

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.627/2012

DISTRICT: AHMEDNAGAR

Duryodhan s/o. Mohiniraj Mate,
Age : 48 years, Occu. : Service
R/o. Nagar-Aurangabad Road,
Near Gaikwad Hospital,
Newasa Phata, Tq. Newasa,
District Ahmednagar.

...APPLICANT

V E R S U S

1) The Superintending Engineer
And Administrator, Command
Area Development Authority,
Sinchan Bhavan, Dindori Road,
Nashik, Tq. & Dist. Nashik.

2) The Executive Engineer,
Mula Irrigation Department,
Sinchan Bhavan, Fakirwada,
Tq. & Dist. Ahmednagar.

...RESPONDENTS

APPEARANCE :Shri Abasaheb D. Shinde, Advocate for
the Applicant.

:Smt. M.S.Patni, Presenting Officer for the
respondents.

CORAM : B. P. Patil, Member (J)

DATE : 15th January, 2019

J U D G M E N T
[Delivered on 15th day of January, 2019]

1. The applicant has challenged the order dated 01-8-2012 passed by the respondent no.2 cancelling/ withdrawing the higher pay scale conferred on him and bringing down the pay scale to the basic pay scale and also directing recovery of the amount of benefit extended to the applicant by filing the present O.A. The applicant has also sought direction to respondent no.1 and 2 to continue to pay the higher pay scale which has been granted to him w.e.f. 30-12-1997 and to grant further increments to which the applicant is entitled.

2. The applicant had completed course of Civil Engineering Assistant in an examination held in the month of December, 1982 by securing first class and accordingly the competent authority has issued the certificate. The applicant was appointed as Technical Assistant. In the year 1990, he was promoted to the post of Civil Engineering Assistant ("CEA" for short). His service was unblemished and there are no complaints against him. After completion of 12 years' service, the applicant has applied for the examination to be held for the conferment of higher pay scale. Said examination was held in December, 1997. The

applicant was initially declared as 'failed' in the examination. Therefore, he has filed an application dated 23-08-1998 with the competent authority for revaluation of the marks of the said examination. In pursuance of the said application, the applicant was declared as 'passed' in the examination on 17-07-1999. After passing the said examination, the applicant was conferred with promotional pay scale of Rs.5500-175-9000 w.e.f. 30-12-1997. Since then, he was drawing the said salary in the promotional pay scale till the impugned order is passed.

3. Meanwhile, certain doubts had been raised by the respondents on the ground that the applicant appeared for the departmental examination with Seat No.311039 while the marks sheet produced by the applicant declaring him 'passed' shows that he had passed the examination with Seat No.311038. Respondents raised doubt that the applicant has manipulated and forged the marks sheet and gained the benefit. Therefore, the criminal case bearing RCC No.228/2002 had been filed against the applicant on the basis of complaint filed by the respondents in the court of Judicial Magistrate First Class (JMFC), Newasa. After trial, JMFC, Newasa acquitted the applicant by judgment

dated 31-10-2007. It is contention of the applicant that on 30-12-1997, the applicant was conferred with promotional pay scale. Again in the year 2011, he was held eligible for further promotional scale and accordingly further promotional scale was granted to him. The applicant is getting pay in the pay scale of Rs.9300-34800. It is contention of the applicant since the year 1997 till the year 2012 the applicant had worked on the said post and he received the promotional pay scale.

4. On 24-12-2011, one Machhindra Dashrath Wagh had filed a complaint with the respondent no.1 alleging that he appeared for examination with Seat No.311038, therefore, he ought to have been declared 'passed' instead of the applicant. Marks sheet produced by the applicant belongs to him. The applicant has manipulated the seat number and received the benefits and therefore, he had requested to make enquiry in the matter. On the basis of complaint filed by him, the applicant was called upon to submit his reply. Accordingly, the applicant appeared before the competent authority on 13-03-2012 in view of the communication dated 07-03-2012. It is his contention that the allegations made by Shri Wagh were false and he has been acquitted

by the criminal court in the year 2007. He has contended that he was getting pay in the higher scale since long. It is his contention that he has successfully passed the examination and Shri Wagh was unsuccessful in the said examination. It is his contention that on his application his marks had been revaluated and he was declared as 'passed'. The applicant has given his explanation accordingly to the respondent no.1. In spite of that the respondent no.2 had passed the impugned order dated 01-08-2012 and cancelled the benefits of higher pay scale granted to him on the ground that the applicant had failed in the examination. Thereafter, the pay of the applicant has been re-fixed and recovery of the excess amount paid to the applicant has been directed. It is his contention that the said order passed by the respondents is illegal and therefore, he prayed to quash the impugned order dated 01-08-2012 by allowing the O.A. and also prayed to direct the respondents to continue to pay higher pay scale to him which has been conferred to him on 30-12-1997.

5. Respondent nos.1 and 2 have resisted the contention of the applicant by filing their affidavit in reply. They have no dispute regarding the fact that the applicant was given

promotional pay scale on completion of 12 years' and second benefit under Assured Career Progression Scheme on completion of 24 years' service. It is their contention that the applicant appeared for Junior Engineer professional examination held in December, 1997. In that examination he 'failed' but the applicant produced the forged document i.e. marks sheet showing that he had passed the examination and got sanctioned the promotional pay scale. They have denied the fact that the applicant had applied for revaluation of the marks and after revaluation, he was declared as 'passed'. It is their contention that the competent authority i.e. Principal, Staff College, Nashik has stated that the marks list produced by the applicant is bogus and forged one and accordingly informed the respondents by letter dated 11-01-2012. Since the applicant has not passed examination which was essential for getting promotional scale, he was not entitled to get benefits on completion of 12 years' and 24 years' service respectively.

6. It is their further contention that the applicant appeared for the examination held in the year December, 1997 and has secured 90 marks, therefore, he was declared

as 'failed'. Not only this but he appeared for the examination held in the year 1998 also and at that time he secured only 71 marks. Therefore, he was declared 'failed'. It is their contention that for passing the examination, one must secure 40 marks in each subject and minimum total marks for passing should be 270. But the applicant has not secured the necessary marks for passing the examination. Therefore, he was declared as 'failed'. It is their contention that the applicant received the benefit of promotional post on the basis of fake and bogus marks sheet. Therefore, the respondents had withdrawn those benefits by passing the impugned order. It is their contention that there is no illegality in the impugned order and therefore, they have prayed to reject the O.A.

7. The applicant has filed affidavit in rejoinder and contended that the respondents had not supplied photocopies of the documents. Therefore, he had no opportunity to dispute those documents. Said act on the part of the respondents is in violation of the principles of natural justice, and therefore, he has prayed to allow the O.A. It is his further contention that initially he secured 90 marks in the examination. Thereafter on 23-08-1998, he

applied for revaluation of the papers. In response to his application he was declared 'passed' in the examination on 17-07-1999 as he secured 315 marks. It is his contention that Shri Machhindra Wagh had filed a complaint against him in the year 2012 and on the basis of his complaint an action has been taken against him without following the principles of natural justice. Therefore, he has prayed to allow the O.A. by quashing and setting aside the impugned order.

8. I have heard Shri Abasaheb D. Shinde, Advocate for the Applicant and Smt. M.S.Patni, Presenting Officer for the respondents. Perused the documents placed on record by both the parties.

9. Admittedly, the applicant has joined the services with the respondents as Technical Assistant. In the year 1990, he was promoted to the post of CEA. Admittedly, after completion of 12 years' service he was eligible for promotional post and therefore, he appeared for the professional examination held in the month of December, 1997. Admittedly, he was declared as 'failed'. Admittedly, the applicant thereafter produced a marks sheet showing that he was declared as 'passed' in the examination and on

the basis of same, the promotional pay scale was granted to him w.e.f. 30-12-1997 on completion of 12 years' service.

10. Admittedly, one Shri Wagh filed the complaint against the applicant on the ground that he filed fake marks sheet bearing Seat No.311038 which was belonging to him (Shri Wagh). It is alleged by Shri Wagh that in fact the applicant had appeared for examination with Seat No.311039. It is alleged by Shri Wagh that on the basis of false and bogus marks sheet, the applicant got promotional benefits. On the basis of his complaint, the impugned order came to be passed by the respondent no.2 withdrawing the benefits given to the applicant. There is no dispute about the fact that on the basis of complaint filed by the respondents, a criminal case had been registered against the applicant in the court of JMFC Newasa but the applicant was acquitted in the said case bearing RCC No.228/2002 on 31-10-2007.

11. Learned Advocate for the applicant has submitted that the applicant was eligible for appearing in the Junior Engineer Professional Examination. He appeared for the examination held in the year 1997. He has submitted that initially the applicant was declared as 'failed' as he secured 90 marks but the applicant filed an application to the

concerned authorities on 23-08-1998 for reassessment of the papers and marks. On his application, revaluation of the papers had been made and he secured 315 marks and therefore he was declared as 'passed'. He has submitted that the applicant was accordingly informed by communication dated 17-07-1999. After revaluation the marks sheet has been sent to him. He has submitted that on the basis of the said documents, the pay scale of promotional post has been given to the applicant. He has submitted that the said documents at paper book page 17 & 18 have been issued by the competent authority and no fraud has been practiced by the applicant in getting those documents.

12. Learned Advocate for the applicant has further submitted that one Shri Wagh had also appeared for examination with Seat No.311038 while he had appeared with Seat No.311039. He has further submitted that in the marks list, his Seat No. has been wrongly mentioned as 311038 but the marks list was addressed to him and the letter at paper book page 17 shows that the marks sheet was belonging to him. He has further submitted that the criminal case alleging that he fraudulently acquired the

certificate had been filed against him but he was acquitted from the said criminal charges. He has submitted that in the year 2012 Shri Wagh filed the complaint in respect of promotional benefits given to the applicant. On the basis of his complaint, the impugned order has been issued by the respondents and the benefits given to him have been withdrawn and also recovery has been directed against him.

13. He has further submitted that while passing the impugned order the respondents had not supplied the necessary documents to the applicant on which they relied and without giving an opportunity of inspection of those documents, impugned order has been passed. Said act on the part of the respondents is against the principles of natural justice. Therefore, the impugned order requires to be quashed and set aside by allowing the O.A.

14. In support of his submission learned Advocate for the applicant has placed reliance on the judgment of the Hon'ble the Apex Court in the case of **K. Vijayalakshmi V/s. Union of India** reported in **1998 AIR (SC) 2961** and also in the case of **Union of India V/s. Mohd. Ramzan Khan** reported in **1991 AIR (SC) 471**.

15. Learned Advocate for the applicant has further argued that the documents placed on record at paper book page 17 and 18 had been issued by the competent authority who conducted the examination, and therefore, on the basis of said genuine documents, the promotional benefits have been granted to the applicant but the respondents had not considered the said aspect while passing the impugned order and passed the order withdrawing the benefits on the ground that the documents were fake and forged. Therefore, he has prayed to quash and set aside the impugned orders and to allow the O.A.

16. Learned P.O. has submitted that the applicant has appeared for the examination held in December, 1997. The result of the examination was declared. The applicant had secured 90 marks in the said examination and therefore, he was declared as 'failed'. She has submitted that the applicant had not asked for recounting of marks or revaluation of the papers, and therefore, no question of revaluation of the papers of the applicant arises. She has submitted that as per the practice and procedure followed by the examining authorities, the marks list of the candidates appeared for the examination used to be sent to

the concerned Controlling Authorities under whom the candidates were serving and it was incumbent on the concerned Controlling Authority to inform the candidates about the result and marks secured by them. She has further submitted that it was not practice and procedure of the Examining Authority to issue certificate and marks list to the candidates appeared for the examination individually. She has submitted that in the year 1999, the Examining Authority informed the concerned controlling authorities that some fake certificates and marks lists had been issued to the candidates, and therefore, they were warned to take care in the matter.

17. Learned P.O. has further submitted that the applicant had failed in the examination conducted in the year 1997. Therefore, he again appeared for the examination held in the year 1998 and in that examination he had secured only 71 marks, and therefore, he was declared 'failed'. She has submitted that for passing the examination one has to secure 40 marks in individual subject and aggregate 270 marks but the applicant had not secured required passing marks, and therefore, he was declared 'failed'. She has submitted that the applicant has got financial benefits i.e.

scale of the promotional post under Assured Career Progression Scheme on the basis of fake documents produced at paper book page 17 & 18. This fact has been noticed by the respondents in the year 2012 when Shri Wagh filed the complaint in that regard. A show cause notice had been issued to the applicant in that regard on 07-03-2012 to which the applicant had filed his reply dated 20-03-2012 at paper book page 29. After giving an opportunity of hearing the impugned order has been passed, and therefore, no question of violation of the principles of natural justice arises.

18. She has further submitted that the applicant has not passed the professional examination which was essential and necessary for grant of promotional post of Junior Engineer. Therefore, applicant was not eligible to get the benefit under the Assured Career Progression Scheme on the basis of false and fake documents. He received the benefits and therefore, the said mistake had been corrected by the respondents by issuing the impugned order. She has submitted that there is no illegality in the impugned order. Therefore, she has prayed to reject the O.A.

19. Before considering the facts in the matter, it is material to note here that the respondents have produced copies of the original marks sheet of the examination held in the year 1997 and the relevant papers in that regard. On perusal of the result sheet of the examination held during the period from 26-12-1997 to 30-12-1997, it is crystal clear that the applicant appeared for the examination with Seat No.311039 and one Shri Wagh appeared for the examination with Seat No.311038. In the said examination, as per the result sheet the applicant secured total 90 marks, and therefore, he was declared 'failed'. On perusal of the said documents it reveals that the said result-sheet had been prepared on 21-11-1998 and thereafter it had been communicated to the concerned controlling officer including the Superintending Engineer of the Ahmednagar District by letter dated 30-11-1998. It means that the results were declared for the first time on 21-11-1998 and it was communicated thereafter to the respondent no.1. The respondent no.1 then communicated the result to the candidates who appeared for the examination including the applicant. The applicant has come up with a case that after receiving the result, he filed an application for reassessment of the papers by filing an

application dated 23-08-1998 and in the revaluation he has secured 315 marks. He has placed reliance on the documents at paper book page 17 & 18 and also produced those original documents before this Tribunal for perusal.

20. In view of the abovesaid facts it is crystal clear that the result sheet was prepared on 21-11-1998 and it was communicated to the Controlling Authorities of the concerned employees on 30-11-1998 with a direction to inform the concerned candidates who are desiring to apply for rechecking and re-assessment of the papers to file their application before 31-12-1998 along with the Demand Draft of the necessary fees. In view of this the candidate who failed in the examination has to file the application for reassessment of papers after 21-11-1998 and on or before 31-12-1998. But the applicant has come with a case that he filed an application for reassessment/revaluation on 23-08-1998. It means the applicant moved the application dated 23-08-1998 for reassessment before preparation of result-sheet and before declaration of the result of the examination. Therefore, it creates doubt regarding the genuineness of documents dated 17-07-1999 produced by the applicant showing that he applied for reassessment of

the papers on 23-08-1998. This fact creates suspicion regarding genuineness of the documents produced by the applicant at paper book pages 17 & 18 as the documents show that the applicant moved the application for reassessment of his paper on 23-08-1998 i.e. before the date of declaration of the result and before preparation of the result sheet, which was in fact prepared on 21-11-1998.

21. Not only this but the examining authorities by letter dated 29-12-1999 informed the Superintending Engineer, Ahmednagar that they never issued the certificate and marks sheet to the candidates and same used to be supplied to the Controlling Authorities and the Controlling Authorities have to communicate the result to the concerned candidates and the marks secured by them. He had informed the respondent no.1 by the said letter to take care while considering the marks list and certificate produced by any of the candidates as some fake, forged and false marks lists had been issued to the candidates. Not only this but again on 29-12-1999, the Examining Authority issued another letter and directed the respondent no.1 to take appropriate action against the candidates who produced such documents. This shows that the Examining

Authority never issued the individual marks list directly to the candidates and also not communicated the result directly to the candidates appeared for the examination. As per the practice and procedure followed by the Examining Authority, it used to communicate the result to the concerned Controlling Authority along with the marks list and thereafter the Controlling Authority has to inform the concerned candidates about his result and marks secured by him on the basis of statement supplied to him by the Examining Authorities. In spite of this, the applicant had produced the documents at paper book page 17 & 18 which are fake and fabricated and he got promotional benefits on the basis of the same.

22. By letter dated 21-09-1999 the Examining Authority informed the respondent no.1 that the applicant had not filed any application for revaluation or reassessment of the papers. On the contrary, Shri Wagh filed an application in that regard. It had also informed to the respondent no.1 by communication dated 20-11-1999 that letter dated 17-07-1999 (paper book page 18) bearing outward no.1803 and marks sheet attached to with it are fake. It is informed to the respondent no.1 that they called the applicant and

one Shri Wagh for enquiry. Shri Wagh submitted reply in the enquiry but the applicant had not appeared before the authority and also not filed his explanation in that regard. From this fact, it is crystal clear that since beginning the competent Examining Authority informed the respondent no.1 about the fake marks list procured by the candidates appeared for the examination and it had informed the respondent no.1 not to act upon the said marks list or certificate. In spite of that, the applicant placed said documents before the respondent no.1 and got benefits of promotional scale misleading the concerned authorities and this amounts fraud on the part of the applicant. The applicant has practiced fraud on the respondent no.1 by procuring the fake marks list and letter in that regard showing that he has passed the examination held in the year 1997.

23. The record shows that the marks list filed by the applicant had been received by the applicant along with communication dated 17-07-1999. Said letter dated 17-07-1999 shows that on the basis of application dated 23-08-1998 filed by the applicant for revaluation his papers have been reassessed and in the reassessment he has

secured 315 marks and therefore, he was declared 'pass'. In fact, the result of the examination had been prepared by the Examining Authority on 21-11-1998 and thereafter it was communicated to the Controlling Authority by letter dated 30-11-1998. Therefore, the contention of the applicant that he moved the application for re-assessment of the papers on 23-08-1998 i.e. prior in time before the preparation of the result sheet, is not acceptable. On the contrary, it strengthens the contention of the respondents that the applicant got prepared the false record regarding passing of the examination and re-assessment and procured the fake and false marks list showing that he has passed the examination.

24. It is evident from the documents that the applicant had not passed the examination held in the year 1997. He was declared fail. Respondents in their affidavit in reply have specifically contended that thereafter the applicant again appeared for the examination held in the year 1998 and in that examination he had secured 71 marks, and therefore, he was declared as 'fail'. Said contention of the respondents has not been denied by the applicant in his affidavit in rejoinder. This amounts admission on the part

of the applicant. Had it been a fact that the applicant passed the examination held in December, 1997 after re-assessment of the papers as alleged by the applicant then there was no need for him to appear again for the examination in the year 1998 but the fact is different. The applicant again appeared for examination held in the year 1998 after he was declared 'failed' in the examination in the year 1997. Said fact falsifies the contention of the applicant that after declaration of the result of the examination held in the year 1997, he moved an application for re-assessment of his papers and in the re-assessment, he was declared passed.

25. In the nutshell, the applicant was well aware of the fact that the examining authorities never used to supply the marks sheet and result sheet independently to the candidates and the Examining Authority used to supply the result sheet and marks sheet to the candidates through the Controlling Authority. In spite of that he had procured the documents at paper book page 17 & 18 which are fake and forged and on the basis of those documents, he got promotional benefits.

26. The respondents after giving an opportunity of hearing to the applicant passed the impugned on 01-08-2012 and had withdrawn the benefits given to the applicant and directed recovery of the amount paid to the applicant. There was no violation of principles of natural justice, and therefore, the principles laid down in the abovesaid decision filed by the learned Advocate for the applicant is not attracted in this case and same is not much useful to the applicant in the instant case.

27. In view of the above facts and circumstances of the case, I find no illegality in the impugned order by which the promotional benefits granted to the applicant had been withdrawn and recovery of amount had been directed from the applicant. Therefore, no interference is called for in it. There is no merit in the O.A. Consequently, it deserves to be dismissed.

28. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad

Date : 15-01-2019.

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