

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.744 OF 2018

DISTRICT: NASHIK

Subject: Seniority list

Shri Ashok Shivram Karkar)
Age 49 years, Occ : Jailor Group I at)
Nasik Central Prison, Nasik.)
R/at Rajgad Bunglow No.5, Nasik)
Road, Nasik.).....Applicant

VERSUS

- 1) The State of Maharashtra, through)
The Secretary, Home Department,)
Mantralaya, Mumbai 32.)
- 2) The Additional Director General of)
Police and Inspector General of)
Prison, Central Bldg., Pune.).....Respondents

Shri K. R. Jagdale, Advocate for the Applicant.

Smt. Archana B. K., Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 29.02.2024

PRONOUNCED ON: 15.04.2024

PER : Smt. Medha Gadgil, Member (A)

JUDGMENT

1. Heard Shri K. R. Jagdale, learned Advocate for Applicant and Smt Archana B. K., learned Presenting Officer for the Respondents.

2. The Applicant who is working as 'Jailor' Group-I at Nashik Central Prison, Nashik seeks promotion on the post Deputy Superintendent, Central Jail/Superintendent, District Prison Class II and prays that impugned communication dated 15.06.2018 issued by Respondent No.2 be quashed and set aside. He also prays that seniority of the Applicant be modified from Sr. No.58 and his name be inserted at Sr. No.7 (A) in between Sr. No.7 (Shri Baburao Sadashiv Kharate Jailor Group II (2006-2007) Rank of 150) and Sr. No.8 (Shri Anil H. Khamkar, Jailor Group II (2006-2007) rank of 164) in the final revised seniority list dated 15.06.2018 for the years 2015, 2016 & 2017 for the Jailor Group I post.

3. Learned Counsel for Applicant points out that Applicant was due for promotion as Jailor Group I in November 2006. However, he was promoted on 30.05.2007 on the post of Jailor Group I by Respondent No.2. The Applicant had appeared for the MPSC Exam in 2013 and was declared to have passed the said Exam on 15.02.2014. However, learned Counsel points out that Applicant ought to have been exempted from the criteria of passing MPSC Exams in a span of 5 years because according to GR dated 01.11.1977, 10.07.1979, and 28.11.1979 and 22.03.1983, the officers who have attained the age of 45 years are exempted from passing departmental examination and Applicant is entitled for the said benefit because he attained the age of 45 on 01.08.2013.

4. Learned Counsel for the Applicant further states that though according to Prison Manual Rules, all officers are required to pass MPSC Exam in 4 chances and in a period of 5 years. The Respondents had

permitted the Applicant to appear for MPSC Exam for the 5th time, in which Applicant eventually passed, therefore, the Respondents cannot go back and states that Applicant has been demoted in the seniority list because he did not pass MPSC Exam in span of 5 years.

5. Learned Counsel for the Applicant relied on the following judgments of this Tribunal which reads as under:-

- a) O.A.No.513/2015 (Ravindra Rave V/s State of Maharashtra 7 Ors.).**
- b) O.A.25/2019 (Dnyaneshwar D. Kale V/s State of Maharashtra & Ors.)**
- c) O.A.No.1017/2018 (Shri Vilas P. Kapade V/s State of Maharashtra & Ors.)**

6. Ld. PO opposes the submissions of the Ld. Advocate for the applicant. She relies on the affidavit in rely dated 26.2.2019 filed by Sharad Vamanrao Khatavkar, Principal, Datulatrao Jadhav Jail Officers Training College, Yeravada, Pune. She referred to the appointment order of the applicant dated 13.11.1994 wherein it was stated that as per Rule 3(1) of the Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977 (hereinafter refer to as 'the said Rules of 1977' for the sake of brevity), the applicant was required to clear this examination. Rule 3(1) of the said Rules of 1977 reads as under:

“Every person appointed directly to any post in the cadres of Jailor Group I or Group II or in the cadre of Superintendents of District Prison, Class II after the commencement of these rules, shall be required to

pass the examination in accordance with these rules within a period of five years from the date of his appointment and within three chances.”

7. Ld. PO submits that however the applicant cleared the said examination in his 5th attempt. She further pointed out that it came to the notice of the authority that seniority list prepared by the respondents were not in conformity with the said Rules. She stated that he was wrongly given promotion on 2.11.2006 although he had not cleared the said examination. The change in the seniority of the applicant was taken on the basis of 7 Members Committee constituted by respondent no.2 to consider the provisions and effect of the said Rules of 1977. The Committee took the following decision:

“A) The provisional seniority lists published for the years 2015, 2016 and 2017 were cancelled.

B) The said Committee decided that those officers who have passed the qualifying examination held by the MPSC within stipulated period and chances should be allowed to retain their original seniority.

C) The officers, who have failed to pass the examination within stipulated period and chances, would get the seniority from the date of passing the said examination. Accordingly, the revised provisional seniority list was published on 31.10.2017.”

8. It was pointed out that the final seniority list was published on 15.6.2018 by taking into consideration decision of the 7 Members Committee and a decision was taken to cancel the earlier provisional seniority lists for the years 2015, 2016 and 2017 as the applicant had failed to pass the qualifying examination within the period of 5 years and 3 chances. He lost his original seniority as per the provisions of Rule 3(4) of the said Rules of 1977.

9. Considered the submissions of both the sides. In this connection it is important to look at the provisions of the said Rules of 1977. It is seen that the respondents have followed the provisions of said Rules of 1977 which are framed as per the powers conferred by proviso to Article 309 of the Constitution of India. It is seen that 7 Members Committee has rightly taken a decision on the basis of said rules to cancel the provisional seniority list published for the years 2015, 2016 and 2017. The officers who passed the qualifying examination held by the MPSC within the stipulated period and chances were allowed to retain their original seniority and final seniority list was published on 15.6.2018.

10. Ld. Advocate for the applicant relied on the judgment and order dated 8.2.2023 passed by the Aurangabad Bench of this Tribunal in **OA No.25 of 2019 (Dnyaneshwat Dashrath Kale Vs. The State of Maharashtra & Ors.)** to strengthen his case. Here the matter revolves around exemption given to the applicant from passing the Executive Officers Qualifying Examination on attaining the age of 48 years as per the provisions of Rule 4(a) of the Rules.

However, in the present matter the applicant has belatedly cleared the qualifying examination in the year 2014. It is to be noted that the judgment of this Tribunal in *D.D. Kale* (supra) has been challenged before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No.13094 of 2023 (The Principal Secretary, Appeals & Security Vs. Dnyaneshwar Dashrath Kale)** and the following order is passed on 20.10.2023:

3. *Until further orders, the original Applicant shall not initiate steps for seeking execution of the impugned judgment dated 08.02.2023."*

11. Ld. Advocate for the applicant relied on the judgment and order dated 17.4.2023 passed by this Tribunal in OA No.1017 of 2018 Mr. Vilas Pandit Kapade Vs. The State of Maharashtra & Anr. In this case the applicant had prayed that his name be included in the select list of Jailor Group-I. As the facts in this case were similar to the case in *Dnyaneshwar D. Kale* (supra), this Tribunal had extended the same relief to the applicant. Herein also the matter related to grant of exemption from passing the departmental examination.

12. In the present case the facts are slightly different from the above mentioned OAs. Here the applicant has passed the examination belatedly on 15.2.2014 which was beyond the time limit prescribed as per the said Rules of 1977. It is not a question of exemption from passing the

departmental examination. The applicant was wrongly promoted in the year 2006 although he had not passed the said examination. Hence, the Committee took the following decision:

“A) The provisional seniority lists published for the years 2015, 2016 and 2017 were cancelled.

B) The said Committee decided that those officers who have passed the qualifying examination held by the MPSC within stipulated period and chances should be allowed to retain their original seniority.

C) The officers, who have failed to pass the examination within stipulated period and chances, would get the seniority from the date of passing the said examination. Accordingly, the revised provisional seniority list was published on 31.10.2017.”

13. We find that there is no reason to interfere with the said decision as it is taken as per the rules.

14. Considering the totality of the facts, we find that there is no merit in this OA and hence the same is dismissed with no order as to costs.

**Sd/-
(Medha Gadgil)
Member (A)**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson**

Place: Mumbai
Date: 15.04.2024
Dictation taken by: VSM/SGJ

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