

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 640/2019

Lahu Raosaheb Sangale,
aged 42 years, Occ. Sevice,
R/o Jail Quarter No.1, Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home (Prisons),
Mantralaya, Mumbai-32.
- 2) Additional Director General of (Police) cum
Inspector General of Prisons,
Old Administrative Building, 2nd floor, Pune-1.

Respondents

Shri R.V.Shiralkar, Ld. counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

Dated: - 22th March 2022.

JUDGMENT

Judgment is reserved on 15th March, 2022.

Judgment is pronounced on 22th March, 2022.

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri A.P.Potnis, Ld. P.O. for the Respondents.

2. In this O.A., for redressal of his grievance, the applicant has made following prayers-

A. Quash and set aside the order dated 7.1.2019 passed by the respondent no.2 being illegal and arbitrary;

B. Hold and declare that the applicant is entitled to arrears of increments from 2008 to 2013 which are withheld illegally consequently;

C. Direct the respondent no. 2 to pay arrears of increments from 2008 to 2013 within stipulated period of time in the interest of justice.

3. Facts leading to this application are as follows.

The applicant was appointed as Jailor, Group-II vide order dated 15.2.2005. He is governed by The Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules, 1977 (Hereinafter 'the Rules'). He appeared for the departmental examination held in the years 2006, 2008, 2009 and 2012, but could not clear it. In the years 2007, 2010 and 2011 departmental examination was not held. In the year 2013, the applicant cleared departmental examination, whereupon, by order dated 11.12.2014 (Annexure A-2), passed by Deputy Inspector General of Prison, the applicant was held to have completed his probationary period satisfactorily but w.e.f. 4.6.2013

that being the date on which he had cleared the examination. The respondents did not release increments due to the applicant for the years 2007 onwards. Vide order dated 23.12.2014 (Annexure A-3), while fixing his pay, period from 2006 to 2013 was regularised, but arrears of increments for this period were not released. The applicant made a representation dated 3.10.2018 (Annexure A-5), which was rejected by the impugned order. Hence, this application.

4. It is the contention of the applicant that a conjoint consideration of Rules 3 and 9 of the Rules will show that the impugned order cannot be sustained for the reasons that the applicant belongs to the excepted category as per Rule 9(1), and it is passed on wrong interpretation of Rule 39 of the M.C.S. (Pay) Rules, 1981.

Rules 3 and 9 of the Rules read as under.

3. (1) Every person recruited to the post of an 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.

A candidate from (1) Scheduled Caste, Scheduled Tribe and Denotified Tribes and Nomadic Tribe, shall be given one more chance and one more year to pass the examination.

(2) Every person working as an Executive Officer on the date of the commencement of these rules shall, unless he has

passed an equivalent Examination under any rules in force immediately before such commencement, be required to pass the Examination according to these rules within a period of two years from the date of coming into force of these rules and within three chances.

Explanation- An Executive Officer, may appear at the examination even before he completes his training at Jail Officers' Training School.

(3) *Notwithstanding anything contained in sub-rule (1) or (2)-*

(a) *the Inspector General, may in this discretion grant permission to a candidate to appear at one more Examination, and*

(b) *the State Government may, in exceptional circumstances, either grant further extension of time condone the failure of any candidate.*

(4) (a) *No person, who is required to pass the Examination under these rules, shall hereafter be confirmed unless he has passed the Examination.*

(b) *If an Executive Officer, who is required to pass the examination under these rules, fails to pass the examination within the time mentioned in sub-rule (1) or (2), as the case may be, or within such extended time as may be granted to him under sub-rule (3), shall be liable to be discharged or reverted, as the case may be.*

9. (1) *Failure in the first or the second attempt shall not result in the stoppage of increments. If however, a person (except a person holding the post of Jailors Group II) fails to pass the Examination within the time limits laid down in sub-rule (1) or*

(2) of rule 3 and is granted permission to appear at fourth or any subsequent chance then, he shall not be allowed to draw the increment after his failure in the third attempt, until he passed the Examination or the failure is condoned by Government.

(2) On passing the Examination in the fourth or subsequent chance or on condonation of the failure by Government, he shall draw the increments which were withheld and all subsequent increments shall accrue to him, as if, no increments were withheld. He shall not, however, be entitled arrears.

5. Rule 9 (1) covers the period between the third failure to clear the examination, and the point at which the employee passed the examination or the failure is condoned by Government. So far as applicability of this sub-rule concerned, it carves out an exception for a person holding the post of a Jailor Grade-II.

Rule 9 (2) states that a person who does not clear the examination in three chances would not be entitled to get arrears of increments falling due in the intervening period till clearing the examination or till condonation by Government.

6. In the impugned order (Annexure A-5), while rejecting representation of the applicant (Annexure A-4) for releasing arrears of increments, reliance was placed on sub-rules (1) and (2) of Rule 9

quoted above, and Exceptions 1(a) (i), (ii) and (iii) of Rule 39 (1) of the M.C.S.(Pay) Rules. Relevant portion of Rule 39 reads as under.

39. Service which counts for increment.- The following provisions prescribe the conditions on which service counts for increments in a time-scale :-

(1) Subject to the provisions of Rules 11, 14, 20 and 44, all duty in a post on a time-scale counts for increments in that time-scale.

For the purpose of arriving at the date of next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment :

Provided that the increment shall be admissible from the 1st of the month in which it accrues.

Note.-The above proviso shall not apply to the persons on probation.

Exception 1.- (a) The increments of a Government servant appointed directly to a post on probation during the period of probation should be regulated as follows :-

- (i) The first increment should be released on completion of one year of his probationary period and the subsequent increment should be released on his completing the probationary period satisfactorily.**
- (ii) A probationer whose probationary period is extended on account of failure to pass a departmental examination within the prescribed time limit or on account of leave taken by him during the probationary period, should be allowed to draw, on his**

appointment to that post on long term basis after completion of the probationary period satisfactorily, such pay as he would have drawn had he not been on probation and consequential arrears.

(iii) A probationer whose probationary period is extended on account of unsatisfactory performance, should be allowed to draw second increment only with effect from the date of satisfactory completion of the probationary period and shall not be eligible for arrears.

7. The first Exception speaks about releasing the second and subsequent increments on satisfactory completion of the probationary period. The second Exception states that if an extension of probationary period is on account of failure to pass the departmental examination, in the event of appointment to a post on long term basis after completion of the probationary period satisfactorily, such pay as he would have drawn had he not been on probation and consequential arrears shall be paid. The third Exception deals with the contingency of extension of probationary period on account of unsatisfactorily performance and provides that such employee should be allowed to draw the second increment only with effect from the date of satisfactory completion of the probationary period and he will not be eligible for arrears (of increments).

8. Rule 9 of the Rules primarily deals with post recruitment examination of Executive Officers serving in Maharashtra Prison Department.

The M.C.S. (Pay) Rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe except where it is otherwise expressed or implied.

9. The Maharashtra Prison Department (Executive Officers Post Recruitment Examination) Rules do not either expressly say or impliedly lead to the conclusion that the M.C.S.(Pay) Rules will not apply to the Executive Officers of the Maharashtra Prison Department. Once it is concluded that the M.C.S.(Pay) Rules are applicable, it can be further concluded that case of the applicant would fall in Exception-1(a) (ii) quoted above. This Exception says that on satisfactory completion of probation the increments falling due in the intervening / extended period shall be released with arrears if extension of probationary period was on account of failure to pass the departmental examination. On the other hand, if extension of probationary period is owing to unsatisfactory performance, second increment will be drawn only on satisfactory completion of probationary period and no arrears shall be payable. It is the case of the respondents that the extension of probationary period of the applicant was only on account of failure to pass the Departmental

Examination. In such a case release of increments is merely deferred till satisfactory completion of probationary period and hence, arrears are to be paid. On the basis of Exception.-1(a) (ii) to Rule 39 of the M.C.S. (Pay) Rules, it will have to be held that the applicant is entitled to get arrears of increments as claimed by him. Hence, the order-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 7.1.2019 is quashed and set aside and it is held and declared that the applicant is entitled to arrears of increments from 2008 to 2013.
- (iii) Respondent No.2 is directed to pay to the applicant arrears of increments from 2008 to 2013 within one month from date of this order.
- (iv) No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 22/03/2022.

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 : 22/03/2022.

and pronounced on

Uploaded on : 22/03/2022.*