

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 961 OF 2014
WITH
MISC APPLICATION NO 513 OF 2015
IN
ORIGINAL APPLICATION NO 961 OF 2014**

DISTRICT : MUMBAI

Shri Ravindra Vitthalrao Rave,)
Occ : Nil, Ex-Jailor Grade-II,)
Having worked in one of the Prisons)
Under the Administrative control of)
herein below the Respondent no. 1)
R/o: At post Chikhli, Dist-Buldhana)
Add for service of notice :)
Shri A.V Bandiwadekar, advocate,)
Having office at 9, "Ram Kripa",)
Lt Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

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1. The Additional Director)
General of Police and Inspector)
General of Prisons, [M.S],)
Pune, having office at)
Old Central Building, Pune-11.)
2. The State of Maharashtra,)
Through Principal Secretary,)
[Prison], Home Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 07.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)


ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

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2. This Original Application has been filed by the Applicant challenging the order dated 5.3.2013, which was modified by order dated 30.4.2013, removing him from Government service as he failed to pass the Departmental Examinations within 2 years from the date of appointment, even after he was given further chances and subsequent order dated 28.8.2014 passed by the Respondent no. 2.

3. Learned Counsel for the Applicant argued that the Applicant joined Government service as Jailor, Grade-II on 30.9.2003. His date of birth is 7.7.1967. He completed 45 years of age on 6.7.2012. As per the Maharashtra (Prison Department and Executive Offices Post Recruitment) Examinations Rules, 1997 (hereinafter called as '1977 rules'), he was exempted from passing the Departmental Examination after attaining the age of 45 years. The action of the Applicant in terminating his services by order dated 5.3.2013 is, therefore, bad in law and cannot be sustained. Learned Counsel for the Applicant relied on the judgment of this Tribunal, Nagpur Bench dated 21.9.2015 in O.A no 752/2014, where a Jailor, Grade-II who was similarly removed from service for failure to pass the Departmental Examination as per rules, was ordered to be taken back in service, as it was held that he was exempted from passing the Departmental Examination on reaching the age of 45 years.



4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents the Applicant was appointed as Jailor, Grade-II on 30.9.2003. As per the 1977 rules, the Applicant was required to pass the Departmental Examination within 2 years of joining service and within 3 chances. A candidate can be given one more chance to appear for the Post Recruitment Examination (P.R.T) at the discretion of the Inspector General of Prisons. The Applicant could not pass P.R.T within 3 chances and two years. He was allowed one more chance by the Inspector General of Prisons. However, he could not pass P.R.T even then. As per Rule 3(4)(b) of 1977 rules a person who fails to pass P.R.T within the time mentioned in sub rule (1) or (2) or within such extended time as may be granted under sub-rule (3) is liable to be discharged from service. The Applicant could not pass P.R.T in extended time, and was, therefore, discharged from service. Learned C.P.O argued that Rule 4(6) is not applicable in this case, as the Applicant was liable to be discharged under Rule 3(4)(b) for his failure to pass P.R.T.

5. We find that the Applicant joined service as Jailor, Grade-II on 30.9.2003. The Applicant was allowed to appear in P.R.T held between 30.7.2012 and 1.8.2012, which was his fifth chance. In para 6.3 of the O.A, the Applicant has stated that:-



“The Petitioner states that the departmental examination was held firstly in the year 2005, then 2006, 2008, 2009 and 2012. That it was the 5th chance of the Petitioner in the year 2012, when examination was held between 30.7.2012 to 1.8.2012, when he failed in only one paper namely, ACT, i.e Paper No. 2.”

In para 6 of the affidavit in reply dated 26.2.2015 of the Respondent no. 1, it is stated that:-

“With reference to Para 6.3, I say that the contents therein are correct as per the Prison Manual 1979. The Rule 3(4)(b) on page 1009 of the Manual is very clear and mandatory, which says, ‘if a candidate fails to pass the examination, he shall be liable to be discharge or reverted, as the case may be.’ The rest of the contents are correct as per record.”

6. From this, it is clear that the Respondent no. 1 had permitted the Applicant to appear for the P.R.T, 5 times till 2012, i.e. a period of 9 years from his joining service on 30.9.2003. Rule 4(b) of 1977 rules reads:-

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

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

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The language of this rule leaves no doubt that this rule overrides all other rules. The Respondent no. 1 has permitted the Applicant to continue in service, though he could not pass P.R.T as per Rule 3 ibid and the Respondent no. 1 never invoked Rule 3(4)(b), till the Applicant attained the age of 45 years. Once the Applicant was allowed by the Respondent no. 1 to cross the age of 45 years 1977 rules were not applicable to him and the Applicant could not be discharged from service under Rule 3(4)(b) ibid. This Tribunal (Nagpur Bench) has taken a similar view by judgment dated 21.9.2015 in O.A no 752/2014. The order dated 5.3.2013 issued by the Respondent no. 1 as modified by order dated 30.4.2013 is not sustainable. Similarly order dated 28.8.2014 of the Respondent no. 2 is also not sustainable.

7. Having regard to the aforesaid facts and circumstances of the case, the order of the Respondent no. 2 dated 28.8.2014 and consequential order dated 4.9.21014 are quashed and set aside. The orders dated 5.3.2013 and 30.4.2013 of the Respondent no. 1 are also 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.

As the Original Application is allowed, nothing survives in the Misc Application, which stands disposed of with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 07.01.2016

Dictation taken by : A.K. Nair.