

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.74 OF 2015

DISTRICT : NASHIK

Shri Bhaskar Nathu Kachare. )  
Working as Jailor Grade-II, Nasik Central )  
Jail, Nasik. )  
Address of Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...Applicant

**Versus**

1. The Additional Director General of )  
Police and Inspector General of )  
Prisons, M.S, Pune having office at )  
Old Central Building, Pune - 1. )
2. The State of Maharashtra. )  
Through the Principal Secretary )  
(Prison), Home Department, )  
Mantralaya, Mumbai - 400 032. )...Respondents

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Shri K.B. Bhise, Presenting Officer for Respondents.**



**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 22.07.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Applicant, a Jailor Grade-II posted at Nashik Central Jail got apprehensive and stung by the confidential communication of 4.12.2014 by the Additional Director General of Police and Inspector General of Police (Prisons) whereby he was informed inter-alia that action will follow, if he failed to clear in the 6<sup>th</sup> attempt the departmental examination as per Rule 3(4)(b) of the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977 (to be hereinafter called Rules). According to him, he having attained the age of 45 has now been exempted from clearing that examination and no action can be taken against him in that regard.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.



3. The facts that must be set out *inter-alia* are that the Applicant was born on 10.5.1968 and on 10.5.2013, he attained the age of 45 years. He belongs to Reserved category NT(D). He holds the qualification of 12<sup>th</sup> Standard. He joined as Jailor Grade-III on 1.2.1992 and on 12.6.2006, he came to be promoted a Jailor Grade-II. The said Rules came to be framed on 7.11.1977 for the purposes of confirmation of the executive Officers having been made subject to the clearance of the said departmental examination. Having been promoted on 12.6.2006, he initially took training of one year in Yerwada Jail at Pune from 10.1.2007 to 10.1.2008. His performance details in so far as the departmental examination are concerned are that he unsuccessfully appeared at the examinations during 25.8.2008 to 28.8.2008 and 7.10.2009 to 9.10.2009. No examinations were held in 2010-11 and in the 3<sup>rd</sup> chance in 2012, he cleared 4 papers, but could not clear the 3 remaining subjects. On 9.9.2012, there was a life threatening fire arm attack on him which led to his prolonged treatment. In those circumstances, he could not appear for the examination till he attempted 4<sup>th</sup> time in March, 2013 but failed, according to him because of health problems and even this chance was given to him because he belonged to Backward Class and there was such a provision in the



Rules. But pertinently, it was as ready noted above, on 10.5.2013 itself that he attained the age of 45. While allowing 5<sup>th</sup> chance to him, he was warned that if he did not clear the examination, he would have to face the consequences envisaged by the Rules. The Applicant applied for one more chance to him. He was told by the Inspector General of Prisons – Respondent No.1 to take permission from the Government to avail the 6<sup>th</sup> chance. He apparently informed that he had already attained the age of 45 years and was thus exempt from the said examination. Ultimately, while offering the 6<sup>th</sup> chance, the Applicant was given the impugned notice which is the subject matter of the challenge herein.

4. The Respondent No.1 through the Superintendent of Talaja Central Prison filed an Affidavit-in-reply resisting the OA. Rejoinder and Sur-rejoinder were also filed.

5. Now, the above discussion must have made it clear that the issue herein involved is as to whether any adverse consequences could be visited upon the Applicant for having failed to clear the said departmental examination during the chances given to him in accordance with the Rules when with a few chances



remaining in balance, he had already attained the age of 45 years. It is really not necessary for us to closely read and interpret the Rules because the issue involved herein is now fully settled by more than one pronouncements of this Tribunal. Two of them have been cited and they are **OA No.961/2014 with MA 513/2015 in OA 961/2014 (Shri Ravindra V. Rave Vs. Additional Director General of Police and one another, 7.1.2016)** rendered by this very Bench that spoke through one of us (Rajiv Agarwal, Vice-Chairman). In that order, we referred to another order of the Nagpur Bench of this Tribunal in **OA 752/2014 (Gulabrao S. Kharde Vs. The State of Maharashtra and one another, dated 21<sup>st</sup> September, 2015)**. In those orders, reference is made to a few other orders, one of them being of Aurangabad Bench. In essence, it is held that once by attaining the age of 45, an Officer becomes entitled for exemption from passing the departmental examination then he becomes immune from any adverse action even if he were to fail to clear the said examination. A careful perusal of the two orders just referred to would, in our opinion, make it quite clear that this OA also will have to be disposed of in the same line.

6. It is hereby held and declared that having attained the age of 45 years, the Applicant herein is



exempted from clearing the said departmental examination. The impugned communication is, therefore, quashed and set aside and the Respondents are directed to act in accordance herewith. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**22.07.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**22.07.2016**

Mumbai  
Date : 22.07.2016  
Dictation taken by :  
S.K. Wamanse.

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