

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 85/2015

Dilip Tarachand Jadhao,
Aged about 39 years,
R/o Govt. Milk Scheme,
Quarter Type -II, Congress Nagar,
Amravati.

Applicant.

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya Mumbai.
2. The Deputy Secretary,
Govt. of Maharashtra,
Deptt. Of Agriculture, Animal Husbandry, Dairy
Development and Fisheries, Madam Kama
Road, Hutatma Rajguru Marg,
Mantralaya, Mumbai.
3. The Maharashtra Public Service
Commission, through its Secretary,
Bank of India Building, 3rd Floor,
Mahatma Gandhi Marg,
Hutatma Gandhi Marg,
Hutatma Chowk,
Mumbai.

Respondents-

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1. Shri N.D. Thombre, P.C. Marpakwar, Advocate for the
applicant.
 2. Shri A.M. Ghogare, Presenting Officer for the
Respondents.

CORAM : B. Majumdar : Vice Chairman
and

S.S. Hingne: Member (J)

DATE : 11th February, 2016

ORDER**PER VICE-CHAIRMAN**

The applicant has filed this O.A. as he is aggrieved that he has not been appointed to the post of Asstt. Dairy Development Commissioner, Group-B.

2. MPSC (R/3) issued an advertisement in 2009 for the posts of Asstt. Dairy Development Commissioner. There was 1 post reserved for DT (A) from which category the applicant applied. On 4/8/2010, MPSC recommended the applicant's name for appointment and instructed the Govt. that appointment should be made after verification of his documents. MPSC informed the applicant about his selection on 5/8/2011. Govt. did not grant appointment to the applicant and on 5/3/2013 it informed the Commissioner, Dairy Development, that the applicant's documents about his experience were examined by the GAD. As per the Recruitment Rules, 3 years' experience is required. However, in case of the applicant, after ignoring the period of his additional charge he does not have qualifying experience of 3 years and hence he cannot be appointed. A copy of this

communication is also marked to the applicant. The applicant filed O.A. No.279/2013 challenging his non-appointment. On 9/5/2014 the O.A. was disposed of in terms of the following orders :-

Para 11. *“ O.A. succeeds partly.*

(i) The respondent No. 1 is directed to seek Opinion/views of the respondent No. 3 on the issue of relaxation of period of experience in terms of rule 12 and on receipt of the same, take further necessary steps as may deem fit.”

3. On 3/9/2014 the Govt. informed the applicant that as per the opinion of MPSC as there were sufficient number of candidates from the category of VJ (A), there was no need to relax the condition of qualification as per Rule 12 of the Recruitment Rules. The applicant has challenged this communication in the O.A.

4. According to the applicant, MPSC in its reply to the earlier O.A. No.279/2013, had clearly stated that the total valid

experience of the applicant is 8 years, 8 months and 13 days and hence he was rightly declared as eligible for interview. As per the communication by MPSC to R/1 consequent to his selection, the latter was only required to verify the genuineness of the certificates submitted by the applicant and no authority was given on him to decide whether the applicant's experience was valid. R/1 in his reply to that O.A. had stated that the applicant was holding the additional charge for a period from 16/7/2010 to 8/3/2011 and hence in terms of the circular dtd. 3/7/2004 it did not qualify as experience. According to the applicant, he had worked on a full time basis on the post for which he was stated to be in additional charge. He then submits that by disposing of the O.A. the Tribunal had quashed and set aside the communication dtd. 5/3/2013 and hence his candidature cannot be rejected on the same ground. He finally relies on the order dtd. 17/7/2010 issued by the General Manager, Govt. Milk Scheme, Nagpur which stated that he was asked to hold the charge of Asstt. Quality Control Officer consequent to the transfer of Shri Pise and this post was equivalent to the post

of the Office Superintendent. This order did not state that it was an additional charge.

5. The Secretary, Animal Husbandry (R/1) in his reply submits as follows :-

"As per the instructions of MPSC document verification was done in the office of Commissioner (Dairy). In the said verification, it was found that, the experience of the applicant was not as per the criteria stated in the advertisement and the post which was held by the applicant during the August, 2003 to March, 2011 and onwards was not equivalent to the post of Office Superintendent mentioned in the advertisement. The applicant was holding Additional charge of the post of Quality Control Officer for a period of 16/7/2010 to 8/3/2011 which was equivalent to the post of Office Superintendent, but same cannot be counted as the applicant holding the additional charge, for counting the experience the government had issued G.R. dtd. 3/7/2004. A copy of the same is enclosed herewith and marked as Annexure-R-1. Therefore, the applicant was not meet with the experience criteria prescribed in the advertisement. The answering Respondent however, considered to relax the experience criteria and referred the case to the General Administrative Department . The copy of

the proposal submitted by the present Respondent is enclosed herewith and marked as Annexure-R-2.

Para 4: It is submitted that, the General Administration Department has considered the proposal, but the same has been turned down on the basis of Circular dtd.3/7/2004."

6. No reply has been filed by MPSC (R/3).

7. Shri N.D. Thombre, Id. Counsel for the applicant submitted that MPSC in O.A. No. 279/2013 had clearly held that the applicant had valid experience of more than 8 years. While deciding the O.A. the Tribunal had quashed the Govt.'s communication to MPSC that minus the period of an additional charge, the applicant's experience was of less than 3 years. Hence this issue is no longer open for re-examination. The respondents' contention that the applicant was holding the post of Asstt. Quality Control Officer from 16/7/2010 to 8/3/2011 as an additional charge was also incorrect as the order dtd. 17/7/2010 stated that he will be looking after the

work of Quality Control Department on transfer of its previous incumbent.

8. Shri A.M. Ghogare, Id. P.O. submitted that in terms of the recommendation of MPSC it was for the Govt. to verify the correctness of the experience claimed by the candidates who have been called for interview. Candidates including the applicant were called for interview based on the prima facie examination of their claim regarding experience that they have made in their applications. In O.A. No.279/2013, the Tribunal had held that the applicant's case could not have been rejected without examining the issue of relaxation of the minimum specified experience required for the post as per Rule 12 of the Recruitment Rules. MPSC had informed the Govt. that as a sufficient number of candidates from DT-A category were available, there was no need for relaxation of experience. Thus the only issue raised by the Tribunal in that O.A., i.e., whether the minimum prescribed qualification can be relaxed had been settled and this issue

arose as the Tribunal had accepted the fact that the applicant did not have the minimum required experience. He further submitted that the order dtd. 17/7/2010 relied on by the applicant states that he will not get any financial compensation for holding the post of Asstt Quality Control Officer and thus it is obviously an additional charge. He further submitted that the applicant had applied for the post on 26/10/2009 and according to MPSC as per its affidavit in O.A. No. 279/2013, the last date for counting experience was 28/10/2009. Hence the applicant's experience as above from 16/7/2010 was irrelevant.

9. After hearing the presentation made by both the sides and after going through the documents placed before us, we find that as per the affidavit of MPSC in O.A. No. 279/2013 (Annexure-A-10) experience up to 28/10/2009 only was to be counted as valid for purpose of applying for the post. As per the G.R. dtd. 3/7/2004, experience by way of holding an additional charge cannot count towards qualification.

10. The qualifications prescribed as per the advertisement, and it is not disputed that these are same as in the Recruitment Rules , are as follows :-

5.2 “ Experience in a dairy having processing capacity of not less than 50,000 litres per day for a period not less than three years in the post equivalent to the Group-C posts of office Superintendent in the Department.”

11. The applicant’s experience after acquiring the qualification of B. Tech. (20/7/2000) as stated in his application form is as follows:

	Post held	Period	Duration
1.	Dairy Chemist	5/8/2000 to 26/10/2001	1 year 2 months 21 days
2.	Trainee Chemist	1/11/2001 to 10/8/2002	9 months 9 days
3.	Tech. Officer	12/8/2002 to 16/2/2003	6 months 4 days
4.	Lab. Assistant	19/8/2003 till last date of application i.e.28/10/2009	6 years 2 months 9 days.
		Total experience	8 years,8 months and 13 days.

12. As per extract of files in the office of R/1 produced before us by the P.O. (page 83 of PB) GAD had opined as follows :-

“ R;kuqlkj Jh- fn- rk- tk/ko ;kaP;k vuqHko izek.ki=kaph iMrkG.kh dsyh vlrk] R;kapk xzkg; vuqHko fofgr 3 o"kkZP;k dkyko?khis[kk deh vuqHko vly;kps 'kklukl vk<Gys vkgs-”

13. The applicant has not contested the above stand of the Govt. Thus, undisputedly his experience from 5/8/2000 to 28/10/2009 does not fulfil the condition of the requirement of 3 years of service in a Group-C or equivalent post. He however has relied on his experience as an Asstt. Quality Control Officer from 16/7/2010 to 8/3/2011, which, according to him, is not by way of holding an additional charge as he was asked to look after the work of Shri Pise, who was transferred. On plain reading of the order we find

that it states that for looking after the above work the applicant will not get any financial compensation. Thus, it cannot be said that this was a regular charge held by him. Be that as it may, we find that the above experience is of no relevance as far as the candidature of the applicant is concerned as the same was acquired after 28/10/2009, the last date of submission of the application form. The applicant has relied on the order dtd. 9/5/2014 vide which his earlier O.A. No. 279/2013 was partly allowed, by holding that in that O.A. the MPSC had made a submission that he had valid experience of 8 years, 8 months and 13 days and thus, according to him, the issue that he had experience of more than 3 years in Group-C post had become undisputed. We however do not agree with this averment of the applicant. On perusal of the Tribunal's order as above, we find that the Tribunal,

having noted that the applicant, having accepted the Govt. stand that he did not have the prescribed experience, had held that MPSC, under these circumstances, should have examined and decided, as per Rule 12 of the Recruitment Rules, whether the applicant has a case for grant of relaxation in experience. For this purpose we reproduce below the relevant para 10 of the Tribunal's order dtd. 9/5/2014 of O.A. No.279/2013:-

Para 10: Further the stand of the respondent No. 3 is : " When the Government was of the view that the applicant does not possess requisite experience of three years, it was expected of the Government to inform the Commission that out of the four segments of the experience possessed by the applicant which one is held as an additional charge." It is thus clear that, the respondent No. 3 did not resort to Rule 12 of the Recruitment Rules, 2001 only for the reason that in its opinion, the applicant was

having more than the requisite experience whereas the Government did not agree to this. In this premise and particularly having regard to the fact that the candidature of the applicant was recommended by the respondent No. 3, it was expected of the Government (R/1) to allow the respondent No. 3 to reconsider the case in the light of Rule 12 and then finally decide the issue. Having not done so, we find no alternative than to set aside the impugned communication and direct the respondent No. 1 to seek opinion on the decision of the respondent No. 3 in terms of Rule 12."

14. MPSC, after examining the provisions of Rule 12 had held that as there were sufficient number of candidates who had applied from DT(A) , there was no case for relaxation.

15. After considering the issues as above, we hold that the applicant did not have the minimum prescribed experience for the post of Asstt. Dairy Development Commissioner when he had applied for the post and there is also no case for granting him any relaxation in this regard. Hence, the O.A. is devoid of any merit and stands rejected with no order as to costs.

(S.S. Hingne)
Member (J)

(B. Majumdar)
Vice-Chairman.

Skt.