

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 13/2023 (D.B.)

Suhas Ramchandra Pawar,
Superintendent,
Wardha District Prison-Class-I,
Age 54, Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) The Additional General of Police (Prison),
Maharashtra State,
Pune-411 001.
- 3) Nitin Bhalchandra Waichal,
Central Prison,
Mumbai-II.
- 4) Sunil Nivruti Dhamal,
I.G. Prison,
Pune-411 001.
- 5) Pramod Bhalaji Wagh,
Nashik Central Jail,
Nashik-422 101.

Respondents

Shri B.Kulkarni, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents 1 & 2.

Shri A.P.Sadavarte, Id. Counsel for the respondents 3 to 5.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 13thMar., 2023.

Judgment is pronounced on 23rd Mar., 2023.

(Per:-Vice Chairman)

Heard Shri B.Kulkarni, learned counsel for the applicant, Shri M.I.Khan, learned P.O. for the Respondents 1 & 2 and Shri A.P.Sadavarte, Id. Counsel for the Respondents 3 to 5.

2. The applicant's case in short is that the applicant was appointed in Jail Department and he was promoted in 2006 as Jailor, Group-I and further promoted in 2013 as Deputy Superintendent of Prison. Further he was promoted as Additional Superintendent of Prison (Central) in 2017 (as per Rejoinder on behalf of the applicant P. 3, para IV). The applicant has sought following reliefs:-

- A. *This Hon'ble Tribunal may be pleased to call for the record of the case from respondents and after examining the same quash and set aside impugned orders dated 13.12.2022 (A-1).*
- B. *This Hon'ble Tribunal may be pleased to direct the respondent no. 1 to act in accordance with the information furnished dated 15.07.2022 by the*

respondent no. 2 to respondent no. 1 thereby providing list of eligible candidates showing name of the respondent no. 3 to 5 for promotion in the cadre of Superintendent, Central Prison (vacant).

3. Respondents 1 & 2 have filed their reply on 24.02.2023 (PP. 34 to 44). To the reply they have also attached The Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules from PP. 45 to 47, hereinafter referred as Rules. In reply it has been pleaded in para nos. 6 and 7 (PP. 37 & 38):-

“6. It is further submitted that when the meeting of the Departmental Promotion Committee was held on 9th and 14th of March, 2006 in the Office of the respondent no.2 for promotion to the post of Jailor Grade-1, the applicant had not passed the Qualifying Examination. The rules for Qualifying Examination are mentioned in the Maharashtra Prison Manual on Page Nos. 1015, 1016, 1017 and 1018. It is clearly mentioned in the Rule 3 (3) on Page No.1016 that without having passed the Qualifying Examination, no one shall be promoted to a senior post and it is also mentioned in the Rule 3(4) that if one fails to pass the Qualifying Examination within prescribed period and attempts, he shall lose his seniority.

These facts have not been mentioned in the original application and hence the applicant is trying to mislead the Hon'ble Tribunal.

7. It is submitted that despite failing to pass the Qualifying Examination within prescribed period and attempts, the applicant was promoted to the post of Jailor Group-I in the year, 2006, whereas he passed the Qualifying Examination later in the year, 2010 vide Maharashtra Public Service Commission's Notification No.P-1(2)(19)/Feb-2009/1 dated 13.04.2010. It means that the applicant was supposed to be promoted for the post of Jailor Group-I only after passing the qualifying examination as per rules of promotion in accordance with the Maharashtra Prison Manual. However, as the said rules were not noticed by the administration, the applicant was promoted consequently before being eligible. Despite this, without taking away his promotion and without regulating the rest of his promotions, the action of only affecting his seniority has been taken by the administration presently. The copy of the result dated 13.04.2010 is annexed as Annexure-R-III. The chart showing the passing of the

examination by the applicant and the respondent nos. 3 to 5 is as below;

<i>Sr. Nos.</i>	<i>Name of the applicant and respondents 3 to 5</i>	<i>Date of appointment</i>	<i>Date of passing the qualifying examinations</i>	<i>Date of granting promotions on the post of Addl. Sp.</i>
1	<i>Suhas Ramchandra Pawar (Applicant)</i>	<i>17.02.1992</i>	<i>13.04.2010</i>	<i>29.06.2019</i>
2	<i>Nitin Bhalchandra Vaychal (Respondent no. 1)</i>	<i>17.02.1992</i>	<i>27.04.1998</i>	<i>29.06.2019</i>
3	<i>Sunil Nivrutti Dhamal (Respondent no. 2)</i>	<i>17.02.1992</i>	<i>18.06.1993</i>	<i>29.06.2019</i>
4	<i>Pramod Bhalaji Wagh (Respondent no. 3)</i>	<i>17.02.1992</i>	<i>23.06.1994</i>	<i>29.06.2019</i>

In view of the above chart it is clear that by typographical mistakes respondents 3 to 5 have been written in the above chart as respondents 1 to 3. Respondent 4 has passed the examination within five years after recruitment as per Rule 3 (1). Respondent no. 5 has passed the examination as per Rule 3 (1) on 23.06.1994 i.e. within five years of recruitment. Respondent no. 4 has passed the examination on 18.06.1993 i.e. again within five years of recruitment. Respondent no. 3 has passed on 27.04.1998 i.e. after five years."

4. Rule 3 of The Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules (from PP. 45 to 47), reads as under:-

“3. (1) Every person appointed directly to any post in the cadres of Jailors Group I or Group II or in the cadre of Superintendents of District Prisons. Class II after 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.

A candidate from (1) Scheduled Caste, Scheduled Tribe and Denotified Tribes and Nomadic Tribes, shall be given one more chance and one more year to pass the examination.

(2) Every person working in any post in the cadre of Jailors, Group-I or Group-II or in the cadre of Superintendents of District Prisons Class-II on the date of commencement of these rules, shall, be required to pass the examination within three years and within three chances.

(3) Save as otherwise provided in sub-rule (6), no Executive Officer shall hereafter be promoted in a regular vacancy in any higher cadre, unless he has passed the examination.

(4) An Executive Officer who does not pass the Examination within the period prescribed under sub-rules (1) and (2) above or within the period extended under rule 11 will lose his seniority to all those who have passed the examination.

(5) Subject to the loss of seniority under sub-rule (4) and Executive officer shall be allowed to pass the Examination in any number of chances.

(6) During the interim period, that is, the period from the date of the commencement of these rules to the date on which the results of first Examination under these rules are declared, promotion of the Executive Officers to any of the higher cadres shall be made according to seniority and suitability of persons. However persons so promoted shall have to pass the Examination under these rules within a period of three years and within three chances from the date of commencement of these rules failing which they shall be reverted."

5. The applicant has passed the examination on 13.04.2010 i.e. much after respondents 3 to 5 have passed the same. Along with reply respondents have filed Annexure-R-IV which is minutes of meeting under Special General of Police (Jail) South Division, Mumbai. The

minutes of meeting are at PP. 51 & 52 relevant part of which is reproduced below:-

“वरील नियमानुसार सन १९७७ ते २०१५ पर्यंत सेवाजेष्ठता सुची तयार करतांना नियमातील तरतुदीनुसार तयार करण्यात आल्या नसल्यामुळे जे अधिकारी अर्हताकारी परिक्षा उत्तीर्ण नाहीत अशा अधिका-यांना वरिष्ठ पदावर पदोन्नती देण्यात आली. याबाबत नियमातील तरतुदींचा अभ्यास करून समितीने सेवाजेष्ठता सुची तयार करण्यासाठी खालील प्रमाणे निकर्ष ठरविले आहेत.

अ. एकाच निवड यादीमध्ये दोन अधिकारी शासकिय सेवेत प्रवेश केला त्यापैकी जो कनिष्ठ आहे त्यांनी अर्हताकारी परिक्षा प्रथम संधीत उत्तीर्ण झाले. अशा वेळी त्यांनी पदोन्नतीच्या अटी व शर्तीची पूर्तता केल्यामुळे त्यांना वरिष्ठ पदावर पदोन्नती देण्यात आली. तथापी त्यांच्याच बरोबर कार्यरत असलेले अधिकारी तीस-या संधीत परंतु विहित कालावधीत अर्हताकारी परिक्षा उत्तीर्ण झाल्यामुळे त्यांचे सोबतच्या अधिका-यास ज्या दिनांकाला पदोन्नती देण्यात आलेली आहे तोच दिनांक देवून मुळ सेवाजेष्ठता अबाधित ठेवणे असा निर्णय घेण्यात आला.

ब. जे अधिकारी विहित संधीत व विहित कालावधीत अर्हताकारी परिक्षा उत्तीर्ण झालेले आहेत त्यांची सेवाजेष्ठता जशी आहे तशीच ठेवण्यात यावी.

क. जे अधिकारी विहित संधीत व विहित कालावधीत अर्हताकारी परिक्षा उत्तीर्ण झालेले नाहीत त्यांना ते ज्या वर्षी परिक्षा उत्तीर्ण झालेले आहेत त्या वर्षानुसार सेवाजेष्ठता देण्यात यावी.”

6. From these minutes it is clear that there was no seniority list from 1977 to 2015 and many promotions were given even to those officers who had not passed qualifying examination as per rule 3 (1).

7. The Id. Counsel for the applicant seeks quashing of G.R. dated 13.12.2022 (A-1, P. 11). From minutes of the meeting dated 11.09.2017 it is crystal clear that promotions have been given to Officers who had not passed the necessary examination.

8. In view of above discussion, it is clear that seniority list published by impugned order dated 13.12.2022 (A-1, P. 11) is not correct. So, it is required to be quashed and set aside and fresh list is required to be prepared after taking into account all objections from candidates. Hence, following order:-

ORDER

A. Impugned order dated 13.12.2022 (A-1, P. 11) is quashed and set aside.

B. The matter is remanded back to respondent no. 2 to prepare fresh seniority list according to Rules and Regulations and after inviting and deciding objections. It shall then be submitted to the Government along with remarks for finalization. The whole process shall be completed within two months from the date of receipt of this order. Once list is finalized any aggrieved party shall be at liberty to approach this Tribunal.

C. No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated -23/03/2023

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 23/03/2023.
on and pronounced on

Uploaded on : 24/03/2023.