

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 20/2023(S.B.)**

Hemant Nathuji Anturkar,  
Aged 42 years, Occ. Service,  
R/o 34, Shesh Nagar, Kharbi Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Secretary Department of Finance  
and Accounts services,  
Mantralaya, Mumbai-32.
- 2) Director,  
Accounts and Treasuries,  
New Govt. Complex no.15 & 16,  
Plot no.176, Free Press Journal Marg,  
Mumbai-01.
- 3) Maharashtra Public Service Commission,  
Bank of India building, 3<sup>rd</sup> Floor,  
Mahatma Gandhi Marg, Hutatma Chowk,  
Mumbai-01.

**Respondents**

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Shri R.V.Shiralkar, Ld. Counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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

**Dated: - 1<sup>st</sup> August 2023.**

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**JUDGMENT**

**Judgment is reserved on 25<sup>th</sup> July, 2023.**

**Judgment is pronounced on 1<sup>st</sup> August, 2023.**

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The applicant who is working in the respondent department as Senior Clerk is claiming benefit of Rule 12 of Maharashtra Finance and Accounts Service, Class-III Examination Rules, 1965 (hereinafter Rules of 1965) which reads as under –

*12. If a candidate passes in all the papers of Part I or Part II except one, his failure to pass in that paper shall be condoned provided the deficiency does not exceed 5 percent of the marks obtained in that paper.*

3. It is the case of the applicant that in examination of October 2012 he cleared three papers of part I and failed in 1 paper i.e. paper no.2 by 3 marks. Examination of April, 2013 was held in April, 2018. In this examination he attempted part II and cleared all four papers. Result of this examination was declared on 09.10.2019 (Annexure A-2).

4. Further case of the applicant is that he filed this O.A. on 05.01.2023, thereafter, he filed C.A.No.170/2023 for condonation of delay and delay was condoned by order dated 05.07.2023.

5. According to the applicant, since only 1 paper remained to be cleared by him and the deficiency in the said paper did not exceed 5%, he was entitled to get the benefit of Rule 12 of Rules of 1965. Hence, this O.A.

6. Stand of respondents 1 and 2 is as follows. Result of the examination was declared on 09.10.2019 when the cause of action arose. Hence, this O.A. which is filed on 05.01.2023 is barred by limitation and the applicant is guilty of laches. The O.A. is not tenable since the applicant did not avail alternative remedy of making a representation. In the examination held in October 2012 the applicant cleared only two out of four papers of part one. In the examination held in the year 2018 he cleared only one out of two papers of part one. Grace marks cannot be awarded under Rule 12 of Rules of 1965 unless the employee clears all papers except one simultaneously. Judgment of this Bench in O.A.No.63/2016 on which the applicant desires to rely is not applicable to the facts of the case in hand.

7. In his rejoinder the applicant has contended as follows. The Rule 12 provides that "If Candidate passes in all the papers of Part-I or Part-II except one, his failure to pass in that paper shall be condoned provided the deficiency does not exceed 5% of the marks obtainable in that

paper." The Rule does not contemplate that the candidate should clear all the papers in one stroke. The interpretation done by the respondent no. 3 is erroneous. The applicant can show that some of the candidates have been given grace marks twice.

7A. The Applicant had filed separate Civil Application for Condonation of Delay and the same was allowed by this Hon'ble Tribunal and the delay was condoned.

8. The applicant has relied on the Judgment of this Bench dated 07.04.2017 in O.A.No.63/2016 (Annexure A-3). In the said case Rule 12 of the Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977 (hereinafter Rules of 1977), which reads as follows was considered-

*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 at least 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.*

This Bench held-

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

In this O.A. the Bench also considered the effect of proviso to Rule 12(2) of Rules of 1977 which is quoted above.

Regarding effect of this proviso the Bench held-

*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.*

9. It was submitted by Shri R.V.Shiralkar, learned Advocate for the applicant that Rule 12 of Rules of 1977 is in pari materia with Rule 12 of Rules of 1965. I have quoted both these Rules. Plain reading of these Rules shows that there is merit in the aforesaid submission. It is not in dispute that the applicant has cleared all papers of parts 1 and 2 except paper no.2 of part 1 in which he has scored 42 out of 100 marks and thus the deficit is less than 5% as the bar for clearing a paper is set at 45 marks out of 100.

10. It was submitted by Shri M.I.Khan, learned P.O. that the applicant was guilty of laches and hence no relief can be granted to him. In support of this submission reliance is placed on the Judgment of Principal Bench of this Tribunal in a batch of 7 Original Applications, dated 22.11.2022. In opening para of this Judgment facts and the relief claimed are stated as follows-

*Applicants in all these seven Original Applications challenge the results declared by Maharashtra Public Service Commission (M.P.S.C.) for re-evaluation of answer sheet in Paper-2 in the Departmental Examination. All the Applicants are working on the post of Clerks in various departments in Government offices in the State have completed five years of Government service. All the Applicants aspiring for the appointment by selection for the post of Assistant Accounts Officer, Group-B appeared for the Departmental Examination conducted by M.P.S.C. Service, Class-III, Departmental Examination was conducted by M.P.S.C. from 24.04.2018 to 27.04.2018 at Mumbai. However, the applicants could not clear the examination on account of multiple errors in the question paper and also the answer sheets provided by M.P.S.C. Hence, they pray for re-evaluation of these sheets and for the grace marks.*

Operative part of this Judgment is as follows-

26. *In view of the above, we pass the following order.-*
- (i) Question nos. 4, 5(a) & 5(b) are out of syllabus*
  - (ii) The prayers of the applicants that they be given full marks for these two questions 4, 5(a) & 5(b) is denied.*
  - (iii) We direct the M.P.S.C to allot the marks to question nos. 4, 5(a) & 5(b) by following one of the two methods stated below:-*
    - (a) Considering the total marks secured by the candidate out of 70 marks, i.e., excluding the 30 marks of question nos. 4, 5(a) & 5(b) and then*

*calculate the average of 100 marks on the basis of actual marks obtained by the candidate out of 70 marks, [that is the marks of the question barring question nos. 4, 5(a) & 5(b)].*

*(b) Passing marks of question nos. 4, 5(a) & 5(b) are to be calculated and rounded off and that is to be given to all the candidates.*

*(c) We make it clear that if the candidates have attempted either of the question nos. 4, 5(a) & 5(b) and secured more marks than the average or passing marks, then the marks which are obtained by a particular candidate are to be retained.*

*(iv) We further clarify that these benefits is to be extended to the applicants who have approached this Tribunal within a reasonable time.*

*(v) The said order should be complied on or before 25.1.2023.*

It was submitted by the P.O. that in the above referred case the Principal Bench clarified that benefits of the order were to be extended only to those of the applicants who had approached the Tribunal within a reasonable time and by applying this yardstick the applicant will have to be non-suited on account of laches.

Further reliance was placed by the P.O. on the Judgment of this Bench in a batch of Original Applications dated 25.07.2022. The

Judgment of this Bench dated 25.07.2022 was placed before the Principal Bench of this Tribunal in O.A.Nos.327 and 344 of 2022 which were decided by a common Judgment dated 21.06.2023 wherein it is observed-

*However, in the judgment and order dated 25.7.2022 of the Nagpur Bench of this Tribunal in OA No.391 of 2022 & other group matters (Sandip B. Somwanshi & Ors. Vs. The State of Maharashtra & Ors.) again, same issue was dealt with and whether benefits of order in O.A.No.634/2017 are to be extended to the other applicants who are similarly placed in service is discussed. The DB of this Tribunal at Nagpur Bench has further considered the ratio laid down in the Judgment of Hon'ble Supreme Court in (2015) 1 SCC 347 State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors.*

6. *While passing the order the Nagpur Bench of the Tribunal has considered the point of laches also. It is also required to be mentioned that Ld. PO has pointed out from the averments in para 6.6 and 6.7 in O.A.No.327 of 2022 that applicants were aware of the decision of non-eligibility for this examination but they did not approach earlier because their applications were accepted.*

7. *Thus, on account of law of precedent, we are bound by the orders of the Nagpur Bench of this Tribunal and we are unable to extend the same benefit of O.A.No.634/2017 to the present applicants. We are informed that order of Nagpur Bench of this Tribunal in OA No.391/2022 (supra) is challenged before the Nagpur Bench of the Hon'ble High Court and it is pending.*

None of these Judgments which deal with the effect of laches will help the respondents since in the instant case the applicant's application for condonation of delay was allowed by order dated 05.07.2023. Under the circumstances, it would not be open to go into the issue of laches again and the matter will have to be decided on merits. So far as merits of the matter are concerned, the Judgment of this Bench dated 07.04.2017 fully supports the applicant in establishing his case that he is entitled to get the benefit of Rule 12 of Rules of 1965. It may be stated that there is no proviso to this Rule 12 like the one to Rule 12 of Rules of 1977. For all these reasons I hold that the applicant is entitled to get the benefit of Rule 12 of Rules of 1965, and consequential benefits. The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 01/08/2023  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J).  
Judgment signed on : 01/08/2023.  
and pronounced on