

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 393 OF 2020
(Subject : Benefits of G.R.)**

DISTRICT : DHULE

Sanjay s/o Bhanudas Barde,)
Age :- 52 years, Occupation – Service,)
Senior Clerk, In the office of Superintendent)
Of Prison, Dhule District Prison, Class-I, Dhule.)

... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Home Department (Prisons),)
Mantralaya, Mumbai- 32.)
2. **The Deputy Director General of Prisons,))**
Central Division, Aurangabad (Harsul))
3. **The Additional Director General of))**
Prisons and Inspector General of Prisons,))
Maharashtra State, Pune-1 (Central Building).)
4. **The Superintendent of Prison,**)
Dhule District Prison,)
Dhule.)

.. **RESPONDENTS**

APPEARANCE : Smt. Suchita Dhongde, Advocate for the
Applicant.

: Smt. M.S. Patni, Presenting Officer for
respondents.

CORAM : **Justice Shri P.R. Bora, Vice Chairman**
AND
Shri Bijay Kumar, Member (A)

Reserved on : **20.07.2022.**

Pronounced on : **27.07.2022.**

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

1. One Shri Sanjay Bhanudas Barde, has filed this Original Application on 28.09.2020 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 13.08.2020 passed by the Respondent No. 3, the Additional Director General of Police & Inspector General of Prisons, Maharashtra State, Pune, whereby the Applicant has been declared to be ineligible for getting benefits of 2nd and 3rd Time Bound Promotion on the ground of not passing Qualifying Examination.

2. Facts of the matter - Following facts in the case have been admitted by the two contesting sides :-

(a) It is admittedly that the applicant joined the service in prison department as Jail Guard (Rakshak) on 01.02.1992. However, there is ambiguity in submission made by the applicant regarding provision of service rules under which he moved to clerical cadre and with effect from which date.

(b) What the Applicant has stated in para 6 (a) of the Original Application (page 2 of paper-book) and 6 (h) of the

Original Application (page 5 of the paper-book) in this regard are being quoted below:

“6 (a) *The applicant submits that he belongs to Scheduled Tribe category being Bhil (Hindu) by caste. He joined service with the Respondents as a Guard (Rakshak) w.e.f. 01.02.1992. He served as clerk at Nashik Central Prison from 01.02.1992 to 10.01.1996 at Kolhapur.....”*

“6 (h) *The applicant reiterates that he joined service as a Guard (Rakshak) on 01.02.1992. He got first benefit of time bound promotion on completion of 12 years w.e.f. 15.02.2008.”*

(c) On the other hand, the Respondent No. 1 to 3 do not seem to have responded to what had been stated by the Applicant in para 6 (a) of the Original Application even though the applicant has submitted a copy of official document on page No. 28 of the paper-book which is a part of Annexure A-4 of the O.A. in which, it is mentioned that the applicant served as Guard from 01.02.1992 to 10.03.1996 and from 11.01.1996 the applicant has been appointed as clerk. In response to averments made by the Applicant in para 6 (h) of the Original Application, submissions made by the Respondents in para 7 of Affidavit in Reply filed by them (annexed at page 49 of the paper-book) is being quoted below for ready reference:

“7. With reference to para No. 6 (h), I say and submit that the Applicant joined the service as a Jail Guard (Rakshak - uniformed service) on 01.02.1992. Then he changed his cadre and became junior clerk on 11.01.1996. The Applicant got his first time bound promotion on completion of 12 years w.e.f. 15.02.2008.....”

(d) The applicant passed Departmental Examination for the post of Junior Clerk on 04.12.1997 which is within period and number of attempts prescribed under provisions of rule 3 (3) of the Maharashtra Prison Department Ministerial Staff Post Recruitment Examination Rules, 1977.

(e) After completing 12 years continuous service on the post of Junior Clerk, he was given benefits of the first time-bound promotion on 15.02.2008, which is a non-functional promotion in the pay-scale of Senior Clerk.

(f) The Applicant was given substantive promotion as Senior Clerk on 04.03.2014 and since then he is working in that capacity. He is still in service and date of his retirement by superannuation is 31.05.2026.

(g) The applicant had not passed qualifying examination for promotion within 3 years of getting promoted as Senior Clerk on 04.03.2014 as per provisions of rule 3 (1) read with rule 3 (4) of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977. However, it is also admittedly that the Respondents had not conducted any qualifying examination from year 1993 till 2015. It is in only in the year of 2016 that a Qualifying examination was conducted during the period from 19.10.2016 till 21.10.2016. The applicant appeared in this qualifying examination held in the year 2016 but failed. This may be counted as the first year and first attempt of the applicant under provisions of rule 12 of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977. There is nothing on record to show what prevented the applicant from making further attempts for passing the qualifying examination.

(h) The date of birth of the applicant as per record is 01.06.1968, as such he had completed 45 years of age on 30.05.2013. In view of this and also by referring to general provisions of circular issued by the General Administration Department, dated 13.09.2013 that the Superintendent of

Prison, Dhule District Prison had vide his letter dated 13.06.2016 submitted proposal to the Deputy Inspector General of Prisons, Aurangabad for granting exemption to the applicant from passing the Departmental Examination for the post of Senior Clerk. This reference was made without referring to the provisions of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977 which does not provide for exemption in the present case. A photo copy of the said proposal is annexed as Annexure-4, which is at page No. 27 of the Paper-book. It is not clear from facts on record whether this proposal had been decided or not.

(i) The Applicant has not represented to the Respondents for grant of exemption from passing Qualifying Examination on attaining 50 years of age on 01.06.2018 invoking provisions of clause 4 of Government Resolution issued by General Administration Department bearing No. संकीर्ण-२३१८/प्र.क.३/का.१७, मंत्रालय, मुंबई, dated 01.03.2018 nor did he file rejoinder to affidavit in reply filed by Respondent No. 1 to 3 so far as response to the averments made by them in this regard is concerned (*para*

6 of the Affidavit in Reply enclosed at page 48 of the paper-book).

(j) The Respondent No. 4, the Superintendent of Prison, Dhule District Prison had, vide his letter dated 06.09.2019 (Page 24 of Paper-Book), submitted to the Additional Director General & Inspector General of Prisons and Prisons Reforms, Maharashtra State Pune, a proposal for grant of second time-bound promotion to the applicant on completion of 20 years of continuous service in the cadre of clerk as Senior Clerk as per provisions of Government in Finance Department Resolution No. वेतन -१११९/प्र.क.३/२०१९/सेवा-३, मंत्रालय, मुंबई-३२, dated 02.03.2019. Respondent No. 4 had recommended the case in following words- “नियमांचे अधीन राहून शिफारस आहे”. However, the same was turned down by the Respondent No. 3, the Additional Director General of Police & Inspector General of Prisons, Maharashtra State Pune vide impugned order dated 13.08.2020 on the ground that the Applicant has not passed the qualifying examination for the post.

(k) Being aggrieved by the said order of Respondent No. 3 the present Original Application has been filed by the Applicant.

3. Relief Sought : The Applicant has prayed for reliefs in terms of Para 9 of the Original Application and Interim Relief in terms of Para 10 of the Original Application, which are being reproduced verbatim for ready reference:

“9. Reliefs sought

In view of this facts mentioned in para 6 above, the applicants pray for the following reliefs :-

- A) This Original application may kindly be allowed with costs.*
- B) The impugned order dated 13.08.2020 declaring the applicant disqualified from getting the benefits of resolution dated 2.3.2019 be quashed and set aside.*
- C) Respondent No. 3 be directed to grant the applicant benefits of resolution dated 2.3.2019 forthwith with consequential benefits.*
- D) Any other equitable and appropriate relief to which the applicant is found due and entitled in the facts & circumstances of the case may kindly be granted in favour of the applicant.*

10. Interim order if any prayed for

Pending final decision on the application, the applicant seeks issue of the following interim order :

- A) The impugned order dated 13.08.2020 may kindly be stayed till the decision of this Original Application.*

B) Any other appropriate and equitable relief to which the applicant is found due and entitled in the facts & circumstances of the case as deemed fit by this Honourable Tribunal may kindly be granted.”

However, no interim relief was granted by the Tribunal.

4. Pleadings and Arguments - All the four Respondents had been duly served notices during 14-19 October 2020. Affidavit in reply on behalf of Respondent No. 1 to 3 was filed on 28.06.2021 which was taken on record and a copy thereof was supplied to the other side. Respondent No. 4 did not file affidavit in reply. As no rejoinder to the affidavit in reply was filed on behalf of the Applicant, the matter was fixed for hearing on 22.07.2021 at the stage of admission. However, hearing actually took place on 20.07.2022 and the matter was reserved for orders.

5. Analysis of Facts: From submissions made by the two sides, following issues emerge each of which are being analyzed and inferences drawn by us in respect of them are also being recorded:

Issue No. 1- What was the mode of change in cadre of the Applicant from cadre of Jail Guard to Junior Clerk and with effect from which date the change was effected?

Analysis: As discussed in preceding para 2 (a), 2 (b) and 2 (c), it is established that the two contesting sides have used vague terms which are alien to service rules and have for reasons best known to them only, avoided to clarify the mode of switching over of the applicant from the post of initial appointment as a Guard to the post of Junior Clerk on 11.01.1996. Extracts of service book of the applicant which have been enclosed with the O.A. are truncated to exclude any entry in respect of change of cadre of the Applicant from Guard to Junior Clerk w.e.f. 11.01.1996. The learned Advocate for the Applicant, on being specifically asked to clarify this point, has orally submitted that the Guard and junior clerk in the Prison Department are equivalent and interchangeable posts. However, in case his version be taken on face-value, then the next question arises is the reason for not claiming benefits of 12 years' length of service from date of initial appointment as Guard on 01.02.1992 for getting benefits of first time bound promotion scheme under Government in General Administration Department Resolution No. एस आर व्ही-१०९५/प्र.क. -१/बारा, मंत्रालय, मुंबई, dated 08.06.1995; as such claim would have made him entitled to get first time-bound promotion

w.e.f. 01.10.2004 instead of 15.01.2008 (i.e. 12 years from the date of appointment as Junior Clerk on 11.01.1996). The learned Chief Presenting Officer too, has not been able to explain this ambiguity in submissions made by him on behalf of the Respondents No. 1 to 3.

Inference: In our considered opinion, it is a case of suppression of critical facts by the applicant as well as by the respondents which operates as a serious constraint in adjudicating the present matter effectively, so far as deciding the claim of consequential benefits of time-bound promotions after 10 years of continuous service as per provisions of Government in Finance Department Resolution No. वेतन -999९/प्र.क.३/२०१९/ सेवा-३, मंत्रालय, मुंबई-३२, dated 02.03.2019, is concerned.

Issue No. 2- Whether the claim made by the Applicant regarding applicability of the provisions of rule 4 (6) of the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977 in his case of granting exemption from passing Qualifying Examination is sustainable or not?

Analysis: The Applicant has claimed exemption from passing qualifying examination under provisions of rule 4 (6) of the of the Prison Manual, 1979 and as evidence he has enclosed extract of the said rules on page No. 31 of Paper-Book, which is marked as a part of Annexure A-5 contents of which is being quoted below:

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

(1) Allocated Government servants who were absorbed as on the 1st November 1956 in the cadres, mentioned in clause (b) rule of 3.

(2) Persons who have attained the age of 48 years or more or have completed twenty five years or more of service on the date of coming into force of these rules.

(3) Persons confirmed in any post in any of the cadres mentioned in clause (b) of rule 2.

(4) Persons who have at any time before passed the departmental examination in accounts and service matters under the rules in force before the commencement of these rules;

(5) Person appointed as Jailors Group II by promotion from amongst Subhedars, Jamadars and departmental technical personnel.

(6) Persons who attain the age of 45 years on or after the 1st November 1977.”

However, the said extract enclosed with this O.A. does not make it clear that the same is extract of which main document. There is mention of internal page 1010 on the

enclosed extracts, contents of which completely tally with the relevant part of the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules 1977. The phrase “Executive Officers” has been defined under definition clause 2 (b) of the said Rules which reads as follows:

“2 (b) “Executive Officer” means a person in the cadre of Jailor (Group I) or Jailor (Group II) and in the cadre of Superintendent of District Prison- Class-II, the Research Officer.”

Inference: From above analysis it is amply clear that the cited rule provision is not applicable in the present matter as the applicant does not fall in the category of “Executive Officer” and therefore, the aforesaid claim made by the Applicant is not sustainable.

Issue No. 3- Whether the provisions of rule 3 (1) read with rule 3 (4) of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977 are applicable to the applicant?

Analysis: For ready reference provisions of rule 3 with all its sub-rules are being produced below for ready reference and taking a holistic view:

“3. (1) Every person appointed in any of the following cadres in the Department after coming into force of these rules, shall be required to pass the Examination within a period of three years, from the date of his appointment and within three chances available to him. A candidate from Scheduled Caste, Schedule Tribe and Denotified Tribes and Nomadic Tribe shall be given one more chance and one more year to pass the examination :-

- (a) Senior Clerk (Supervisory),*
- (b) Head Clerk*
- (c) Statistician,*
- (d) Officer Superintendent.*

(2) Every person working in the cadres specified in sub-rule (1) on the date of coming into force of these rules, shall be required to pass the examination within three years and within three chances available to him on his completion of training. A candidate from Scheduled Caste, Scheduled Tribe and Denotified Tribes and Nomadic Tribe, shall be given one more chance and one year to pass the examination.

(3) Every person who has completed five years of continuous service or more in the cadre of senior clerks on the date of coming into force of these rules, shall be required to pass the examination within a period of three years from the date of his completion of training and within three chances provided that he had passed or exempt from passing the examination under the

Prison Department Ministerial Staff Post Recruitment Examination Rules, 1977.

(4) Except as provided in sub-rule (7), no person working in any of the cadres specified in sub-rules (1) and (3) shall, hereafter, be promoted in a regular vacancy in higher cadre, unless he has passed the examination.

(5) A person who does not pass the examination within three years and within the period extended under rule 14, will lose his seniority to all those who have passed the examination and have been promoted to the higher cadres in regular vacancies before he passes the examination under sub-rule (6).

(6) Subject to loss of seniority under sub-rule (5), a candidate shall be allowed to pass the examination in any number of chances.

(7) During the period from the commencement of these rules and the date on which the results of the first examination are declared, promotion to the higher cadres shall be made according to the seniority and suitability of persons. However, persons so promoted shall have to pass the examination within a period of three years from the date these rules come into force, failing which they shall be reverted."

Analysis and Inference: From the plain reading of the provisions of rule 3 (1) and 3 (4) of the Maharashtra Prison

Department Ministerial Staff Qualifying Examination Rules, 1977, it is clear that the said rules are applicable in the present matter, subject to rules relating to exemptions from passing the Qualifying Examination provided under rule 4 of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977.

Issue No. 4- Whether the applicant is entitled for exemption from passing Qualifying Examination mandated under provision of rule 4 of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977?

Analysis: For ready reference rule 4 of the aforesaid Rules is being quoted below:

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

(a) persons who had attained the age of 48 years or more on the date of coming into force of these rules;

(b) the allocated Government servants who were absorbed as on 1st November 1956 in the cadres specified in sub-rule (1) of rule (3) and the persons appointed to the post in the said cadres from the 1st November 1956 to 30th April 1960 (both inclusive);

(c) persons who have passed examination in Accounts and Service Rules prescribed in rule 132 of Bombay Jail Manual or Accounts Examination conducted by the ex-Government by Hyderabad State;

(d) Persons who are appointed in the Department by transfer from other Departments of Government and who have attained age of 48 years at the time of such transfer.”

Inference: Though the Applicant has not claimed exemption under the above mentioned provisions, upon plain reading of the said provisions for exemption from passing Qualifying Examination, the applicant does not seem to be eligible for claimed exemption.

Issue No. 5 - What is way forward for the Applicant to avail benefits of time-bound promotion under provisions of G.R. issued by Government in Finance Department bearing Resolution No. वेतन -१११९/प्र.क.३/२०१९/ सेवा-३, मंत्रालय, मुंबई-३२, dated 02.03.2019?

Analysis of Facts- Admittedly, no qualifying examination was conducted by the Respondents during the period from year 2013 to 2015. Thereafter, qualifying examination was conducted in the year 2016 during the period from

19.10.2016 to 21.10.2016, in which the Applicant appeared but failed. Provisions of rule 12 of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977 is quoted below for ready reference-

“If for any reason, any examination is not held during a year, the period allowed for passing the examination shall be extended by six months on each occasion the examination is not held”.

Therefore, qualifying examination held in the year 2016 will be counted as the first year and the first attempt by the applicant. He had been entitled for benefits of retaining his seniority and getting promotion to next higher post in channel of promotion/ pay-scale by passing qualifying examination in three years and three attempts counted from year 2016 which apparently the Applicant has not done. The Applicant could seek exemption from passing Qualifying Examination by invoking provisions of clause 4 of the Government Resolution issued by General Administration Department bearing No. संकीर्ण-२३१८/प्र.क.३/का.१७, मंत्रालय, मुंबई, dated 01.03.2018 which he has not done. The said clause reads as follows :-

“४. या आदेशाच्या दिनांकापासून सदर सुधारणा अंमलात येतील. त्यामुळे सर्व प्रशासकीय विभागांनी संबंधित परीक्षा नियम / सेवाप्रवेश नियमांमध्ये सुधारणा करताना या आदेशाचा दिनांक हा सुधारणा अंमलात आणण्याचा दिनांक असेल अशी स्पष्ट तरतूद करावी. तसेच परीक्षा नियमामध्ये सुधारणा करेपर्यंतच्या कालावधीतही उमेदवाराला वयोमर्यादेची सूट देण्याबाबत या आदेशातील तरतुदीनुसार अंमलबजावणी करावी.”

(quoted from para 4 on page No. 56 of P.B).

6. **Conclusion:** - Upon considering facts on record and oral submissions made, we are of the opinion that the Applicant has not been eligible for exemption from passing qualifying examination as claimed by him under provisions of rule 4 (6) of the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules 1977. The Applicant has also not sought exemption from passing Qualifying Departmental Examination on attaining 50 years of age by invoking provisions of clause 4 of the GR dated 01.03.2018. Moreover, the Applicant has submitted incomplete / truncated extracts of documents in support of his claims which does not enable us to grant him even the consequential benefits under provisions of G.R. issued by GAD dated 02.03.2019. Therefore, in our considered opinion, reliefs prayed for in terms of para 9 of the present Original Application, are being pursued on wrong premises. As such, the same is devoid of merit and deserves to be rejected. However, this does not absolve the Respondents from their administrative

responsibilities for granting appropriate benefits to the Applicant which are admissible under extant rules. Therefore, the present Original Application is being disposed of with following orders;

ORDER

Original Application No. 393 of 2020 is being disposed of with following orders :-

- (A) Reliefs prayed for by the Applicant in terms of para 9 of the Original Application No. 393 of 2020, on the basis of grounds stated in the said O.A., are rejected for reason of the same being misconceived and devoid of merit.
- (B) Respondent No. 1 and 3 are directed to decide the proposal submitted by Respondent No. 2 vide his letter No. 5654, dated 14.06.2018 in respect of amending rule 4 (a) of the Maharashtra Prison Department Ministerial Staff Qualifying Examination Rules, 1977 or in alternative, issue suitable directions in view of provisions of clause (1) read with clause (4) of the Government Resolution issued by General Administration Department bearing No. संकीर्ण-२३१८/प्र.क. ३/का.१७, मंत्रालय, मुंबई, dated 01.03.2018, within a period of 12 weeks from receipt of this Order.
- (C) Applicant is at liberty to make fresh representations to the Respondents for grant of exemption from

passing the Qualifying Examination under provisions of Government Resolution issued by General Administration Department bearing No. संकीर्ण-२३१८/प्र.क. ३/का.१७, मंत्रालय, मुंबई, dated 01.03.2018 and also for grant of benefits of Assured Career Progression Scheme under provisions of G.R. issued by Government in Finance Department bearing Resolution No. वेतन -१११९/प्र.क.३/२०१९/ सेवा-३, मंत्रालय, मुंबई-३२, dated 02.03.2019, if he so desires.

(D) No orders as to costs.

MEMBER (A)

VICE CHAIRMAN

Kpb/D.B. O.A.393 of 2020 PRB & BK Benefits of G.R.