

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 237 OF 2015

DISTRICT : MUMBAI

Shri Devrav Roda Jadhav,)
Room No. 52/53, Jail Quarter,)
Near Kasturba Hospital,)
Mumbai 400 011.)...**Applicant**

Versus

1. The Chief Secretary,)
State of Maharashtra,)
Mantralaya, Mumba 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.)

of

4. The Addl. Director General of Police)
And Inspector General of Jail,)
Old Central Building, 2nd floor,)
Pune-1.)...**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. This Original Application has been filed by the Applicant challenging the order dated 2.3.2015 reverting him from the post of Jailor, Grade-II to Jail Guard (Sepoy).

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3. Learned Counsel for the Applicant argued that the Applicant joined Government service as Jail Guard (Sepoy) on 27.8.1994. He was appointed as Jailor, Grade-II on 12.6.2006. The Applicant was exempted from passing the departmental examination on reaching the age of 45 years on 15.7.2014 as per the relevant rules. On 21.11.2014, a notice came to be issued to the Applicant asking to show cause as to why he should not be reverted to the post of Sepoy, for his failure to pass the departmental examination, though he was given six chances. The Applicant replied to the notice on 2.12.2014, but he was reverted by impugned order dated 2.3.2015. Learned Counsel for the Applicant argued that a person who has reached the age of 45 years is exempted from passing the departmental examinations. The action of the Respondents in reverting the Applicant after he stood exempted from passing the departmental examination is illegal. Learned Counsel for the Applicant relied on judgment of this Tribunal in O.A no 1007/20125 and O.A no 961/2014.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was appointed as Jail Guard on 27.8.1994 and was promoted as Jailor Grade-II on 27.8.1994. As per the Maharashtra Prison Department (Executive Officers-Post Recruitment Examination) Rules, 1977, the Applicant was required to pass Post Recruitment Examination within two years and



three chances. However, the Applicant did not pass the Post Recruitment Examination and was, therefore, rightly reverted to his original post of Prison-Guard. Learned Presenting Officer argued that by G.R dated 13.9.2012, the exemption from passing the Post Recruitment Examination on reaching the age of 45 years has been withdrawn. The Applicant was rightly reverted from the post of Jailor, Grade-II to that of Jail Guard (Sepoy).

5. We find that Rule 4(6) of the Maharashtra Prison Department (Executive Officers-Post Recruitment Examination) Rules, 1977 reads:-

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

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

The Applicant admittedly reached the age of 45 years on 14.7.2014. He, therefore, stood exempted from passing the Post Recruitment Examination on 15.7.2014 as per Rule 4(6) *ibid*. The Respondents claim that this exemption is withdrawn by Government Circular dated 13.9.2012 which is at Exhibit R-1 (page 53 of the Paper Book). We have carefully perused the same. This Circular has been issued clarifying the procedure to be followed while granting exemption from passing the Post Recruitment Examination. It refers to earlier G.R dated 1.11.1977,

which provides for exemption from passing the Post Recruitment Examination after reaching the age of 45 years. This Circular states that if a Government servant was not eligible for appearing in the Post Recruitment/Departmental Examination, such a person will not be eligible to be exempted from passing the relevant examination after reaching the age of 45 years. In para 6 of the Circular, it is stated that:-

“ ज्यांची सध्याच्या पदावरील सेवा नियमित स्वरूपाची आहे व त्या पदाकरीता विहित केलेल्या परीक्षेला बसण्यासाठी विहित केलेली अर्हता व सेवा कालावधीचा निकष पूर्ण केला आहे अशा कर्मचा-यांना ते ज्या दिवशी त्या परीक्षेला बसण्यासाठी पात्र असतील व त्यांनी वयाची ४५ वर्षे पूर्ण केली असतील फक्त अशा कर्मचा-यांनाच त्या दिनांकापासून फक्त ती परीक्षा उत्तीर्ण होण्यातून सूट देता येईल. परीक्षा नियमात सूट देण्याची तरतूद असल्यास अशी सूट देता येईल. वयाची ४५ वर्षे पूर्ण केली याकारणास्तव सरसकट सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा/विभागीय परीक्षा अशा सर्व परीक्षा उत्तीर्ण होण्यातून सूट देण्याची तसेच ज्या कर्मचा-यांना तात्पुरती/तदर्थ स्वरूपात पदोन्नती दिली आहे व ते कर्मचारी त्या पदावरील परीक्षेस बसण्यास पात्रतेचा निकष पूर्ण करित नाहीत अशा कर्मचा-यांना त्या पदाकरीता विहित केलेली सेवाप्रवेशोत्तर प्रशिक्षण परीक्षा/विभागीय परीक्षा उत्तीर्ण होण्यातून सूट देता येणार नाही.”

Now this circular is bringing new restrictions on the operation of Rules. It purports to provide that a person on reaching the age of 45 years should be eligible to appear for the examination. Probably, the intention is that if he has exhausted all chances, he will not be eligible to get exemption. Such an interpretation will make the operation of the relevant rules totally meaningless. Only those who are promoted/appointed at

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the age of 44 or 45 years could be exempted as the time to pass the Departmental Examination is two years as per rules. This restriction or rules, which were framed in 1977 cannot be placed by bringing out a circular in 2012. If the intention was to change the rules, it should have been done. The Circular dated 13.9.2012, if it is applied to the Applicant, will nullify the Maharashtra Prison Department (Executive Offices-Post Recruitment Examination) Rules, 1977. A Circular cannot supplant the express provision of Rules. This Circular dated 13.9.2012 will have no application in the case of the Applicant, who will be continued to be governed by the Rules of 1977. Rule 4(6) of the Rules clearly exempts a person from passing the Post Recruitment Examinations after reaching the age of 45 years. If the Applicant could not pass the said examination in requisite attempts, the Respondents could have reverted him to the lower post, before he attained the age of 45 years. For some reasons that was not done and the Applicant was allowed to cross the age of 45 years. Once he attained the age of 45 years, he was exempted from passing the Post Recruitment Examination, and he could not be reverted. This Tribunal has taken similar view in O.A no 961/2014 and O.A no 1007/2015.

6. Having regard to the aforesaid facts and circumstances of the case, the order of the Respondent no. 4 dated 2.3.2015 is quashed and set aside.

The Applicant has been working as Jailor-Grade-II by virtue of the interim order of this Tribunal. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik) 02-05-16
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 02.05.2016

Dictation taken by : A.K. Nair.