

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**


**ORIGINAL APPLICATION NO.280 OF 2016**

**DISTRICT : MUMBAI**

Smt. Meenal M. Desale. )  
Age : 57 Yrs, Working as Clerk-Typist in )  
the office of the Maharashtra State Board )  
of Vocational Examinations, having office )  
at Govt. Polytechnic Building, 49, )  
Kherwadi, Bandra (E), Mumbai – 51. )  
R/o. 11/19, Raowadi, T.H. Kataria Marg, )  
Mahim, Mumbai 400 016. )...**Applicant**

**Versus**

1. The Secretary. )  
The Maharashtra State Board of )  
Vocational Examinations, having )  
Office at Govt. Polytechnic Building, )  
49, Kherwadi, Bandra (E), )  
Mumbai 400 051. )
2. The State of Maharashtra. )  
Through the Principal Secretary, )  
Skill Development & Entrepreneurship,)  
Mantralaya, Mumbai - 400 032. )...**Respondents**

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**Mr. G.A. Bandiwadekar, Advocate for Applicant.**

**Mr. K.B. Bhise, Presenting Officer with Mr. N.K. Rajpurohit,  
Chief Presenting Officer for Respondents.**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 03.03.2017**

### **JUDGMENT**

1. By the order dated 17.4.2015 (Exh. 'A', Page 10 of the Paper Book (PB)), the Applicant then working as a Clerk-Typist was denied the benefit of the 2<sup>nd</sup> Assured Career Progression Scheme *inter-alia* on the ground that the average of five immediately preceding Annual Confidential Reports (ACRs) was lesser than 'B+'. Aggrieved thereby, the Applicant who may as well have retired now on superannuation having been born on 25.7.1958 is up before me in this Original Application (OA).

2. I have perused the record and proceedings and heard Mr. G.A. Bandiwadekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (PO) with Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. In so far as this OA is concerned, useful reference can be made at the outset to a G.R. of 21<sup>st</sup>



February, 1994 regarding the ACRs and it is therein mentioned that for the purpose of ascertaining the eligibility for promotion, the ACRs of the average of the five immediately preceding ACRs should be 'B'. Pertinently, it is the case of the Respondents herein that the said average should be 'B+'. The parent G.R, however, provides it to the only 'B'. I shall, however, complete the discussion in every respect for the purposes of deciding this matter fully and completely.

4. The issue was with regard to the grant of 2<sup>nd</sup> ACP Scheme. The average of the immediately five preceding ACRs, according to the Respondent should be 'B+' which in case of the Applicant was allegedly not there. In that connection on page 28, there is a document which is the minutes of the meeting held to consider the case of the Applicant for 2<sup>nd</sup> ACP on 3.6.2016. It appears that at that point in time, this OA was pending and on 21.3.2016, this Tribunal presided over by the Hon'ble Chairman gave directions to reconsider the case of the Applicant. Therein, the Respondents considered the ACRs of the Applicant for the periods from 2005-06 to 2009-10. According to them, the gradation given was 'A', 'B+', 'A', 'B' and 'B-'. As far as the gradation for the year 2007-08 are concerned, in Marathi, it is written as 'अ+उत्कृष्ट'. The Applicant and the

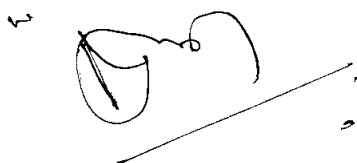
Respondents are not *ad-idem* about its implication. The gradations in all are 'A+ Outstanding', 'A Very Good', 'B Positively Good', 'B-Good', 'B-Average' and 'C-Below Average'. In so far as that particular year 2007-08 is concerned, as already mentioned above, as to what was the gradation in Marathi of the Applicant. According to the Respondents, + is some kind of Typing Slip while according to the Applicant, it is what it reflects to be, which should mean 'A Outstanding'. The Reviewing Authority has merely put his signature without putting his own gradation and giving an indication of whether he agreed with the Reporting Officer or not. In this kind of a scenario, there being no other norm available and a mistake being very apparent and despite a clear opportunity being there for the Reviewing Officer to do the needful, he having not done it. I am of the opinion that I have got no other-go but to work on the basic principle of interpretation that other factors remaining constant and there being some kind of a deadlock, the interpretation that favours the weaker of the two should be adopted. In my opinion, therefore, I should proceed on the basis that for that particular year, the gradation was 'A+'. In that behalf, I differ from the said Committee. It is quite clear that if the gradation was considered to be 'A+ Outstanding' then the Applicant would in the manner of speaking, sail through and she will



have got the average of four and would not be lesser than 'B+'. However, examining it from the stand point of the Respondents and taking the whole thing as it is, the said document viz. the minutes of the meeting has mentioned the value equivalent in terms of digits for the gradations. According to them, for 'C', the equivalent would be 1, for 'B-', it will be 2, for 'B', it will be 3 and significantly for 'B+', it would be 4, for 'A', it will be 5 and for 'A+', it would be six. The average of the five immediately preceding ACRs would have to be taken. The Respondents themselves in that document in respect of the Applicant have worked it out to 3.8 and that being the state of affairs and it being more than 3.5, it would have to be rounded off to 4 and in any case, if the ACR of 2007-08 is considered to be 'A Outstanding' then the average in any case would be 4.

5. In so far as the case of the Respondents based on a particular aspect of the G.R. of 5<sup>th</sup> July, 2010 which deals with the isolated post is concerned, in the present set of facts, it is very clear that the post held by the Applicant can by no stretch of imagination be considered as an isolated one.

6. In view of the foregoing, even if it was held that the average ought to have been 'B+' contrary to the G.R. of

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21<sup>st</sup> February, 1994 still the Applicant would be in a position to carry the day and if one were to go strictly by the last mentioned G.R, she will be in a stronger position.

7. For the foregoing, the order herein impugned being one dated 17.4.2015 (Exh. 'A', Page 12 of the PB) stands quashed and set aside. The concerned Respondents are directed to reconsider the case of the Applicant in accordance with the observations hereinabove made and by treating the average of the five immediately preceding ACRs as 'B+' and give all consequential benefits of the 2<sup>nd</sup> ACP to the Applicant and also give consequential benefits and if need be, to rework out her pension and post retiral benefits. Compliance within two months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**03.03.2017**

Mumbai

Date : 03.03.2017

Dictation taken by :

S.K. Wamanse.

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