

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936 WRIT PETITION NO.3409 OF 2019

Shaikh Sajid Shaikh Hamid
Age : 48 years, Occu : Service as
Junior Clerk, Aurangabad Cantonment
Board, Aurangabad.

.. Petitioner

Versus

1. The Union of India
Through its Secretary,
Ministry of Defense,
New Delhi.
2. The Principal Director,
Defense Estate, Government of India,
Ministry of Defense, Southern Command,
Pune
3. The General Office Commanding
In Chief (GOD-in -C)
Southern Command, Pune
4. The President, Cantonment Board,
Aurangabad, Dist. Aurangabad.
5. The Chief Executive Officer,
Aurangabad Cantonment Board,
Aurangabad, Dist. Aurangabad
6. Mohd. Bashir Mohd. Jamal
Age: Major, Occu : Service as Accountant,
Aurangabad Cantonment Board, Aurangabad
Tal. & Dist. Aurangabad.

.. Respondents

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Mr Nitin T Tribhuwan, Advocate for Petitioner
Mrs S.S. Kulthe, Standing Counsel for Respondent Nos.1 to 3
Mr A.D. Soman, Advocate h/f. Mr D.V. Soman, Advocate for
Respondent No.4 & 5

Mr Vinod Khairnar, Advocate h/f. Mr Vijay Y. Gangtire,
Advocate for Respondent No.6

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**CORAM : S. V. GANGAPURWALA
AND
R.N. LADDHA, JJ.**

DATE : 03-08-2021

ORAL JUDGMENT (Per: S. V. GANGAPURWALA, J.) : -

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matter is taken up for hearing.

2. The petitioner seeks directions against the respondents to promote the petitioner on the post of accountant with effect from the date of retirement of respondent no.6 i.e. on 06-06-2020. The petitioner also seeks directions to set aside the order dated 23-01-2019 promoting respondent no.6 to the post of accountant.

3. Mr Tribhuwan, learned Advocate for the petitioner submits that, the petitioner was eligible to be promoted for the post of accountant. The claim of the petitioner was illegally negatived and respondent 6 was promoted, the same is illegal. The learned Counsel in alternate submits that, respondent no.6 has stood retired as an

accountant with effect from 06-06-2020. Since 06-06-2020 the post of accountant is vacant. The petitioner is the senior-most Jr. Clerk in the department and is working in the account section for more than one year. The petitioner is not considered for the post of promotion. The learned Counsel relies upon Rule 5 (B) (8) of the C.F.S. Rules, 1937. The learned Counsel referring to annexure - 'C' to CFS rules submits that, the post of accountant is to be filled in by promotion and post of Jr Clerk is a feeder cadre for the post of accountant.

4. Mr Soman, learned Advocate for the respondent submits that, the order dated 23-01-2019 does not suffer from any illegality. Respondent no.6 was senior to the petitioner. Respondent no.6 was rightly promoted. The petitioner does not have much experience in the field of account. The post of the accountant is a responsible post and financial powers are given to the accountant. So, the Board by meeting dated 27-10-2020 held that the petitioner should gain some work experience of working in account section, but the petitioner is not taking his duty seriously as Jr Clerk in account section and he is showing the casual approach. The petitioner was issued show cause notice on 04-01-2021 as to why action should not be taken against him for the casual approach towards his duties. According to the learned

Advocate, if the petitioner gains adequate experience and takes work seriously then the respondents may consider the petitioner for the promotional post.

5. We have considered the submissions made on behalf of the learned Counsel appearing for the parties. Right to be promoted is not a fundamental right, but to be considered for promotion is right. It is not disputed by either parties that, the petitioner is the senior-most junior clerk and the post of accountant is to be filled in from the feeder cadre of Jr. Clerk.

6. No doubt, the employer has to promote a competent and eligible person to the post. The competency and eligibility can be considered only after the selection committee and / or the authority takes up the proceedings for promotion. The show cause notice is said to have been issued to the petitioner on 04-01-2021. More than 7 months have lapsed since the date of issuance of the show cause notice. The petitioner undisputedly is working since June-2020 in the account section. More than one year experience has been gained by the petitioner in the account section. In such a scenario, there is no impediment for the respondents to consider the petitioner for the promotional post, of course, on its own merit.

7. In light of the above, we pass the following order.

ORDER

(i) The respondents may consider the petitioner for the post of accountant in accordance with its rules and considering the eligibility and competency of the petitioner.

(ii) The said exercise shall be done by the respondents within three months.

8. Rule made accordingly absolute in above terms. No costs.

[R.N. LADDHA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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