

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.1076/2019

DISTRICT :- BEED

Ramling S/o. Sadashiv Kamble,
Age : 53 years, Occ: Service as Clerk,
Tahsil Office, Ambajogai,
R/o. Followers Quarter Line,
Behind Irrigation Office, Ambajogai,
Tq. Ambajogai, Dist. Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
3. The Divisional Commissioner,
Aurangabad Division, Delhi Gate,
Aurangabad.
4. The Collector, Beed,
Administration Branch, Dist. Beed.
5. The Tahsildar,
Tahsil Office, Ambajogai,
Tq. Ambajogai, Dist. Beed.

...RESPONDENTS

APPEARANCE : Shri S.D.Joshi, Counsel for
Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Date : 02-07-2024

ORAL ORDER

1. Heard Shri S.D.Joshi, learned Counsel for Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities.

2. The applicant was appointed as Peon at Tahsil Office, Ambajogai on 04-04-1998. At the said time, he was holding the qualification of SSC passed. The applicant is blind by birth. With the passage of time, the applicant acquired the qualification of M.A. in Arts and also passed the Marathi and English typewriting examinations with requisite speed. He also acquired MS-CIT Certificate. After rendering the services for the period of about 26 years in the year 2014, the applicant was promoted to the post of Clerk on his merits. After having completed the period of 3 years on the post of Clerk the applicant had become entitled for the further promotion to the post of Senior Clerk, it requires 3 years' service as a Clerk and passing of the departmental examination. The applicant completed 45 years of his age on 17-06-2011. He, therefore, applied for exemption from passing the departmental examination. The applicant was exempted from passing the departmental examination on his completing the age of 45 years. Accordingly, District Collector, Beed granted such

exemption to the applicant w.e.f. 21-10-2017 vide order passed on 26-09-2020. It is the grievance of the applicant that despite holding the eligibility for to be promoted to the post of Senior Clerk, he was deprived from the said promotion for wrong reasons.

3. Learned Counsel pointed out that, exemption was granted to the applicant from passing the departmental examination, way back in 2011. Learned Counsel further pointed out that, the applicant completed 45 years of his age in 2011. Learned Counsel further pointed out that the applicant entered into Government service in the year 1988. It is further submitted that, applicant was promoted on the post of Clerk on 21-10-2014. After completing the period of 3 years of his service in the cadre of Clerk, applicant had acquired eligibility for his promotion to the next promotional post i.e. of Senior Clerk. However, respondents did not consider him for such promotion stating that he has not completed 15 years of service on the erstwhile post and that upper age limit of 45 years has been extended up to the age of 50 years for granting exemption to the candidates for passing examination. Learned Counsel further submitted that in the G.R. dated 01-03-2018 vide its clause no.2 for getting exemption from

passing the departmental examination for promotion, the employee concerned was required to have worked for 15 years on the erstwhile post or must have been exempted from passing the said examination on attaining the age of 50 years, whichever may occur subsequently. Learned Counsel pointed out that, the corrigendum dated 11-08-2022 which has been issued to the said G.R. dated 01-03-2018, the Government has removed the condition that, the employee concerned must have worked for at least 15 years on the erstwhile post and now the only requirement as per the corrigendum is that, the employee concerned must have worked in the Government service for the period of 15 years. Learned Counsel submitted that in view of the corrigendum to the G.R. dated 01-03-2018, the applicant had become entitled for the further promotion w.e.f. 21-10-2017. Learned Counsel submitted that, during the pendency of the present O.A., the applicant has retired from the service on attaining the age of superannuation. Learned Counsel submitted that in the circumstances the applicant may not be able to enjoy the promotional post, he is certainly entitled for getting the monetary benefits attached to the said post by notionally giving the deemed

date of such promotion. The applicant, therefore, prayed for allowing the application.

4. Shri V.R.Bhumkar, learned P.O. though sought to oppose the contentions raised and prayers made in the O.A., could not provide any explanation as about the order passed in favour of the applicant thereby giving him exemption at the age of 45 years, which he completed in the year 2011 but the certificate to that effect was issued in 2017. It is thus evident that, the said certificate was issued prior to coming into effect of the G.R. dated 05-03-2018 whereby age was enhanced to 50 years.

5. It is not in dispute that the applicant was promoted to the post of Clerk on 21-10-2014. After completing the service for the period of 3 years on the said post, applicant had become entitled for the further promotion on the post of Senior Clerk. However, the promotion was refused to the applicant on the ground that he did not complete the tenure of 15 years on the post of Clerk. It was also the case of the respondents that the applicant had failed in passing the departmental examination and could not have been granted exemption in view of the G.R. dated 01-03-2018. The facts which have come on record sufficiently establish that the applicant had

spent more than 15 years in the Government service. Undisputedly, the applicant attained the age of 45 years on 17-06-2011. As such, the applicant was entitled for exemption from passing the departmental examination. It is true that, vide G.R. dated 01-03-2018, upper age limit for grant of exemption to the Government employee from appearing for the departmental exemption was enhanced by the Government up to the age of 50 years. In this context, it has been argued by the learned P.O. that, in the said extended period of 5 years, the applicant must have passed the departmental examination.

6. The argument made by the learned P.O. is difficult to be accepted. The provisions under the G.R. dated 01-03-2018 cannot be retrospectively made applicable. In clause 4 of the said G.R., it is specifically stated that the provisions made under the said G.R. would come into effect from the date of issuance of the said G.R. i.e. prospectively. From the documents on record, it is further revealed that, the applicant had become entitled for exemption from passing the departmental examination on completing the age of 45 years on 17-06-2011 i.e. prior to issuance of the G.R. dated 01-03-2018.

7. Since the provisions under the G.R. dated 01-03-2018 were to be implemented prospectively i.e. from the date of its publication, it is evident that the said provisions could not have been applied in case of the present applicant. In case of the present applicant, completing the age of 45 years was the only requirement for grant of exemption in his favour from passing the departmental examination. The applicant completed the age of 45 years on 17-06-2011 i.e. much prior to coming into force of G.R. dated 01-03-2018.

8. In the case of the applicant provisions under the G.R. dated 01-11-1977 would apply. In the said G.R. except that the employee concerned must have attained the age of 45 years, there was no other condition imposed for granting exemption to the said employee from passing the departmental examination. Government circular dated 27-11-2018 (page 29 in the paper book) makes it explicitly clear that, the provisions under G.R. dated 01-03-2018 would not be applicable to the employees who have completed the age of 45 years prior to 01-03-2018. Respondent no.4, however, has applied the said G.R. dated 01-03-2018 for rejecting the claim of the applicant stating that, he has not completed 15 years of his service on the

post of Clerk and hence cannot be promoted to the post of Senior Clerk/Head Clerk. Once it is held that no provision under G.R. dated 01-03-2018 would apply in the matter of the present applicant, it was absolutely wrong on the part of respondent no.4 to reject the claim of the applicant for his promotion on the post of Senior Clerk/Head Clerk. Considering the legal provisions as aforesaid the communication dated 09-04-2019 by respondent no.4 cannot be sustained and deserves to be set aside.

9. As has been brought to our notice by the learned Counsel appearing for the applicant the provision under the G.R. dated 01-03-2018 mandating service of 15 years on the erstwhile post has been diluted by the Government by issuing corrigendum dated 11-08-2022 to the G.R. dated 01-03-2018. By way of corrigendum, the condition that the employee must have worked for 15 years on the erstwhile post is modified to the effect that the employee concerned must have spent 15 years in the Government service. Looked from that angle also, the communication dated 09-04-2019 cannot be sustained.

10. It is also the contention of the applicant that since he is blind by birth, he is entitled for the benefit provided to the persons with disability. It is further

contention of the applicant that 3% posts are identified and reserved for promotion to the Group-C posts for the disabled persons. According to the applicant, he satisfies the criteria for his consideration to be promoted to the next higher post against 3% seats reserved for the persons with disability.

11. For the reasons as aforesaid, we are inclined to allow the present application with the following order:

O R D E R

[i] Communication dated 09-04-2019 issued by the respondent no.4 is quashed and set aside.

[ii] It is declared that the applicant is eligible and qualified to be promoted to the post of Senior Clerk/Head Clerk on the basis of recruitment rules for the said post and is entitled to seek exemption from passing the departmental examination.

[iii] Respondents shall consider the case of the applicant for his promotion to the next higher post from the category of persons with disability, if he is satisfying all the norms prescribed for such promotion.

[iv] O.A. is allowed in the aforesaid terms without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)
Place : Aurangabad
Date : 02-07-2024.

(P.R.BORA)
VICE CHAIRMAN