

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 724 of 2017 (D.B.)

Dr. Bhaidas Namdeorao Dhole,
Aged 49 years, Occ. Service,
R/o Chandrapur District Prison,
Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Home (Prison),
Mantralaya, Mumbai-32.
- 2) Inspector General of Prisons,
Central Buidling, Pune-1.
- 3) Deputy Inspector General of Prisons,
Eastern Region, Wardha Road, Nagpur.

Respondents.

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

Shri S.A. Deo, learned C.P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT

PER: V.C. (J).

(Delivered on this 5th day of May,2018)

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri S.A. Deo, learned CPO for the respondents.

2. The applicant was appointed as Jailor Group-II by the respondent no.2 vide order dated 01/12/1995. His appointment was from Open Category. He accordingly joined on the post of Jailor Group-II and worked there till 2012. After completion of the training he was posted on the said post.

3. In between 15/01/2002 to 17/01/2002 the applicant appeared for examination to be conducted under the Maharashtra Prison Department (Executive Officers' Qualifying Examination) Rules, 1977 (in short "Rules of 1977"). He cleared that examination. Thereafter, the applicant was appointed as Deputy Superintendent of District Prison after clearing the examination conducted by Maharashtra Public Service Commission vide order dated 01/03/2012 by way of direct examination and since then he is working as such. Presently, the applicant is working on the said post and having charge of Superintendent of Prison at District Jail, Chandrapur.

4. According to the applicant, the next promotional post available for applicant is Superintendent, District Prisons. He has already cleared the departmental qualifying examination in the cadre of Deputy Superintendent itself. Moreover, the applicant has also crossed age of 48 years and as per Rule 4 (a), he is exempted from passing of qualifying examination. The applicant has also made representation for promotion on 13/09/2017 to respondent no.1.

However, his claim has not been considered. The applicant has therefore prayed that it shall be declared that he is entitled to exemption from passing departmental qualifying examination provided under Rule 4 (a) of the Rules of 1977 and also because he has already passed that examination in 2002 and direct the respondents to consider his case for further promotion.

5. The respondent nos. 1 to 3 have filed their reply-affidavit. It is stated in para nos. 16 & 17 as under :-

“ (16) The applicant has misconstrued the definition of Executive Officer’s Rule 2 (d) of the said rules provides the definition of Executive Officer’s means a person working in the cadre of Jailor, Group-I or Group-II and in the cadre of Superintendent of District Prisons, Class-II. The said definition has to be read inconsonance with provisions of Rule 3 (3) which provides that save as otherwise provides in sub rule 6 no Executive Officer shall hereinafter promoted in a regular vacancies in any higher cadre unless he has passed the examination. As such the rule is crystal clear that since the applicant has been appointed on the post of Superintendent of District Prisons Class-II / Dy. Superintendent Central Prisons by way of nomination he is required to pass the said examination for further promotion as provided under Rule 3 (3) of the said rules. The applicant has no doubt once cleared the said examination in the different cadre of Jailor, but now the applicant is working on the post of Superintendent of District Prisons Class-II which is a different

cadre from the cadre of Jailor and therefore for getting further promotion he has to again pass the qualifying examination.

(17) The applicant in the Original Application has prayed two fold reliefs that first he is not required to pass the said qualifying examination again as he has already pass the same in the year,2002. As far as that relief is concerned, it is already made clear that he has passed the qualifying examination in a different cadre and now for seeking further promotion in the different cadre he has to pass the said qualifying examination again. The second relief is the applicant has claimed by which he has sought exemption from passing the said examination as he has crossed the age of 48 years, therefore it is the contentions of the applicant that he should be exempted from passing the said examination as per the provisions of Rule 4 (a) of the aforesaid rules. As far as this contention of the applicant is concerned, Rule 4 (a) provides that the persons who have attained the age of 48 years on the date of coming into force of these rules should be exempted from passing the said examination. The said rules came into force on 1/9/1977, as such the persons claiming the exemption under the said rule has to attain the age of 48 years on 1/9/1977 and no thereafter. As such the applicant cannot be granted benefit of Rule 4 (a) in respect of exemption from passing the said examination.”

6. From the reply-affidavit and the argument putforth by the learned CPO, it seems that the respondents are coming with a case that the so called qualifying examination, i.e., as per Rules of 1977 has been cleared by the applicant, but not in the cadre of Dy.

Superintendent of Prisons, but when he was serving as a Jailor, Group-II and therefore as per the Recruitment Rules he has to clear the said examination. The learned P.O. has invited our attention to the Rules of 1977 and particularly Rule 2 (d) which refers to the definition of the word "Executive Officer". The said rule 2 (d) & 3 (1) reads as under :-

"2(d) "Executive Officer" means a person working in the cadre Jailors (Group-I) or (Group-II) and in the cadre of the Superintendents of District Persons Class-II.

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."

7. He further referred to rule 3, which states that 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.

8. We have perused the rule 2 (d) and 3 (1) as referred above. In our opinion the applicant falls within the definition of "Executive Officer" since he is Jailor, Group-II and also the Deputy

Superintendent of Prisons. He has already cleared the departmental qualifying examination as per rule-3 after commencement of these rules. It is highly improbable on the part of State to say that such qualifying examination must be passed again after appointment of the direct recruitee. If the applicant has already cleared that examination while he was working as Executive Officer i.e. Jailor Group-II, it will be injustice on the applicant to ask him again to appear for that examination and to clear it for getting promotion for the post of Superintendent of District Prisons.

9. Apart from rule 3 as referred above, the rule 4 states about the exemption to be granted and rule 4 (a) is material and relevant which reads as under :-

“4 (a) persons who have attained the age of 48 years on the date of coming into force of these rules”

10. The aforesaid clause clearly shows that a person who has attained the age of 48 years is entitled to be exempted. The learned CPO submits that such person must attain the age of 48 years on the date of coming into force of these rules and therefore since these rules came into force on 1st September,1977, the only candidates who have attained the age of 48 years on 1st September,1977 shall be exempted. This interpretation seems to be correct. These rules came into force on 1st September,1977 and therefore it has been clearly stated that those employees who have attained the age of 48 years on 1st September,1977

need not be required to clear the departmental examination and therefore these rule of exemption is not applicable to the applicant and the applicant cannot claim exemption on that ground. However, from the facts discussed, it will be cleared that the applicant has cleared the qualifying examination as required under rule 3 after commencement of these rules and therefore he need not again appear for such examination merely because he has cleared that examination while serving as Jailor, Group-II Officer. Considering this fact, the representation of the applicant should have been considered for promotion. We, therefore, pass the following order :-

ORDER

It is hereby declared that since the applicant has already cleared the Maharashtra Prison Department (Executive Officers' Qualifying Examination) Rules, 1977, he be considered for the promotion to the post of Superintendent of District Prison, if he is otherwise fit for such promotion. The respondents are directed to consider the case of the applicant for such promotion on its own merits without being influenced by any of the observations made in this order. No order as to costs.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 05/05/2018.