

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1077 OF 2016

(O.A. No.785 of 2015-Nagpur)

DISTRICT : AMRAVATI

Dilipsingh Charansingh Girase,)
Age 48 years, Service, R/o Morshi Open Prison,)
Morshi, District Amravati)..Applicant

Versus

1. The State of Maharashtra,)
Through Ministry of Home Department,)
Mantralaya, Mumbai)
2. Additional Director General of Prisons and)
Inspector General of Prison,)
Old Central Building No.2, Pune 400006)
3. Sahebrao Lashkarrao Ade,)
Jailor, Class-II, R/o Arthur Road Jail, Mumbai)
4. Satish Uttam Kamble,)
R/o Ratnagiri Special Jail, Ratnagiri)
5. Sheikh Yusuf Sultan,)
R/o Kalyan District Prison, Kalyan, Thane)
6. Sampat Hamu Ade,)
R/o Parbhani District Prison, Parbhani)

7. Ganajan Vitthal Patil,)
R/o Osmanabad District Prison, Osmanabad)
8. Pradip Onkar Ingle,)
R/o Thane Central Prison, Thane)
9. Rajendra Vasant Rao Marade,)
R/o Latur District Prison, Latur)
10. Shridhar Parshuram Kale,)
R/o Sindhudurg District Prison, Sindhudurg)
11. Balrajendra Chokhaji Nimgade,)
R/o Nagpur Central Prison, Nagpur)..Respondents

Ms. Neha Kachi i/b. Talekar & Associates – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

DATE : 18th October, 2023

J U D G M E N T

1. Heard Ms. Neha Kachi i/b. Talekar & Associates, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. In this case the applicant is working as a Jailor in Open Prison at Morshi, District Amravati. He challenges seniority list dated 1.1.2015

issued by respondent no.2 and prays that the applicant be placed in the seniority list as per earlier seniority list of 1.1.2012.

3. Ld. Advocate for the applicant has tendered her written notes of arguments, which reads as under:

“1. Sub-rule (4) of rule 3 of the Maharashtra Prisons Department Executive Officers (Qualifying Examination) Rules, 1977 refers to sub-rule (1) and sub-rule (2) of Rule 3 so as to prescribe the period within which an executive officer has to pass the examination failing to which he would lose his seniority to all those who have passed the examination. Sub-rule (4) is not an independent rule but an extension of sub-rules (1) and (2) and, therefore, sub rules (1) and (2) qualifying and limit the scope of sub rule 4. An executive officer who was appointed directly within the meaning of sub rule 1 of rule 3 or an executive officer who was working on any post in the cadre of group 1 or group 2 on the date of commencement of these rules (i.e. in 1977) has to pass the examination within the time limit prescribed in those sub rules.

2. Sub-rule (4) cannot be read as if it is an independent rule which will apply to executive officers whether directly appointed or promoted and whether was working in 1977 or anytime thereafter.

3. Sub rule 4 has a limited scope that has to be understood with reference to sub-rules (1) and (2) and therefore has a very limited application.

4. Sub-rules (1), (2) and (4) need to be understood and interpreted harmoniously as they form a scheme provided under sub-Rules (1) and (2) of Rule 3.”

4. Ld. PO while interpreting Rule 3(4) in context with sub rule (1) and (2) submits that sub-rule (4) is applicable to Executive Officers and definition of Executive Officer reads as under:

“2(b) ‘Executive Officer’ means a person in the cadres of Jailors (Group I) or (Group II) and in the cadre of Superintendent of District Prisons-Class III, the Research Officer.”

5. Ld. PO further pointed out affidavit in reply dated 3.11.2016 filed by Kirti Chintimani, Superintendent, Nagpur Central Prison. Ld. PO pointed out para of the reply. It is specifically stated that it is mandatory on the part of every executive officer to pass the examination for the purpose of promotion. As the applicant has not passed the qualifying examination his seniority is affected adversely and he is pushed down in the seniority list.

6. We have considered the submissions of both the sides. It is admitted fact that applicant has not passed the examination. The issue is short whether recruitment rules for the Maharashtra Prison Department (Executive Officers Qualifying Examination) Rules, 1977 state anything about passing of the departmental examination as a condition for eligibility. As pointed out by the Ld. PO in Rule 2(b) the term executive officer is defined. Thus, it is including the cadre of Jailor Group-I and Group-II. The submissions of the applicant that passing of the examination is a condition precedent for the Jailor who are going to be appointed as Jailor Group-I post and not for the Jailor Group-II which is feeder cadre for Group I by way of promotion. These submissions are not sustainable after careful reading of Rule 3, which reads as under:

“3. (1) Every person appointed directly to any post in the cadre of Jailor Group-I or Group-II or in the cadre of Superintendent of District Prison Class II after commencement of these rules, shall be required to pass the Examination in accordance with these rules within a period of five years from the date of his appointment and within three chances.

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

(2) Every person working in any post in the cadre of Jailors, Group-I or II or in the cadre of Supdts. of 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.

(3) Save as otherwise provided in sub-rule (6), no Executive Officer shall hereafter be promoted in a regular vacancy in any higher cadre, unless he has passed the Examination.

(4) An Executive Officer who does not pass the Examination within the period prescribed under Sub rules (1) and (2) above or within the period extended under rule 11 will lose his seniority to all those who have passed the Examination.

(5) Subject to the loss of seniority under sub rule (4) and Executive Officer shall be allowed to pass the Examination in any number of chances.

(6) During the interim period, that is, the period from the date of the commencement of these rules, to the date on which the results of

the first Examination under these rules are declared, promotion of the Executive Officers to any of the higher cadres shall be made according to seniority and suitability of persons. However, persons so promoted shall have to pass the Examination under these rules within a period of three years and within 3 chances from the date of commencement of these rules failing which they shall be reverted.”

7. By plain reading of these rules one understands that under Rule 3(1) the persons who are going to be appointed directly the conditions are separately mentioned. Under Rule 3(2) the officers who were working in the cadre of Group I and II on the date of commencement of the rules the requirement of passing examination is also mentioned. The difference between Rule 3(1) and 3(2) is the officers who are appointed directly are covered under Rule 3(1) and Rule 3(2) pertains to Jailor Group I and II who were working on the date of commencement of these rules. Thus the officers who were in service in the year 1977 for them it is made clear that they are also required to pass the examination. The difference is of period within which they are required to pass the examination. For direct recruitment the period given is 5 years and for officers in service on the date of commencement of the rules the period given is 3 years. The officers from these two categories however are provided equal chances i.e. 3 chances. Sub-rule 3 and 4 are to be taken into account. Sub rule 3 has connection with sub rule 6. But we are concerned mainly with sub rule 4.

8. Ld. Advocate for the applicant by capitalizing the reference of sub-rule 1 and 2 in Rule 4 has interpreted that Rule 4 pertains to only the direct recruits. However, this amounts to misreading of sub rule 4. We cannot lose our sight with reference to sub rule 1 and 2 which is to be read in context with the period of passing the examination which is 5 years and 3 years as mentioned in sub rule 1 and 2. It is made clear as latter portion of sub rule 4 is taken into account and read as entailing

portion of the first part of sub rule 4. It refers to Rule 11 in the latter part of sub rule 4. Rule 11 reads as under:

“11. In exceptional circumstances, the Inspector General, may, in his discretion, allow one extra chance to a candidate to appear for the Examination by extending the period for passing the Examination by one year.”

9. Thus, sub rule 4 refers this sub rule 1 and 2 of Rule 3 not for the purpose of describing the cadre of the officers but only for the purpose of chances given to Executive Officers i.e. the prescribed period. Thus, the interpretation of sub rule 4 by Ld. Advocate for the applicant is not correct and hence not accepted. It is an adjective clause of the term ‘chance’ i.e. ‘prescribed period’. Thus, we are of the view that all the Executive Officers including Jailor Group I and II are required to pass the examination for promotion including direct recruit.

10. Rule 4 states specifically that persons who will not pass will lose his seniority to all those who have passed examination. Therefore, the applicant was pushed down in the seniority. For the aforesaid reasons the prayer of the applicant cannot be granted.

11. The Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
18.10.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
18.10.2023

Dictation taken by: S.G. Jawalkar.