

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 104/2015**

Dattatraya Namdeo Khandekar,  
Aged about 44 years,  
R/o Jail Officer Government Quarters,  
Room No. 9, Amravati Central Prison,  
Amravati. -----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Deptt. of Home, Mantralaya,  
Mumbai.
2. The Dy. Director of Police and Inspector General of  
Prison,  
Maharashtra State, Pune, 11.
3. The Superintendent, Amravati Central Jail,  
Amravati. ----- **Respondents.**

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1. Shri R.V. Shiralkar, Advocate for the applicant.  
2. Shri M.I. Khan, Presenting Officer for the Respondents

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**CORAM** : B. Majumdar : Vice Chairman  
and  
S.S. Hingne : Member ( J )  
**DATE** : 28<sup>th</sup> April, 2016

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ORDERPER VICE-CHAIRMAN

The applicant, a Jailor, Grade-II has filed this O.A. as he is aggrieved that he has been reverted as a Jail Guard on failing to pass the Department Examination.

2. The facts of the case are that the applicant was promoted as Jailor, Grade-II on 12/6/2006. The Maharashtra Prison Department ( Executive Officers' Post Recruitment Examination ) Rules were notified on 7/11/1977. The applicant appeared in the above Examination on 24/5/2013 and in two subjects in which the passing marks were 67.5, he had scored 66 and hence he was declared as failed. It must be stated here that he had appeared in the same Examination earlier from 2008 onwards and also in 2014 <sup>and</sup> had failed in it. On 2/3/2015 the Additional Director General of Police and IG of Prison (R/2) issued an order reverting the applicant as a Prison Guard for the reason that as he had failed to pass the Departmental Examination in spite of so many chances had

been given to him, in terms of Rule 3 (4)(b) of the above examination rules, he was liable to be reverted. The applicant has challenged this order in the O.A.

3. The applicant submits that in the Examination held in 2013, he had failed by just 1 ½ marks due to erroneous evaluation of his paper. As many as 4 Jailors, Grade-II had also failed in the said Examination but they were not only continued as Jailors, Grade-II but were also promoted as Jailors, Grade-I. The State Govt. is empowered to condone the failure of a candidate in terms of Rule 3(3)(b) and hence his case should have been considered on the same basis as the above Jailors especially since he had failed in the Examination by only a margin of 1 ½ marks. He further submits that the respondents, in cases of other candidates had given marks to them even when the answers were erroneous and in one case a candidate had been given more marks than the marks allotted for the question. He also submits that the impugned order reverting him from Jailor, Grade-II, Amravati to Prison Guard, Nagpur is actually an

order of transfer which has been done in violation of the Transfer Act.

4. Respondent no. 2 in her reply submits that the applicant had failed to pass the Examination in 6 chances given to him. There is no system of rechecking the marks in the Examination. He has not produced any proof to substantiate his allegation that he <sup>w</sup> has given less marks. There is a provision as per Rule 3 (3)(b) of the Examination <sup>Rules</sup> that the State Govt. may in exceptional circumstances condone the failure of a candidate. However, the word "may" is discretionary and the applicant cannot claim condonation as a matter of right. The applicant has mentioned the names of the jailors who were promoted in spite of not getting passing marks. The applicant has neither made any of them as a party respondent in the present O.A. nor has he explained as to how this alleged irregularity has been done. She further submits that the Govt. had given extra marks to candidates who had failed in papers 3 and 4. In case of the applicant he had failed in paper no. 1 which is the most important

subject and thus no discretion could be applied in his case. She also submits that as the applicant had failed to pass the Examination after giving extra chance, a show cause notice was issued to him on 21/11/2014 for action under Rule 3 (4)(b) of the Examination Rules for reverting him as a Jail Guard. The reply of the applicant to the show cause notice was placed before the Committee which decided that there was no satisfactory reason given by the applicant as to why he had failed to pass the Examination in spite of all the chances. With regard to the applicant's transfer to Nagpur, she submits that there was no vacant post of a Guard at Amravati.

5. Shri R.V. Shiralkar, Id. Counsel for the applicant reiterated the submissions of the applicant in the O.A.

6. Shri M.I. Khan, Id. P.O. similarly reiterated the submissions of R/2. He further submitted that the fact that the applicant had failed to pass the Examination even after granting of 6 chances demonstrates his lack of seriousness in passing the Examination. Rule 3(3)(b) for condonation of failure deals with the exceptional circumstances warranting such

condonation. He relies on the order of the Principal Bench of the Tribunal in O.A. No. 20/2014 along with 3 more O.As. dtd. 10/3/2014. The Tribunal had held that with regard to the benefits of 'exceptional circumstances', it is for the applicant to point out as to what are those circumstances which entitled him to get his failure to pass the Departmental Examination condoned. The applicant in the present O.A. has failed to demonstrate that any such "exceptional circumstances" existed in his case.

7. We find that the impugned order reverting the applicant from Jailor, Grade-II to Prison Guard dtd. 2/3/2015 is issued under the provisions of the Departmental Examination Rules of 1977. The relevant Rule as applicable in the present case is Rule 3, which is reproduced below :-

***“ Every person recruited to the post of an Executive Officer after the commencement of these rules shall be required to undergo a course of training at the Jail Officers' Training School and to pass the examination according***


***to these rules within a period of two years from the date of recruitment and within three chances.***

***A candidate from (1) Scheduled Caste, Scheduled Tribe and Denotified Tribes and Nomadic Tribe, shall be given one more chance and one more year to pass the examination.***

***(2) Every person working as an Executive Officer on the date of the commencement of these rules shall, unless he has passed an equivalent Examination under any rules in force immediately before such commencement, be required to pass the Examination according to these rules within a period of two years from the date of coming into force of these rules and within three chances.***

***Explanation :- An Executive Officer, may appear at the examination even before he completes his training at Jail Officers' Training school.***

***(3) Notwithstanding anything contained in sub- rule (1) or (2)-***

- (a) *the Inspector General, may in his discretion grant permission to a candidate to appear at one more Examination and*
- (b) *the State Government may, in exceptional circumstances, either grant further extension of time of condone the failure of any candidate.*
- (4) (a) *No person, who is required to pass the Examination under these rules, shall hereafter be confirmed unless he has passed the Examination .*
- (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."*
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8. The applicant was promoted as a Jailor on 12/6/2006. Hence in terms of the above Rule, he was required to pass the Departmental Examination within 3 chances and 2 years, i.e., by 12/6/2008. He did not do so. In fact the applicant was granted 6 chances as per the Examination held on different dates, shown as below :-


- 1) 27/8/2008
- 2) 7/10/2009
- 3) 30/7/2012
- 4) 20/3/2013
- 5) 24/7/2013 and lastly
- 6) 24/3/2014.

9. In fact as per the show cause notice given to him on 21/11/2014 ( Annexure-A-8 ), the 6<sup>th</sup> chance was given as per the authority exercised by the Govt. The applicant, as stated earlier, had failed in all the above Examinations.


10. For condonation of failure in the last Examination held in March 2014, in which he had failed by a margin of 1.5

marks, the record shows that the applicant did not represent for condonation, except that his papers were wrongly evaluated. He has also nowhere claimed as to how his failure to pass the Departmental Examination in 6 chances is required to be condoned in terms of Rule 3(3)(b). The said Rule, as we have already cited above, states that the State Govt. may in 'exceptional circumstances' condone the failure of any candidate to pass the examination. With regard to what amounts to "exceptional circumstances", the Id. P.O. has relied on the order of the Principal Bench dtd. 13/10/2014 filed by Shri S.R. Kundatwad and others. The relevant part of the Tribunal's order is reproduced below :-

**Para 7 : "Learned Counsel for the Applicants has argued that the words "exceptional circumstances" have not been defined, so the same must be interpreted liberally. We are unable to accept this argument. It is not necessary to define 'exceptional circumstances', as the meaning is self evident. It is for the Applicants to point out, what are the 'exceptional circumstances' which will entitle**



*them to get their failure to pass the Departmental Examination condoned. We do not find any exceptional circumstances, in the representations submitted by the Applicants. In fact, if the argument of the Applicants is accepted, all the candidates, if they fail to pass the Departmental Examination after exhausting the given chances, will have to be given condonation in case of failure to pass the Departmental Examination. The whole idea of prescribing Departmental Examination will become meaningless. In fact, the word 'exceptional circumstances' are required to be construed strictly. There is another factor, which has to be considered. Rule 3(3)(b) provides that the State Government may grant one of the two reliefs viz. either grant further extension of time or condone the failure (emphasis supplied). All the Applicants have already got the relief of one additional chance to participate in the Departmental Examination with a view to pass it. It is not necessary, nor is it expected that the State Government will continue to consider representations from the Applicant for repeated reliefs under this rule."*



11. As regards the applicant's averment that a number of Jailors who had failed to pass the Examination but were not reverted or some were even promoted as Jailors, Grade-I, we find that he had not joined any of them as a party respondent. Hence I decline to go into any issue related to their cases. Besides, we also find that the applicant has not produced any documents to substantiate his allegations against these Officers.

12. In view of the above, the O.A. is without any merit and hence stands rejected with no order as to costs.

sd/-

(S.S. Hingne )  
Member ( J )

sd/-

( B. Majumdar )  
Vice-Chairman.

Skt.