IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

REVIEW APPLICATION NO.36 OF 2015
IN
ORIGINAL APPLICATION NO. 7 OF 2014

DISTRICT :PUNE

Shri Vidyadhar Bhaurao Deshmukh,)
Programme Officer,)
Director of Cultural Affairs,)
Old Secretariat Annexe, 1st floor,)
M.G. Road, Mumbai – 400 032.)
R/o. 93/3, Khatao Building,)
Dr.S.S. Rao Road, Lalbaug,)
Mumbai – 400 012.)...**Applicant**

VERSUS

1) The State of Maharashtra,)
Through the Principal Secretary,)
Tourism & Cultural Affairs Dept.,)
Mantralaya, Mumbai – 400 032.)

2) The Director of Cultural Affairs,)
Cultural Affairs Directorate,)
Old Secretariat Annexe, 1st floor,)
M.G. Road, Mumbai – 400 032.)....**Respondents**

Shri J.N. Kamble, learned Advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 11.03.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri J.N. Kamble, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Review Applicant is filed by the Applicant seeking review of our order dated 9.10.2015 in O.A.No.7 of 2014. The Applicant is seeking that our order dated 9.10.2015 may be recalled and the O.A. may be allowed.

3. Learned Counsel for the Applicant argued that this Tribunal in its order has not considered the fact that for the period from 3.4.2001 to 22.4.2004, the Applicant was promoted to the post of Programme Officer on ad-hoc basis and from 22.4.2004 to 13.3.2009, he was holding additional charge of the post of Programme Officer. Learned Counsel for the Applicant argued that these facts were mentioned in paragraph no.7(2) of O.A.No.7 of 2014. However, while passing the order dated 9.10.2015, this Tribunal lost sight of these facts. As a result, factual error has crept in the aforesaid order of this Tribunal and the promotion of the Applicant to the post of Programme Officer has been ordered to be regularised from 13.9.2009 till his retirement on 31.5.2011. However, the Applicant is entitled for

regularisation of his appointment from 3.4.2001 onwards in view of the facts mentioned hereinabove. Learned Counsel for the Applicant argued that these facts have been admitted by the Respondents in their affidavit-in-reply dated 22.12.2015 in this R.A.

4. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents that this issue was fully dealt with by the Tribunal in paragraph no.5 of the order. It was mentioned that the Applicant had earlier filed O.A.No.33 of 2007 before this Tribunal, where he had sought promotion to the post of Programme Officer. He had admitted that he was not given promotion on ad-hoc basis for the post of Programme Officer from 22.4.2004 to 13.3.2009. It was held that there was no question of treating period from 22.4.2004 to 13.3.2009 as period on promotion to the post of Programme Officer. Learned C.P.O. argued that there is nothing on record to show that the Applicant was given additional charge of this post during the aforesaid period. In the affidavit-in-reply dated 22.12.2015, by mistake it is mentioned that the Applicant was given ad-hoc promotion as Programme Officer from 22.4.2004 to 13.3.2009. This is in direct conflict with the affidavit-in-reply filed in O.A. This mistake has been rectified by filing fresh affidavit in reply in this R.A. on 9.2.2016. Complete service details of the Applicant have been given in paragraph 2 and for the period 2004-2005 to 2008-2009, the Applicant was getting pay in

the scale of Rs.5500-9000, which is pay scale of the Manager, Rangbhawan. He was getting pay in the scale of Rs.6500-10,500 for 2001-2002 to 2003-2004, which is the pay scale of Programme Officer. This is the period when the Applicant was given ad-hoc promotion as Programme Officer. He was next given promotion as Programme Officer only in 2009-2010. Learned C.P.O. argued that this is conclusive evidence that during the period 26.4.2004 to 12.3.2009 the Applicant was not holding the post of Programme Officer. No records are available to show that any orders entrusting him additional charge of the post was given to the Applicant. The Applicant has not placed any order/material on record in this regard either in R.A. or O.A. Learned C.P.O. argued that there is no error in the order of this Tribunal order dated 9.10.2015 in O.A.No.7 of 2015.

5. It is seen that in the O.A, the Applicant had placed on record orders dated 7.4.2001, 15.11.2001, 26.7.2001, 27.7.2003 & 22.4.2004. These orders were regarding ad-hoc promotion of the Applicant to the post of Programme Officer from time to time. There is a letter dated 3.6.2004 from the Applicant to the Respondent No.1 seeking regular promotion to the post of Programme Officer. The last letter is dated 12.7.2004 (Exhibit 'D' page 23 of the Paper Book), which is addressed to the Respondent No.2 by the Respondent No.1 which clearly states that the ad-hoc promotion of the Applicant to the post of Programme Officer had come to an end on 26.4.2004. Thereafter there is no order for the period

26.4.2004 to 12.3.2009 on record of the O.A. On 13.3.2009 the Applicant was again given promotion to the post of Programme Officer which is on record. The Applicant has produced letter dated 3.4.2013 (Exhibit 'H) from the Respondent No.1 under the Right to Information Act. Item No.5 reads as below:-

'' ४. सन २००१ ते २०११ या कालावधीत	१. श्री. वि.मा. देशमुख,
एक-एक दिवसाच्या सेवाखंडाने शासन स्तरावरून	२. श्री. म.श. राजपूत,
तात्पुरत्या पदोन्नती दिलेल्या कर्मचा-यांची यादी	३. श्री. आ.स.राजपूत

The same information is given in letter dated 6.5.2013 of the Respondent No.2 at Exhibit 'I' on page 41 of O.A. The Applicant had claimed in the O.A. in paragraph no.6.11 that he was given promotion as Programme Officer for the entire period from 2001 to 2011 on the basis of this communication. However, this claim was not considered by this Tribunal to mean that the Applicant was working as Programme Officer, through out the period from 2001 to 2011. On the basis of material placed on record by the Applicant himself, it was held that he worked as Programme Officer from 3.4.2001 to 22.4.2004 and from 13.3.2009 till his retirement on 31.5.2011 and he didnot work as such in the intervening period. It is clear that the Applicant was not able to place any material on record in O.A. to support his claim that he was actually working from 26.4.2004 to 12.3.2009 as Programme Officer.

6. In the R.A. in paragraphs no.3 & 4, the Applicant has stated that the communications dated 3.4.2013 from the Respondent No.1 and 6.5.2013 from the Respondent No.2 were not considered by this Tribunal while giving judgment dated 9.10.2015 in O.A.No.7 of 2015. In fact, in our judgment dated 9.10.2015 it was clearly held that there was no legal or logical basis to hold that for the period from 22.4.2004 to 13.3.2009 the Applicant was working on promotion to the post of Programme Officer.

7. In the present R.A., the Respondents have created a lot of muddle by filing contradictory and confusing affidavits. In paragraph no.5 of the affidavit-in-reply dated 22.12.2015 it is mentioned that the "The applicant worked from 22.4.2004 to 13.3.2009 on the post of Programme Officer is purely as a ad-hoc basis promotion." There is a letter Exhibit 'I' page 41 of the Paper Book in O.A. issued by the Directorate of Cultural Affairs and (not by Under Secretary to the Government) on record in the O.A. The information in item 4 is identical to what was given by the Government in letter dated 3.4.2013 (Exhibit 'H', page 33 of the Paper Book) which is reproduced in paragraph no. 5 of the affidavit in reply dated 22.12.2015. From this information ~~there~~ no deduction can be made that the Applicant was working as Programme Officer from 22.4.2004 to 13.3.2009. At the most it can be inferred that during the period from 2001 to 2011, he was given intermittent appointment as Programme Officer. The Respondents have

filed another affidavit in reply dated 9.2.2016 in this R.A. In paragraph no. 1 it is stated:-

> " I crave leave to this Hon'ble Tribunal and tender my unconditional apology to this Hon'ble Tribunal for inadvertent mentioned in affidavit dated 9.11.2015 of the additional charge of the post of Programme Officer (Group 'B') for the period from 22.4.2004 to 13.3.2009 to the Applicant. In fact after verifying all the service record of the Applicant, it was not found any single order of additional charge or no pay was given to the Applicant to that effect".

8. The date of earlier affidavit is actually 22.12.2015 and not 9.11.2015. In paragraph no.2 of the said affidavit, details of pay given to the Applicant from 2001-2002 to 2010-2011 are provided. From those details it is clear that the Applicant didnot work as Programme Officer from 2004-2005 to 2008-2009 on the basis of pay drawn by him.

9. From the records of O.A. and the present R.A., it is quite clear that the Applicant has failed to place any material on record to show that he was actually working as Programme Officer on ad-hoc promotion, during the period 22.4.2004 to 13.3.2009. On the contrary letter dated 12.7.2004 (Exhibit 'D' in O.A.) from the Respondent No.1 to the Respondent No.2 shows that his promotion as Programme Officer came to an end on 26.4.2004. There is no material to suggest that he was holding additional charge of

the post of Programme Officer during the aforementioned period. Only 'evidence' produced by the Applicant in O.A.s were letter dated 3.4.2013 from the Respondent No.1 and letter dated 6.5.2013 from the Respondent no.2. These letters donot prove that he was working as Programme Officer from 22.4.2004 to 13.3.2009.

10. The Applicant has not been able to show any error in the judgment of this Tribunal dated 9.10.2015 in O.A.No.7 of 2014. This R.A. is accordingly dismissed with no order as to costs.

Sd/- Sd/-

(R.B. MALIK)
(MEMBER) (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 11.03.2016
Place : Mumbai
Dictation taken by : SBA
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