

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.188/2014.**

Manoj Manoharrao Mankar,  
Aged about 42 years,  
R/o 27, Nandanwan Colony,  
Nagpur-9

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service Commission,  
Bank of India Building, 3<sup>rd</sup> floor,  
Mahatma Gandhi Road, Hutatma Chowk,  
Mumbai-01.

**Respondents.**

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**ORIGINAL APPLICATION NO.189/2014.**

Ajay Fulchand Shambharkar,  
Aged about 41 years,  
R/o Indora Sadhu Mohalla,  
Bezonbagh, Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service Commission,  
Bank of India Building, 3<sup>rd</sup> floor,  
Mahatma Gandhi Road, Hutatma Chowk,  
Mumbai-01.

**Respondents.**

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Shri Sunil Pande, Advocate holding for Shri R.V. Shiralkar, the Ld. Advocate for the applicant.

Mrs. M.A. Barabde, Ld. P.O. for the respondents.

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**Coram:- B. Majumdar, Vice-Chairman and  
Justice M.N. Gilani, Member (J).**

**Dated:- 16<sup>th</sup> July, 2014.**

**Order**

**Per: Member (J)**

In both these O.As., common question of act and law having been involved, they are being disposed of by this common order.

2. A short question that arises for our consideration is whether the upper age limit provided under the Maharashtra Civil Services (Provision of Upper Age Limit for Recruitment by Nomination) Rules, 1986 (in short Upper Age Limit Rules, 1986), is applicable to the in-service candidates who applies for the post of Executive Engineer (Electrical) or Electrical Inspector, Group-A. The applicants are in service of the respondent No.1 as Sectional Engineers. On 7.2.2014, the respondent No.2 issued an advertisement for filling up nine posts of Executive Engineer (Electrical) or Electrical Inspector, Group-A. The applicants, considering this as eligible candidates, applied. However, they were not considered for the said post on the ground that they crossed the age of 40 years. In case of the applicant Manoj Manoharrao Mankar (in O.A.No. 188/2014), it is stated that on the relevant date, his age was 42 years, 5 months and 16 days and being overage cannot be considered for selection to the post advertised. As regards the applicant Ajay Fulchand Shambharkar (in O.A.No. 189/2014), it is stated that on the relevant date, he completed the age of 42 years, 2 months and 22 days and being overage, has been kept out of consideration.

3. The applicants have relied upon the conditions relating to the age laid down in the advertisement. Same being relevant are reproduced below:

४.१ वय दिनांक १ जून ,२०१३ रोजी अमागासप्रवर्गासाठी ३५, मागासप्रवर्गासाठी ४० वर्षांपेक्षा जास्त नसावे.

४.२ शासन सेवेतील उमेदवारांसाठी उच्च वयोमर्यादा पाच वर्षांनी शिथिलकाम राहिल. शासन सेवेतील मागासवर्गीय कर्मचा-यांना पाच वर्षे शिथिलतेची सदर सवलत ते शासन कर्मचारी किंवा मागासवर्ग म्हणून त्यापैकी केवळ एकाच कारणाकरिता उपलब्ध राहिल'.

४.३ शासन आदेशानुसार आरक्षित प्रवर्ग / उपवर्ग /माजी सैनिकासाठी वयोमर्यादा शिथिलकाम राहिल.

4. Admittedly, the applicant Manoj belongs to OBC category whereas the applicant Ajay belongs to SC category. Apart from the conditions laid down in the advertisement, the Executive Engineer (Electrical) or Electrical Inspector, Group-A and the Deputy Engineer (Electrical) or Assistant Electrical Inspector, Group-A Recruitment Rules, 2005 (in short Recruitment Rules, 2005) provide the following age criteria:

By nomination from amongst the candidates who,--

- (i) Are not more than thirty five years of age; Provided that, the age limit may be relaxed by five years in respect of the candidates who are in Government service+.

5. What can be gathered from these rules, is the general age limit is 35 years which is relaxable for further five years in respect of candidate who is in Government service. Both the applicants are in Government service. Therefore, as per the Recruitment Rules, the maximum age limit in their case shall be 40 years. While issuing advertisement, it seems that, Upper Age Limit Rules,1986 for the candidates belonging to the backward class category was considered. Therefore, it has been categorically mentioned that in respect of the candidates belonging to the backward class category, age limit shall be 35 years. Rule 3 of the Upper Age Limit Rules,1986 begins with notwithstanding clause. Rule 4 of the Upper Age Limit Rules,1986 is specially made for admission to competitive

examination. It also provides for upper age limit of 35 years in respect of candidates belonging to the backward class category.

6. The stand taken by the respondent No.2 that the candidate cannot claim advantage of relaxation of age limit on the ground that they are in-service candidates and in addition to the relaxation of five years on the ground that they belong to the backward class category, is according to us, *de hors* the Upper Age Limit Rules, 1986. If the respondent is allowed to take such stand, it will negate the Upper Age Limit Rules, 1986. In the entire reply submitted by the respondent No.2, it is nowhere whispered as to why in the advertisement issued by them, it has been specifically mentioned that the age limit for backward class candidates shall be 35 years and further relaxation by five years will be available to those who are in service. Presumably, the said condition appeared in the advertisement because of the provision in the Upper Age Limit Rules, 1986. A conjoint reading of the Recruitment Rules, 2005 and the Upper Age Limit Rules, 1986 connote that both are supplementary to each other. In addition to what is laid down in the Recruitment Rules, 2005, if a candidate belongs to backward class, the benefit of upper age limit provided under the Upper Age Limit Rules, 1986 cannot be denied to him.

7. For the reasons afore-stated, the O.As succeed in the following terms:

- (i) It is declared that the applicants are eligible (being below 45 years of age on the relevant date) for being considered for the post of Executive Engineer (Electrical) or Electrical Inspector, Group-A, reserved for backward class.

- (ii) Accordingly, the respondent No.2 shall take necessary steps in the matter of selection process.
- (iii) The respondents are directed to consider their candidatures.

(Justice M.N.Gilani)  
Member (J)

(B. Majumdar)  
Vice-Chairman

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