

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 851/2019 (D.B.)

Shri Sharad S/o Nilkanth Kubade,
Aged about 44 years, Occ. Nil,
R/o Plot No. 92, Dhore Layout,
Shivshanti Nagar, Behind Madhavdas Ashram,
Gorewada, Nagpur - 440 013.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai-400 032.
- 2) Director of Accounts & Treasury (M.S.)
-cum-President of Selection Process Committee,
Office of Directorate of Accounts and Treasury,
Mumbai Port Trust, Port House,
Thakarsee House, 3rd Floor,
Surji Vallabhdas Marg, Belad Estate,
Mumbai-400 001.
- 3) Director of Local Funds Accounts & Audit,
610, 6th Floor, Kokan Bhawan,
CBD Belapur, Navi Mumbai-400 614.
- 4) Joint Director of Local Funds Audit,
Nagpur Division, Koshagar Bhawan,
3rd Floor, Near Collectorate Compound,
Civil Lines, Nagpur.

Respondents

WITH

ORIGINAL APPLICATION NO. 296/2021 (D.B.)

Shri Rajesh S/o Zingar Khewale,
Aged about 47 years, Occ. Ex-Serviceman,
R/o Radharaman Nagar, Plot No. 10,
Narsala Nagpur, Tah. & Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai-400 032.
- 2) Director of Accounts & Treasury (M.S.)
-cum-President of Selection Process Committee,
Office of Directorate of Accounts and Treasury,
Mumbai Port Trust, Port House,
Thakarsee House, 3rd Floor,
Surji Vallabhdas Marg, Belad Estate,
Mumbai-400 001.
- 3) Director of Local Funds Accounts & Audit,
610, 6th Floor, Kokan Bhawan,
CBD Belapur, Navi Mumbai-400 614.
- 4) Joint Director of Local Funds Audit,
Nagpur Division, Koshagar Bhawan,
3rd Floor, Near Collectorate Compound,
Civil Lines, Nagpur.

Respondents

WITH

ORIGINAL APPLICATION NO. 298/2021 (D.B.)

Shri Dilipkumar S/o Dasaram Chaudhari,
Aged about 45 years, Occ. Ex-Serviceman,
R/o Dawaniwada,
Tah. & Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai-400 032.
- 2) Director of Accounts & Treasury (M.S.)
-cum-President of Selection Process Committee,
Office of Directorate of Accounts and Treasury,
Mumbai Port Trust, Port House,
Thakarsee House, 3rd Floor,
Surji Vallabhdas Marg, Belad Estate,
Mumbai-400 001.
- 3) Director of Local Funds Accounts & Audit,
610, 6th Floor, Kokan Bhawan,
CBD Belapur, Navi Mumbai-400 614.

Respondents

Shri G.G.Bade, Id. Advocate for the applicants.

Shri M.I.Khan, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri M.A.Lovekar, Member (J) &
Hon'ble Shri Vinay Kargaonkar, Member (A)**

JUDGMENT

Judgment is reserved on 17th Jan., 2024.

Judgment is pronounced on 29th Feb., 2024.

[Per:-Member (J)]

Heard Shri G.G.Bade, learned counsel for the applicants and
Shri M.I.Khan, learned P.O. for the Respondents.

2. These three connected O.As. are being decided by this common judgment.

3. Case of the applicants is as follows. All the applicants are Ex-Servicemen having served in Armed Forces for more than 15 years. In response to advertisement dated 08.01.2019 they applied for the post of Junior Auditor/Junior Accountant which is a Group-C post, from Ex-Servicemen Quota. The advertisement prescribed following Educational Qualification:-

शैक्षणिक पात्रता :-

(अ) ज्यांनी पुढील कोणतीही अर्हता, म्हणजे

(एक) किमान ५५ टक्के इतक्या गुणांसह वाणिज्य शाखेची पदवी ; किंवा

(दोन) सांख्यिकी, गणित किंवा अर्थशास्त्र असा मुख्य विषय घेऊन ५५ टक्के इतक्या गुणांसह कला शाखेची पदवी धारण केलेली असेल; किंवा

(तीन) सांख्यिकी किंवा गणित असा मुख्य विषय घेऊन किमान ५५ टक्के गुणांसह विज्ञान शाखेची पदवी धारण केलेली असेल; किंवा

(चार) भारतीय परिव्यय व कार्य लेखापाल संस्थेकडून घेण्यात येणारी परिव्यय लेखाशास्त्राची अंतिम परीक्षा उत्तीर्ण केली असेल; किंवा

(पाच) व्यवसाय प्रशासनाची पदवी ; किंवा

(सहा) कोणतीही पदवी आणि सनदी लेखापालाची मध्यमस्तरीय परीक्षा उत्तीर्ण केली असेल; किंवा

(सात) संगणक तंत्रज्ञान किंवा संगणकशास्त्र किंवा माहिती तंत्रज्ञान यातील विशेषज्ञतेसह अभियांत्रिकी पदवी धारण केली असेल.

(पदवी याचा अर्थ विद्यापीठ अनुदान आयोगाची मान्यता प्राप्त विद्यापीठाकडून प्रदान केलेली पदवी)

(ब) नियुक्ती प्राधिकाऱ्याच्या मते, निवडीच्या टप्प्यावर अनुसूचित जाती व अनुसूचित जमाती यांच्या उमेदवारांकरिता राखून ठेवलेली रिक्त पदे भरण्यासाठी वर नमुद (अ) (एक) (दोन) (तीन) मध्ये नमुद केलेली किमान आवश्यक अर्हता धारण करणारे पुरेसे उमेदवार उपलब्ध नसतील तर, नियुक्ती प्राधिकाऱ्यास, अशा निवडीच्या बाबतीत, गुणांची अट ५० टक्क्यांपर्यंत शिथिल करता येईल आणि अशा अनुसूचित जाती किंवा जमातीच्या योग्य उमेदवारांची निवड करता येईल, त्यामुळे अशा अनुसूचित जाती जमातीचे पदवी परीक्षेमध्ये ५०% गुण प्राप्त केलेले उमेदवार सुध्दा अर्ज करण्यास पात्र असतील.

Clause 9.6 of the advertisement stipulated as follows:-

माजी सैनिक :- माजी सैनिक असल्यास त्याबाबतचे प्रमाणपत्र आवश्यक (फक्त माजी सैनिक राखीव पदासाठी) माजी सैनिक सामान्य प्रशासन विभाग शासन निर्णय क्र. आरटीए-१०७९/०/ ४८२/ XV१-A दिनांक १६.०४.१९८१ मधील व त्यानंतर वेळोवेळी निर्गमित केलेले शासन निर्णयातील तरतुदीनुसार माजी सैनिक प्रवर्गातील आरक्षण लागू राहिल.

The applicants appeared for tests conducted as part of selection process and they were shortlisted. Their names featured in Provisional Select/Wait List. All of them possessed Graduation Certificate issued by Indian Army which stated:-

This is to certify that as per Government of India, Ministry of Personnel Public Grievance and Pensions (Department of Personnel & Training) O.M. No. 15012/8/82/Estt. (D) dated 12th Feb. 86, Ex-serviceman who are matriculate (which terms includes ex-serviceman who have obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), and has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to any reserved vacancy in Group 'C' posts for

which the essential qualification is graduation and where experience of technical or professional nature is not essential.

Circular of G.A.D. of Government of Maharashtra dated 16.04.1981 provides for concession of Ex-Servicemen for recruitment to Class-III and Class-IV posts and it *inter alia* states:-

For appointment to any reserved vacancy in Class III posts, to be filled partly by direct recruitment and partly by promotion or transfer, where the minimum educational or technical qualification prescribed for appointment by direct recruitment is higher than that prescribed for promotees or transferees, an, ex-serviceman should be deemed to satisfy the prescribed, educational or technical qualification if he:-

(a) satisfies the educational or technical qualification prescribed for direct recruitment to the posts from which promotion or transfer to the posts in question is allowed, and

(b) has an identical experience of work in a similar discipline and for the same number of years in the Armed Forces of the Union, as prescribed for promotees or transferees.

G.R. dated 05.10.1989 issued by G.A.D., Government of Maharashtra states:-

शासन प्ररिपत्रक, सामान्य प्रशासन विभाग, क्रमांक: आरटीए-१०७९/०/४८२/१६-अ, दिनांक १६.४.१९८१ मधील परिच्छेद २ (चार) (१) नुसार माजी सैनिकांना शासन सेवेत वर्ग ३ व ४ मधील राखीव पदावर नियुक्तीसाठी काही शैक्षणिक सवलती देण्यात आल्या आहेत.

२. केंद्र शासनाने माजी सैनिकांना सेवा भरतीसाठी नव्याने काही शैक्षणिक सवलती जाहीर केल्या आहेत, त्या धर्तीवर राज्यातील शासकीय विभाग व कार्यालयान्तर्गत तृतीय व चतुर्थ श्रेणीतील माजी सैनिकांसाठी असलेल्या १५% राखीव पदावर नियुक्तीसाठी सवलती देण्याचा प्रश्न शासनाच्या विचाराधीन होता, त्यावर विचार करून शासन आता असे आदेश देत आहे की,

(अ) १५ वर्षे सैनिकी सेवा झालेले माजी सैनिक जे एस. एस. सी. उत्तीर्ण असतील किंवा इंडियन आर्मी स्पेशल सर्टिफिकेट ऑफ एज्युकेशन अथवा तत्सम प्रमाणपत्र धारक असतील, तर ज्या पदासाठी पदवी परीक्षाही पात्रता आवश्यक आहे आणि जेथे तांत्रिक अथवा व्यवसायिक कामांचा अनुभव आवश्यक ठरविलेला नाही, अशा पदावर त्यांची सदरची शैक्षणिक पात्रता शिथिल करून नेमणुकीसाठी विचार करावयास हरकत नाही.

(आ) १५ वर्षे सैनिकी सेवा झालेले माजी सैनिक, जर इयत्ता ८ वी उत्तीर्ण असतील किंवा इंडियन आर्मी फस्ट क्लास सर्टिफिकेट ऑफ एज्युकेशन अथवा तत्सम प्रमाणपत्र धारक असतील, तर ज्या पदासाठी माध्यमिक शालान्त प्रमाणपत्र परीक्षा ही पात्रता आवश्यक आहे अशा पदावर त्यांची सदरची शैक्षणिक पात्रता शिथिल करून नेमणुकीसाठी विचार करावयास हरकत नाही.

३. सर्व मंत्रालयीन विभाग तसेच त्यांच्या अधिपत्याखालील विविध विभाग प्रमुख / कार्यालय प्रमुख यांना माजी सैनिकांना नेमणुका देताना वरील निर्णय विचारात घ्यावा. मंत्रालयीन विभागांनी हे आदेश त्यांच्या प्रशासकीय नियंत्रणाखालील संबंधित शासकीय उपक्रम, महामंडळे, औद्योगिक संस्था, जिल्हा परिषद, महापालिका इत्यादींच्या निदर्शनास आणावेत.

Order dated 23.01.2018 issued by Public (Ex-Servicemen)

Department, Government of Tamil Nadu *inter alia* states:-

Resolution 4:

Considering the stand of Government of India, the State Government of Punjab, Karnataka, Maharashtra, Goa, Jammu & Kashmir, Orissa, Tripura and Government of Pondicherry in the subject, this Committee recommends that the Government may consider, as this being a policy decision."

3. After careful examination, the Government have decided to accept the proposal of the Director of Ex-Servicemen's Welfare, Chennai and accordingly, direct that for appointment to any reserved vacancy in "Group-C posts, a Matriculate Ex-Servicemen, (which term includes an Ex-Servicemen, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union shall be considered eligible for appointment to the posts for

which the essential qualification prescribed is Graduation. They are eligible for promotion to all Group 'A' and 'B' posts in routine course excepting for those posts for which graduation is prescribed as a prescribed qualification for promotion.

G.R. dated 13.08.2014 of G.A.D., Government of Maharashtra contains guidelines for horizontal reservation in government service. Considering all the above, impugned communications holding that the applicants did not possess requisite Educational Qualification as per Clause 5 of the advertisement dated 08.01.2019, and Rule 4 of Recruitment Rules framed by Notification dated 02.12.2008 will have to be quashed and set aside.

4. The respondents have resisted these O.As. on the following grounds:-

A. The applicants do not possess requisite educational qualification as prescribed by Rule 4 (b) (2) of Recruitment Rules of 2008.

B. The certificates which are sought to be equated with graduation certificates are based on individual's trade proficiency during service in Armed Forces. Therefore, it cannot be equated with graduation as mandated by Recruitment Rules of 2008.

C. In these cases Circular dated 16.04.1981 and G.R. dated 05.10.1989 cannot be pressed into service because Recruitment Rules prescribe specific educational qualification.

D. G.R. dated 13.08.2014 only provides guidelines about the procedure to be adopted while implementing horizontal reservation. This G.R. does not deal with the issue of relaxation in educational qualification.

E. As per Recruitment Rules of 2008 graduation in a particular faculty and minimum percentage of marks are prescribed. The certificates on which the applicants wants to rely clearly do not fulfil these criteria.

5. By way of rejoinder the applicants have raised following contentions:-

A. There is no provision in Military Services to specify a particular faculty in which graduation is completed.

B. The advertisement in question specifically states that Circular dated 16.04.1981 will be applicable.

C. A conjoint consideration of contents of the advertisement, Recruitment Rules of 2008, contents of

graduation certificates produced by the applicants, Circular dated 16.04.1981 and G.R. dated 05.10.1989 will unmistakably lead to the conclusion that the applicants possess requisite educational qualification for the post.

6. Rule 4 of Recruitment Rules of 2008 reads as under:-

4. Appointment to the post in the regional cadre of Junior Accountant in the Accounts and Treasuries, Group-C Service shall be made either-

(a) by promotion on the basis of seniority subject to fitness from amongst the persons from the respective regional cadre of Accounts- Clerk in the Accounts and Treasuries, Group-C Service who has completed not less than three years of regular service in the cadre of Accounts-Clerk and has passed the Maharashtra Accounts and Local Fund Accounts, Group-C Service Departmental Examination (Part I), unless he has been exempted from passing the said examination; or

(b) by nomination from amongst the candidates who,-

(i) is not more than 33 years of age:

Provided that, the age limit may be relaxed by five years in the case of a candidate already in the service of the Government, and

(ii) possesses any of the following qualifications,-

(a) a degree with at least 55% marks in Commerce, or

(b) a degree in Arts with at least 55% marks with Statistics, Mathematics or Economics as the principal subject, or

(c) a degree in Science with at least 55% marks with Statistics or Mathematics as the principal subject, or

(d) has passed the final examination of Cost Accountancy conducted by the Institute of Cost and Works Accountants of India, or

(e) a degree in Business Administration, or

(f) any degree and has also passed the intermediate examination for Chartered Accountants, or

(g) a degree in Engineering with specialization in Computer Technology or Computer Science or Information Technology:

Provided that XXXX

As per Rule 2 (b) of Recruitment Rules of 2008 “degree” means a degree of a statutory university. We have already quoted educational qualification prescribed in the advertisement. It is as per aforequoted Rule 4 and Rule 2 (b). The graduation certificates of the applicants clearly do not fulfil the criteria of educational qualification prescribed by statutory rules. Statutory rules have primacy and they cannot be diluted by Circulars/G.Rs. Hence, **the O.As. are dismissed with no order as to costs.**

(V.Kargaonkar)
Member(A)

aps

Dated – 29/02/2024

(M.A.Lovekar)
Member (J)

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J)
& Hon'ble Member (A).

Judgment signed : 29/02/2024.
on and pronounced on

Uploaded on : 01/03/2024.