

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR

ORIGINAL APPLICATION NO.598/2015.

Bhujang Ganpatrao Rathod,
Aged about 37 years,
Occ- Service as Instructor (Wireman),
I.T.I., Chikhaldara, Dist. Amravati.
R/o "Aryadeep", Shingane Nagar,
Deulgaon Raja, Distt. Buldhana.

Applicant.

-Versus-

1. State of Maharashtra,
Through its Secretary,
Department of Technical Education,
Mantralaya, Mumbai-400 032.

2. The Maharashtra Public Service Commission,
Through its Secretary,
Mumbai.

Respondents.

Shri V.A. Kothale, Advocate for the applicant.
Shri P.N. Warjekar, P.O. for the respondents.

CORAM: S.S. Hingne, Member (J)

Date:- 8th August, 2016.

Order

Matter pertains to the Division Bench. With the consent of both sides, the O.A. is heard and disposed of by the Single Judge Bench at the admission stage only.

2. The applicant has filed this O.A. seeking recommendation of his name for appointment to the post advertised on 1.11.2013..

3. Heard Shri V.A. Kothale, the learned counsel for the applicant and Shri P.N. Warjekar, learned P.O. for the respondents.

4. The applicant had applied for the post consequent to the Advertisement No.91/2013 dated 1.11.2013. The applicant appeared for the examination. The applicant and the recommended candidates have scored the marks as under:

Name	Screening test marks	Interview marks	Total marks
Sali Keshav Prabhakar	74	21	95
Kulkarni Mukund Ashokrao	56	30	86
Rathod Bhujang Ganpatrao	84	20	104

5. The grudge and grievance of the applicant is that, though he scored highest marks i.e. 104, his name is not recommended for the post.

6. The respondents' stand is that, as per term No. 3:10:3 of the Procedure Rules, a candidate has to score more than 40% marks in the viva-voce. Term No. 3:10:3 is as under:

“3:10:3 – मला 100 गुण मिळाले असताना मला कनिष्ठ पोस्टीमध्ये 40 पेक्षा जास्त गुण मिळाल्याने मला याचा सफाई देण्यात येणे आवश्यक आहे.”

7. This term is based on the standing order issued by MPSC bearing No. 01/2002 dated 20th March 2002. As per this order,

a candidate has to score average marks i.e. 41 to 49 in the oral interview. The standing order runs as under:

“**સરલસા પિઠાદારો(ગૃહ મહાકલિદાર)ોનાં ક્રિયાસૂત્ર આગામી ઉચ્ચ ગતિયા જાળવવા માટે (Grade) નિયમિતપણે પુસ્તકો આવી આકર્ષક કરવા યોજાઈ જાણવું મહત્વની માહિતિ આપવા માટે 100 ગણના કલિપના ગાંધી સંવલિપના આગામી 3 માર્ચ 2002 રોજ જાણવું માટે આ આજીવન માટે માહિતિ આપવા માટે.**

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|-----|---------------|---------------|
| (a) | Excellent | 70 and above. |
| (b) | Very Good | 60 to 69 |
| (c) | Good | 50 to 59 |
| (d) | Average | 41 to 49 |
| (e) | Below Average | 40 and below. |

2. **માહિતિ 40 વાં જાણવું કરી ગાંધી ના કલિપ વગરનાં જાણવું નિષ્ફળ ગણવામાં આવે તેથી આ આગામી ઉચ્ચ ગતિયા આજીવન માટે માહિતિ આપવા માટે કરવામાં આવે.**

3. **જાણવું માહિતિ 100 ગણના ગાંધી સંવલિપના આગામી 3 માર્ચ 2002 રોજ જાણવું માટે આ આજીવન માટે માહિતિ આપવા માટે કરવામાં આવે.”**

8. The learned counsel for the applicant vehemently urged that the word “minimum” preceding 40% marks in the above condition is indicative of the fact that the minimum 20% marks are to be obtained and the applicant has scored 20 marks and, therefore, his name ought to have been recommended. Such a meaning cannot be given to the interpretation in the term. It is crystal clear from the

language that the candidate must score more than minimum of 40%. Meaning thereby he must score above 40% marks. In the standing order, it is clearly explained that a candidate has to score above the average i.e. 41 to 49 marks.

9. The learned P.O. also relied on Maharashtra Public Service Commission Rules of Procedure, 2014 which came into force from 16th May 2014. The learned counsel for the applicant urged that the advertisement is issued in 2013 and these Procedure Rules cannot have retrospective effect. The submission carries substance. However, the rule can be a guiding factor in Rule (ix) which runs as under:

“Notwithstanding anything contained in these rules, only those candidates securing at least 41% marks in the interview / viva voce conducted for all types of direct recruitment shall be eligible for final recommendation.”

10. It clarifies that the above 40% marks means at least a candidate has to score 41% marks. For this purpose, the rule can be considered for interpreting the provisions of the standing order.

11. Truly, it sounds that a candidate scored higher marks is ignored and less scorer is recommended. However, in view of the clear provisions, the applicant's contention cannot be accepted.

12. In this view of the matter, the applicant's case has no legs to stand as he scored less than the required minimum marks. Consequently, the O.A. is rejected with no order as to costs.

(S.S. Hingne)
Member (J)

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