

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.482 OF 2019
WITH
ORIGINAL APPLICATION NO.120 OF 2021**

O.A.No.482/2019

Mr. Balkrishna Motiram Yadav)
Age : 49 years,)
Working as Deputy Commissioner of Police)
Wireless, Mumbai.)
Residing at Room No.4, 6 Subhedar Quarters,)
Naigaon Police Headquarters,)
Naigaon, Dadar (East), Mumbai 400 014.)... **Applicant**

Versus

1. State of Maharashtra,)
Through Principal Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
- 1A. Additional Director General of Police &)
Director of Police Wireless, M.S.)
Pashan Road, Chavan Nagar,)
Pune 411 053.)
2. Maharashtra Public Service Commission,)
Through Secretary, Bank of India Bldg.,)
3rd floor, Fort, Mumbai 400 001.)
3. Mr. Gajanan Somnath Shelar,)
Crime Branch, Mumbai City,)
Mumbai.)
4. Mr. Sunil Mohan Sawant,)
Assistant Commissioner of Police,)
Santacruz wireless office, Mumbai City,)
Mumbai.)

5. Mr. Prateek Bhalchandra Deshpande,)
State Intelligence Department,)
Mumbai City, Mumbai.)
6. Mr. Vaidya Pankaj Shashikant,)
R/o. 503, L-1, Amrut Ganga,)
Near Anand Nagar Tele. Exch.,)
Sinhagad Road, Manik Baug,)
Pune 411 041) **...Respondents**

WITH**O.A.No.120/2021**

- Mr. Balkrishna Motiram Yadav)
Age : 49 years,)
Working as Deputy Commissioner of Police)
Wireless, Mumbai.)
Residing at Room No.4, 6 Subhedar Quarters,)
Naigaon Police Headquarters,)
Naigaon, Dadar (East), Mumbai 400 014.) **... Applicant**

Versus

1. State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. Maharashtra Public Service Commission,)
Through Secretary, Bank of India Bldg.,)
3rd floor, Fort, Mumbai 400 001.)
4. The Director General of Police,)
Maharashtra State Police Headquarter,)
Shahid Bhagatsingh Marg, Colaba,)
Mumbai 400 001.)

5. Mr. Vaidya Pankaj Shashikant,)
 R/o. 503, L-1, Amrut Ganga,)
 Near Anand Nagar Tele. Exch.,)
 Sinhagad Road, Manik Baug,)
 Pune 411 041) **... Respondents**

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No.1, 1A and 2 in O.A.No.482/2019 and for Respondents No.1 to 4 in O.A.No.120/2021.

Mr. A.M. Deshmukh, learned Counsel with Ms. S Joshi, learned Counsel for the Respondents No.3 to 5 in O.A.No.482/2019.

Mr. M.D. Lonkar, learned Advocate for the Respondents No.3 to 5 in O.A.No.120/2021.

Mr. Prasad Survankar along with Mr. Tanvi Sangle, learned Counsel for the Respondent No.6 in O.A.No.120/2021.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Shri P.N Dixit (Vice-Chairman) (A)

RESERVED ON : **07.06.2021**

PRONOUNCED ON : **22.07.2021**

PER : **Justice Mridula Bhatkar, Chairperson**

J U D G M E N T

1. The Applicant, working as Deputy Commissioner of Police Wireless Mumbai challenges the order dated 21.05.2019 and Notification of short-listing criterion published on the web-site on 10.05.2019. The Applicant joined the police force as Police Wireless Sub Inspector from NT-B category on 30.06.1992. He was promoted as Police Wireless Inspector

(Engineering) and thereafter to the post of Assistant Commissioner of Police Wireless. On 18.04.2010 he was appointed as Deputy Commissioner of Police Wireless, Mumbai on adhoc basis. The Respondent No.2, Maharashtra Public Service Commission (M.P.S.C.) issued Advertisement No.24 of 2018 dated 13.05.2018 for one post of Superintendent of Police/ Deputy Commissioner of Police, Wireless (Engineering), Maharashtra State, Police Service, Group-A. As per the advertisement the period of practical and administrative experience in Radio Communications Organization of Repute was required not less than 7 years, out of which the experience of not less than 5 years should be practical experience.

2. Subsequently, by order dated 10.05.2019, M.P.S.C. notified the short listing criterion of 15 years, 5 months and 17 days, out of which experience of not less than 5 years should be practical experience. The M.P.S.C. published the list of the candidates to be called for the interview and as per the new short listing criterion. The Applicant's name was not included in the list of the candidates who are going to be interviewed on 24.05.2019. On 13.05.2019 the Applicant submitted representation to M.P.S.C. stating the grievances about the eligibility of the candidates which were short listed for the interview in view of short listing criterion. He submitted another representation on 17.05.2019. However on 21.05.2019 he was informed by the M.P.S.C. that he is not eligible for want of 15 years field technical experience and he cannot be called for the

interview. The Applicant thereafter approached this Tribunal on 23.05.2019. By order dated 23.05.2019 this Tribunal granted interim relief with directions that the applicant be interviewed and his credentials be scrutinised and the entire result should not be declared till hearing of present Original Applications.

3. The learned Advocate Ms. Punam Mahajan submitted that the Respondent No.2, M.P.S.C. did not apply the same yardstick while scrutinizing the applicant's candidature. She submitted that in the Advertisement No.24/2018 the educational qualification and experience details were mentioned at point 4.3 and 4.4. The ratio of calling the candidates for interview was 1:5. The period of experience was short-listed as 15 years, 5 months and 17 days. It also includes practical experience of minimum 5 years in Radio Communications Organization of Repute. The Applicant is having the experience of 15 years, 5 months and 10 days. Thus he falls short of only 7 days of experience to get himself shortlisted. The Applicant is shown at Sr. No.6 The Applicant collected information under RTI from various organisations where the candidates especially of Sr.No.3, 4 and 5 have worked and as per this information the Applicant has made out the case that shortlisted candidate at Sr. No.5, who is Respondent No.3, Mr. Gajanan Somnath Shelar has experience of 15 years, 4 months and 17 days. However, the M.P.S.C. has shown his experience as 15 years, 5 months and 17 days. She submitted that it is only arithmetical error in counting the period of

experience, instead of 4 months, it is shown 5 months. The period of experience as per the short listing criterion is fixed as 15 years, 5 months and 17 days and so the applicant who is having experience less by 7 days was not included in the list of candidates who were to be interviewed. The learned Counsel has submitted that the applicant scored the highest marks in the interview i.e. 60 marks, whereas candidate who was recommended by M.P.S.C. i.e. Respondent No.6, Mr. Pankaj Shashikant Vaidya scored 57 marks. The learned Counsel further pointed out that the M.P.S.C. has committed error in counting the period of experience of Respondents No.3, 5 as well as 6 and therefore the M.P.S.C. should have modified the short-listing criterion to 15 years, 5 months & 10 days which is the experience of the applicant who in fact stands on a higher footing; not below Sr. No.5.

4. The learned Counsel Ms. Punam Mahajan has submitted that training period and the period when the candidate was getting the stipend should not have been counted as the period of experience. In support of her submissions she relied on the guidelines issued by M.P.S.C. on 11.07.2016 at Serial No.2.2.12.4. She submitted that Respondent No.5 was getting a stipend of Rs.4,500/- and the period should have been excluded while counting the period of experience. The learned Counsel further submitted that the seniority and experience are the two different things. Respondent No.4 (Mr. Sunil Mohan Sawant), Respondent No.5 (Mr. Prateek Bhalchandra Deshpande) and Mr. Chandrakant Ambadas

Dhakne were appointed on 24.05.2010 and got their independent posting. However, their date of appointment is taken as 12.08.2009 which is not correct. She submitted that it was necessary for the Respondent No.2, M.P.S.C. and Respondent No.1, State of Maharashtra to consider the experience including practical as well as administrative and therefore when the candidate actually started functioning in Radio Communication Organization, it can be said that he has actual experience. From the date of appointment the period of experience cannot be counted because the officer does not get actual experience by mere appointment to the particular post.

5. The learned Counsel Ms. Punam Mahajan relied on the list of duties which are required to be discharged by the officers working in the Radio Communication establishment i.e. DYSP also actual work. She further submitted that the experience certificates produced by these Respondents are faulty and hence it is the responsibility of each candidate to produce factual, true and correct certificate of experience. If such certificate is not produced by a candidate then he is to be declared as ineligible for interview. She pointed out Circular dated 03.07.2004 (page 315) wherein it is mentioned as to which service is not to be considered as experience while counting the total period of experience. The learned Counsel further argued that the Government of Maharashtra and M.P.S.C., both in their affidavits have taken stand that the period of training is to be excluded from the period of experience. In support of her submission, she

relied on the affidavit-in-reply dated 15.01.2020 (page 604) to amendments on behalf of Respondent No.2, Mr. Bhalchandra Pandurang Mali and also relied on the affidavit-in-reply dated 13.02.2020 (page 631) on behalf of Respondent No.1A through Mr. Kishor Deoram Utale, Assistant Commissioner of Police (Wireless), office of Deputy Commissioner of Wireless, Mumbai.

6. The learned Counsel while putting up her case has tried to demonstrate that one of the candidates, Mr. Prateek Bhalchandra Deshpande who stands at Sr. No.4 in list of the candidates was called for interview, was receiving stipend Rs.4,550/- + DA from 11.02.2002 till 08.03.2002. Similarly, Mr. Gajanan Somnath Shelar, Respondent no.3 was incorrectly taken in the list of the eligible candidates as the arithmetic error is committed by M.P.S.C. in counting the period of experience i.e. instead of 4 months, counting it as 5 months. She further relied on the certificate of experience dated 03.09.2012 of the said candidate and she argued that the M.P.S.C. has deviated its own short listing criterion guidelines while counting the period of experience.

7. The learned C.P.O. relied on the various affidavits filed by the Respondents. The learned C.P.O. relying on the affidavit-in-reply of Respondents No.1, 1A and 2 has submitted that the M.P.S.C. has issued advertisement as requested by the Government. She argued that O.A.No.482/2019 is opposed by the Respondents by filing separate

affidavit-in-reply all dated 03.07.2019 (pg.111) on behalf of Respondent No.1, through Mr. Kailas Arjun Gaikwad, Deputy Secretary office of Home Department, Mantralaya, and also by Respondent No.3 and Respondent No.4 through Mr. Gajanan Somnath Shelar and Mr. Sunil Mohan Sawant respectively.

8. The learned C.P.O. has pointed out fairly that in the affidavit of Mr. Utale for Respondent No.1A admission regarding mistake on calculation of the period of experience of Respondent No.3 Mr. Shelar is mentioned. Respondents also filed Additional Affidavit-in-reply, dated 01.07.2019 on behalf of Respondent No.2, Mr. Sudam Bhivaji Tavhare, Under Secretary in the office of M.P.S.C. The Applicant filed affidavit-in-rejoinder to the additional affidavit-in-reply dated 27.08.2019. Thereafter Respondent No.2, Mr. Tavhare filed affidavit-in-sur-rejoinder dated 23.09.2019. The three affidavits-in-reply to additional Affidavit of Applicant dated 24.09.2019 on behalf of Respondents No.3 to 5 were filed through Mr. Gajanan Somnath Shelar, Mr. Sunil Mohan Sawant, and Mr. Prateek Bhalchandra Deshpande respectively.

9. The affidavit-in-sur-rejoinder dated 19.08.2019 on behalf of Respondents No.3, 4 and 5 through Mr. Gajanan Somnath Shelar, Mr. Sunil Mohan Sawant and Mr. Prateek Bhalchandra Deshpande respectively were filed.

10. The affidavit-in-reply dated 15.01.2020 to the amendments on behalf of Respondent No.2 through Mr. Bhalchandra Pandurang Mali, Under Secretary, office of M.P.S.C., Mumbai was filed. Affidavit-in-reply, dated 16.01.2020 was filed on behalf of Respondent No.6 through Mr. Vaidya when he was added as party respondents. Thereafter affidavit-in-reply, dated 13.02.2020 filed on behalf of Respondent No.1A, through Mr. Kishor Deoram Utale, Assistant Commissioner of Police, (Wireless) office of Deputy Commissioner of Wireless, Mumbai. The affidavit-in-reply to amendments, dated 05.03.2020 on behalf of Respondent No.4, through Mr. Sawant was filed. Affidavit-in-rejoinder to reply filed on behalf of Respondent No.1A dated 05.03.2020 was filed by the applicant. Affidavit-in-reply to amended paragraphs of O.A., dated 14.01.2021 on behalf of Respondent No.1, through Mr. Kailash Arjun Gaikwad, Deputy Secretary to Government of Maharashtra, Home Department was filed. Affidavit-in-rejoinder to reply filed, dated 22.01.2021 on behalf of the Applicant was filed.

11. Much was argued by the learned Counsel for the applicant on the point of excluding the training period while counting the period of experience. We pointed out the M.P.S.C. Rules 2014, so also advertisement wherein the period of training is not excluded from the period of experience. The learned Counsel for the Applicant could not show any rule of M.P.S.C. supporting to substantiate her submission and therefore she made it clear that she was not pressing the point of validity

of the certificates which were issued by the authority where the training period was included in while calculating the period of experience. Similarly, the Respondents also filed the affidavit on this point explaining the point of experience and counting training in the period of experience. Much time was unnecessarily consumed in the beginning on this point. However, as the M.P.S.C. Rules 2014 are specific and clear, we cannot go beyond the rules and all the arguments on this points subsided. All other facts were not disputed except whether the applicant was entering the consideration zone in view of the ratio of 1:5. We narrowed down the compass of the dispute and that point was only to be answered.

12. We have gone through all these affidavits-in-reply, additional affidavits-in-reply, affidavits-in-rejoinder and affidavits-in-sur-rejoinder. The applicant has produced many documents including the photocopies of the application forms filled up by him and also by the Respondents, M.P.S.C. Rules 2014, advertisement, charts, experience certificates of all the Respondents etc. While private respondents refuted the allegations made and contentions raised by the applicant in respect of the period of experience raising objections to their period of experience, all the contentions that their inclusion in the consideration zone was after scrutiny made by the expert appointed by the M.P.S.C, the same cannot be challenged. Though the period of experience was checked by the M.P.S.C. correctly from expert while including the period of experience the period undergone for training was also considered because it was not

excluded in the M.P.S.C. Rules 2014. While short-listing the experience of last candidate as per 1:5 ratio was found 15 years 4 months and 17 days, however, the applicant who was having more experience of 15 years 5 months and 10 days was not called for the interview. He was given chance pursuant to the order of the Tribunal by granting interim relief in favour of the applicant. The credential of all the candidates have been checked and verified by the Additional Director General of Police and Director, Wireless at the time of scrutiny of all the applications and then applied the revised short-listing criterion of 15 years 5 months and 17 days. The experience certificate of all the candidates on the basis of available information was verified by the Additional Director General of Police and Director, Wireless.

13. In O.A.No.482/2019, Respondent No.6, Mr. Pankaj Shashikant Vaidya who was recommended and selected candidate filed his affidavit-in-reply dated 16.01.2020. In O.A.No.120/2021 he filed the affidavit-in-reply on 02.03.2021. In the beginning the Applicant filed O.A.No.482/2019. However, the applicant filed another O.A.No.120/2021 against the Government officers and Respondent No.5, Mr. Vaidya. We have gone through it carefully. He is having longest period of experience but he secured 57 marks, 3 marks less than the applicant.

14. In O.A.No.120/2021 by order dated 27.01.2021 and 01.02.2021 the applicant's temporary promotion was discontinued and he was demoted to the post of Assistant Commissioner of Police. The learned C.P.O. for the Respondents has submitted that the applications are misconceived and not filed with clean hands. The M.P.S.C. has rightly held the applicant as not eligible for interview as he was not fulfilling the short-listing criterion. It was asked that the name of Mr. Nitin Prabhakar Joshi whose name earlier appeared in initial short-list did not found after applying the revised criterion. She submitted that Respondent No.6, Mr. Pankaj Shashikant Vaidya was having longest period of experience i.e. 21 years amongst all the candidates, hence his name was appearing in both the short-lists i.e. initial as well as revised. Respondent No.3, throughout denied the contentions of the applicant in respect of experience. It was submitted that only after the scrutiny by the expert the experience was calculated and therefore he rightly stood at serial No.5.

15. 6 persons were called for the interview and they secured marks in the interview as follows :

Sr. No.	Names of the candidates	Marks
1	Mr. Yadav Balkrishna Motiram	60
2	Mr. Vaidya Pankaj Shashikant	57
3	Mr. Shelar Gajanan Somnath	54
4	Mr. Deshpande Prateek Bhalchandra	45
5	Mr. Sawant Sunil Mohan	Absent for interview
6	Mr. Bhosale Utkarsh Uttreshwar	Absent for interview

16. The period of experience of the applicant is not a dispute and therefore the marks which he obtained being highest, he is to be recommended. At the time of interview other 5 candidates did not secure more marks than him and thus there is no challenge to the process of interview. Though Respondent No.6, Mr. Vaidya has contended that for interview persons who were earlier selected in the initial short-list were also eligible. This contention cannot be appreciated because Respondent No.6, Mr. Vaidya himself had participated in the interview without raising any objection and therefore we are of the view that it is not necessary to go through the details of the scrutiny and experience and the points raised by unsuccessful candidates.

17. On this point the Respondent No.1A in O.A.No.482/2019 filed affidavit-in-reply dated 13.02.2020, through Mr. Kishor Deoram Utale, Assistant Commissioner of Police (Wireless) office of Deputy Commissioner of Wireless, Mumbai and also affidavit-in-reply, dated 14.01.2021 (pg. 695) on behalf of Respondent No.1, through Mr. Kailash Arjun Gaikwad, Deputy Secretary to the Government of Maharashtra, Home Department, Mantralaya. In the affidavit dated 13.02.2020 Mr. Utale has mentioned that the Orientation Training and the Field Training period is included in the experience certificate. He further stated in paragraphs 26 and 26.1 of his affidavit-in-reply that contents in paragraph no.6.13.14 regarding the period of experience of Mr. Shelar as 10 years, 5 months and 19 days is correct. However, the M.P.S.C. has

wrongly showed this period in the affidavit dated 23.09.2019 as 10 years, 6 months and 19 days by showing difference of 1 month.

18. We gave fair opportunity to M.P.S.C. to calculate and recalculate the period of experience of Respondent No.3 in O.A.No.482/2019, Mr. Gajanan Somnath Shelar. However, learned C.P.O. on instructions from Respondents No.1, 1A and 2 has submitted that the scrutiny of the period is done and verified by the M.P.S.C. and the M.P.S.C. while calculating the period of experience of Respondent No.3 has indeed committed mistake by calculating 1 month more in respect of the Respondent No.3. The applicant who was initially not included in the consideration zone was excluded from the process of interview. However, he had approached the Tribunal and by interim order dated 23.05.2019 was allowed to appear for interview wherein by securing 60% he stood highest in the interview. On the basis of these submissions the period of experience and the calculations placed before us and as it is demonstrated we hold that the experience of Respondent No.3 goes lesser than the applicant and therefore the applicant stands at serial No.5. The applicant was interviewed pursuant to the interim order passed by this Tribunal. Let us put it in the form of Chart to have a correct grasp.

CHART NO.I

**Experience Details of the interview Candidates for the post of
Superintendent of Police/ Deputy Commissioner of Police, Wireless (Eng.)
Maharashtra State Police Service, Group A**

(Including training period of Sr. no. 3, 4 and 6, stipend period of sr. no 4)

SR NO	NAME of the Candidates	Experience			Observations
		Y	M	D	
1	Vaidya Pankaj Shashikant	23	10	26	Present for Interview Scored 57 Marks.
2	Bhosale Utkarsh Uttaeshwar	20	00	27	Absent for interview
3	Sawant Sunil Mohan	17	03	06	Absent for interview
4	Deshpande Prateek Bhalchandra	16	02	22	Present for Interview Scored 45 Marks.
5	Yadav Balkrishna Motiram	15	05	10	Present for Interview Scored 60 Marks.
6	Shelar Gajanan Somnath	15	04	17	<p>Present for Interview Scored 54 Marks.</p> <p>Resp. No.3 JTO in BSNL experience is from 15/03/2002 to 03/09/2012 = 10Y, 05M, 19D Actually.</p> <p>MPSC Shown wrongly as = 10Y, 06M, 19D(i.e. 1month extra)</p> <p>Wrong Arithmetic Calculation</p> <p>Thus Total Experience of Resp. no.3 Does not fulfil the short-listing criteria of 15Y, 05M, 17D</p>

The Chart No.1 shows the calculated total period of experience of Respondent No.3, Mr. Shelar as actual total experience, thus it can be demonstrate successfully that there is an arithmetical error in calculating the period of months where the experience of actual BSNL, JTO though was calculated 5 months, M.P.S.C. erroneously showed the said BSNL,

JTO experience as 6 months and thereafter the mistake carried forward. We rely on the Chart No.3 which was produced by the learned Counsel for the Applicant wherein the period of experience of the Applicant is 15 years, 5 months and 17 days is not challenged by either of the Respondents and it is admitted fact. The Chart shows the correct positioning of all the candidates with demonstration. Thus, the Applicant who was having 15 years, 5 months and 17 days naturally takes place at serial No.5 pushing down the Respondent No.3, Mr. Shelar at serial No.6. As per the Maharashtra Public Service Commission Rules of Procedure, 2014 (hereinafter referred as 'M.P.S.C. Rules 2014' for brevity), if there is any arithmetical error which can be corrected then the M.P.S.C. has power to correct the same. After hearing the learned Counsel for the Applicant and after going through all these Charts we gave opportunity to the State and M.P.S.C. to explain it.

19. However, though the Respondent-State and M.P.S.C. filed affidavit they could not satisfy us on this point, rather the M.P.S.C. had admitted that there is a mistake in counting one month of experience of Mr Gajanan Somnath Shelar. Thus, we hold that the Applicant stands at serial No.5 and Mr. Shelar is pushed down to serial No.6, therefore, the Applicant was rightly called for the interview after interim order given by this Tribunal. Had the Applicant been secured less marks than Mr. Pankaj Shashikant Vaidya, the recommended candidate by the M.P.S.C., then the applicant had no case. However, he secured the highest marks

i.e. 60 marks and the selection of the candidate depends on the marks in the interview. Therefore, the applicant successfully stands as No.1, so he is the candidate who needs to be recommended by the M.P.S.C. to the State Government. We have already granted interim relief in favour of the Applicant that he should not be reversed and we allowed him to continue. Thus, we pass the following order :-

O R D E R

- (A) The Original Applications are allowed.
- (B) The Applicant is a successful candidate and his name is to be recommended within one week i.e. by 30.07.2021 by the M.P.S.C. to the Respondent-Government.
- (C) The Respondent-Government is thereafter directed to issue the order within 10 days i.e. by 10.08.2021 and till then the Applicant to continue on the post as Deputy Commissioner of Police, Wireless, Mumbai.

Sd/-

(P.N Dixit)
Vice-Chairman (A)

prk

Sd/-

(Mridula Bhatkar, J.)
Chairperson