

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 25 OF 2019**

**DISTRICT : AURANGABAD**

Dnyaneshwar S/o. Dashrath Kale,       )  
Age: 54 years, Occupation: Senior Jailer)  
Class-I Aurangabad Central Prison,       )  
Harsul at Aurangabad, R/o. Aurangabad.)

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,       )  
Through the Principal Secretary, )  
Appeals & Security, Home       )  
Department: Prison-2,       )  
Government of Maharashtra,       )  
Mantralaya, Mumbai-32.
- 2) Additional Director General of Police &)  
Inspector General of Prisons: Reform Services,)  
Government of Maharashtra,       )  
Old Administrative Building, 2nd Floor,)  
Pune-1       )
- 3) Deputy Inspector General: Prisons:)  
Central Division, Aurangabad.       )
- 4) Superintendent: Aurangabad :       )  
Central Prison, Harsul, Aurangabad.)

**.. RESPONDENTS**

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**APPEARANCE** : Smt. Priya Bharaswadkar, Advocate holding  
for Shri R.N. Bharaswadkar, Advocate for the  
applicant.

: Shri I.S. Thorat, Presenting Officer for  
Respondents.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**  
**Reserved on** : **10.01.2023**  
**Pronounced on** : **08.02.2023**  
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**O R D E R**

**(Per : Shri Bijay Kumar, Member (A))**

1. By invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, this Original Application has been filed by one Shri Dnyaneshwar S/o Dashrath Kale on 08.01.2019. The applicant had joined Prison Department as Jail Guard on 04.01.1985. He was promoted as clerk on 06.08.1993, as Jailor Group-II w.e.f. 01.09.1995 and Jailor Group- I on 09.11.2006. He has passed post recruitment examination as per provisions of the *Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977* but he has **not** passed Qualifying Examination for promotion under provisions of the *Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules 1977* (in short, '**EQE Rules, 1977**') which is required for promotion to the post of Deputy Superintendent, Central Prison/ Superintendent, District Prison Class-II.

2. The applicant is aggrieved for the reason of not getting exemption from passing Maharashtra Prison Department as per rule 3 (3) of '*EQE Rules, 1977*'. as a result of which he has not been able to

get promotion to the Deputy Superintendent, Central Prison with deemed date of promotion w.e.f. 25.02.2016 i.e. on attaining age of 45 years which is the age for getting exemption from passing departmental examination.

3. The applicant had been granted leave vide oral order dated 04.07.2022 to incorporate the list of other officers in the rank of Jailor Grade-II who had been promoted without passing qualifying examination which was granted and such a list was attached with this O.A. as Annexure A-9 , page 42-A. The applicant submitted a written precipi seeking amendment in the O.A. to the extent of taking additional ground and consequential prayer clause which was granted vide oral order dated 06.12.2022 and two new para 11-A and 11-B were added and Relief Clause X (B-1 and X (C-1) were added:-

**4. Relief Sought :-** The applicant has prayed for relief in terms of para X which, after permitted amendments reads as follows :-

**“X) RELIEF (s) SOUGHT:**

A) *The Hon’ble Tribunal may kindly be pleased to allow the Original Application.*

B) *The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the exemption to the Original Applicant in passing the Divisional Eligibility Examination for the promotional post of Deputy Superintendent, Central Prison Department (Executive Officers Qualifying Examination) Rules, 1977.*

**B-1)** *The Hon’ble Tribunal may kindly be pleased to hold that the rule 4 (a) of Maharashtra Prison Department (Executive*

*Officers Qualifying Examination) Rules, 1977 is applicable to the case of the applicant and the applicant may kindly be granted the exemption from passing the Qualifying Examination from 01.04.2013 as he has completed his age of 48 years and it may be further be directed to promote the applicant on the post of Deputy Superintendent Central Prison/ Superintendent District Prison Group II with deemed date of promotion as 15.02/2017 along with all consequential benefits.*

**C)** *The Hon'ble Tribunal may kindly be pleased to direct the respondents to promote the Original Applicant to the post of Deputy Superintendent, Central Prison from the deemed date of promotion 15.02.2016 along with all the consequential benefits.*

**C-1)** *The Hon'ble Tribunal may kindly be pleased to direct the respondents to promote the original applicant at par with the person to whom the promotions were granted despite of non-passing of the qualifying rules; the list of persons to whom the promotions were granted despite of non-passing of the qualifying examination annexed and marked as Annexure "X" to the Original Application.*

**D)** *The Hon'ble Tribunal may kindly be pleased to direct the respondents to decide the representations preferred by the Original Applicant which are pending with the respondents in relation to the grant of exemption in passing the Divisional Eligibility Test for the promotion and seniority of the Original Applicant.*

**E)** *Any other equitable and suitable relief may kindly be granted in favour of the Original Applicant in the interest of justice."*

**5. Pleadings, Final Hearing and Re-Hearing :-** Affidavit in reply on behalf of respondent no. 1 to 4 was filed on 11.02.2020 which was taken on record and copy thereof supplied to the other side. Rejoinder to affidavit in reply was filed on 17.08.2021. Learned Presenting officer was given time as per his request, to file sur-rejoinder but he failed to file the same. Finally, after pleadings were complete, the matter was fixed for final hearing on 20.07.2022 after which the matter was

reserved for orders. Before, orders in the matter could be passed the constitution of Division bench was changed and the matter was re-heard by newly constituted Division Bench on 25.11.2022 and 02.12.2022. At this stage the applicant prayed for permission to add two new paras in the O.A. and add two sub clauses in prayer clause X which granted. As the learned P.O. did not wish to file additional affidavit in reply to amended O.A., the matter was then heard further on 02.01.2023 and 10.01.2023. Thereafter, the matter had been closed for orders.

**6. Gist of contentions, pleadings and arguments on behalf of the applicant-** The learned Advocate for the applicant had taken following four mutually exclusive arguments which to a large extent exhibit *inconsistency* and *swing* which, in our considered opinion, amounts to *mutual conflict*:

(a) In the un-amended Original Application the applicant has claimed exemption from passing '*Executive Officers Qualifying Examination*' on attaining age of 45 years by drawing parity with the officers and employees of other services like *Civil Engineering Assistants* in Engineering Departments. For this purpose a copy of Government Resolution issued by Public Works Department bearing No. परीक्षा 1093/प्र.क्र. 185/ आस्था-2, Mantralaya, Mumbai, dated 31.07.2013 has been enclosed as Annexure A-1 at page no. 13-15 of the Paper-Book. Therefore, it is inferred by us that

the applicant accepts requirement of passing 'EQE' for being eligible to get promotion to the post of Deputy Superintendent, Central Prison/ Superintendent District Prison Class II and also relies on provisions for exemption from passing the same on attaining age of 45 years.

(b) Secondly, the applicant has submitted that the Departmental Selection for Promotion Committee in its meeting held on 08.10.2014 had recommended name of the applicant for promotion a copy of which is at page 67 to 79 of paper-book. The applicant has further cited a communication between Special Police Inspector General, Prisons in the office of the Additional Director General of Police & Inspector General of Prisons & Reforms Service and Superintendent, Central Prison, Aurangabad (Annexure A-4, page 22 of Paper-Book) that the applicant was not considered for promotion on the stated ground of the applicant not having passed '*Executive Officers Qualifying Examination*' as per rule 3 (3) of '*EQE Rules 1977*'. The applicant has contended that other similarly situated Jailor Grade-I have been given promotion.

(c) Thirdly, the applicant has relied on following judgment and order buttressing his claims of being eligible for exemption from passing Executive Officers Qualifying Examination on attaining age of 45 year and otherwise respectively :-

- (i) *Judgment of Hon'ble High Court of Judicature at Bombay, Bench at Auragabad in Writ Petition No.3643 of 2009, judgment dated 21.11.2017.*
- (ii) *Order passed by this Tribunal's Bench at Nagpur in O.A. No. 603/2017, dated 01.11.2018.*

(d) During Oral Arguments the learned Advocate for the applicant referred to rule 3 (1), rule 3 (2), rule 3 (3) and rule 4 (a) of 'EQE Rules, 1977' and asserted that the provisions of rule 3 (3) of the 'EQE Rules, 1977' are not applicable to him, which, in turn, are applicable only to the directly appointed executive officers who had been working in any post in the cadre of Jailor, Group-I or II or in the cadre of Superintendent of District Prison, Class-II on the date of commencement of these rules. He has also asserted that exemption from passing *Executive Officers Qualifying Examination* on attaining age of 48 years as per provisions of rule 4 (a) is available only to such persons who have attained the age of 48 years on the date of coming into force of the said 'EQR Rules, 1977'. For ready reference the relevant part of the said rule is reproduced as bellow :-

**“3. (1)** *Every person appointed directly to any post in the cadre of Jailor Group-I or Group-II or in the cadre of Superintendent of District Prison Class II after commencement of these rules, shall be required to pass the Examination in accordance with these rules within a period*

*of five years from the date of his appointment and within three chances.*

**3. (2)** *Every person working in any post in the cadre of Jailors, Group-I or II or in the cadre of Supdts. of District Prison, Class-II on the date of commencement of these rules, shall be required to pass the examination within three years and within three chances.*

**3. (3)** *Save as otherwise provided in sub-rule (6), no Executive Officer shall hereafter be promoted in a regular vacancy in any higher cadre, unless he has passed the Examination.*

**4.** *The following persons shall be exempted from the operation of these rules namely: -*

**(a)** *persons who have attained the age of 48 years on the date of coming in to force of these rules;*

**(b)** .....

**(c)** .....”

**7. Gist of pleadings and arguments made on behalf of the**

**Respondent Nos. 1 to 4 :-** The Respondents have put counter arguments answering each of the arguments put forth on behalf of the applicant which may be summed as follows:-

(a) The applicant had been promoted from the post of his first appointment, i.e. Jail Guard to Clerk and then to the post of Jailer Group-II and Jailer Group-I without passing *Executive Officers Qualifying Examination* which in itself was in violation of



*the provisions of 'EQE Rules, 1977'*. However, the fact remains that such discrepancies have occurred in a number of other cases too, due to wrong interpretation of provisions of *'EQE Rules, 1977'*. In view of this a seven-member committee was constituted which had its meetings on 11.09.2017, 11.03.2018 and 05.06.2018 and made recommendations which was accepted and seniority lists of various cadres of Executive Officers for the years 2015, 2016 and 2017 were cancelled and revised seniority lists were prepared in which seniority number of the applicant as on 01.01.2017 is 78.

(b) That the applicant had applied for but had not appeared in the *Executive Officers Qualifying Examinations* held in years 1997, 1998 and 1999. Thereafter, the applicant had not even applied and appeared for the said examination after year 2010. This shows that the applicant never wanted to appear or to pass the said departmental examination.

(c) That the Government Resolution issued by General Administration Department dated 01.11.1977 required administrative departments to amend the rules for Departmental Examinations providing for exemption from requirement of passing departmental examination on attaining age of 45 years. However, Home Department has not carried out any amendment in the Departmental Qualifying Examination Rules for the

reason that the officials working in the prison department are administered by the provisions laid down in rules of Maharashtra Prison Manuals. The notification in the said manual dated 20.08.1977 already consist of the provision of exemption to employees from passing departmental examination on attaining 48 years of age on the commencement of these rules.

(d) That the applicant is not eligible for exemption from passing *Executive Officers Qualifying Examination* in view of rule 4 (a) of '*EQE Rules, 1977*' benefits of exemption being available only to such employees who attained age of 48 years on the date of commencement of '*EQE Rules, 1977*'.

(e) *That there is no comparison between the facts applicable in the case of Civil Engineering Assistants and Jailor Group-I, the former having stagnation whereas the later have availed multiple promotions.*

(f) *That in view of respondents, ratio decidendi in Writ Petition No. 3643/2009, cited by the applicant, are different and not applicable in the present matter.*

(g) *Representation dated 23.12.2017 from the applicant was referred to the General Administration Department which, in turn, on 30.12.2019 has turned down the proposal of giving exemption from passing departmental qualifying examination under*

*provisions of GAD's G.R. dated 01.11.1977 and 01.03.2018 and communicated as follows-*

*“दिनांक ०१.०३.२०१८ च्या सामान्य प्रशासन विभागाच्या शासन निर्णयानुसार पुर्वी ४५ व्या वर्षी मिळणारी वयोमर्यादेची सुट आता ५० वर्षे किंवा त्या पदावर १५ वर्षे सेवा यापैकी जे नंतर घडेल त्या नंतरचा दिनांक अशी बदलण्यात आली आहे. सबब, इतक्या प्रदीर्घ कालावधीनंतर वयोमर्यादेमुळे मिळणारी सूट पुर्वलक्षी प्रभावाने ४५ वर्ष अशी सुधारित करणे कायदेशीर दृष्ट्या चुकीचे असल्याने गृह विभागाच्या प्रस्तावाला मान्यता देता येत नाही, हे सामान्य प्रशासन विभागाचे अभिप्राय कायम ठेवण्यात येत आहेत.”*

**8. Granting leave to amend original applications by adding para 11 (A) and 11 (B) and sub-clauses X(B1) and X (C1) to the prayer clauses by the applicant:-** Realizing during oral submissions being made by the two contesting sides that there were deficiencies in the original application, the applicant prayed for leave to amend the Original Application by adding para no. 11 (A) and 11 (B) and prayer clauses X (B1) and X (C1) to the Original Application. Normally, amendments in Original Application at stage of arguments are not permitted by the Tribunal as the same may amount to varying the pleadings and the very nature of the original application. However, in the present matter, we have observed that the two contesting sides had not been able to make consistent pleadings addressing the core issue of equality before law, rationale of rule provisions and basis of seeking relief, therefore, in our considered opinion, the proposed amendments may enable us to look at the bigger picture of the matter including vires / rationale of rules 3 (1), 3 (2), 3 (3) and 4 (a) which may go a long way in furthering interest of justice in such matters,

therefore, the amendments have been allowed despite some reservations expressed by the learned presenting officer.

**9. Analysis of the facts on record and oral submissions made by contesting parties and conclusions drawn:-**

(a) In our considered opinion, the argument put forth by the applicant that he was never reprimanded by the respondents for not applying for and passing the *Executive Officers Qualifying Examination*, by any stretch of logic, does not become admissible defence in as much as it does tends to shift responsibility to remind the applicant to pass qualifying examination from him to the respondents.

(b) The respondents have not disputed the contention made by the applicant that a number of similarly situated Executive Officers have been given promotion without compliance of provisions of Rule 3 (3) of the '*EQE Rules, 1977*'. Rather, the respondents have sought to establish bona-fide of mistake made by putting forth argument that the applicant too, had been beneficiary of similar mistake as a result of which he could reach up to level of Jailor Grade-I in spite of not passing Executive Officers Qualifying Examinations for promotion to the post of Jailor Grade-I. At the same time, in our considered opinion, if breaches of rules in a certain number of cases/ instances is treated as '*Rule Holiday*' justifying breach of rules in

all other cases the same shall go against the requirement of *Rule of Law* and *Principles of Good Governance*.

(c) It is also appreciated that so long as the Prison Department has its own departmental examination rules, there is no valid reason for exploring similarity with the case of Civil Engineering Assistants, as being sought by the applicant. Likewise, the matter before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 3643 of 2009 was different that in those matters, exemption clause was not there in the respective Departmental Examination Rules. Hence, in our considered opinion, the ratio in the said judgment in that Writ Petition is not applicable in the present matter.

(d) It is also observed that the Order passed by Nagpur Bench of this Tribunal in O.A. No. 603/2016, dated 01.11.2018 in *Jogendra Brindaban Mishra Vs. State Maharashtra and Ors.*, has been based on interpretation of facts which are different from the facts that are before us. Therefore, in our considered opinion, the doctrine of precedence may not be applicable in the present matter.

(e) Copy of the reference made to General Administration Department as mentioned in para 7 of this order, has not been submitted by the respondents to this Tribunal. However, from contents of response received by respondents from the General

Administration Department dated 30.12.2019 leads us to draw inference that the respondents sought retrospective effect to be given to the provisions of Government Resolution issued by GAD dated 01.11.1977 and 01.03.2018 to the 'EQE Rules, 1977' and thereby, making exemption from passing departmental qualifying examination applicable on attaining age of 45 years or, 50 years, as the case may be, with retrospective effect of 1977. Therefore, this argument put forth by the respondents in this regard is, in our opinion, out of context and thus inconsequential.

(f) The fact that the applicant did not apply or pass *Executive Officers Qualifying Examination*, in our considered opinion, cannot be treated as lapse for entitlement of the applicants for the benefits of exemption from passing the said examination on attaining prescribed age.

(g) Last but not the least, the respondents have argued that rule 4 of '*EQE Rules, 1977*' have exemption clause. At the same time, the respondents have argued that the exemption from passing *Executive Officers Qualifying Examination* is available only to those executive officers who attained the age of 48 years *on the date of coming into force of the 'EQE Rules, 1977'*. In our considered opinion, there is inherent contradiction in rule 4 of the '*EQE Rules, 1977*' if the said rule is interpreted literally, then

the nature of the rule 4 will be reduced to an one-time policy statement granting exemption to only such Executive Officers who had attained age of 45 years on the date of 'EQE Rules, 1977' coming in to force, i.e. 01.09.1977 and thus the rule 4 will lose characteristics of being a *departmental examination rule* as the rules have prospective application. In addition, interpreting rules 3 (1) literally will lead us to draw conclusion that the requirement of passing Qualifying Examination is applicable only for *directly appointed* executive officers and may not be applicable for executive officers, who have been appointed by promotion. To top up these, in the case of interpretation of rule 3 (1) and rule 3 (2) on one side and rule 3 (3) on the other will not be mutually reconcilable. The learned Presenting Officer has not been able to respond to these anomalies brought to his notice at the stage of final hearing. Therefore, it is inferred that there is a need to have harmonious reading of Rule 3 (1), 3 (2), 3 (3) and rule 4(a). In our considered opinion, the Home Department, in consultation with Law & Judiciary Department, ought have got these aspects of 'EQE Rules, 1977' examined and learned Presenting Officer ought have been instructed suitably to respond to the contentions raised by learned Advocate for the applicant in this respect. In absence of this, we are constrained to arrive at conclusion that there is a need to have harmonious reading of various rules under 'EQE Rules, 1977'.

(h) So far as, amending 'EQE Rules, 1977' according to provisions of G.R. issued by G.A.D., dated 01.03.2018 is concerned, it is expected from the respondents to take decision in this respect on merit of the matter, within a definite time frame which has not been done even after lapse of about 4 years thereafter. Hence following orders :-

**ORDER**

The Original Application No. 25 of 2019 is partly allowed in following terms :-

- (A) For the purpose of having harmonious reading of rule 3 (1) and rule 3 (3) of the *Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977*, the phrases "**appointed directly**" in rule 3 (1), is construed to include "**appointed by promotion**". Likewise, the phrase "**on the date of coming into force of these rules**" in rule 4 of the *Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977* is construed to include the persons who have attained the age of 48 years on and **after** the date of coming into force of these rules.
- (B) The applicant may be given benefit of exemption from passing the Executive Officers Qualifying Examination as per provisions of rule 4 of the *Maharashtra Prison Department (Executive Officers Qualifying Examination)*



*Rules, 1977 with effect from the date of attaining age of 48 years and may be accordingly considered for promotion along with benefits of deemed date of promotion, as per provisions of service rules, on merit, and decision in that respect be taken within three months of receiving certified copy of this order. However, as the applicant has got promotion from Jailor Group-II to Jailor Group-I without passing Executive Officers Qualifying Examination and has not worked on the post of promotion till he gets promotion to the post of Superintendent of District Prison Class-II/ Deputy Superintendent of Central Prison and assumes charge or superannuates, whichever is earlier, the applicant's monetary benefits may be calculated notionally for the intervening period from attaining age of 48 years till getting promotion or till date of superannuation, whichever is earlier, and actual monetary benefits in terms of pay and allowance etc. as per service rules or in terms of post-retirement benefits, as the case may be released with prospective effect. Similar benefits may be extended to similarly situated Executive Officers in service on the date of passing of this order, who are not before this Tribunal.*

- (C) *Respondents may take decision in respect of amending the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules 1977 and the Maharashtra*

*Prison Department (Executive Officers Qualifying Examination) Rules, 1977* in view of Government Resolution issued by General Administration Department, Government of Maharashtra, dated 01.03.2018 within a period of 4 months from the date of receipt of certified copy of this order.

(D) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb**/D.B. O.A. No. 25/2019 VDD & BK 2023 Promotion