

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 279/2013.

Dilip Tarachand Jadhao,
Aged about 38 years,
Occ-Service,
R/o C/o Kishore Daterao,
Vijay Colony, Behind Petrol Pump,
Rukmini Nagar, Amravati.

Applicant.

-Versus-

1. The State of Maharashtra
Through its Secretary,
Department of Agriculture, Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai-32.
2. The Dy. Secretary,
Department of Agriculture, Animal Husbandry,
Dairy Development and Fisheries,
Madam Cama Road, Hutatma Rajguru Marg,
Mantralaya, Mumbai-32.
3. Maharashtra Public Service Commission,
Bank of India Building, 3rd floor,
Mahatma Gandhi Marg, Hutatma Chowk,
Mumbai-1 through its Secretary.

Respondents.

Shri P.V. Joshi, Advocate for the applicant.
Mrs. M.A. Barabde, Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (A)**

Dated:- 9th May 2014.

Order

Per-M.N.Gilani, M (J)

With the consent of learned counsel appearing for the parties, this O.A. is heard finally at the stage of admission.

2. The applicant, in response to the advertisement published by Maharashtra Public Service Commission (R-3) for filling six posts of Assistant Dairy Development Commissioner etc. General State Service, Group-B, the

applicant who possesses degree in B. Tech. (Dairy) and who belongs to De-notified Tribes (A), applied for the said post. Out of six posts, one was reserved for De-notified Tribes (A). In the advertisement, there was a clause about relaxation of condition of possessing requisite experience in the event sufficient number of candidates belonging to reserved categories are not available to fill up the vacancies. The applicant was shortlisted by the respondent No.3 and was called for interview. Considering his performance, he was selected for the post of Assistant Dairy Development Commissioner and accordingly his name was recommended to the respondent No.1 in the Department of Agriculture, Animal Husbandry, Dairy Development and Fisheries for further necessary action. On 5.3.2013, he received communication (Annexure A-1) from the respondent No.1 to the effect that because he lacks three years experience, he cannot be considered for the post of Assistant Dairy Development Commissioner. It is further clarified that experience of the applicant by holding additional charge of the post in the feeder cadre, is not liable to be counted. Aggrieved by this communication, this O.A. has been filed.

3. In para 4 of the application, the applicant set out a table showing the places where he worked and also the period spent on duty. On that basis, it is stated that the selection of the applicant by the respondent No.3 was in accordance with the Recruitment Rules and terms and conditions stipulated therein. Even the respondent No.3 has a right to relax the period of experience, if a suitable candidate in reserved category is not available. Considering the qualification, performance in the interview and experience the applicant possesses, he came to be selected. In that view of the matter, the respondent

No.1 has no right to reject his nomination and consequently deny him appointment.

4. The respondent No.3 filed reply stating that, prima facie, the applicant had an experience of 8 years and 8 months and, therefore, he was selected. It is specifically pleaded that, the respondent No.1 did not inform the respondent No.3 as to how the applicant is lacking in requisite qualification.

Relevant averments in the reply are reproduced below:

However, the Government herein has not informed the Commission that out of the four segments of the experience possessed by the applicant which one is held as an additional charge. Hence, the Government is the appropriate authority to comment on this matter. While recommending the candidate, the Commission informs the Government to verify the authenticity/truthfulness of the certificates produced by the applicant to the Commission. Hence, the Commission sends all the attested certificates produced by the applicants while recommending them to the Government. It is to note that the Government has not informed the same to the Commission before cancelling the recommendation of the applicant+.

5. The respondent Nos. 1 and 2 filed reply and did not dispute the nomination of the applicant for the post of Assistant Dairy Development Commissioner. It is then stated that one of the criteria for selection to the said post is experience in dairy having processing capacity of not less than 50,000 litres per day. The period of experience is three years and the post held should be equivalent to the Group-C post of Office Superintendent in the department. While verifying the documents received from the respondent No.3, it was noticed that the applicant did not hold the post equivalent to the Office Superintendent over a period of three years as stipulated in the advertisement and also the Recruitment Rules. It is further stated that the applicant held additional charge of

the post of Quality Control Officer for the period from 16.6.2010 to 8.3.2011, which cannot be counted. Thus, applicant's nomination was rejected mainly on the ground that he did not have three years' experience stipulated in the advertisement. Further, the criterion of experience can only be relaxed in case of a candidate having exceptional qualification or experience. It is, therefore, submitted that the application has no merit.

6. In the opinion of the respondent No.3, the applicant possesses 8 years, 8 months and 13 days' experience. This has been expressly stated in para 4 of their reply. In the advertisement published by the respondent No.3, there is a stipulation to the following effect:

At any stage of selection, the Commission is of the opinion that sufficient number of candidates possessing requisite experience are not available to fill up the vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Castes converted to Buddhism, Scheduled Tribes, Denotified Tribes, then the Commission may, in the matter of such selection, relax the period of experience and select suitable candidates belonging to such Caste or Tribe.

This is consistent with the Gazetted Post in Dairy Development Department (Recruitment) Rules, 2001 (In short Recruitment Rules, 2001). The Rule 12 provides thus:

Notwithstanding anything contained in each sub-clause (iii) of clause (c) of rules 7,8,9 and 10, if at any stage of selection, the Commission is of the opinion that sufficient number of candidates possessing the requisite experience are not available to fill up the vacancies reserved for candidates belonging to the Scheduled Castes and Scheduled Castes converted to Buddhism, Scheduled Tribes, Denotified Tribes, then the Commission may, in the matter of such selection, relax the requirement in respect of the period fo

experience set out therein, and select suitable candidates belonging to such Caste or Tribe+.

7. Admittedly, the applicant belongs to Denotified Tribe and is entitled to be considered for age relaxation under the aforesaid provision. It is pertinent to note that Rule 11 and Rule 12 are supplementary to each other. Rule 11 gives general power to the Government to grant age relaxation to the candidate of any category provided, he has exceptional qualification or experience or both, whereas Rule 12 confers right in the Commission to grant age relaxation to the candidates falling in backward class categories, if in the opinion of the Commission sufficient number of candidates possessing requisite experience are not available to fill up the vacancies reserved for the candidates belonging to the respective categories.

8. The learned P.O. was fair enough to produce for our perusal the relevant file maintained by the respondent No.1. Initially, this department was of the view that the applicant is entitled for age relaxation. The relevant note submitted reads thus:

''श्री दिलीप जाधव- श्री जाधव हे सुध्दा शासनाच्या दुग्धविकास खात्यातच डेअरी केमीस्ट म्हाणून कार्यरत असून आयुक्तांच्या पृ.५२१/२२ प.वि.वरील पत्रानुसार श्री जाधव यांनी विविध ठिकाणी काम केलेल्या कालावधीचा विचार करता त्यांना एकूण तीन वर्ष ५ महिने व २५ दिवस एवढा अनुभव प्राप्त आहे. (यापैकी अतिरीक्त कार्यभाराचा कालावधी ७ महिने २४ दिवस आहे.) त्यामुळे खालील उधृत केलेल्या सेवाप्रवेश नियमांच्या तरतुदी विचारात घेता,आयोगाने केलेली निवड व शासनास असलेले अधिकार विचारात घेता श्री दिलीप जाधव यांनाही नियुक्तीस पात्र ठरविण्यास हरकत नाही.

वरीलप्रमाणे सर्वश्री सुरेश पाटील व दिलीप जाधव हे दोन्ही मागासवर्गीय उमेदवार असून लोकसेवा आयोगाने सेवाप्रवेश नियमांच्या नियम १२ नुसार सदर पदे मागासवर्गीयांसाठी अनुषेशची पदे असल्याने अनुभवाची अट शिथिल करून संबंधीतांची निवड केलेली आहे. शासनासही सेवाप्रवेश नियमांच्या नियम ११ नुसार अनुभवाची अट शिथिल करण्याचे अधिकार आहे. या दोन्ही तरतुदी विचार घेवून सर्वश्री सुरेश पाटील व दिलीप जाधव या दोन्ही उमेदवारांना नियुक्तीसाठी पात्र धरण्यास कोणतीही हरकत नाही''.

9. However, as per rules of business, the approval of the Government of Maharashtra in General Administration Department was required in such matter and, therefore, the proposal was submitted to the department. In turn, case was examined by the Government in General Administration Department. It was specifically pointed out that, instead of three years, the applicant has an experience of 2 years and 10 months (excluding the experience which he gained while holding additional charge). Quoting Rule 11 of the Recruitment Rules, 2001, it was pointed out that the criteria like age limit, period of experience etc. can be relaxed by the Government on the recommendation of the Commission in favour of the candidate having exceptional qualification and experience or both. Rule 12 of the Recruitment Rules, 2001 was also quoted wherein the power lies with the Commission (R.3) to relax the requirement in respect of period of experience stipulated in the advertisement and select suitable candidate belonging to the backward class category, provided in the opinion of the Commission, sufficient number of candidates possessing requisite experience are not available to fill up the vacancies reserved for candidates belonging to the backward class category. While quoting Rule 12, the respondent No.1 totally ignored that the age relaxation under Rule 12 is within the exclusive domain of the Commission. In that view of the matter and having regard to the fact that the Commission has already recommended the candidature of the applicant who belongs to the Denotified Tribe (A) category, it would have been appropriate on the part of the respondent No.1 to request the Commission to take conscious decision on the issue as to whether the applicant, in the opinion of the Commission is, having regard to the provisions of Rule 12 entitled for relaxation in the matter of experience. It is pertinent to note that the scheme of the

Recruitment Rules, 2001, does not permit the respondent No.1 to differ with the opinion of the Commission on the point of relaxation of age or experience, although Rule 11 independently vests right in the respondent No.1 to relax age limit, experience criteria provided the candidate has an exceptional qualification or experience or both. Under the facts and circumstances of the case, straightway rejecting the candidature of the applicant in exercise of the power vested in them by virtue of Rule 11, cannot be sustained. It is pertinent to note that in the opinion of the respondent No.3 the applicant possessed experience of 8 years, 8 months and 13 days and, therefore, question of Commission exercising discretion under Rule 12 of the Recruitment Rules, 2001 did not arise. The relevant excerpt from reply submitted by the respondent No.3 reads thus:

“However, the Government herein has not informed the Commission that out of the four segments of the experience possessed by the applicant which one is held as an additional charge. Hence, the Government is appropriate authority to comment on this matter. While recommending the candidate the Commission informs the Government to verify the authenticity / truthfulness of the certificates produced by the applicant to the Commission. Hence, the Commission sends all the attested certificates produced by the applicant while recommending them to the Government. It is to note that the Government has not informed the same to the Commission before cancelling the recommendation of the applicant+.

10. Further the stand of the responded No.3 is: “When the Government was of the view that the applicant does not possess requisite experience of three years, it was expected of the Government to inform the Commission that out of the four segments of the experience possessed by the applicant which one is held as an additional charge+. It is thus clear that, the respondent No.3 did not resort to Rule 12 of the Recruitment Rules, 2001 only for

the reason that in its opinion, the applicant was having more than the requisite experience whereas the Government did not agree to this. In this premise and particularly having regard to the fact that the candidature of the applicant was recommended by the respondent No.3, it was expected of the Government (R.1) to allow the respondent No.3 to reconsider the case in the light of Rule 12 and then finally decide the issue. Having not done so, we find no alternative than to set aside the impugned communication and direct the respondent No.1 to seek opinion on the decision of the respondent No.3 in terms of Rule 12.

11. O.A. succeeds partly.

(i) The respondent No.1 is directed to seek opinion / views of the respondent No.3 on the issue of relaxation of period of experience in terms of rule 12 and on receipt of the same, take further necessary steps as may deem fit.

(ii) It is expected that the entire exercise of seeking opinion, the respondent No.3 recording its opinion and submitting it to the respondent No.1 and in turn the respondent No.1 taking decision thereon shall be completed within six months from the date of this order.

(iii) There shall be no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B. Majumdar)
Vice-Chairman

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