

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.1047 OF 2016**

**DISTRICT : THANE**

Shri Pramod Prakash Birajdar, )  
Age 29 years, R/at 402, Sanskruti Apartment, )  
Rambaug-4, Kalyan (W) 421304 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Chief Secretary, Mantralaya, Mumbai )
2. Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai )
3. Commissioner of Transport, )  
4<sup>th</sup> floor, Administrative Building, )  
Government Colony, Bandra (E), Mumbai-51 )
4. Maharashtra Public Service Commission, )  
Through Secretary, Fort, Mumbai )..Respondents

Shri S.S. Dere – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
Shri A.D. Karanjkar, Member (J)

RESERVED ON : 12<sup>th</sup> June, 2019  
 PRONOUNCED ON : 14<sup>th</sup> June, 2019  
 PER : Shri P.N. Dixit, Vice-Chairman (A)

### **J U D G M E N T**

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

#### Brief facts of the case:

2. The Respondent no.4 issued advertisement dated 11.10.2013 for the post of Assistant Motor Vehicles Inspector. The advertisement mentioned as under:

“४.४ शैक्षणिक अर्हता :-

४.४.२ राज्य तंत्रशिक्षण मंडळाने प्रदान केलेली स्वयंचल अभियांत्रिकी (ऑटोमोबाईल इंजिनिअरींग) किंवा यंत्र अभियांत्रिकी (मेकॅनिकल इंजिनिअरींग) मधील पदविका (३ वर्षीय अभ्यासक्रम) किंवा केंद्र वा राज्य शासनाने या पदविकांशी समतुल्य म्हणून मान्य केलेली अर्हता.

४.५ अनुभव:-

४.५.१ वरील क्रमांक ४.४.२ मधील शैक्षणिक अर्हता संपादन केल्यानंतर, उद्योग संचालनालयाकडे लघु उद्योग म्हणून किंवा इतर कायद्यान्वये लघु उद्योग म्हणून नोंद असलेल्या किंवा ज्यांची वार्षिक उलाढाल रु ३ ते ५ लाख आहे, अशा मोठ्या गॅरेज किंवा कार्यशाळेमध्ये हलके वाहन, जड माल वाहतूक वाहन व जड प्रवासी वाहतूक वाहनाच्या दुरुस्तीचे व परिरक्षेचे (मेन्टेनन्स) पूर्ण वेळ कर्मचारी म्हणून प्रत्यक्ष काम केल्याचा १ वर्षाचा अनुभव, प्रस्तुत अनुभव हा अर्ज स्वीकारण्याच्या अंतिम दिनांकास म्हणजे दिनांक १ नोव्हेंबर, २०१३ किंवा त्यापूर्वी प्राप्त केलेला असणे आवश्यक आहे.”

(Quoted from page 30 of OA)

3. Accordingly, the Applicant filled in online application form. He mentioned as under:

### Qualification Details

Qualification Type	Name of Degree	Subject	Board/University	Result Date	Attempts	Percentage	Course Duration (In Months)	Class	Mode
Graduate	BE	Mechanical Engineering	University of Mumbai	13.8.2009	1	67.78	48	First Class	Traditional

### Experience Details

Employment (Present/Past)	Organization/Department	Designation	Nature of Post	Nature of Appointment	Pay Band	Grade Pay	Basic Pay	From Date	To Date	Total Period in Years	Months	Days
Present	Bharat Forge	Assistant Manager	Marketing	Permanent	400000	0.00	120000.00	02-01-2012	01-11-2013	1	10	1
Past	Perfect Service Centre	Engineer	Repair & Maintenance	Permanent	5000	0.00	5000.00	01-06-2009	31-07-2010	1	2	1

(Quoted from page 32-33 of OA)

4. He further declared:

*“All the information, provided in this application is true and correct to the best of my knowledge. I am aware that I will be liable for appropriate action (including loss of the job) if the information provided is found to be incorrect.”*

(Quoted from page 33)

5. On 29.3.2014, Respondent no.4 published the recommendation list (page 34-63 of OA). The Applicant did not find his name in the same. Following the same on 29.9.2016 he received the impugned order of rejection. The same reads as under:

“सहायक मोटार वाहन निरीक्षक (मुख्य) परीक्षा -२०१३ करिता आपण ऑनलाईन अर्जांमध्ये विहित शैक्षणिक अर्हता प्राप्त केल्याचा दिनांक १३ ऑगस्ट, २००९ व अनुभवाचा कालावधी दिनांक १ जून, २००९ ते ३१ जुलै, २०१० असा

नमूद केला आहे. यासंदर्भात आपले लक्ष विषयांकित परीक्षेच्या जाहिरातीतील परिच्छेद ४.५.१ मधील तरतूदीकेडे वेधण्यात येत आहे. सदर तरतूदीनुसार अर्ज स्विकारण्याच्या अंतिम दिनांकास म्हणजे दिनांक १ नोव्हेंबर, २०१३ रोजी, विहित शैक्षणिक अर्हता प्राप्त केल्यानंतर आपला अनुभव १ वर्षापेक्षा कमी (दिनांक १४ ऑगस्ट, २००९ ते ३१ जुलै, २०१० एकूण ११ महिने ) असल्याचे प्रथमदर्शनी तपासणीअंती आढळून आले आहे. त्यामुळे जाहिरातीतील परिच्छेद ४.५ मधील तरतूदीनुसार आपण विहित अनुभव कमी या कारणास्तव अपात्र ठरला आहात. आयोगाच्या संकेतस्थळावर उपलब्ध असलेल्या ‘‘उमेदवारांना सर्वसाधारण सूचना’’ मधील सूचना क्रमांक १.३.२ व २.३.७ च्या तरतूदीनुसार आपणास प्रस्तुत परीक्षेच्या निकालप्रक्रियेतून वगळून प्रस्तुत परीक्षेकरिता आपली उमेदवारी रद्द करण्यात आलेली आहे. याची कृपया नोंद घ्यावी.’’

(Quoted from page 64 of OA)

6. On 1.10.2016 the Applicant informed Respondent no.4 that he has made a mistake in writing the experience from 1.6.2009 to 31.7.2010 instead it should be considered as 1.6.2009 to 31.8.2010. He also enclosed copy of the experience certificate to support his claim (Exhibit A-1 page 11).

7. The Applicant has prayed to quash the impugned order rejecting his candidature and condone the typographical error. The Ld. Advocate for the Applicant has relied on the following judgments to support his claim that the candidate should not be punished for the inadvertent error made by him at the time of filling the application form:

(1) Mrs. Patil Vijaya Milind Writ Petition No.393 of 2016 decided by the Hon'ble Bombay High Court, Bench at Aurangabad on 22.1.2016. Relevant portion of the same is as under:

‘‘6. We have carefully considered the submissions advanced by the learned counsel for the respective parties. From the material on record, it is abundantly clear that the post for which the petitioner has applied was reserved for Open Female. It is true that in the form to be filled in on-line, Clause 13 thereof prescribes for the information

*whether the candidate applying for the said post is eligible for horizontal reservation and the petitioner has filled in the information against said clause as “No”. We are however, convinced that, that was an inadvertent mistake committed by the petitioner. In the circumstances, according to us merely for that reason the application of the petitioner could not have been rejected. We reiterate that when the post itself is reserved for Open Female, none else than Open Female could have applied for the said post. Having regard to the fact that in the test, the petitioner has secured 47 marks out of 80, she needs to be given an opportunity to prove her merit even in the interview and her candidature cannot be rejected merely on the ground that she has wrongly filled in the information against Column No.13.”*

(2) Ajay Kumar Mishra Vs. Union of India & Ors., W.P. (C) No.11642/2016 and CM No.45868/2016 (stay) decided by the Hon'ble Delhi High Court on 23.12.2016. Relevant portion of the same is as under:

*“15. As observed above, it is not the case of the Respondents that the petitioner derived any advantage by entering the wrong date of birth in his online and application. There is a difference between a mere inadvertent error and misrepresentation or suppression. There could be no intentional misrepresentation as the school certificate was submitted. The penalization of cancellation of the candidature on the ground of a typographical error is arbitrary, unreasonable harsh and disproportionate to its gravity of the lapse. The writ petition is, therefore, allowed and the pending application also stands disposed of. The impugned order is set aside.”*

8. The Ld. Advocate for the Applicant contended that the inadvertent error made by the Applicant by mentioning work experience upto 31.7.2010 instead of 31.8.2010, has not been made with any intention of

suppressing the facts. The Applicant is otherwise meritorious and therefore deserves consideration of his prayer.

9. The Respondent no.4 has filed his affidavit. The relevant portion of the same is as under:

*“5.3 The Applicant states that he has mentioned the period of experience from 1<sup>st</sup> June, 2009 to 31<sup>st</sup> July, 2010 instead of 1<sup>st</sup> June, 2009 to 31<sup>st</sup> August, 2010 by mistake. He admits the mistake. It means that the Applicant was well aware of his mistake. The Commission does not entertain any request to change the claims made in the application form and this fact has been clarified in Para 1.1.6 and 5.3.1 of the General Instructions to the candidates. If such request is allowed it will lead to chaos. It will also hamper the very selection process carried out by the Commission.*

*5.4 It is pertinent to mention here that the Aurangabad Bench of Hon’ble Tribunal had already settled the position in this respect while deciding the OA No.410/2012. Hon’ble Tribunal vide its order dated 11.10.2013 held that, “9. This submission is not an acceptable submission, because with the functioning of the MPSC and as per the procedure of the MPSC the authorities has to act only on the basis of information supplied by the candidates in the application forms and the said procedure is applicable to all the contesting candidates. So also allowing the Applicant to correct the information in the application form will also amount to discrimination to other candidates, who have also furnished incorrect information in the application forms and were rejected on account of so called mistake committed by them. In view of above discussion, the Applicant is not entitled to any of reliefs claimed in his original application”.*”

(Quoted from page 82-83 of OA)

10. The Respondent no.4 has therefore stated that the Applicant is ineligible and therefore not entitled to any relief.

Discussion and findings:

11. The error made by the Applicant in the experience column has been accepted by him. He has mentioned his pay as under:

Pay Band : 400000  
Basic Pay : 120000

12. During hearing when he was questioned he clarified that basic pay is per annum and there is an error in the Pay Band column. The Applicant has certainly not filled in the form by observing due care and caution. As far as the experience is concerned he has certainly not suppressed any factual position and made the error to his own disadvantage. Looking at his age and the nature of inadvertent error made by him, it would be harsh to deny him the opportunity for being considered for the post which he had applied. In the interest of ultimate justice, it would be appropriate to allow his prayer.

13. In view of the above background as a matter of fact this situation arose due to the error committed by the Applicant and no other person is responsible for it. It is the submission of the Ld. Advocate for the Applicant that the error committed is not deliberate. The Applicant would cross the age for the Government service and it will be grave punishment to him. Even after hearing the submissions of the Ld. Advocate for the Applicant it is not permissible to give him any relief in this matter for the reasons that now all posts are filled in by the Government and no post is vacant. The recruitment process is completely exhausted and, therefore, only when someone is removed from service, mandatory direction cannot be given to the Government to appoint the Applicant. But this peculiar situation wants that as the situation is caused due to error in writing

while filling in the form and, therefore, we are of the view that case of the Applicant be referred to the Government for sympathetic consideration. The Government is authorized to give appointment to the Applicant if any post is vacant. In view of the above, we pass the following order:

O R D E R

Original Application is partly allowed. The Respondent no.1 to consider the case of the Applicant with sympathy and may adjust him by issuing him appointment order, if there exists vacancy. No order as to costs.

Sd/-

**(A.D. Karanjkar)**  
**Member (J)**  
**14.6.2019**

Sd/-

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**14.6.2019**

Dictation taken by: S.G. Jawalkar.