

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.875 OF 2015

DISTRICT : MUMBAI

1. Shri Girish Ramraoji Alone,)
Aged about 55 years,)
Assistant Entertainment Duty)
Officer, Tahsildar Office,)
Topiwala Building, Mulund (West),)
Mumbai 400 080.)
and having residential address as)
Building No.4, Flat No.21,)
Supervisors' Quarters, Unit No.6,)
Aarey Milk Colony, Goregaon (E),)
Mumbai 400 065.)

2. Shri Omprakash Ajabrao Kale,)
Aged about 48 years, Naib Tahsildar,))
(Revenue & Forest Department),)
Tahsil Office Bhandara, and having)
Residential address as C-2/1,)
Savitri Vihar, Somal Wada, Nagpur.)

..APPLICANTS

VERSUS

1. The Government of Maharashtra,)
Through the Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032)

2. The Addl. Chief Secretary,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
3. The Addl. Chief Secretary,)
Finance Department,)
Mantralaya, Mumbai 400 032.)
4. Divisional Commissioner,)
Konkan Division, Konkan Bhavan,)
Navi Mumbai.)
5. Divisional Commissioner,)
Nagpur Division, Maharashtra State,))
Civil Line, Nagpur 440 001.)

....RESPONDENTS

Shri M.D. Lonkar, learned Counsel for the Applicant.

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

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 09.08.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants challenging the action of the Respondents asking the Applicants to pass the Departmental Examination consequent upon their absorption as Naib Tahsildar as unconstitutional and illegal.

3. Learned Counsel for the Applicants argued that the Applicants were working in the Dairy Development Department and Finance Department of Government of Maharashtra respectively. The Applicants were declared surplus in their respective Departments and were absorbed as Naib-Tahsildars in the Revenue and Forest Department by orders dated 20.12.2010 and 24.07.2009 respectively. The Respondent No.1 is insisting that the Applicants pass the Departmental Examination viz. Departmental Examination as envisaged in Rule 1 of the Maharashtra Probationary Naib - Tahsildars Departmental Examination Rules 2000. Learned Counsel for the Applicants argued that the Applicants have not been recruited as Probationary Naib Tahsildars. They were declared surplus and they were absorbed as Naib-Tahsildars in terms of G.R. dated 10.09.2001. The aforesaid rules are not applicable to the Applicants. The Applicant No.1 has completed the age of 45 years and as per G.R. dated

01.11.1977, he is exempted from passing the aforesaid Departmental Examination. Learned Counsel for the Applicants argued that this issue has been decided by this Tribunal by judgment dated 03.06.2008 in O.A.Nos.1 & 127 of 2008, and it has been held that a Government servant, who is absorbed in another post on being declared surplus is not required to pass the Departmental Examinations in the absorbed post.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants were absorbed as Naib-Tahsildars in Revenue and Forest Department, as they were declared surplus in the Dairy Development / Finance Department, where they were working earlier. Learned P.O. stated that one mode for appointment to the post of Naib Tahsildar is by nomination, where a Naib Tahsildar selected by the Maharashtra Public Service Commission (M.P.S.C.) is required to pass Departmental Examination within two years and three chances. Failure to pass the examination will result in discharge from service. The other mode of appointment is by promotion from the post of Awal Karkoon / Circle Officer. Such persons are required to pass the Revenue Qualifying Examinations. This is to ensure that a person appointed as Naib Tahsildar is well conversant with the relevant laws etc., which he has to administer as Naib Tahsildar. For Awal Karkoons / Circle Officers, who are promoted from the post of Junior Clerks / Talathi, exemption is provided from passing Revenue Qualifying Examination under relevant rules after crossing the age of 45 years. However, that is done as they

acquire a lot of knowledge of the relevant laws and working of the Revenue Department due to long experience. The Applicants neither have any experience of working in Revenue Department nor are they ready to acquire relevant knowledge by passing the Departmental Examination. Learned P.O. argued that order of absorption of the Applicant No.1 dated 29.05.2010 (exhibit 'A', page 12 of the paper book) had condition no.3 which clearly mentioned these facts and that he was required to pass Revenue Qualifying Examination. The Applicant No.2 was absorbed by order dated 18.07.2009, which also has identical condition (exhibit 'D', at page 18 of the paper book). Learned P.O. argued that the Applicants have accepted orders of absorption subject to the conditions attached to the aforesaid orders. They cannot be allowed to turn around now and claim that they are not required to pass Revenue Qualifying Examination. Learned P.O. argued that the facts in the case cited by the Applicants are different and not applicable in the present case.

5. We find that the Applicants are mainly relying on the judgment of this Tribunal dated 03.06.2008 in O.A.Nos.1 and 127/2008. In that case, the Applicants were declared surplus and appointed as Deputy Superintendent, State Excise, Group 'B'. Paragraph 8 of the order reads :-

"8. Therefore, in our considered view insistence of passing departmental examination by the applicants is ill founded and the same cannot be insisted by the respondents. Thus, those condition incorporated in the order of appointment has to be declared as inoperative and not applicable to the applicants herein. In fact the Government or the concerned department should have

taken a decision to issue order of exemption from passing the departmental examination by the applicants as both the applicants now have crossed the age of 45 years. In view of this aspect of the matter and considering the fact that when the applicants were initially appointed as District Prohibition Propaganda Officer they were not required to pass the departmental examination as it was not insisted and when they are declared as surplus and on the other policy they have been reappointed the Government should not have incorporated such condition in the appointment order which in other words imposing additional condition which is onerous now for applicants to pass the said examination on account of age the applicants have reached now. (emphasis supplied)

In this paragraph, it is mentioned that the Applicants were earlier working as District Prohibition Propaganda Officers, in the same department and were not required to pass the Departmental Examination as it was not insisted upon. In the present case, the Applicants were working in different Departments, and have absolutely no knowledge of working of Revenue Department. In the Revenue Department, a Naib- Tahsildar has to pass either Revenue Qualifying Examination for Awal Karkoon (Circle Officer), in case of promotion to that post or pass Departmental Examination on nomination to that post. Exemption is granted under Revenue and Qualifying Examination Rules themselves to those who cross the age of 45 years. The G.R. dated 01.11.1977 has no application here. The rationale for such exemption from passing the R.Q. Examination has to be understood in the proper context. A person acquires adequate knowledge of the working of a department due to long experience. The Applicants' case is entirely different. In our view, this case is distinguishable.

6. The Applicants have to pass the Revenue Qualifying Examination as per condition No.3 of the orders absorbing them as Naib-Tahsildars. Otherwise, they will not be eligible for further promotion. We do not find that this condition is unreasonable.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

SD/-

**(R.B. MALIK)
MEMBER(J)**

SD/-

**(RAJIV AGARWAL)
VICE-CHAIRMAN**

**Place : Mumbai
Date : 09.08.2016
Typed by : PRK**