

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 482 OF 2016**

**DISTRICT : NASIK**

Shri Kuber Govindrao More, )  
R/o: C-2/18, Siddhivinayak Soc. )  
Opp. Sharanpur Police Chowk, )  
Trimbak Road, Nasik-2. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Principal Secretary, )  
Higher & Technical Education, )  
Mantralaya, Mumbai 400 032. )
2. Principal Secretary, )  
Social and Special Justice )  
Department, Mantralaya, )  
Mumbai 400 032. )
3. Director (Training), )  
Directorate of Vocational Education )  
& Training, Pune. )

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4. Commissioner, )  
 Office of the Handicapped )  
 Welfare Commissioner, )  
 Department of Social Welfare )  
 Church Road, Pune. )
5. Joint Director, )  
 Vocational Education and Training, )  
 Regional office, Opp. Adivasi Vikas )  
 Bhavan, Near Trimbak Naka, )  
 Nasik-2. )...**Respondents**

Shri Kuber G. More, applicant in person.

Ms Sativa Suryavanshi, learned Presenting Officer for the Respondents.

**CORAM** : **Shri Justice A.H Joshi (Chairman)**  
**Shri Rajiv Agarwal (Vice-Chairman)**

**RESERVED ON** : **25.04.2017**

**PRONOUNCED ON** : **08.06.2017**

**PER** : **Shri Rajiv Agarwal (Vice-Chairman)**

### **ORDER**

1. Heard Shri Kuber G. More, applicant in person and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 3.2.2014, issued by the Respondent no. 5, compulsorily retiring the Applicant from service issued under Rule 10(4) of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant had also sought payment of full salary till the date of his superannuation and interest @ 21% p.a and also damages.

3. The Applicant appeared in person and was permitted to file the Original Application in Marathi language.

4. The facts of the case in brief are as follows:-

The Applicant who suffers 55% disability was working as Senior Clerk in Government Technical School, Sinnar, Dist-Nasik on deputation from Industrial Training Institute (ITI), Ahmednagar, when he was given a notice on 15.11.2011 by the Respondent no. 5, asking him to show cause as to why he should not be compulsorily retired from service under Rule 10(4) of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules). The Applicant filed a complaint before Commissioner for Persons with Disabilities, Pune on 5.12.2011 against the aforesaid notice. The Commissioner by order dated 23.4.2012, quashed the notice dated 15.11.2011 and directed the Government to

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appoint an Enquiry Officer at the level of Deputy Secretary to take decision in the matter after the Applicant was given opportunity of being heard. The Applicant filed another complaint under Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the Disabilities Act) before the Commissioner on 4.9.2013 regarding his absence from duty, when he was transferred to I.T.I, Ahmednagar and where he did not join. Thereafter, the Applicant was posted on deputation to Government Technical School, Sinnar, Dist-Nasik. The Applicant was seeking relief that the period of absence before he joined at Sinnar may be treated as duty period. This application of the Applicant was rejected by the Commissioner by order dated 14.1.2014. The Applicant was retired compulsorily by the Respondent no. 5 by order dated 3.2.2014, which is impugned in the present Original Application.

5. The Applicant filed another complaint before the Commissioner on 14.3.2014 challenging his compulsory retirement from service by order dated 3.2.2014. The Commissioner by order dated 5.7.2014 (pages 140-147 of the Paper Book) quashed the order dated 3.2.2014 passed by the present Respondent no. 5. The State Government through the present Respondent no. 5 challenged the order of Commissioner for Persons with Disabilities, Maharashtra State, Pune before Hon'ble



High Court in Writ Petition no. 9125 of 2014. By judgment dated 20.10.2015, Hon'ble High Court quashed the order of the Commissioner. In the judgment of Hon'ble High Court, date of order of the Commissioner is mentioned as 5.6.2014. However, in the copy of order filed in this Original Application, the date is 5.7.2014. The Applicant has now filed the present Original Application challenging the order dated 3.2.2014 issued by the Respondent no. 5, compulsorily retiring him from service.

6. After carefully going through the material placed on record by the Applicant, we find that he has raised the following issues while challenging the order dated 3.2.2014, viz:-

- (i) As a person with Disability, the Applicant's Annual Confidential Reports (ACRs) should have been written carefully, as per G.R dated 12.12.2006.
- (ii) ACRs for the year 2005-06, 2006-07, 2007-08, which contained adverse entries, were communicated to the Applicant very late. As per clause 52 in G.R dated 1.2.1996, the same should have been ignored while considering any service related matter. These instructions have been reiterated in para 42 of G.R dated 1.11.2011, which has been issued after superseding earlier G.Rs

including G.R dated 1.2.1996. As such, the decision to retire the Applicant after 30 years of service is bad in law, as the same is based on ACRs, which should not have been considered while passing the impugned order.

- (iii) Government Circular dated 12.5.1986 provides that for Group 'C' & 'D' employees, their case will be reviewed in the 55<sup>th</sup> year of their age to decide whether to retire them prematurely. The Applicant's case for continuance in service was reviewed before he completed 54 years of age. On this ground also, the impugned order is bad in law.
- (iv) The Respondents have violated the provision of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Under this Section, a person with disability cannot be removed from service or reduced in rank. As such, the action of retiring the Applicant after completion of 30 years of service violates this provision of law.

7. Learned Presenting Officer (P.O) argued as follows:-

The contention of the Applicant that he was retired from service before he reached the age of 55 years

is not correct. Date of birth of the Applicant is 2.5.1957 and he was retired from service by order of the Respondent no. 5 dated 3.2.2014 (page 117 of the Paper Book). The notice for premature retirement was issued to the Applicant on 15.11.2011. At that time, he was running in the 55<sup>th</sup> years of age. He joined Government service on 15.4.1980. He completed more than 31 years when the notice was issued to him on 15.11.2011. Government Circular dated 12.5.1986 provides that for Group 'C' & 'D' employees their cases will be reviewed in the 55<sup>th</sup> year of their age to decide whether to retire them prematurely. As per Rule 10(4)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 a Class-III Government servant can be retired from service in public interest after he has attained the age of 55 years as a result of such review. Under Rule 65 ibid, a Government servant can seek voluntary retirement on completion of 30 years of service or he may be required to retire in public interest. Circular dated 4.3.1986 contains these provisions and also provides that cases of class III employees may be reviewed under this Circular. The review has to be taken in the 55<sup>th</sup> year of age of the class-III employee or at the time he is completing 30 years of service. The Applicant is placing reliance on Circular dated 19.6.1998, which mentions that for Group 'C' & 'D' employees, the review is to be done in the 55<sup>th</sup> year of age of the employee. This Circular does not mention years of service. The Applicant's case was reviewed when he was

running 55 years. The notice was in accordance with Statutory Rules even if the Applicant's years of service is ignored.

8. Learned Presenting Officer further made the following submissions:

G.R dated 12.12.2006, no doubt provides that ACRs of persons with disability have to be written carefully, and it has to be ensured that no entries are made for extraneous reasons or made with negative point of view. It is to be ensured that bad remarks are not given intentionally. The Applicant has not placed any material on record to show that provisions of this G.R were violated by the Respondents while writing his ACRs. Adverse remarks in the A.C.R of the Applicant for the year 2005-06 were communicated to the Applicant on 5.12.2007. For the year 2006-07, the same were also communicated on 5.12.2007. For the year 2007-08, the remarks were communicated on 28.7.2008. The Applicant had not submitted any representations against the adverse remarks in his ACRs for 2005-06, 2006-07 and 2007-08, so the question of his now claiming that his ACRs for these years were written in violation of G.R dated 12.12.2006 does not arise. The Applicant is relying on para 42 of Schedule A appended to G.R dated 1.11.2011 and similar provision in para 52 of Schedule A to G.R dated 1.2.1996. It is true that Para 28 of Schedule



A of G.R dated 1.2.1996 provides that adverse comments in the ACRs have to be communicated to an employee before 30<sup>th</sup> June, in the year in which ACR is written. However, the Applicant's claim that these adverse remarks were not communicated to him within prescribed time, and therefore should have been ignored by the Committee, while deciding the issue of his premature retirement, is not correct. Even uncommunicated remarks can be considered in such cases as has been held by Hon'ble Supreme Court in the case of **VAIKUNTH NATH DAS Vs. CHIEF DIST. MEDICAL OFFICER : AIR 1992 SC 1020**. Learned Presenting Officer stated that section 47 of the Persons with Disability Act, is applicable to those who 'acquire' disability while in service. The Applicant was a person with disability when he was employed in Government and this section is not applicable in his case. Otherwise also, he has not been removed from service by impugned order, but was retired from service in public interest under Rules 10(4) and 65 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned Presenting Officer argued that the Applicant was compulsorily retired from service by following due procedure and as per law.

9. The Applicant has claimed that provisions of Government Circular dated 12.12.2006 were not followed by the authorities while writing his ACRs especially during the years 2005-06, 2006-07 and 2007-08, when

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adverse remarks were entered in his ACRs. This Circular (page 237 of the Paper Book) has the following provision, viz:

“वरील परिच्छेदात नमूद केलेल्या मागासवर्गीय कर्मचा-यावे गोपनीय अहवाल वस्तुनिष्ठ लिहिण्याबाबत तसेच ते हेतुपुरस्सरपणे, नकारात्मक दृष्टीने किंवा जाणनबजून प्रतिकूल स्वरूपात न लिहिण्याबाबत सध्या प्रथलित असलेले संदर्भाधीन क्रमांक ४ येथील दिनांक १/२/१९९६ हया शासन निर्णयातील निदेश अपंग कर्मचारी/अधिकारी यांचेकरिताही लागू करावेत असा शासनाने निर्णय घेतला आहे”.

The Applicant was required to furnish material in support of his claim that adverse remarks in his ACRs were deliberately made with negative intentions or were made for extraneous reasons. One way to indicate that would have been representations made by the Applicant when the adverse remarks were conveyed to him. The Respondent no. 5 was asked to file an affidavit by this Tribunal on the issue of adverse entries in the ACR of the Applicant by order dated 12.4.2017. In the short affidavit filed by the Respondent no. 5 on 24.4.2017, it is stated that adverse entries in the ACRs for 2005-06, 2006-07 and 2007-08 were communicated to the Applicant on 5.12.2007, 5.12.2007 and 28.7.2008 respectively. The Applicant has admitted that he was in receipt of these communications, a few days after they were issued on the aforesaid dates. The Respondent no.

5 has categorically stated in para 5 of the aforesaid affidavit that:-

“The Applicant had not made any representation to the Respondent against the adverse remarks mentioned in his ACRs for the year 2005-06, 2006-07 and 2007-08 to this office.”

There is no material on record which would indicate that the provisions of the Circular dated 12.12.2006 were violated while writing ACRs of the Applicant. We do not find any substance in this contention of the Applicant.

10. The Applicant has stated that provisions of Circular dated 19.6.1998 have been violated, while starting review of his case, with a view to determine whether to retire him prematurely from service. The notice of premature retirement was given to the Applicant on 15.11.20911 (page 69 of the Paper Book). This notice mentions Rules 10(4) and 65 of the Maharashtra Civil Services (Pension) Rules, 1982. These rules are reproduced below:-

“10(4) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving [notice of three months] in writing in Form 30 or in Form 31, as the

case may be, or three month's pay and allowances in lieu of such notice, have the absolute right to retire-....

(b) any Government servant who holds a post in class-III service of the State, either pensionable or non-pensionable, after he has attained the age of fifty years.”

“65. Retirement on completion of 30 years qualifying service.

(1) At any time after a Government servant has completed thirty year's qualifying service, he may retire from service, or he may be required by the appointing authority to retire in the public interest”.

Rule 10(4)(b) is applicable to class-III (Group 'C') employees, while Rule 65(1) is applicable to all employees. In Para 2 of the Government Circular dated 19.6.1998 (Exhibit R-11, page 395 of the Paper Book), it is mentioned that:-

“गट 'क' व 'उ' कर्मचा-यांच्या बाबतीत वयाच्या ५५ वर्षी पुनर्विलोकन करण्यात येते.”

11. The Applicant had claimed that he had not completed 55 years when notice dated 15.11.2011 was issued. From the proceedings of the Review Committee

(Exhibit R-1, page 387 onwards) it is seen that the Applicant was at Sr. No. 144 and his date of birth is given as 2.5.1957, while the date of joining the service is 15.4.1980. The meeting was held on 18.7.2011. His age is shown against his name as 53 years, while on 2.5.2011, he had completed 54 years and was running 55<sup>th</sup> year. He had actually completed 54 years when the review was undertaken. He had also completed more than 30 years of service on the date of review. Therefore, as per Rule 65(1) of the M.C.S (Pension) Rules, 1982, he could be retired from service in public interest. Circular dated 19.6.1998 does not reflect the provisions of Rule 65(1) of the M.C.S (Pension) Rules, 1982, but this omission has been rectified by circular dated 25.9.1998. Circular dated 4.3.1986, also mentions both the eventualities. It is clear that the case of the Applicant was taken for review in his 55<sup>th</sup> year or after he has completed 30 years of service. Neither Rule 10(4) or 65(1) of the M.C.s (Pension) Rules, 1982 has been violated in the present case. The proceedings of the Review Committee held on 18.7.2011 are not vitiated on this count and contentions of the Applicant in this regard are without any basis.

12. The Applicant has rightly claimed that the adverse entries in his ACRs for the years 2005-06, 2006-07 & 2007-08 were not communicated in time as per G.R dated 1.2.1996. This G.R was superseded by G.R dated

1.11.2011. However, the Review Committee had considered the case of the Applicant in the meeting held on 18.7.2011, when earlier G.R dated 1.2.1996 was in force and his case will be governed by G.R dated 1.2.1996. It is admitted that ACRs of the years 2005-06, 2006-07 and 2007-08 were communicated to the Applicant on the following dates:-

Sr No	Year	Date of writing ACR	Date of Review	Date of communication
1.	2005-06	27.4.2006	Date not mentioned	5.12.2007
2.	2006-07	25.4.2007	- do -	5.12.2007
3.	2007-08	16.5.2008	30.5.2008	28.7.2008

The Applicant had admitted to have received these communications on 10.12.2007, 10.12.2007 and 1.8.2008 respectively.

13. Clause (28) of Schedule A to G.R dated 1.2.1996 reads:-

“२८. संस्करण अधिका-याने गोपनीय अहवालाची सत्वर छाननी करून गट 'क' च्या कर्मचा-यांच्या गोपनीय अहवालातील प्रतिकूल/टिकात्मक/सूचनात्मक शेरे दिनांक ३० जून च्या आत संबंधित कर्मचा-यांना पत्राद्वारे कळवावेत व त्या पत्राची प्रत संबंधित कर्मचा-यांच्या गोपनीय अहवाल मध्ये ठेवावी.”

It is true that adverse comments were not communicated to the Applicant within time prescribed as above. The Applicant's claim is that such adverse entries cannot be

considered for any service related purpose in view of clause 52, which is reproduced below:-

“५२. गोपनीय अहवालातील जे प्रतिकूल/टिकात्मक/सूचनात्मक शेरे संबंधित कर्मचा-यास/अधिका-यास कळविले नसतील असे शेरे पदोन्नती, स्थायीकरण, दक्षता रोघ ओलांडण्यात अनुज्ञा देणे इत्यादी बाबीसाठी योग्ययोग्यता ठरविताना विचारात घेऊ नये.”

The Review Committee, according to the Applicant, was required to ignore the adverse entries in his ACRs for 2005-06, 2006-07 and 2007-08, as they were not communicated to him in time and he was not required to file any representation against entries communicated after due date. The Respondents are relying on the judgment of Hon'ble Supreme Court in the case of **VAIKUNTHNATH DAS** (supra), ratio of which is mentioned in Government Circular dated 9.6.1998 (Exhibit R-11, page 395 of the Paper Book). The extracts from the aforesaid judgment are reproduced below:-

“34. The following principles emerge from the above discussion:-

- (i) An order of compulsory retirement is not a punishment. It implies no stigma, nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming their opinion that it is in the public interest to retire a government servant

compulsorily. The order is passed on the subjective satisfaction of the Government.

- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short, if it is found to be perverse order.
- (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter, of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post, notwithstanding the adverse remarks, such remarks lose their, more so, if the promotion is based upon merit (selection) and not upon seniority.

- (v) An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

14. In the present case, admittedly, the adverse remarks in the ACRs of the Applicant were communicated to him, albeit late. He, however, did not make any representation against adverse remarks. The Review Committee, in the meeting held on 18.7.2011 (Exhibit R-1, page 387 of the Paper Book) found the Applicant unfit to continue in service. He was, thereafter issued 3 months' notice dated 15.11.2011, which would have retired him from service on 16.2.2012 (FN). This notice was stayed by the Respondent no. 5 on 15.12.2011 in view of the letter dated 5.12.2011 issued by the Commissioner for Persons with Disabilities, Maharashtra State, Pune. The letter is a notice of hearing by the Commissioner on the complaint of the Applicant against the notice dated 15.11.2011, issued by Respondent no. 5. As noted earlier in this order, the Commissioner by order dated 5.7.2014 quashed and set aside the order of compulsory retirement dated 3.2.2014 issued by the Respondent no. 5. In Writ Petition no. 9125/2014, by judgment dated 20.10.2015, the aforesaid order of the Commissioner was set aside by the Hon'ble

High Court on the ground that the Commissioner appointed under Section 60 of the Disabilities Act has no jurisdiction to pass the said order. We have closely scrutinized the order of the Respondent no. 5 dated 3.2.2014, which is impugned in the present Original Application, and we do not find that the orders suffers from any procedural or legal infirmity. We accordingly refuse to interfere with the aforesaid order.

15. The Applicant has claimed that a person with disability cannot be retired prematurely from service under Section 47 of the Disability Act. This section deals with those persons who acquired disability while in service. The Applicant has joined service as a person with disability and had not acquired it. The Disability Act does not give any concession in the standard of efficiency required from a disabled Government servant. Order of premature retirement is not an order of punishment. We are unable to accept the contention of the Applicant in this regard.

16. The reliefs sought by the Applicant in para 9(A), (B), (D), (E) & (F) cannot be granted to him. As regards relief sought in para 9(C), the Applicant has claimed that the Commissioner has given judgment dated 17.8.2013 to grant certain reliefs to the Applicant and the Respondent nos 1, 3 & 5 have not challenged the said order. As such, the Applicant is entitled to get reliefs as

per order dated 17.8.2013 issued by the Commissioner, which means grant of deemed date of promotion as Head Clerk from 17.8.2004 and all arrears of pay from that date. This order of the Commissioner is on pages 150-156 of the Paper Book and reads:-

“ब) सन २००८-०९ ते सन २०११-१२ या कालावधीतील गोपनीय अहवालाच्या आधारे व सन २०१२-१३ या कालावधीतील गोपनीय अहवालाच्या आधीन राहून, जब देणार यांनी दि.२२.११.२०१२ रोजीच्या आदेशान्वये वरिष्ठ लिपिक संवर्गातून प्रमुख लिपिक या संवर्गात अन्य कर्मचा-यांना दिलेल्या पदोन्नतीचा मानीव दिनांक देऊन अर्जदार यांना प्रमुख लिपिक पदी पदोन्नती देणेबाबत व त्या अनुषंगाने सेवेचे सर्व देय लाभ देणेबाबत या आदेशप्राप्तीच्या दिनांकापासून ३० दिवसांच्या आत कार्यवाही करावी.”

The Applicant was promoted as Head Clerk by order dated 29.8.2013. Hon'ble High Court in the judgment dated 20.10.2015 in Writ Petition no. 9125 of 2014 has analyzed the power of Commissioner, appointed under Section 60 of the Disabilities Act. It is held by Hon'ble High Court that:-

“9. On plain reading of Section 62, the power “conferred thereunder is without prejudice to power under Section 61. The power is to deal with the complaints with respect to the matters relating to clauses (a) and (b) thereof and to take up the matters with Appropriate Authorities. There is no power conferred by Section 62 on the Commissioner to issue directions to the Appropriate Authorities

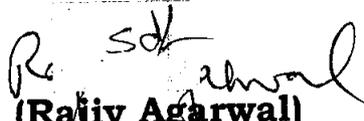
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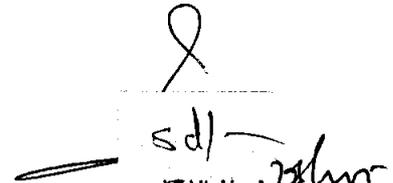
after making an adjudication. Clause (a) is attracted when rights of a person with disabilities which are conferred by the Disabilities Act are infringed. Even if the Commissioner after looking into a complaint finds that there is deprivation of rights of person with disabilities which are conferred by the Disabilities Act or any other statutory provision, he cannot take up the matter with the Appropriate Authorities.”

17. The order of the Respondent no. 3 dated 17.8.2013 has to be held as without any legal authority as Hon'ble High Court has held that the Commissioner has no jurisdiction to adjudicate in service matters. At the most, he can take up the matter with the Appropriate Authority. The Applicant was promoted as Head Clerk by order dated 29.8.2013 (page 178 of the Paper Book) by the Respondent no. 5, pursuant to the order dated 17.8.2013 issued by the Respondent no. 3. The order dated 17.8.2013 did not mention that the Applicant was eligible to get deemed date of promotion from 17.8.2004 in the post of Head Clerk. We are not inclined to grant this relief to the Applicant, as no legal order has been passed in his favour, and on the basis of material on record, we are unable to conclude that he was eligible to get promotion to the post of Head Clerk, that too from 17.8.2004. The relief in this clause 9(C) cannot be granted to the Applicant.



18. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

  
**(Rajiv Agarwal)**  
**Vice-Chairman**

  
**(A.H Joshi, J.)**  
**Chairman**

**Date : 08.06.2017**

**Place : Mumbai**

**Dictation taken by : A.K Nair**

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