

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 137 OF 2016

DISTRICT : KOLHAPUR

Shri Ashok Shankar Kadam,)
Residing at Kolhapur Central Prison,)
Room No. 5, Kalamba,)
Kolhapur 416 007.)...**Applicant**

Versus

1. The Chief Secretary,)
State of Maharashtra,)
Mantralaya, Mumbai 400 032.)
2. The State of Maharashtra,)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Director General of Police,)
Maharashtra State, Mumbai.)

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4. The Additional Director General of)
Police & Inspector General of Jail)
Old Central Building, 2nd floor,)
Pune 411 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 02.05.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. The Applicant in the present Original Application is challenging order dated 23.2.2016 passed in appeal against the order dated 13.9.2013 and he is also challenging order dated 13.9.2013, terminating his services as Jailor, Grade-II on his failure to pass the Post Recruitment Departmental Examination.

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3. Learned Counsel for the Applicant argued that the Applicant was appointed as Jailor, Grade-II by order dated 30.9.2003 and joined on 10.10.2003. AS per Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977 (the said Rules), the Applicant was required to pass the Post Recruitment Examination (P.R.E) within a period of two years from the date of recruitment and within three chances. The rules also provide for additional chances to pass the said examination in certain circumstances. The Applicant was given an additional chance to appear for P.R.E by the Government by letter dated 13.3.2013 and he appeared for the said examination from 20.3.2013 to 22.3.2013. The result was declared on 30.6.2013 and the Applicant failed. However, the Applicant attained the age of 45 years on 4.5.2013. As per Rule 4(6) of the said Rules, a person who attains the age of 45 years is exempted from the operation of the said Rules. The Applicant was, therefore, not liable to be terminated, for failure to pass P.R.E, after he crossed the age of 45 years. Learned Counsel for the Applicant relied on the judgment of this Tribunal dated 7.1.2016 in O.A no 961/2014 and judgment dated 7.1.2016 in O.A no 1007/2015. Both the judgments are in respect of Jailor, Grade-II. The Applicant in O.A 961/2014 was terminated (being a direct recruit) while the Applicant in O.A no 1007/2015, who was a promote, was reverted to the post of Jail Guard in similar circumstances. This Tribunal quashed

both the orders and both the Applicants were ordered to be posted back as Jailor, Grade-II.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant failed to pass the Post Recruitment Examination as per the provisions of the Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977. He did not pass P.R.E in requisite two chances and was allowed more chances as a special case, but he could not pass the said examination. He was, therefore, discharged from service under Rule 3(4)(b) of the said Rules. Learned Presenting Officer argued that a person, who has availed of all the chances to pass P.R.E and who failed, is not eligible to be exempted on attaining the age of 45 years in view of the Circular dated 13.9.2012.

5. This Tribunal has examined the whole issue at considerable length in O.A no 1007/2015. It is noted that the said Rules have been framed under the proviso to Article 309 of the Constitution of India. A circular issued by the General Administration Department cannot supersede the provision of the rules framed under proviso to Article 309 of the Constitution. Rule 4(5) of the said rules reads as follows:-

“4 The following persons shall be exempted from the operation of these rules, namely:-

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(5) Persons who attain the age of 45 years on or after the 1st November 1977.”

There are no restrictions, subject to which this rule operates. Once a person attains the age of 45 years, he is no longer governed by these rules. Circumstances of his reaching 45 years are not relevant at all. As the said Rules do not apply to a person, who has crossed the age of 45 years, obviously he cannot be discharged from service under the said Rules. This Tribunal has, in a number of cases, taken a view that a person, who has crossed the age of 45 years cannot be discharged from service for failure to pass P.R.D. The reliance of the Respondents on the Circular dated 13.9.2012 is misplaced as a Circular cannot supersede the statutory rules. The order of the Respondent no. 4 dated 13.9.2013 discharging the Applicant from service and the order dated 23.2.2016 passed by the Respondent no. 2 in appeal are not sustainable.

6. Having regard to the aforesaid facts and circumstances of the case, impugned orders dated 13.9.2013 and 23.2.2016 are quashed and set aside. The Respondents will take the Applicant back in service within a period of 4 weeks from the date of this order. The Applicant will be deemed to be in service as if the aforesaid orders were not passed and will be entitled to the pay and allowances for the period when he was not in

service. This Original Application is allowed accordingly with no order as to costs.

Sd/-

~~(R.B. Malik)~~
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 02.05.2016

Dictation taken by : A.K. Nair.