Mumbai dated 10th December, 1981. These rules are called as "the Steno Typists, Lower Grade Stenographers and Higher Grade Stenographers in the offices of Government outside Greater Bombay (Recruitment), Rules, 1981 (Rules for short)." Learned Advocate for the applicant has invited our attention to Rule 4 of the said Rules. Rule 6 is also material, which states about the quota from nomination and promotion cadre for such posts. These rules read as under (page 16):

“4. Recruitment to the post of Lower Grade Stenographer – Appointment to the post of Lower Grade Stenographer shall be made either,--

(a) by promotion of a suitable person holding the post of Clerk, Clerk-typist, Typist and Steno-Typist who possesses and Government Commercial Certificate for a speed in short hand and typewriting prescribed for appointment by nomination in sub-clause (iii) of clause (b) : or

(b) by nomination from amongst candidates who-

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

(ii) have passed the Secondary School Certificate Examination or any other examination recognized as equivalent thereto by Government and

(iii) possess a Government Commercial Certificate for a speed of not less than 100 words per minute in short hand and a speed of not less than 40 words per minute in English

typewriting or 30 words per minutes in Marathi typewriting.

5. ...

6. *Ratio of appointment by promotion and nomination,- Appointment by promotion and by nomination to the posts mentioned in rule 3, 4 or 5 shall be made in the ratio of 50:50 unless any deviation from such ratio is found necessary by the appointing authority due to exigency of service and prior approval of Government to such deviation is obtained."*

It is, thus, clear that Rules provide for 50% posts of Stenographer (L.G.) shall be filled in directly from nomination and 50% from the promotion quota

13. According to the learned Advocate for the applicant, it is an admitted fact that 8 posts of Stenographers are available in Aurangabad Division, and therefore, 4 posts should have been filled in by promotion and 4 by nomination.

14. The respondents in their additional affidavit, in paragraph 6 have stated that under the Office of Joint Directorate of Technical Education, Aurangabad there are 7 sanctioned posts of Stenographer, out of which 6 are filled

by nomination and 1 is filled by promotion. Thus, admittedly, the recruitment rules have not been followed. Had the respondents followed recruitment rules regarding promotion to the post of Stenographer, the applicant should have been promoted to the post of Stenographer. It seems that one post was to be vacated on account of superannuation of Smt. Sawale. Instead of filling up that post from promotional quota, respondent authorities have transferred respondent no.5 from Nashik Division to Aurangabad Division and this has definitely caused injustice to the applicant. It is because the very post which was to be filled in by promotion has now been occupied by respondent no.5.

15. Respondent no.5 has not appeared in this case though notice was issued to him. The applicant has filed additional affidavit in rejoinder and has stated history as to how the respondent no.5 Shri Pohnerkar was favored throughout. From the said affidavit, it is clear that Shri Pohnerkar is from State cadre and he was earlier posted at Mumbai. As per his request, Shri Pohnerkar was transferred from Mumbai Division to Nashik Division, and thereafter, again on request, he has been transferred from

Nashik Division to Aurangabad Division. Since Shri Pohnerkar was transferred as Stenographer (L.G.) in Aurangabad Division, the applicant could not be promoted which he was expecting long back. Respondents could not place on record any documentary evidence to show that transfer of the respondent no.5 was of utmost necessity/urgency or in the utmost administrative interest.

16. We are, therefore, satisfied that the possibility that the applicant was denied promotion only with an intention to accommodate respondent no.5 cannot be ruled out. Hence, we pass following order:

ORDER

(A) O.A. is allowed in terms of prayer clauses (A), (B) and (C) (paragraph 2 of this order).

(B) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman