

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO. 1045 OF 2012**

DISTRICT : MUMBAI

Shri Omprakash B. Jedia)
Adult : Retd A.C.P,)
R/o: Kunar Apartment C.H.S,)
Flat No. 201, Bhandup Gaon,)
Bhandup (E), Mumbai.)..Applicant

Versus

1. The State of Maharashtra,)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Commissioner of Police,)
Crawford Market,)
Mumbai.)..Respondents

Shri S.S. Dere, learned advocate for the Applicant

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

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 13.06.2013

ORDER

1. Heard Shri S.S. Dere, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

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

The Applicant was working as Assistant Commissioner of Police in Mumbai and retired on 31.8.2008. While in service, the Applicant was required to pass Lower Standard and Higher Standard Marathi Language Examinations on or before 30.12.1989 and 30.12.1991 respectively under the Maharashtra Government Servants (other than High Court servants) Marathi Language Examination Rules, 1987. The Applicant could pass the said Examination only in the year 2005 & 2006. Failure to pass Marathi Examinations results in stoppage of increments. The Applicant was receiving his yearly increments despite non-passing of the requisite Marathi Examinations. However, by order dated 8.10.2007, the Applicant was asked to repay the amount of Rs. 5,27,190/- to the Government. The Applicant filed O.A No. 21/208 against the said order and by order dated 3.3.2008, this Tribunal quashed the order dated 8.10.2007 ordering recovery from the

Applicant. However, in the Review Application No. 11/2008 in O.A No. 21/2008, by order dated 20.4.2009, the earlier order was recalled and the Respondent was asked to issue a show cause notice to the Applicant before making any recovery from him. The Applicant was issued a show cause notice and he replied. However, by order dated 29.5.2012, the Respondent No. 1, again asked the Applicant to deposit the amount of Rs.5,27,190/- with the Government. The Applicant filed another Original Application No 336 of 2010. This Original Application No 336 of 2010 was disposed of by this Tribunal by an order dated 4th March, 2011 with the direction to the Respondent No. 1 to reconsider the case of the Applicant in the light of the exemption granted to one Shri H.R. Ansari, by memorandum dated 21.2.2011. The Respondent No. 1, after reconsideration decided not to exempt the Applicant from passing the Marathi Language Examination by order dated 19.4.2011. The Applicant filed O.A No. 368/2011. By order dated 20.12.2011, this Tribunal quashed and set aside the order dated 2.2.2010 and letter dated 17.4.2011 of the Respondent No. 1. The Respondent No. 1 was directed to reconsider the case of the Applicant under Rule 9 of the Marathi Examination Rules of 1987. The Respondent No. 1 has once again rejected the representation of the Applicant to give him exemption from passing Marathi Examinations by order dated 29.5.2012. The present Original Application is filed against the said order.

3. Learned Advocate Shri S.S. Dere, argued on behalf of the Applicant that grave injustice have been done to the Applicant. The Applicant could make official correspondence in Marathi. He was given a Certificate by the Deputy Commissioner of Police (Crime Prevention), Mumbai, to that effect on 2.3.2003. On top of it, the Applicant passed both the Lower Standard and Higher Standard Marathi Examination in the year 2005 & 2006. That clearly shows that the Applicant was capable of doing work in Marathi. However, the Respondents have chosen not to grant exemption to the Applicant. However, the Respondents have granted exemption to other officers, who could not even pass the Marathi Examination till retirement. Learned Counsel for the Applicant argued that the Applicant has been subjected to hostile discrimination by the Respondents. Learned Counsel for the Applicant cited inter alia the following cases, where exemption from passing Marathi Examinations was given by the Respondents:-

1) In O.A No. 336 of 2010, para 3 of the affidavit in reply filed by the Respondent No. 2 dated 16.12.2010 reads:

“Shri Sapankumar Bankimchandra Das, Police Inspector, has been granted exemption from passing the Lower and Higher Marathi Examinations pursuant to the order passed by the Additional Commissioner of Police, Armed Police, Naigum, Mumbai on 30.11.2006. Shri Sapankumar

Bankimchandra Das, Police Inspector was studying in St. Joseph High School, Boys at Khadki, Pune from 26th June 1961 to 9th September 1968. During this period, Marathi was a subject in his school. It is also necessary to know the fact of Deputy Commissioner of Police, has also issued a Certificate dated 8.11.2006 which clearly shows that Shri Sapankumar Bankimchandra Das, Police Inspector, has knowledge of Marathi very well and he can write, read and speak the Marathi language. Thus he was given exemption from passing said Marathi Language Examination as per the provisions of Section 4(3) of the Maharashtra Government Servants (other than High Court servants) Marathi Language Examination Rules, 1987.

The Rule (not section) 4(2) of the aforesaid Rules reads:-

“4(2). A Government servant,

(i) who claims that his mother tongue is Marathi,
(ii) who does not claim that his mother tongue is Marathi but that he has studied in Marathi medium and who has not passed Secondary School Certificate or Higher Secondary Examination with Marathi,
shall fulfill the following conditions for getting exemption from these rules:-

(a) he should be able to write with facile in Devnagiri script;

(b) he should produce a Certificate from the concerned Institute indicating that he has taken education in Marathi medium at least upto 7th standard; and

(c) he should produce a Certificate from the Head of Department/Office that he can correspond in Marathi.”

In the case of Shri Sapankumar B. Das, it is merely mentioned that during this period (i.e. 26th June 1961 to 9th September 1968 when Shri Das was studying in that school), Marathi was a subject in his school. It is nowhere mentioned that Shri Das has taken education up to 7th Standard in Marathi medium. In fact, he could not have been granted exemption under Rule 4(2)(b).

2) Shri M.A. Mirande, Assistant Commissioner of Police was granted exemption by Joint Commissioner of Police (Admn), Mumbai on 28.5.2004. It is stated that he fulfilled all the conditions as laid down in Rule 4(2)(a),(b) & (c). No documentary evidence was annexed.

3) Shri P.S. Ganjia: He was granted exemption on the basis that Marathi was one of his subject from Standard VI to Standard X. It is not mentioned that his medium of instruction was Marathi. In S.S.C Examination, Marathi was not one of the

subject. However, it was held that he fulfills the conditions in Rule 4(2)(a), (b) & (c).

4) Shri N.J Manekshaw-The order dated 19.10.2000 giving exemption to Shri Manekshaw from passing Marathi Examination clearly mentions that he has been given such exemption as he fulfills the conditions laid down in Rule 4(3)(a) and (c).

4. It appears Marathi Examination Rule 4 has been amended on 7.2.2001. Before amendment the Rule 4(3) was as given below:-

“(3) A Government servant who does not claim that his mother tounge is Marathi, but that he has studied in Marathi medium and who has not passed Secondary School Certificate or Higher Standard Examination with Marathi shall fulfill the following conditions for getting exemption from the rules:-

- (a) he should be able to write with facile in Devnagiri script;
- (b) he should produce a Certificate from the concerned Institute indicating that he has taken education in Marathi medium at least upto 7th standard; and

(c) he should produce a Certificate from the Head of Department/Office that he can correspond in Marathi.”

5. Learned Counsel for the Applicant has cited a large number of cases where the Respondents have granted exemption to Government employees under Rule 4(2) [and earlier Rule 4(3)]. Many of the employees who have been granted exemption under Rule 4(2) have claimed that their mother tongue is Marathi, though from their names they appear to be non-Maharashtrians. In many cases, exemption has been granted under Rule 4(3) (a) & (c), without verifying whether the candidate satisfy the condition in Rule 4(3)(b). Only the case of the Applicant there is insistence that he does not satisfy condition in Rule 4(3)(b), and hence cannot be granted exemption from passing Marathi language.

6. Learned Presenting Officer on behalf of the Respondents argued that the fact that many other candidates had been exempted from passing Marathi language examination does not confer any right on the Applicant and the case of the Applicant is not fit and proper to be exempted from passing the said language examination. It is mentioned in the affidavit in reply that “the applicant’s mother tongue is not Marathi as he is a non-Maharashtrian”. It is contended by the learned Presenting Officer that Applicant has to pass the Marathi language

examination. Regarding exemption to other officers, learned Presenting Officer argued that each individual case has been decided on merit and Applicant is not entitled to claim the same relief.

7. I have carefully perused the case papers and considered the arguments on behalf of the Applicant and the Respondents. The Applicant claims that he has been subjected to hostile discrimination as other Officers, less worthy of exemption from passing Marathi examinations have been exempted. In case of Shri Sapankumar Das and Shri Manekshaw, the exemption was given under Rule 4(3)(a) & (c). They never passed the Marathi language examination. The Applicant also fulfills conditions in Rule 4(3)(a) & (c). In addition, he also passed lower and higher standard Marathi Examinations in the year 2005 and 2006.

8. This Tribunal by order dated 20.12.2011 in O.A 368/2011 has held that the case of Applicant does not appear to be covered by any part of Rule 4. The only provision under which the case of the Applicant can be properly considered is Rule 9, which reads as follows:-

“Notwithstanding anything contained in these rules, Government may relax provision of any of these rules

under special circumstances in such manner as shall appear to it to be just and reasonable”.

This Tribunal further observed that:

“5. There are several facts and circumstances which would suggest that it is a fit case in which it would be “just and reasonable” for Respondent No. 1 to exercise his discretionary powers under Rule 9 aforesaid”.

Though the Respondent No. 1 was asked to reconsider the case of the Applicant under Rule 9 of the Maharashtra Government Servants (other than High Court servants) Marathi Language Examination Rules, 1987, in the light of the observations made in para 5, it is seen that the Respondent No. 1 has again rejected the representation of the Applicant as he does not fulfill the condition of Rule 4(2)(ii)(b). This Rule viz. 4(2)(ii)(b) makes it clear that to claim exemption under this rule, a person has to have either his mother tongue as Marathi or must have taken his education in Marathi medium. A person whose mother tongue is not Marathi or who has not taken his education through Marathi medium, will never be able to claim exemption under this Rule. In view of this fact, this Tribunal had directed the Respondent No. 1 to consider the case of the Applicant to give exemption from passing Marathi Language Examination under Rule 9. However, the Respondent No. 1 has

once again passed the impugned order that Applicant is not entitled to exemption from passing the Marathi Language Examination as he does not fulfill the condition in Rule 4(2)(ii)(b). This fact was known when the order dated 20.12.2012 in O.A 368/2011 was passed. It appears that the Respondent No. 3 is not ready to budge from the position taken earlier despite clear directions of this Tribunal.

9. In para of the order of this Tribunal dated 20.12.2011, the following conclusions were drawn:

- (a) It would be "just and reasonable" for the Respondent No. 1 to exercise his discretionary powers under Rule 9.
- (b) The decision to recover Rs. 5,27,190/- from the Applicant just one year before his retirement was not only inconsiderate and unfair but also of doubtful legal sustainability.
- (c) It is not in doubt that the Applicant is well versed in Marathi and during his service was functioning in that language.
- (d) A long list of Officers from Police Department have been exempted from passing the prescribed Marathi Language Examinations.

10. Order passed by the Respondent No. 1 has not discussed any of these issues. Learned Counsel for the Applicant has

drawn my attention to the order of this Tribunal in O.A 940/1999 passed on 8.6.2000. In that Original Application, the Applicant's mother tongue was not Marathi, he did not pass Marathi as a subject in S.S.C nor did he appear for Lower & Higher Standard Marathi Examination. The Applicant only produced a Certificate issued from his Head of the Department stating therein that he can write Marathi language in Devnagiri script with speed and he can effectively correspond in Marathi. He also annexed the list of Officers stating that in respect of 8 A.C.Ps the order of granting them exemption from passing Marathi Examination and giving them increments regularly on production of Proficiency Certificate in Marathi from their superiors in the Police Force. This Tribunal held that "(there) was no justification for Respondent No. 2 to refuse to grant exemption in favour of the present Applicant on the basis of similar Certificate. The granting of exemption for other Officers and refusing the same in favour of the present Applicant is a clear case of illegal discrimination and I, therefore, hold that the denial of increments to the present Applicant on the ground that he is not entitled to exemption is improper and unjust. I, therefore, hold that the Certificate produced by the present Applicant clearly fulfills the conditions for getting exemption and when the department had granted the same exemption in favour of other Officers by order dated 9th July, 1999, there is no justification to deny the same to the present applicant". The

Respondents were ordered to release the increments to the Applicant in that case.

11. The Applicant in para 6.17 of the present Original Application has relied upon judgment of this Tribunal in O.A No. 940/1999. The Respondent No. 1 in his affidavit in reply filed on 12.3.2013 has not denied that averments made by the Applicant in para 6.17 of the Original Application. There is no mention anywhere that the order of this Tribunal in O.A No 946/1999 was challenged in the High Court. It is clear that the order dated 8.6.2000 has achieved finality.

12. The facts in the present case are strikingly similar to the facts in O.A No. 940/1999. The Applicant has produced a Certificate dated 1.2.2003 from the Head of the Department that he had very good knowledge of Marathi and could correspond in that language. On top of it, he passed the Lower & Higher Standard Examinations in 2005 and 2006 respectively. In fact, the Applicant's case is much stronger. He is only seeking relaxation of the condition that he should have passed lower Standard Marathi Examination before 30.12.1989 and Higher Standard Marathi Examination before 30.12.1991. The other Officers listed by him who have been given exemption from passing Marathi Language Examinations never passed these Examinations. The case of the Applicants is on a much higher footing. I agree with the contention of the Applicant that

the ultimate purpose of the Rules for passing Marathi Language Examination is to ensure that the official work is done in that language. The Applicant has produced a Certificate from his Head of the Department that he was doing official work in Marathi. He has proved this fact by passing Lower and Higher Standard Marathi Language Examinations.

13. This Tribunal has held in O.A No. 940/1999 that there the Government cannot treat similarly placed Officers differently. The Applicant has produced ample evidence to show that a large number of Officers had been given exemption from passing Marathi Language Examination. Many of them did not take education in Marathi medium. Despite that on production of Certificate from their Heads of Department, they were granted exemption. The Respondent No. 1 has not been able to give any explanation as to how exemptions were given to Officers whose mother tongue was also not Marathi. As has been observed elsewhere in this order, such persons are not at all eligible to be considered for exemption under Rule 4(2). The most charitable construction could be that the exemptions were covered under Rule 9. In case of the Applicant, however, the Respondent No. 1 has totally ignored the directions of this Tribunal in O.A No. 368 of 2011 dated 20.12.2011. The Applicant is entitled to be treated at par with other similarly placed Officers who were granted exemption from passing the Marathi Language Examinations. Any other view will amount

to discrimination against the Applicant which is not allowed under the Constitution.

14. In view of the above facts and circumstances, the Original Application is made absolute in terms of prayer clause 10(b) & (c). There will be no order as to costs.

Place : Mumbai.
Date : 13.6.2013
Dictation taken by: A.K Nair.

(Rajiv Agarwal)
Vice-Chairman