

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 476/2021 (S.B.)

Lahu S/o Raosaheb Sangale,
Aged about 42, Occupation : Turung Adhikari – Jailor Group-I,
Gadchiroli, District Open Prison,
Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home (Prison),
Mantralaya, Mumbai- 32.
- 2) The Director General & Inspector General of Prisons,
Old Central Building,
Second Floor,
Pune-1.
- 3) Shri Deorao S/o Suryabhan Ade,
Aged - Major, Turung Adhikari Group-I,
Presently posted at – Nagpur Central Prison,
Nagpur.

Respondents

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

Shri A.P.Potnis, Id. P.O. for the Respondents.

None for the R-3.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 03rdJuly, 2023.

Judgment is pronounced on 07thJuly, 2023.

Heard Shri B.Kulkarni, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents. None for the R-3.

2. Case of the applicant is as follows. In seniority list of Jailor-Grade-II as on 01.01.2012 (A-5) the applicant was at Sr. No. 27 whereas respondent no. 3 was at Sr. No. 104. By order dated 20.12.2012 (A-4) respondent no. 3 was promoted as Jailor-Grade-I. The applicant was promoted as Jailor-Grade-I by order dated 21.05.2018 (A-6). He was required to pass the departmental qualifying examination in five attempts as he belongs to N.T.-(D). He appeared for the examination held in the years 2007, 2008 and 2009 but could not clear it. In the year 2010 examination was not held. Though examination was held in the years 2011 and 2012, he was not relieved by his office to appear for the same. In the year 2013, too, he could not clear the examination. In the year 2014 which was effectively his 5th attempt he passed the examination. In the seniority list of Jailor-Grade-I as on 01.01.2020 (A-7) the applicant is at Sr. No. 62 and respondent no. 3 is at Sr. No. 93. In these facts the applicant is entitled to deemed date of promotion to the post of Jailor-Grade-I on par with his junior, respondent no. 3, i.e. 20.12.2012. He ventilated this grievance by representation dated 03.07.2019 (at PP. 42 to 46 and also marked A-7). By the impugned order dated 20.01/18.02-2020 his representation was rejected. Hence, this O.A..

3. In their reply respondents 1 & 2 have raised following grounds:-

A. For want of documentary evidence contention of the applicant that he was not relieved to appear for examinations held in the years 2011 & 2012 cannot be accepted.

B. In the meeting of Selection Committee held on 30.11.2012 the applicant was held to be ineligible for promotion as he was still on probation (A-R-1).

C. In the meeting of Selection Committee held on 02.12.2015 the applicant was held to be ineligible for promotion because he had not passed the departmental/qualifying examination (A-R-2).

D. A seven member committee in its meetings held on 11.09.2017, 11.03.2018 and 05.06.2018 (A-R-3 collectively) took the following decisions:-

“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.”

4. In his rejoinder the applicant has stated that in fact he was not relieved to appear for the examinations held in the years 2011 and 2012, this record must be in the custody of the concerned office, and, therefore, onus to produce the same lies on the respondent department and not on him.

To the rejoinder the applicant has attached communication dated 19.10.2015 which states:-

तसेच महाराष्ट्र लोक सेवा आयोगामार्फत जेव्हा अर्हताकारी परीक्षा घेण्यात येईल त्यावेळी आपल्या कारागृहातील अधिका-यांना विशेष बाब सोडून परीक्षेसाठी कार्यमुक्त करणे ही अधीक्षकांची वैयक्तिक जबाबदारी राहिल. तसेच एखाद्या अधिका-याला परीक्षेसाठी पाठविणे अति महत्वाच्या बाबी असेल तर त्याची मंजूरी मुख्यालयाकडून घेणे आवश्यक आहे.

वरील परिपत्रकाप्रमाणे सुचनांचे काटेकोरपणे पालन करावे.

5. To his additional rejoinder the applicant has attached extracts of attendance register for the periods 25.01.2011 to 10.02.2011 and 20.06.2012 to 30.06.2012. It is his contention that these extracts will establish that the dates on which qualifying examination was held in the years 2011 and 2012 he was present in the office and the only inference to be drawn from this circumstance would be that he was not relieved to appear for these examinations.

Communication dated 13.06.2012 also attached to the additional rejoinder shows that the applicant was shortlisted to appear for the qualifying examination to be held in the month of June, 2012.

6. It was submitted by Shri Kulkarni, Id. Counsel for the applicant that the material produced by the applicant with his rejoinders shall suffice to accept the contention that the applicant was not relieved to attend examinations held in the years 2011 and 2012.

7. The applicant had submitted a detailed representation (A-7). It was rejected by the impugned order. The impugned order is devoid of reasons. To properly decide the representation respondent no. 2 was expected to go through the record, find out whether the applicant was in fact nor relieved so as to enable him to attend the examination held in

the years 2011 - 2012, if he was not so relieved what were the circumstances therefor, whether the applicant himself was at fault in any way, etc. These aspects can be dealt with only by going through the relevant record.

8. The impugned order cannot be sustained because it does not show that before passing the same above referred exercise was duly undertaken. Hence, the matter will have to be sent back to respondent no. 2 to decide representation of the applicant dated 03.07.2019 (A-7) afresh on its own merits and to record reasons for the conclusions arrived at. **The O.A. is accordingly allowed in the following terms.** The impugned order dated 20.01/18.02-2020 (A-1) is quashed and set aside. Respondent no. 2 is directed to decide the representation dated 03.07.2019 filed by the applicant on its own merits **within three months** from the date of receipt of this order and communicate the decision to the applicant forthwith. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 07/07/2023.
aps

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 Member (J).

Judgment signed on : 07/07/2023.
and pronounced on

Uploaded on : 10/07/2023.