

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1086 OF 2016

DISTRICT : AHMEDNAGAR

Shri Sunil Bhanudas Sumbe,)
Age 47 years, occ. Nil, R/o At Sonewadi,)
Post Akolner, Taluka & District Ahmednagar)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Transport Department,)
Mantralaya, Mumbai 400032)
2. The Transport Commissioner,)
Administrative Building, Govt. Colony,)
Bandra (E), Mumbai 400051)
3. The Chairman/Secretary,)
Maharashtra Public Service Commission,)
MTNL Building, Off. Cooperage Ground, Mumbai)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri B.P. Patil, Vice-Chairman (J)
Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 6th June, 2019
PRONOUNCED ON : 7th June, 2019
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Admitted facts of the case:

2. Following the requisition on 30.8.2013, Respondent no.3 (MPSC) advertised posts of Assistant Motor Vehicle Inspector. On 30.9.2013 Respondent no.1 (Transport Department) requested Respondent no.3 to omit interview. Accordingly, the advertisement was issued on 11.10.2013. The advertisement stated necessary experience in para 4.5.1, which reads as under:

“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 वाहतुक वाहन व जड प्रवासी वाहतूक वाहनाच्या दुरुस्तीचे व परिरक्षेचे (मेन्टेनन्स) पूर्ण वेळ कर्मचारी म्हणून प्रत्यक्ष काम केल्याचा १ वर्षाचा अनुभव. प्रस्तुत अनुभव हा अर्ज स्वीकारण्याचा अंतिम दिनांकास म्हणजे दिनांक १ नोव्हेंबर, २०१३ किंवा त्यापूर्वी प्राप्त केलेला असणे आवश्यक आहे.”

(Quoted from page 60 of OA)

3. In response, the Applicant filled in the online application form and stated that he is Ex-Serviceman and has 15 years of experience (Exhibit D page 39 of OA). While mentioning details of experience he stated that he has worked with Amit Service Station as Supervisor (page 40 of OA).

Based on the online application form and since Respondent no.3 had dispensed with interview, Respondent no.3 relied on the certificates as mentioned by the Applicant without verifying the same. The Respondent no.3 recommended the Applicant subject to scrutiny of his original certificates by the Government and subject to determination of his eligibility for the said post. Though the Applicant had mentioned in his online application form that he worked with Amit Service Station but on verification it was found that he did not hold valid experience certificate and therefore was declared as ineligible.

4. Following the directives by this Tribunal in OA No.289 of 2015 and OA No.620 of 2015, Respondent no.3 was directed on 24.11.2015 to prepare revised merit list. In the revised list Respondent no.3 recommended name of the Applicant again subject to verification by the appointing authority (page 61 of OA).

5. On 7.3.2015 Respondent no.2 after getting approval from Respondent no.1 cancelled recommendation of the Applicant. The impugned order dated 7.3.2015 stated as under:

“सहाय्यक मोटार वाहन निरीक्षक परिक्षा-२०१३ च्या जाहिरातीतील परिच्छेद क्रमांक ४.५.१ मध्ये विहित करण्यात आलेल्या अनुभवाच्या अटीच्या संदर्भाने आपण आवेदन पत्रामध्ये नमूद केलेल्या कार्यशाळेचे प्रमाणपत्र सादर करू शकला नाहीत. याबाबत आपण सादर केलेला उपरोक्त खुलासा स्विकाराई नाही. सबब संदर्भिय क्रमांक (२) च्या पत्रान्वये महाराष्ट्र लोकसेवा आयोगाद्वारे सहाय्यक मोटार वाहन निरीक्षक पदावर करण्यात आलेली आपली शिफारस रद्द करणेबाबत शासनास प्रस्ताव सादरन करण्यात आला होता.

संदर्भ क्रमांक (३) च्या शासन पत्रान्वये महाराष्ट्र लोकसेवा आयोगाच्या निवड यादीतून आपले नाव रद्द करण्यास शासनाने मान्यता दिली आहे. यास्तव, सहाय्यक मोटार वाहन निरीक्षक संवर्गातील नियुक्तीसंदर्भात आपले नाव वगळण्यात येत आहे.”

(Quoted from page 22 of OA)

6. The Applicant has prayed to set aside the impugned order (para 9(a) page 16 of OA) and consider his experience of 15 years in Indian Navy and in S.S. Motors and Wielding Works, Ahmednagar (para 9(c) page 17 of OA). He has also prayed that he be held as fully eligible for being appointed to the post of Assistant Motor Vehicle Inspector and Respondent no.1 and Respondent no.2 be directed to issue order of appointment to the Applicant (para 9(b) page 16 of OA).

7. The Applicant admits that there was an error while filling in the online application form which stated that he had worked with Amit Service Station as Supervisor. He ascribes this to the mistake made by operator in cyber cafe. He also admits that he failed to mention about his experience in the Indian Navy in the online application form. But during verification of original documents he produced the experience certificate of S.S. Motor and Wielding Works as well as experience of working in workshop in the Indian Navy. He has produced the certificate issued from Indian Navy which is equivalent of Naval Trade Certificate (Exhibit I page 54 of OA). In the affidavit in rejoinder the Applicant has stated as under:

“2. I say that from the other details mentioned by me in my online application form, it is clear that I rendered services in Navy for 15 years and 20 days. That accordingly I did submit my Navy experience certificate before the Respondents. This itself makes the things abundantly clear that I gained workshop experience in the Navy for the aforesaid period. I thus say that in such circumstances, the Respondents were obliged to verify my workshop experience based on the Navy experience certificate.

3. That in fact such an experience gained by other Ex-Servicemen has been acknowledged by the Respondents by considering their cases for the very same post of Assistant Inspector of Motor Vehicles based on the said advertisement on the basis of which I applied for the said post and accordingly they came to be held as eligible to apply for the said post in a

vacancy meant for Ex-Serviceman and accordingly they came to be appointed to the said post and as such they are working.

3A. I say that by way of illustration I do refer the case of my colleague in Navy by name Mr. Shabbir Chadbhai Shaik Merit No.171 of recommended list by MPSC to Transport Department Marks obtained :- 93 Myself and said candidate belongs to same department with same work frame in Navy who has noted navy experience in application form henceforth transport department got it verified from navy and after clearance given him posting at Nashik RTO office as AMVI in June 2015. His and mine navy experience certificate is same for that I am annexing his certificate as Exhibit A for ready reference.

5. I say that as stated above the Respondents did hold enquiry into my workshop experience issued by M/s. S.S. Motors, though there was no reference to this firm being made by me in my online application form. Thus only on the basis of production of the said experience certificate by me, that the veracity of the said certificate was examined by the Respondents by conducting appropriate enquiry. That in such circumstances and in similar manner, I expected a similar exercise being done by the Respondents in regard to my workshop experience certificate from Navy.

6. I say that in this connection, it would be appropriate now to offer my comments to the contents of para 17 of the reply, wherein it is stated by the Respondents that I did not communicate to them anything about the experience gained by me in the Indian Navy Service, but I produced such experience certificate before the Respondent no.2 at the time of scrutiny of the documents. That, however, unfortunately for such hyper technical reason, that my such experience certificate came to be rejected. This is highly improper and unjust approach of the Respondents which destroyed my bright future career in the State Government service, when in fact the petitioner being Ex-Serviceman, that the Respondents were expected to show sympathy to me.”

(Quoted from page 87-90 of OA)

8. The Respondent no.1 and Respondent no.2 have filed sur-rejoinder in the form of affidavit. The relevant portion of the same reads as under:

"2. With reference to para no.1, I say as follows: Applicant has not submitted the certificate in form 8 regarding discharge book and for claiming the age relaxation for ex-servicemen category. The Respondent no. 2 has informed on 03.07.2014 to Applicant to produce attested copy to Respondent no.2. However the Applicant has not submitted the said documents to the Respondent no.2.

3. With reference to para no.2, I say as follows: That the Applicant had filled up the online application form to the Respondent no.3. In the online form the Applicant has submitted the experience details of Amit Service Station only. In that column the Applicant has stated the experience of repair and maintenance for the period from 09.01.2004 to 12.02.2005. However, the Applicant has submitted the experience certificate of M/s. S.S. Motors and Welding Works, Gajraj Nagar, Ahemdagar for the period from 04.04.2005 to 31.05.2006. According to the recruitment process followed by this Respondent, non-mentioning of the experience at M/s. S.S. Motors and Welding Works, Gajraj Nagar, Ahemdagar in the online application exam form, it will not be treated as valid. It is also submitted that, the Applicant had not submitted the workshop experience of Navy department and Navy Experience Certificate at the time of submitting the online application form to Respondent no.3. Therefore the experience certificate of Naval department will not be accepted and considered as valid, for the purpose of recruitment.

4. With reference to para no.2, I say as follows: It was the duty of the Applicant to submit the details of his Certificate of experience in Naval department and M/s. S.S. Motors and Welding Works, Gajraj Nagar, Ahemdagar in the online application exam form submitted to Respondent

no.3. However, it is specifically submitted that, the Applicant did not mention any such details.

5. With reference to para no.3A, I say as follows: That, the Applicant has not mentioned any details related to experience certificate of Indian Navy at the time of filing up of online exam form before Respondent no.3 and therefore question of scrutiny of experience certificate of Indian Navy does not arise. It is specifically submitted that, the scrutiny of documents is done only as per the declaration of the Applicant at the time of making the online application to the Respondent no.3. It is further submitted that, the Applicant has mentioned the name of his colleague Shabbeer Shaikh, who has annexed the Certificate of Indian Navy. However it is specifically submitted that the said candidate has mentioned the experience of Indian Navy at the time of filing up the online exam form. The Applicant has not mentioned any details of experience of Indian Navy at the time of filing up the online exam form before Respondent no.3 i.e. MPSC.

6. With reference to para no.4, I say as follows: It is reiterated that, the Applicant had mentioned the experience of M/s. Amit Service Station for the period from 09.01.2004 to 12.02.2005 to the Respondent no.3 at the time of submission of online application form. However actually the Applicant has submitted the experience certificate of M/s. S.S. Motors and Welding Works, Gajraj Nagar, Ahemdnagar for the period from 04.04.2005 to 31.05.2006 and Indian Navy at the time of scrutiny of documents which is of no use. It is also submitted that, the Applicant has mentioned in letter dated 05.11.2014 that, it was oversight and mistake of cyber cafe operator. The said explanation dated 05.11.2014 is an afterthought and therefore is not acceptable to this Respondent. Further it is also submitted that, it is the duty of Applicant to check the online application form scrupulously.

7. With reference to para no.5, I say as follows: That, the experience certificate of Naval department is not acceptable to the Respondent no.2 as the Applicant had not stated any details of experience certificate of Indian

Navy at the time of submission of online application form before Respondent no.3.

9. With reference to para no.7, I say as follows: That, only the experience of Amit Service Station will be considered for appointment process because the entire recruitment process is based on the submission made by the Applicant at the time of filling up of exam form before Respondent no.3 i.e. MPSC. Taking into consideration the experience certificate of Applicant in respect of M/s. Amit Service Station, it is submitted that the Applicant is not fulfilling the condition related to eligibility criteria of experience and therefore the action of Respondent of refusing the recommendation is just legal and proper. The Applicant has no right to blame Respondent no.2 for the alleged mistake of him and that of cyber cafe operator.”

(Quoted from page 93-97 of OA)

9. The Respondents have, therefore, prayed that the OA is devoid of any merits and same may be dismissed.

10. Issues for consideration:

(1) Whether the Applicant has produced relevant certificate of experience from Indian Navy at the time of verification?

(2) Whether the same may be considered as relevant even if it is not mentioned in the online application form?

Discussion and findings:

11. As stated by Respondent no.3, Respondent no.3 has dispensed with conducting the interview and based on the online application forms, directed that the selected candidates be considered by Respondent no.2.

It had further clarified that recommendation is subject to verification of the eligibility by Respondent no.2. Accordingly, the name of the Applicant was recommended on two occasions as he was found eligible. The Applicant has further stated that during the time of verification he produced the necessary work experience of S.S. Motors and Wielding Works as well as about his experience of working for 15 years in the Indian Navy. The Applicant has further stated that he mentioned that he was Ex-Serviceman and had experience of 15 years though he did not mention about his experience of working in the workshop. The Respondent no.2 in their affidavit has also admitted this fact. The affidavit by Respondent no.2 further states that in case of one Shri Shabbir Shaikh who was working along with the Applicant in Indian Navy and had similar experience had mentioned about the same at the time of filling up online application form. According to Respondent No.2, since the Applicant did not mention about it his case is not similar to that of Shri Shabbir Shaikh. The Applicant was asked to submit the same. (Exhibit R1).

12. It is, however, relevant that Applicant did produce his experience certificate from Indian Navy at the time of verification and the same has not been disputed by Respondent no.2. Just because the Applicant did not mention about it in the online application form, therefore, denying the fact that he had submitted the same during verification, cannot be discarded. Moreover, even though there is admitted error in the online application form, where the Applicant had mentioned about his experience of work in Amit Service Station instead of M/s. S.S. Motors and Wielding Works, Respondent no.2 verified the same. The reason given by Respondent no.2 that experience of the Applicant in Indian Navy cannot be accepted because he did not mention about it in the online application form cannot be a valid reason. Moreover, another person viz. Shri Shabbir Shaikh, who is having similar experience with the Applicant has been

considered eligible and given appointment and the reason stated is Shri Shaikh mentioned about it in the online application form.

13. It is, therefore, found that the Applicant did not produce and mention about his experience of working in Indian Navy at the time of verification. Even though the same may not be part of the online application form, it cannot be considered as non-material or irrelevant while rejecting his claim. The impugned order does not even take it into account.

14. In view of the foregoing and for the reasons stated above, the OA is partly allowed and the impugned order is quashed and set aside. The matter is remitted back to Respondents no.1 and 2 and they are directed to reconsider the claim of the Applicant afresh. The Respondents no.1 and 2 are directed to consider the experience certificate of Indian Navy of the Applicant and if the same is found in order, Respondents no.1 and 2 are directed to consider the claim of the Applicant for appointment as per merit in four weeks. No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
7.6.2019

Sd/-

(B.P. Patil)
Vice-Chairman (J)
7.6.2019

Dictation taken by: S.G. Jawalkar.