

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 63/2016**

Vikas Hanumantu Rajnalwar,  
Aged about 34 years, R/o Quarter No. 173,  
Nagpur Central Prison, Wardha Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
- 2) Maharashtra Public Service Commission,  
Through its Secretary, Bank of India Building,  
3<sup>rd</sup> Floor, Mahatma Gandhi Road,  
Hutatma Chowk, Mumbai-1.
- 3) Inspector General of Prisons,  
Central Building, Pune-1.

**Respondents**

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**Shri R.V.Shiralkar, Advocate for the applicant.**

**Shri S.A.Sainis, P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D.Kulkarni, Vice Chairman.**

**Dated :- 07/04/2017**

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**ORAL ORDER -**

Heard Shri R.V.Shiralkar, Id. counsel for the applicant and  
Shri S.A.Sainis, Id. P.O. for Respondents.

2. The applicant belongs to NT(B) category and is working as  
Jailor Group – II at Nagpur. The applicant is eligible and qualified. The

applicant came to be appointed on the said post on 11/02/2005 and had joined the services on 15/02/2005. After joining the post he was sent for a training of 1 year at Pune and completed his training successfully and thereafter was given posting at Nashik Jail. He has also completed the probation period successfully and had worked at various places and is presently working at Nagpur.

3. The next promotional post for the applicant is Jailor Group-I. One who is aspiring for promotion, has to pass the **Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977**. As per **Rules 3 (1)** it is mandatory for the candidate to pass the examination within 5 years and in 3 chances. A candidate from SC and ST, Denotified tribe and Nomadic tribe is given one more chance and one more year to pass the Departmental Examination. Rule 3 (3) states that no executive officer shall be promoted in a regular vacancy in any higher cadre unless he passed the examination. The said examination is to be conducted every year as per Rule 5. Rule 11 states that in exceptional circumstances, the Inspector General, may in his discretion allow one extra chance to the candidate to appear for examination. Rule 12 states that the standard of passing examination shall be 45 % in each paper. As per Rule 12 (2) condonation upto 5 % of marks in any one paper may be granted to the candidate who is thereby able to pass the examination.



4. The Respondent no. 2 conducted the examination in the year 2008. The applicant appeared for the examination for 5 papers and in the first chance he could clear only paper no. 2 & 4. In 2011 the applicant appeared for second chance and at that time he could clear paper no. 5. In 2013 which was third chance for the applicant the applicant could clear paper no. 3, but in paper no. 1 he could get 41 marks and as such was shortage of 4 marks for passing the examination. According to the applicant he is entitled for exemption / condonation of 5 % marks as per Rule 12 (2) of the Rules of 1977. He made a representation on 01/03/2014 and 08/12/2015 are requested that by granting grace marks he be declared successful in paper number one. However, no cognizance of the representation had been taken and therefore this O.A.

5. The applicant has claimed as under :-

A. *Hold and declare that the applicant is entitled to get 5 % of marks in paper no. 1 i.e. 4 grace marks, as per Rule 12 (2) of Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977 and consequently.*


B. *Direct the respondent no. 2 to grant 4 grace marks to the applicant and then to declare his result a fresh.*





The respondents no. 1 to 3 have filed reply affidavit admitted most of the facts. According to the respondents the applicant has not passed the qualifying examination and therefore he is not entitled to promotion as per the Rule 3 (3) of the Rule of 1977 hereinafter be referred to the Rules of "**Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977**". It is admitted that the representation had been received by the government and the same are under consideration. In para number 15 of the written reply affidavit it is stated that the Respondent no. 2 has recommended that condonation of 5 % of marks in any one paper shall be granted to the candidate who is thereby able to pass examination, provided that the candidate appears for all the papers at one and the same time. As per these recommendations the Government of Maharashtra had issued a G.R./ Notification on 02/01/2017 and amended Rule 12 of the "**Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977**", after Sub-rule (2), the following proviso shall be added, namely:-

"Provided that, the condonation marks shall be granted to only those candidates who appears for the papers at one and the same time."



6. The Id. counsel for the applicant submits that in the Rules of 1977 there was no provision making it compulsory for the candidate to clear all papers at one and the same times for granting condonation of 5 marks. Admittedly that seems to be the reason as to why Rule 12 of the Rules of 1977 has been amended as per notification dated 02/01/2017 which is marks exhibit "X" for the purpose of identification. This proviso to Rule 12 has come into operation on account of notification dated 02/01/2017 whereby the Rules of 1977 have been amended. The said amendment cannot be applied retrospectively. This amendment will come into force on the date of notification i.e. 02/01/2017.

7. I have carefully gone through the Rules of 1977 which are placed on record on paper book Pg. No. 13 to 18 (both inclusive) Rule 12 and the same Rule is relevant and it reads as under:-

12(1) The standard of passing the examination shall be 45 percent in each paper.

(2) Condonation upto 5 percent of marks in any one paper shall be granted to a candidate who is thereby able to pass the examination.

(3) An unsuccessful candidate who had obtained



55 percent or more of the total number of marks obtainable under any subject shall be exempted from appearing again in that subject.

The exemption secured by a candidate in a previous examination should be claimed by applying for it in the subsequent examination and that if it is not claimed, it will be presumed that the candidate does not wish to avail of it.

- (4) A candidate who obtains atleast 75 percent of the aggregate marks obtainable shall be considered to have passed the examination with credit.

Provided that, a candidate who has been granted an extra chance under Rule 11 or has passed the Examination in instalments shall not be considered to have passed with credit.

The aforesaid said Rule nowhere states that the candidate will have to appear for all the papers at one of the same or will have to clear all the papers except one at one of the same time. The applicant

appeared for the examination and admittedly he had cleared 4 papers out of 5 and in 1 paper he got 41 marks out of 100 and therefore his case for condonation upto 5 % of marks can be well considered as per Rule 12 (2). Since he has cleared every papers prior to coming into force of the notification dated 02/01/2017.

8. The respondents have stated that the representations filed by the applicant are under consideration and in view thereof I passed the following orders:-

“O.A. is partly allowed. The respondents are directed to take decision on the representations filled by the applicant on 01/03/2014 and 08/12/2014 as per Rule of 1977 and in view of the observation made in this order that the amendment of Rule 12 vide notification dated 02/01/2017 shall not be made applicable to the case of applicant. Necessary decision shall be taken within 2 Months from the date of this order and shall be communicated to the applicant in writing. No order as to cost.”

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