

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1007 OF 2015

DISTRICT : MUMBAI


Shri Arun Jaysing Madane.)
Age : 46 years, residing at Jail Vasahat,)
Seva Building, Room No.14, Thane)
Central Jail, Thane – 400 601.)...**Applicant**

Versus

1. Chief Secretary.)
State of Maharashtra, Mantralaya,)
Mumbai 400 032.)
2. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
3. The Director General of Police.)
M.S, Mumbai.)
4. The Additional Director General)
Police and Inspector General of Jail,)
Old Central Building, 2nd Floor,)
Pune 411 001.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

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

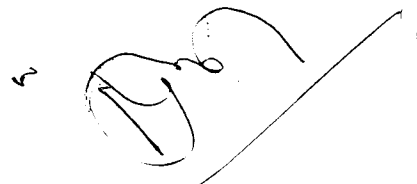
DATE : 07.01.2016

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

JUDGMENT

1. The order of reversion of the Applicant from the post of Jailor Group-II back to the post of Police Sepoy by the order dated 6.11.2015 (Annexure A-8, Page 32 of the paper book) has given rise to this Original Application (OA) under Section 19 of the Administrative Tribunal Act, 1985 (Act hereinafter). The cause of reversion was the failure of the applicant to clear the departmental examinations post promotion within the period and number of attempts as by Rules prescribed.

2. The date of birth of the Applicant is 1st June, 1970. He joined the Government service as a Sepoy on 8.9.1992. He successfully cleared the test for being promoted as Jailor, Group-II and was appointed to that promotional post on 19.6.2006. It is an indisputable factual position that he could not clear the departmental examinations even after the concessional attempts were availed by him. He, however, completed the age of 45 on the mid-night of 31st May, 2015. A show cause notice



came to be issued to him on 13.8.2015 by the Respondent No.4 – Additional Director General of Police and I.G. of Jail. He responded, but in the ultimate analysis, the successor in the office of the 4th Respondent by the impugned order of 6.11.2015 reverted the Applicant to the post of Jail Sepoy. The 1st Respondent is the Chief Secretary, State of Maharashtra, the 2nd Respondent is the State of Maharashtra through Additional Chief Secretary, Home Department and the 3rd Respondent is the Director General of Police, M.S.

3. We have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

4. The present matter is governed by the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977 (the said Rules hereinafter). They are the Rules framed under the proviso to Article 309 of the Constitution of India. Rule 3 thereof provides inter-alia that a person recruited to the post such as the present one would have to undergo a course of training and to pass the examination according to the said Rules within a period of two years from the date of

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recruitment and within three chances. A concession of one more chance was provided for the candidates belonging to Scheduled Caste, Scheduled Tribe, Denotified Tribes and Nomadic Tribe. These Rules came into force w.e.f. 7th November, 1977. Rule 3(3) provides inter-alia that while the IG had the discretion to grant permission to a candidate to appear at one more examination as far as the State Government was concerned, sub-clause (b) lays down that the State Government may, in exceptional circumstances, either grant further extension of time or condone the failure of any candidate. This is a significant provision of the Rules which needs to be borne in mind. Rule 4(b) needs to be reproduced.

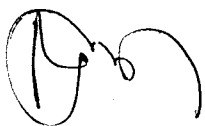
“(b) If an executive officer, who is required to pass the examination under these rules, fails to pass the examination within the time mentioned in sub-rule (1) or (2), as the case may be, or within such extended time as may be granted to him under sub-rule (3), shall be liable to be discharged or reverted, as the case may be.”

(emphasis supplied)

5. Before proceeding further, be it noted that, in our view, the concluding words, “shall be liable to be discharged or reverted, as the case may be” make it clear that it is not mandatory that the defaulter, if we may use that word must be discharged or reverted and that should

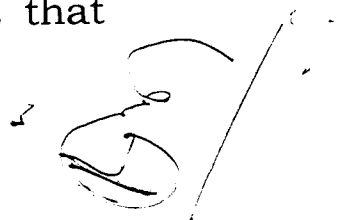
be clearly taken as an option available to the authorities and their actions as manifested by their orders must reflect quite clearly that this aspect of the matter was present in their minds while making the orders such as the one herein impugned. This in turn would be because as already pointed out the State Government has powers under Rule 3(3)(b) already discussed above and there can be other influencing circumstances as well. Therefore, if the authorities moved with a notion that they were simply helpless in the matter, once the Applicant did not answer the requirement of the Rules, we do not think it to be an accurate approach. Here, however, there is another reason why the impugned order is completely susceptible to interference and that it was made after the Applicant attained the age of 45 years before even the show cause notice was issued. We shall elaborate this aspect of the matter presently with the aid of the earlier decisions of this Tribunal.

6. Rule 4(6) grants exemption from operation of these Rules to the persons, who attained the age of 45 years on or after the 1st November, 1977. It is, therefore, very clear that this provision in clear terms simply provides that the person who attained the age of 45 years on or after November, 1977 would be exempted from clearing the

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examination. Nothing more needs to be said or done in this behalf.

7. In the light of the above discussion, we may now turn to a very recent order of this Tribunal in its Nagpur Bench in **O.A. 752/2014 (Gulabrao S. Kharde Vs. State of Maharashtra and one another, dated 21.09.2015)**. There, the Applicant was exactly so similarly placed as the present Applicant. He had completed 45 years on 15.6.2011. That Applicant and the present Applicant could safely be considered to be of the same, "Batch". The only difference was that the Nagpur Applicant was promoted on 12.6.2006 while the Applicant in this OA on 19.6.2006. The rest of the facts were exactly similar. The Nagpur Applicant was also reverted for the same reason that the present one was. He sought parity with one Shri S.M. Bhokare, in whose case, the Respondent No.4 granted exemption by an order dated 19.3.2013 (Annexure A-3, Page 19 of the P.B.). Be it noted right here that the present Applicant just like the Applicant in the Nagpur OA could successfully complain against hostile discrimination. Although in the Affidavit-in-reply, some faint attempt is made on the basis of a certain G.R. dated 13.9.2012 supposedly issued by the General Administration Department (GAD), the details of which are mentioned in Para 5 of the said reply, the crux of the matter is that



according to the Respondents, the 2012 GAD G.R. has now superseded the Rules framed under the proviso to Article 309 of the Constitution. Now, as is there wont, the Respondents have not cared to furnish a copy of the said GAD G.R. It is not possible to readily accept that legally, the source of the Rules being under the proviso to Article 309 could be annulled or affected by a GAD G.R. We must, however, record our disapproval at the Respondents having made a general reference to the GAD G.R. without furnishing a copy thereof. But even on the elementary principles of interpretation, we do not think a GAD G.R. could survive at the expense of the Rules framed under the proviso to Article 309 of the Constitution of India. There is a similar reference to a similarly placed Shri Ajit P. Tikar who also was the beneficiary of the benediction of the Respondent No.4 reinforcing the hostile discrimination aspect of the matter. The Bench at Nagpur categorically repealed the arguments that came to be advanced and which in his own way was adopted by Shri Chougule, the learned Presenting Officer for the Respondents before us. In Para 10, the Bench at Nagpur clearly observed that the order therein impugned which was substantially the same as the one herein proceeded in complete ignorance of Rule 4(6) above referred to. In Para 15, it was observed by the Bench at Nagpur that unless it could be shown that the



employee failed to avail an opportunity to take the examination once he attained the age of 45, he would be exempted and it would not be necessary for him to clear the examination. As far as the language of Rule 4(6) is concerned, the Bench rejected the submission that there was a typographical error and the words, "on or after the 1st November, 1977" should be read as "on or before". Now, in this behalf, if one were to read Rule 4 as a whole, one would find that the conclusions of the Nagpur Bench, with great respect are clearly borne out thereby. It takes into account several categories of the employees who may have been appointed before 1st November, 1977, and therefore, the word, "after" will have to be read as "after" only. In Para 18, the 2012 G.R. of the GAD apparently was referred to, but the Bench did not agree with the submission of the Respondents there also. It is, therefore, very clear that on exactly the same set of facts, the Bench at Nagpur was pleased to set aside the order impugned therein which was exactly the same in terms as the order herein and we must follow the same course of action.

8. In addition, Mrs. Mahajan, the learned Advocate for the Applicant referred us to two interim orders in **OA 74/2015 (Bhaskar Kachare Vs. State of Maharashtra and another, dated 12.2.2015 and OA 237/2015, dated 23.4.2015)** wherein the two Applicants facing peril to the



continuation on the promotional post on the same principles were given the benefit on same reasoning.

9. Therefore, for the foregoing, there is no alternative to hold that once the Applicant crossed the age of 45 years even before issuance of the show cause notice, he would be entitled to the benefit of **Gulabrao Kharde** (supra) and the impugned order will have to be quashed and set aside. The impugned order is accordingly quashed and set aside. It is held that the Applicant stood exempted from passing the said examination as per the relevant 1977 Rule on 31.5.2015 upon reaching the age of 45. The Respondents are directed to re-post the Applicant as Jailor, Group-II within a period of four weeks from today and he would be entitled to all service benefits, pay allowances, etc. even for the period that he spent on reversion as Sepoy. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
07.01.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
07.01.2016

Mumbai

Date : 07.01.2016

Dictation taken by :

S.K. Wamanse.

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