

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.265/2020

DISTRICT:- OSMANABAD

Gulab s/o. Hanmantrao Panchal,
Age : 53 years, Occ. Service
(as Asstt. Accounts Officer)
R/o. Behind Dnyaneshwar Mandir,
Near Mukteshwar Mandir, Osmanabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Finance Department,
M.S., Mantralaya, Mumbai-400 032.
2. The Director,
Accounts & Treasuries, M.S.,
Mumbai Port Trust, Thakracy House,
Near Foreign Post Office, Shoorji Vallabhdas Road,
Ballad Estate, Fort, Mumbai – 400001.
3. The Joint Director,
Accounts & Treasuries, Lekha Kosh Bhawan,
Fazilpura, Aurangabad-01.
4. The Asstt. Commissioner,
Social Welfare, Osmanabad,
Collector Office Campus,
Osmanabad.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh, Counsel for the
Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on: 15-03-2024

ORAL ORDER

1. Heard Shri A.S.Deshmukh, learned Counsel for the Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities.

2. Present applicant was promoted to the post of gazetted officer Group-B and was posted as Assistant Accounts Officer in the office of Assistant Commissioner, Social Welfare, Osmanabad vide order dated 29-05-2019. In pursuance of the said order the applicant resumed his duties on the promotional post on 11-06-2019. As is submitted in the O.A. for certain personal reasons the applicant on 23-10-2019 submitted a request letter/representation praying for reverting him on the erstwhile post. It is the case of the applicant that on 30/31-12-2019, he made a request to the competent authority praying for permission to withdraw the application submitted by him on 23-10-2019.

3. It is the grievance of the applicant that despite the fact that the request made for reversion was withdrawn by him respondent no.2 vide order dated 08-01-2020 reverted him giving reference of the said letter dated 23-10-2019. It is the contention of the applicant that he came to

know about the said order after the order dated 04-02-2020 was served upon him. Vide the order dated 04-02-2020, the applicant was asked to resume duties on the reverted post.

4. Shri A.S.Deshmukh, learned Counsel appearing for the applicant submitted that if the affidavit in reply submitted on behalf of the respondents, more particularly, paragraph 11 and 12 thereof are perused, there remains no doubt that the letter dated 30/31-12-2019 was received to the office of respondent no.2 on 02-01-2020. Learned Counsel submitted that inspite of receipt of the said letter, respondent no.2 relying on the earlier letter of the applicant passed the order thereby reverting the applicant to his erstwhile post. Learned Counsel submitted that the applicant thereafter approached the office of respondent no.2 and requested to re-consider the subsequent order passed on 08-01-2020. The learned Counsel further submitted that since the said request of the applicant has not been considered, the applicant has approached this Tribunal.

5. Learned Counsel submitted that the contention raised in the affidavit in reply that, as because the

letter/representation dated 30/31-12-2019 submitted by the applicant was not placed before the competent authority before 08-01-2020, the impugned order came to be passed, is difficult to be accepted. Learned Counsel submitted that the letter dated 30/31-12-2019 was received to the office of respondent no.1 on 02-01-2020. In the circumstances, respondent no.2 should not have passed the order, thereby accepting the request of the applicant reverting him to erstwhile post.

6. Learned Counsel for the applicant submitted that, since the applicant could not get the interim relief in the present matter he was required to join at the transferred place on the reverted post. Learned Counsel further submitted during the pendency of the O.A. the applicant has now been granted permission and he has been posted in the Collector Office at Osmanabd (Dharashiv) as Assistant Accounts Officer vide order dated 28-08-2023. Learned Counsel further submitted that the applicant has resumed the charge of the said post and is presently working on the said post. Learned Counsel submitted that in view of the subsequent development occurred, now the applicant is praying for deemed date for

his promotion to the post of Assistant Accounts Officer as on 29-05-2009.

7. Respondents have filed the joint affidavit in reply and have thereby resisted the contentions raised in the O.A. as well as prayers made therein. It is the contention of the respondents that since the letter dated 30/31-12-2019 was not received to the office in time, it could not be brought to the notice of the competent authority before 08-01-2020, the earlier request of the applicant made vide his letter dated 23-10-2019 was accepted by the said authority and accordingly the applicant was reverted. Learned P.O. submitted that considering the facts as aforesaid the respondents cannot be held to have committed any error in accepting the request of the applicant and thereby passing the order of reversion.

8. Learned P.O. further submitted that letter dated 30/31-12-2019 was received in the inward section of the office on 02-01-2020 and in usual course, it was placed before the competent authority after 08-01-2020 and prior to that the respondent no.2 had passed an order thereby accepting the request of the applicant for his reversion.

Learned P.O. submitted that in view thereof no error can be noticed on the part of the respondents. As such, learned P.O. submitted that there is no reason for setting aside the order dated 08-01-2020 and the communication dated 04-02-2020. Learned P.O. has therefore prayed for dismissing the O.A.

9. We have duly considered the submissions made on behalf of the applicant as well as the State authorities. 02-01-2020 is the crucial date in the present matter. It has been admitted by the respondents that letter/representation made by the applicant whereby he withdrew the request made by him in his letter dated 23-11-2019 was received in the office of respondent no.2 on 02-01-2020. It is not in dispute that the applicant vide his letter dated 30/31-12-2019 withdrew his request for his reversion made by him vide his previous letter dated 23-10-2019. It is the contention of the respondents that the said letter was received in the office of respondent no.2 on 02-01-2020 in its inward section. It is further contention of the respondents that, before the said letter could be placed before the competent authority, it has already accepted the request of the applicant and has accordingly passed the order in that regard on 08-01-2020. The question is

whether the submission as has been made on behalf of the respondents and the contentions accordingly raised can be accepted.

10. At the first instance, the respondents were under an obligation to explain why the letter dated 30/31-12-2019 sent by the applicant when was received in the office of respondent no.2 on 02-01-2020 why it was not placed before the competent authority immediately or within reasonable time and why for the delay was committed. It has come on record and there is no dispute in that regard from the respondents that the said letter was placed before the competent authority on 09-01-2020 that is one day after the said authority had accepted the request and has passed the order accepting the request of the applicant. When the said letter was placed before the competent authority i.e. respondent no.2, it has been presumed that he must have noticed that the said letter was received in his office on 02-01-2020. In the circumstances, it can be legitimately accepted that the respondent no.2 must have immediately taken information whether the order passed by him on the earlier date i.e. on 08-01-2020 has been dispatched or communicated to the

applicant and must have taken all prompt steps to ensure that the said order is not acted upon.

11. One thing is fully established that the letter dated 30/31-12-2019 whereby the applicant withdrew his request for his reversion was received in the office of respondent no.2 on 02-01-2020 and by that time and till 6 days thereafter no order was passed on his said application. Thus, before his request could be accepted his letter withdrawing the said request was received to the office of respondent no.2. In the circumstances, though the order was passed by respondent no.2 accepting the request of the applicant on 08-01-2020, it was not impossible or impermissible for the said authority to rectify the said order in premise of the representation received from the applicant praying for withdrawal of the request for reversion.

12. For the reasons stated as above, the contention as has been raised on behalf of the respondents that before the request of the applicant could be placed before the competent authority, the said authority had accepted the request of the applicant and hence the said request subsequently could not be considered, is wholly unacceptable. According to us material date is 02-01-2020

on which the letter was duly received in the office of respondent no.2. No blame can be attributed on part of the applicant if the letter was not placed before the competent authority before 08-01-2020 on which the said authority accepted the request of the applicant for his reversion. According to us it is immaterial on which date the said letter was brought to the notice of the competent authority, the moment letter was received in the office of respondent no.2, the same must be held to be within the knowledge of the officers in the said office. Moreover, it appears to us that the things which could have been easily done in the ordinary course of business have not been done and only on some technical grounds the applicant has made to suffer the reversion till he is promoted vide order dated 28-08-2023.

13. If the two dates that is to say 08-01-2020 on which the letter dated 23-10-2019 whereby the applicant has prayed for his reversion was placed before respondent no.2, and 09-01-2020, on which the letter dated 30/31-12-2019, whereby the applicant withdrew the request for revision, were placed are considered, it does not appear to us that it was not possible or not within the authority of respondent no.2 to pass the further order in view of the

request made in the letter which was admittedly inwards in his office on 02-01-2020, not to act upon the order passed by him on 08-01-2020. This could have been the expected course of action which the respondents were supposed to adopt, instead of that, the order was acted upon and the applicant was required to join on the reverted post and worked on the said post till he is promoted recently in the year 2023. It appears to us that, inspite of being aware of the fact that applicant has withdrawn the request made by him in his letter dated 23-10-2019, the said letter was acted upon. This is arbitrary exercise of power by the respondent authorities. Such an action cannot be sustained. We are, therefore, inclined to allow the present application.

14. In the intervening period, the applicant has worked on the reverted post. Though we are not inclined to grant the monetary benefits of the said period, the applicant is certainly entitled for the notional benefits of the said period.

15. From the documents, it reveals that the benefit of Assured Career Progression Scheme which was earlier granted to the applicant was directed to be withdrawn,

though the monetary benefits i.e. wages paid in higher pay scale to the applicant were not directed to be recovered from him.

16. For the reasons stated above, we are inclined to allow the present Original Application with the following order :-

O R D E R

(i) The impugned orders dated 08-01-2020 and 04-02-2020 issued by respondent nos.2 & 3, respectively, are quashed and set aside.

(ii) The applicant shall be deemed to be promoted from the date 11-06-2019 and the notional benefits be granted to the applicant of the said intervening period.

(iii) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 15-03-2024.