

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO. 283 OF 2016**

**DISTRICT : Solapur**

Shri Nagnath Dnyandeo Khaire )  
Working as Police Sepoy )  
Age 46 years 7 Months, )  
residing at Solapur Jail Vasahat, New Building, )  
Room No.3, Kedwai Chowk, )  
Solapur - 413005. )...Applicant

**VERSUS**

1. Chief Secretary, )  
State of Maharashtra )  
Mantralaya, Mumbai – 400 032. )
2. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
Home Department, )  
Mantralaya, Mubai – 400 032. )
3. The Director General of Police, )  
Maharashtra State, Mumbai. )
4. The Additional Director General of Police )  
and Inspector General of Jail, )  
Old Central Building, Second Floor, )  
Pune – 411 001. )....Respondents

Shri Sherkhane, learned Advocate holding for Smt Punam Mahajan, the learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM:- Justice Shri A.H. Joshi, Hon'ble Chairman.**

**DATE : 03.05. 2016**



### J U D G M E N T

1. Shri Sherkhane, learned Advocate holding for Smt Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Case proceeds in admitted background as follows:-

- (a) The Applicant is a promoted Jailor, Group – II.
- (b) Applicant has failed to pass Departmental Examination.
- (c) He was reverted.
- (d) He attained 45 years of age on 24.08.2014.
- (e) He wants that now he be considered eligible for promotion, as he has qualified to be exempted from appearing from Departmental Examination.

3. The Applicant has relied on Rule 4(1) (d) of the Maharashtra Prison Department Executive Officers Post Recruitment Examination, Rule 1977 framed under Government Notification No.T JS. 0172/I-XXVL-J, dated 7.11.1977. Relevant rule 4 reads as follows:-

*"4. The following persons shall be exempted from the operation of these rules, namely:-*

- (1) Allocated Government servants who were absorbed as on the 1<sup>st</sup> November, 1956 in the cadres, mentioned in clause (b) of rule 3.*
- (2) Persons who have attained the age of 48 years or more or have completed twenty five years or more of service on the date of coming into force of these rules;*
- (3) Persons confirmed in any post in any of the cadres mentioned in clause (b) of rule 2;*
- (4) Persons who have at any time before passed the departmental examination in accounts and service matters under the rules in force before the commencement of these rules;*
- (5) Persons appointed as Jailors Group –II by promotion from amongst Subhedors, Jamadars and departmental technical personnel;*
- (6) Persons who attain the age of 45 years on or after the 1<sup>st</sup> November, 1977."*

(quoted from page no.16 of the O.A.)

4. Applicant claims that he is entitled to promotion to the post of Jailor, Group-II because he is attaining 45 years age on 24.8.2014 and he has become eligible for promotion after availing the exemption, in view of Rule 4(6), and based thereon, the Applicant has prayed for the relief as follows:-

- "(a) This Hon'ble Tribunal also be pleased to direct the Respondents to consider the Petitioner for promotion to the post of Jailor, Group II, within a period of one month, from the date of the order of this Hon'ble Tribunal.
- (b) That this Tribunal also be pleased to direct the Respondents to grant deemed date to the Petitioner in the cadre of Jailor, Group II, from the date of exemption from the passing of the examination, i.e. 24.8.2014 and grant all consequential service benefits, such as pay fixation, increments etc."

(quoted from page 10 of the O.A.)

5. Applicant's averments which are foundation of his prayers are seen in paragraph No.6.15 and 6.16 as follows:-

"6.15 The Petitioner has crossed the age of 45 on 24.8.2014, therefore petitioner is automatically exempted from passing the examination, as per Rule 4(6) of the said Rules and no separate order of exemption is required from the Respondents.

6.16. The Petitioner on 24.8.2014, stands exempted from passing of the Maharashtra Prison Department Executive Officers Post Recruitment Examination. The Petitioner becomes entitled and eligible to be considered for promotion to the post of Jailor, Grade II, after crossing the age of 45 years, on 24.8.2014. There is no legal hindrance or impediment in promoting the petitioner. It will be pertinent to note that there is no provision in the Rule which puts an embargo on the promotion of the Petitioner, after crossing the age of 45, eventhough earlier he has been reverted for non passing of the examination. The Petitioner is deemed to be exempted as per the Rules."

(quoted from page no. 7 of the O.A.)

6. Present Original Application is opposed by the Respondents by filing affidavit-in- reply. The averments contained in O.A. in paragraph nos. 6.15 and 6.16 are answered by filing reply as follows:-



“ 15. With reference to para 6.15, I say and submit that the contention in para no.6.15 is wrong and denied. The date of birth of the Applicant is 25.8.1969 and he was reverted as Jail Guard on 10.1.2014. Thus at the time of reversion he was of the age of 44 years, 04 months and 16 days. Hence the Applicant cannot claim exemption from passing the said examination under Rule 4(6) of the said Rules. In addition the Circular dated 13.9.2012 has clearly stated that no such exemption should be given to the government servant who fails to pass the departmental examination prescribed in his service rules. The remarks given in para 3 above adequately describe the provisions in said circular.

16. With reference to para 6.16, I say and submit that the contention in para no.6.16 is wrong, misleading and absurd and hence denied. The Applicant did not pass departmental examination in stipulated time and chances due to which he was reverted. The GAD Circular dated 13.9.2012 clearly states that no government servant should be granted exemption to pass departmental examination after attaining the age of 45 years if he fails to pass the departmental examination which is part of the Recruitment Rules. The remarks given in para 13 above adequately clarify and provisions in this regard.”

(quoted from page no.34 of the O.A.)

7. Entire thrust of the objections is based on the circular dated 13.09.2012 issued by the Government copy whereon is at Exh.R-1, page no.38 of the O.A.

8. Perused the circular dated 13.09.2012. From the title of the circular, it is evident that it is issued to provide guidance as regards the manner in which the imperativeness and/ or exemption from passing of examination which is the condition precedent for entry and / or training after appointment be dealt with.

9. Gist of circular is reiterated in paragraph no.7 of the circular. It is quoted as follows:-

“ ७. वरील परिच्छेद २ मध्ये नमूद केल्याप्रमाणे ज्या पदांच्या सेवा प्रवेश नियमामध्ये परिविदा कालावधीत विभागीय परीक्षा उत्तीर्ण न केल्यास संबंधित उमेदवारांची सेवा समाप्त करण्याची तरतूद आहे, अशा परिविदाधीन अधिकारी/कर्मचा-यांनी वयाची ४५ वर्षे पूर्ण केली तरी संदर्भाधीन दि. २८.११.१९७९ च्या शासन निर्णयातील तरतुदीनुसार सदर विभागीय परीक्षा उत्तीर्ण होण्यातून सूट देता येणार नाही. त्यामुळे या शासन निर्णयात स्पष्ट केल्यानुसार परिविदाधीन अधिकारी/ कर्मचारी यांना विभागीय परीक्षा उत्तीर्ण होण्यातून सूट देण्यात येऊ नये.”

(quoted from page no.42, para no.7 of the circular)

10. It is thus specifically laid down in the said circular that the exemption cannot be granted on any grounds whatsoever from passing of examination to the

candidates, whenever it is prescribed by Recruitment Rules, that failure to pass the examination shall result in termination of the employment. Thus passing of such examination before completion of probation or at the end of Training shall be a condition precedent for confirmation in the employment.

11. This rule can not apply to an examination which is a qualifying examination for departmental promotion.

12. In the result objection raised by the Respondents that exemption from passing Departmental Examination cannot be granted to the Applicant is not based legal ground/ reason. Moreover State Government has not amended or repealed the Maharashtra Prison Department Executive Officer Post Recruitment Examination, Rule 1977.

13. It is settled principle of law that letters and circulars can be issued to explain an ambiguity, but cannot be issued to repeal or nullify a statutory rule.

14. In the result O.A. is succeed and partly allowed. This Tribunal holds that the Applicant is entitled to avail exemption from passing examination due to Rule 4(6) of Maharashtra Prison Department Executive Officer Post Recruitment Examination, Rule 1977. In the result the Applicant stands a chance as an eligible candidate to entry the zone of consideration for promotional avenue, whenever persons similarly situated i.e. entitled to exemption shall be or were considered for promotion to the post of Jailor Group -II.

15. In the circumstances parties are directed to bear their own costs.

Sd/-  
(A.H. Joshi, J.) ✓ / ✓ - 27  
Chairman

sba

