

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.603/2016. (D.B.)

Jogendra Brindaban Mishra,
Aged about 57 years,
Occ-Service,
R/o Jail Quarters, Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary (Prisons),
Home Department,
Mantralaya Mumbai-400 032.
2. The Additional Director General of Police
and Inspector General of Prisons, Pune.
3. Sunil Manohar Nighot,
Aged Major,
The Deputy Superintendent of Prisons,
Central Prisons, Nagpur.

Respondents

Shri S.C. Deshmukh, the Ld. Advocate for the applicant.

Shri A.M. Ghogre, the Ld. P.O. for the respondents 1 and 2.

None for respondent No.3.

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

JUDGMENT

(Delivered on this 1st day of November 2018.)

Per:Vice-Chairman (J)

Heard Shri S.C. Deshmukh, the learned counsel for the applicant and Shri A.M.Ghogre, the learned P.O. for the respondents 1 and 2. None for respondent No.3.

2. The applicant joined the service in Nagpur Central Prison as Rakshak on 21.8.1980 and thereafter came to be posted as a Clerk in Buldana District Prison on 7.1.1985. He was promoted as a Jailor, Group-II on 21.6.1993 and was posted at Mumbai Central Prison. Thereafter, he was promoted as a Jailor, Group-I on 14.3.2006 and was posted at Kolhapur Central Prison. He was very much due for promotion to the post of Deputy Superintendent of District Prisons, Class-II. The D.P.C. was held for considering such promotion on 8.12.2014. Applicant's case was considered for promotion subject to outcome of the departmental enquiry against him. The applicant has been exonerated in the departmental enquiry from all the charges and, therefore, it was necessary to promote the applicant. However, the respondent No.2 on 15.2.2016 issued an order of promotion of respondent No.3 who is junior to the applicant and, therefore, the applicant has filed this O.A. and requested that the promotion order of respondent No.3 dated 15.2.2016 be quashed and set aside and the respondent Nos. 1 and 2 be directed to grant

promotion to the applicant to the post of Superintendent of District Prisons, Class-II / Deputy Superintendent of Central Prison. He is also claiming deemed date of promotion w.e.f. 15.2.2016, that is the date on which his junior i.e. the respondent No.3 was promoted.

3. In reply affidavit, the respondent No.2 submits that the applicant has concealed material fact that for the purpose of getting promotion, an employee is required to pass Maharashtra Prison Department (Executive Officers Qualifying Examination), Rules, 1977. It is an admitted fact that, the applicant was promoted as Jailor, Group-II on 21.6.1993 and thereafter to the post of Jailor, Group-I on 14.3.2006 and as such he is presently working at Buldana in the post of Jailor, Group-I.

4. As regards D.P.C. meeting dated 8.10.2014, it is stated that the applicant's name was considered for promotion and a proposal of promotion for the post of Deputy Superintendent of Central Prison/ Superintendent of District Prison, Class-II has submitted to the Home Department (Prisons) vide letter dated 11.12.2014. It is further stated that as per rules 3 (4) of the Maharashtra Prison (Executive Officers Qualifying Examination) Rules, 1977, an Executive Officer who does not pass the examination within the period prescribed under Rule 1 and 2 or within extended

period, will lose seniority and no Executive Officer can be promoted unless he has passed the examination under Rule 3 (3) of the Rules, which states that same as otherwise provided under sub-rule (6), no Executive Officer shall hereinafter be promoted in a regular vacancy in any higher cadre, unless he/she has passed the examination. It is stated that the applicant has not passed the qualifying examination as per the said rule till today and, therefore, he is not qualified. It is stated that those officers who have passed the qualifying examination in the year 2015-2016, were only considered for promotion. It is further stated that the applicant is facing departmental enquiry and he can be considered for promotion subject to undertaking that he is ready to undergo punishment, if any awarded to him in pursuance of the said enquiry. Since the applicant has not passed the qualifying examination, whereas the respondent No.3 has already cleared that examination, the respondent No.3 was considered for promotion. The applicant filed rejoinder and denied respondents' contention.

5. From the facts on record as well as documents placed before this Tribunal, it sees that there is no dispute of the fact that, the applicant was very much promoted to the posts of Jailor, Group-II and Jailor, Group-I as per Rules of 1977 i.e. Maharashtra Prison Department (Executive Officers' Qualifying Examination)

Rules, 1977. Rule 2 (d) of the Rules defines 'Executive Officer' which means a person working in the cadre of Jailor, Group-I and Group-II and in the cadre of Superintendent, District prison, Class-II. As per this definition, the applicant falls within the definition of 'Executive Officer'. Rule 3 (3) of the Rules states that, "every person working in the post in the cadre of Jailor, Group-I and Group-II or in the cadre of Superintendent, District prison, Class-II on the date of commencement of these rules, shall be required to pass the examination within three years and within three chances and subject to sub-rule (6), no Executive Officer shall hereinafter be promoted in regular vacancy in any higher cadre unless he has passed the examination. Sub-rule (6) only states about the syllabus. Admittedly, the applicant has been promoted to the post of Jailor, Group-I and Group-II. From record, it seems that the applicant has passed the examination which is required to be cleared under Rule 3(3) of the Rules of 1977 and, therefore, he was qualified for being promoted to the post of Superintendent of District Prison, Group-II.

6. The learned counsel for the applicant has invited our attention to the meeting of D.P.C. held on 8.10.2014. The minutes of the said D.P.C. are placed on record at page Nos. 25 to 29. In the said meeting, the case of the applicant was considered for

promotion and he was found fit for promotion, subject to outcome of departmental enquiry against the applicant. There was absolutely no mention of non-passing of departmental examination by the applicant for his promotion. It is an admitted fact that, the applicant has been exonerated from all the charges in the departmental enquiry and, therefore, no departmental enquiry is now pending against the applicant and, therefore, as per the D.P.C. meeting dated 8.10.2014, the applicant should have been considered for promotion, since he was exonerated from all the charges in the departmental enquiry. However, he was not considered. The learned counsel for the applicant has invited our attention to one order dated 20.2.1998 (Annexure A-11, page 68), from which it seems that the applicant has passed the departmental examination while working as Jailor, Grade-II at Thane on 17.9.1997 and his probation was also completed satisfactorily. This shows that the applicant has cleared the departmental examination while working as Jailor, Grade-II and, therefore, there was absolutely no reason to deny him promotion on this count.

7. The learned P.O. has invited our attention to the rules called, "Maharashtra Prison Department Executive Officers Qualifying Examination), Rules, 1977 (for short brevity, "Post

Recruitment Examination Rules”). A copy of the said rules is placed on record at page Nos. 39 to 45 (both inclusive). The Ld. P.O. has also invited our attention to Rule 3 of the Post Recruitment Examination Rules which reads as under:-

“Rule 3 (1):- Every person recruited to the post of Executive Officer after the commencement of these rules shall be required to undergo a course of training at the Jail Officers’ Training School and to pass the examination according to these rules within a period of two years from the date of recruitment and within three chances.”

8. According to the learned P.O., every Executive Officer has to clear the examination under these rules within a period of two years from the date of recruitment and within four chances. We have perused the Post Recruitment Rules and we are satisfied that the Post Recruitment Rules are applicable to the officers who are either appointed by nomination or by promotion to the post of Executive Officer as mentioned in the said rules. But for that purpose, he will have to be first appointed as Executive Officer and once appointed to such post, he will have to pass the examination within a period of two years from the date of recruitment and within three chances. As per Rule 3 (3) and 4 (b) of the Post Recruitment

Examination Rules, if a candidate fails to pass the examination within given time and chances and extended time, he is liable to be discharged or reverted. Perusal of the rules show that these rules will come into force only after promotion of the applicant as Executive Officer which includes cadre of Superintendent of District Prison, Class-II for which the applicant has filed this O.A.

9. Considering the aforesaid circumstances, it will be clear that even the Jailor, Class-II who is either promoted or nominated to the post of Superintendent of District Prison, Class-II, has to pass examination required under the Post Recruitment Rules within two years and within three chances from the date of appointment. But in any case, the Jailor, Class-II cannot be denied promotion to the post of Superintendent of District Prison, Class-II only on the ground that he has not cleared the examination as required under the Post Recruitment Rules, 1977. The minutes of the meeting also nowhere shows that non-passing of examination by the applicant was the reason for not promoting him. On the contrary, reason for non promoting the applicant was the pendency of departmental enquiry and admittedly, the applicant was found fit otherwise for promotion. Since the applicant has been exonerated from the departmental enquiry, he ought to have been promoted to

the post of Superintendent of District Prison, Class-II. Admittedly, the respondent No.3 has been promoted to the said post and admittedly he is junior to the applicant, therefore, the applicant is entitled to deemed date of promotion.

10. The learned P.O. submits that the applicant has retired during the pendency of the O.A. on 31.12.2016 and, therefore, he could not have passed the requisite examination before retirement. As already stated, the applicant was found fit for promotion in the D.P.C. dated 8.10.2014 and his promotion was subject to outcome of the departmental enquiry. He has passed the qualifying examination as per rules i.e. "Maharashtra Prison Department (Executive Officers Qualifying Examination), Rules, 1977" and therefore, the applicant cannot be denied promotion to the post of Superintendent. It is no doubt true that even after promotion to the said post, he will have to clear the qualifying examination as per Post Recruitment Rules within stipulated period and given chances.

11. The applicant in this particular case could not get that opportunity, since he was not promoted promptly and retired in between. For such anomaly, the applicant cannot be blamed. Hence, we proceed to pass the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) We do not find any reason to quash and set aside the promotion order in respect of the respondent No.3 dated 15.2.2016. We, however, direct the respondent Nos. 1 and 2 to grant deemed date of promotion to the applicant to the post of Superintendent, District Prison, Class-II / Dy. Superintendent, Central Prison, Class-II / w.e.f. 15.2.2016. Since the applicant has not actually worked on the promotional post, he will not be entitled to any monetary benefits for such promotion w.e.f. 15.2.2016 till the date of retirement of the applicant on superannuation.
- (iii) It is, however, made clear that it shall be presumed that that the applicant got retired on superannuation from the post of Superintendent, District Prison, Class-II / Dy. Superintendent, Central Prison, Class-II and he will be entitled to pensionary benefits, as may be admissible on account of such promotion.

(iv) No order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated:- 1.11.2018.

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