

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 608 OF 2018**

**DISTRICT : - AURANGABAD**

**1. Narendra S/o Shamrao Suryawanshi,)**  
Age : 51 years, Occu. : Service, )  
R/o : N-7, IA-115, 9/3, Shastrinagar,) )  
Near Ganpati Temple, CIDCO, )  
Aurangabad, Tq. & Dist. Aurangabad.)

**2. Milind S/o Vasudev Tambe, )**  
Age : 50 years, Occu. : Service, )  
R/o : Flat No. F-2, Sawli Apartment,) )  
Swapnanagri, Vijay Chowk, )  
Garkheda, Aurangabad. )  
At present : M.T. Section, )  
S.R.P.F., Group No. 1, )  
Hadapsar, Pune. )

.. **APPLICANTS**

**V E R S U S**

**1. The State of Maharashtra, )**  
Through its Secretary, )  
Ministry of Home Department, )  
Mantralaya, Mumbai-32. )

**2. The Director General of Police, )**  
State of Maharashtra, )  
In front of Regal Talikies, Mumbai.)

**3. The Special Inspector General of Police,) )**  
Motor Transport, M.S. Aundh, )  
Pune-7. )

.. **RESPONDENTS.**

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**APPEARANCE** : Shri R.P. Bhumkar, Counsel for applicants.

: Shri M.P. Gude, Presenting Officer for the  
respondents.

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**CORAM :** **Hon'ble Shri Justice P.R. Bora, Member (J)**  
**AND**  
**Hon'ble Shri Bijay Kumar, Member (A)**

**DATE : 23.03.2022.**

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

1. This Original Application No. 608/2018 has been filed jointly by Shri Narendra s/o Shamrao Suryawanshi, R/o. CIDCO, Aurangabad, Tq. and Dist. Aurangabad and Shri Milind S/o Vasudev Tamse, R/o. Swapana Nagar, Garkheda, Aurangabad, Tq. and Dist. Aurangabad invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the order bearing outward number आशा-१/पोडनि विभागीय पदो/२१२४/२०१८, dated 5/6.05.2018 notifying holding of exam for promotion to the post of Police Sub-Inspector for filling 32 vacant posts under promotion quota. As per the said notification, the applications were invited from Assistant Police Sub-Inspectors (in short, "APSI") Technical Group-1 (Motor Vehicles) and APSIs (Technical Fitter) of Greater Mumbai Motor Transport Department of Police for taking promotional examination under provisions of Mumbai Police Manual, 1959, Rule 182 of the Maharashtra Police Manual, 1999 and Government in Home Department Resolution No. MTS 1361/82002-XI, Sachivalaya, Mumbai, dated 25.05.1964.

2. The applicants submitted their representation dated 18.06.2018, 28.06.2018 and 29.06.2018 to the Special Inspector General of Police, Motor Transport, Maharashtra State for getting

exemption from passing departmental examination for promotion to the post of Police Sub-Inspector (Technical). Earlier too, the applicants had submitted their representation dated 23.11.2017 and 30.11.2017 addressed to the Director General of Police, Maharashtra State for getting exemption from passing departmental examination on attaining age of 45 years. As these representations remained unanswered, and the said notification dated 5/6.05.2018 had been issued therefore, the Original Application has been filed on 23.07.2018.

3. From the particulars of the applicants mentioned in the title clause of the Original Application and copies of representations made by the applicant No. 2, it is clear that the applicant has been posted at Pune, which is outside territorial jurisdiction of this Bench of Maharashtra Administrative Tribunal. Despite this, the applicant filed a Miscellaneous Application No. 281/2018 in O.A. St. No. 1240/2018 on 23.07.2018 for grant of leave to sue jointly, which was allowed by this Tribunal by order dated 10.08.2018 [Coram :- Atul Raj Chadha, Member (A)]. This Tribunal has also passed an order as reproduced below:-

*“9. In the circumstances, it is hereby directed that, in case the recruitment process is initiated by the concerned respondents by way of nomination, then 30% posts be reserved for promotion.”*

4. **Cause of Action:** - The applicants have advanced mainly two grounds for their grievance, which constitutes cause of action which may be summed up as follows:-

(a) The applicants have passed all the three Technical Examinations prescribed for them in their present posts. There is no provision in Recruitment Rules for the post of Police Sub-Inspectors in Police Motor Transport Section according to which APSIs may be required to pass promotional examination as notified by the respondents by impugned order dated 5/6.05.2018. Therefore, the process being undertaken by the impugned order takes a characteristic of nomination in contrast with promotion which defeats the provisions for promotion of APSIs to the post of Police Sub-Inspector.

(b) According to the Government Resolution of General Administration Department No. EXD-1076/1945/137/XVII, Mantralaya, Mumbai, dated 01.11.1977 and Circular No. EXD-1080/34/XVII, Mantralaya, Mumbai, dated 17.05.1980 the employee who attains the age of 45 years is eligible for grant of exemption from passing Departmental Examination. Exemptions under these provisions have been granted by

the Police Department to a number of other similarly situated employees, but the same exemption has not been granted to the applicants in spite of representations made by them to this effect. The applicants have submitted copies of order of exemption from passing departmental examination for the purpose of granting benefit of Time Bound Promotion Scheme/Assured Career Progression Scheme which is enclosed with the O.A. and marked collectively as Annexure 'A-5'.

5. **Relief prayed for** : - The applicants have prayed for relief in the following terms : -

- A. *The Original Application may kindly be allowed.*
- B. *In view of the above facts and circumstances, this Hon'ble Tribunal would be pleased / Sec. 19 of Administrative Tribunals Act, 1985, to direct the respondents to decide the application / representation filed by applicants dated 23/11/2017 then reminder letter dated 18/06/2018, 28/06/2018, 30/11/2017 and 29/06/2018 respectively after completion of 45 years for passing the examination and they claiming the promotion as Clause No. 1 as per the Government Resolution dated 25<sup>th</sup> May 1964 as a Sub Inspector of Police in the Police Motor Transport Section and its consequential monetary benefits.*
- C. *In view of the above facts and circumstances, this Hon'ble Tribunal would be pleased / Sec. 19 of*

*Administrative Tribunals Act, 1985, to quash and set aside the order dated 5/6/2018 passed by the respondent's **annexure A-6**.*

- D. *To direct the respondents to grant the promotion to the applicants as per the clause No. 1 of Government Resolution dated 25<sup>th</sup> May 1964 as a Sub Inspector of Police in the Police Motor Transport Section.*

**Interim relief**

- E. *Pending hearing and final disposal of this application to direct the respondents to decide the application / representation filed by applicants dated 23/11/2017 then reminder letter dated 18/06/2018, 28/06/2018, 30/11/2017 and 29/06/2018 respectively after completion of 45 years for passing the examination and they claiming the promotion as Clause No. 1 as per the Government Resolution dated 25<sup>th</sup> May 1964 as a Sub Inspector of Police in the Police Motor Transport Section and its consequential monetary benefits.*
- F. *Pending hearing and final disposal of this application to direct the respondents to decide the application / representation filed by the applicants dated 23/11/2017 then reminder letter dated 18/06/2018, 28/06/2018, 30/11/2017 and 29/06/2018 respectively after completion of 45 years for passing the examination.*
- G. *Pending hearing and final disposal of this application stayed the order dated 5/6/2018 passed by the respondents **annexure A-6**.*
- H. *Any other just and equitable relief may kindly be granted in favours of the applicants."*

It is a matter of record that no interim relief, as prayed for, had been granted by the Tribunal.

6. **Pleadings and Oral Submissions Made** :-

(a) Respondent Nos. 2 and 3 had filed joint *affidavit in reply*, dated 02.11.2018. Thereafter, respondent No. 2 had filed additional *affidavit in reply*, dated 20.11.2018. Copies of *affidavits in reply* were taken on record and served copies of the two *affidavits in reply* to the other side. Rejoinder to *affidavit in reply* filed on behalf of respondent Nos. 2 & 3 dated 16.4.2019 was taken on record on 7.11.2019 and copy thereof served on the learned Presenting Officer. *Affidavit in sur-rejoinder* on behalf of respondent No. 2 was filed on 18.12.2019 which was taken on record and copy thereof was served on the other side. The matter was closed for hearing at the stage of admission on 8.12.2021 with consent of the contesting parties. However, final hearing took place on 16.2.2022 and the matter was reserved for order.

(b) The Respondents have opposed the claim of the applicants for grant of exemption from writing the departmental promotion examination on many grounds. First of all, the respondents have stated that there is no provision for grant of

exemption in Recruitment Rules, for the post of Police Sub-Inspectors (technical) issued vide GR dated 25.05.1964 (*supra*). In this regard specific reference to Rule No. 2 (e) has been made. Secondly, it has been asserted that the applicants have misinterpreted provisions of Rule No. 182 of Maharashtra Manual, Volume I which provides for holding departmental examinations before each promotion to technical posts. Thirdly, the respondents have further mentioned that the GR dated 01.11.1977 (*supra*) relating to exemption from passing departmental examination has been replaced by another Government in General Administration Department Resolution No. संकीर्ण-२३१८/प्र.क.३/का.१७, dated 01.03.2018, clause 1 (a) of which provides for exception in which exemption from passing departmental examination for promotion to technical post may not be permitted by a conscious decision taken by a department. Fourthly, the respondents have also maintained that the applicants have misquoted orders of exemption from passing departmental examination out of context. Any such exemption has been granted for granting benefits of Time-Bound Promotion Scheme / Assured Career Progression Scheme and in no case, exemption has been granted for the purpose of promotion to the post of PSI (Technical). Lastly, the



respondents have categorically denied that any exemption has been granted to any APSI rank employee from passing the promotional examination.

(c) While arguing the matter during final hearing, the two sides had reiterated what they had already submitted through written submissions in O.A. and subsequent affidavits in reply, rejoinder affidavit and sur-rejoinder to support their respective contentions. Therefore, no separate gist of oral submissions made by the two sides is being incorporated.

7. **Analysis of facts and conclusion:** -

(a) On close scrutiny of the Rule (2) it is clear that the same deals with eligibility for appointment by nomination and sub-rule (e) thereof, has to be read in the same context. There is nothing in the said Recruitment Rules which suggests that sub rule (e) of Rule (2) applies to Rule (1) too, which deals with appointment to the post of PSI (Motor Transport Section). For ready reference the said Recruitment Rules of 1964 are being reproduced below :-

*“ RESOLUTION : In super session of all previous orders in the matter, Government is pleased to direct that recruitment to the posts of Sub-Inspector of Police in the*

*Police Motor Transport Section shall be governed by the following rules :-*

*(1) Appointment to the posts of Sub-Inspectors of Police in the Police Motor Transport Section shall be made either (a) by promotion of suitable departmental men in the Police Central Motor Transport Work shops or the Motor Transport Sections in the district (including State Reserve Police Force Groups) or (b) nomination, provided that not more than 30% of the posts shall be filled by promotion, if the required number of such men is available.*

*(2) To be eligible for appointment by nomination a candidate should possess the following qualifications :-*

*a) Age.....Between 22 and 35 years on the last date prescribed for submission of applications.*

*(b) Educational Qualifications :- Should have passed the S.C.C. or an equivalent examination. This requirement may be relaxed in special cases, if the Selection Board considers a candidate's education sufficiently high.*

*(c) Technical Qualification :- (i) A diploma in Automobile Engineering from recognized institution and three years practical experience in a workshop of repute.*

*Or*

*Five years experience in repair and maintenance of motor vehicles in an engineering works or military workshop.*

*Note :- A candidate having in addition knowledge of maintenance and repairs of diesel engines, motor launches and small water craft and ability to organize and handle skilled and unskilled labour will be given preference.*

(ii) A valid driving licence for heavy transport vehicles.

(d) Medical examination : - A candidate shall have to undergo a medical examination as to his physical fitness, prior to appointment.

(e) Practical and Written tests :- A candidate shall have to appear and pass a practical test and written test. He shall also have to appear for an interview before a Board.

(i) The practical test shall cover :-

- (a) driving,
- (b) inspection,
- (c) assembly,
- (d) fault location and
- (e) use of instruments.

(ii) The written test shall cover :-

- (a) maintenance and repair of automobiles,
- (b) preparation of estimates and
- (c) general correspondence pertaining to motor transport.

(iii) The maximum marks for the practical test and written test shall be 200 and 100, respectively. The marks required for passing shall be 50% and 35% respectively.”

(b) Though the respondents have rightly mentioned that the GR dated 01.11.1977 (*supra*) has been substituted by GR dated 01.03.2018 (*supra*) and clause (1) (a) (i) of the same provides for *exception clause* for technical posts and the provisions of the later are applicable in the present matter. However, no evidence has been adduced to establish that the Home Department, which is the administrative

department in the present case, has taken any conscious decision under the provisions of exception clause. Therefore, the administrative department has option to invoke the said *exception clause* by taking conscious decision and notifying the same without which the exception clause cannot be operationalized.

(c) **Conclusion** - After considering all the facts on record and oral submissions made, we are of considered opinion that there is a merit in the original application and therefore, following order is passed:-

**ORDER**

The Original Application is allowed in following terms:-

[A] The respondents are also directed to decide the representations of the applicants for grant of exemption from passing departmental qualifying examination for the purpose of promotion to the post of Sub-Inspector (Motor Transport Section) as notified by the impugned order dated 5/6.05.2018, The representations should be decided in the light of provisions of Government in General Administration Department Resolution No. संकीर्ण-२३१८/प्र.क.३/का.१७, dated 01.03.2018 within a period of 90 working days from

the date of passing this order and all consequential benefits to the applicants be granted thereafter, within a reasonable time.

[B] The Respondents are directed to remove ambiguity in Recruitment Rules, 1964 providing for appointment to the post of Sub-Inspector of Police (Motor Transport Section) by promotion so far as requirement of passing department examination is concerned and align the same with Rule 182 of Maharashtra Police Manual, Volume I.

[C] No orders as to costs.

**(BIJAY KUMAR)**  
**MEMBER (A)**

**(JUSTICE P.R. BORA)**  
**MEMBER (J)**