

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 198 OF 2021
WITH
ORIGINAL APPLICATION NO. 204 OF 2021
(Subject : Seniority List)**

1. ORIGINAL APPLICATION NO. 198 OF 2021

DISTRICT : BEED

1. **Umesh s/o Ashokrao Bavare,**)
Age:- 30 years, Occ. Service as a Kotwal,))
R/o. Kanadi Road, Tq. Kaij, Dist. Beed.))
E-mail:- umeshabavare@gmail.com))
2. **Devidas s/o Goraksh Netke,**)
Age:-30 years, Occ. Services as a Kotwal,))
R/o Kotwadi, Tq. Shirur (Ka), Dist. Beed.))
E-mail:- netkedevidas@gmail.com))
Mob:- No.8806235498))
3. **Sudam s/o Gorakshnath Katkhade,**)
Age:-31 years, Occ. Service as a Kotwal,))
R/o Nimgaon (Maymba),))
Tq. Shirur (Ka), Dist. Beed.))
E-mail:- sudamkatkhade1989@gmail.com))
Mob:- No.9922770609))
4. **Babasaheb s/o Mohan Birlinge,**)
Age:-36 years, Occ. Service as a Kotwal,))
R/o Nekknoor, Tq. Beed, Dist. Beed.))
E-mail:- birlingeb123@gmail.com))
5. **Chakradhar s/o Sadashiv Ghodke,**)
Age:-33 years, Occ. Service as a Kotwal,))
R/o Rajuri Ghodka, Tq. & Dist. Beed.))
E-mail:- chakru100@gmail.com))
6. **Lalu s/o Babasaheb Kakde,**)
Age:-32 years, Occ. Service as a Kotwal,))
R/o Moregaon, Tq. & Dist. Beed.))
E-mail:- lalitkakade80@gmail.com))
Mob:- No.9325492989))

7. **Ganesh s/o Dashrath Bhadre,**)
Age:-32 years, Occ. Service as a Kotwal,))
R/o Phule Nagar, Tq. Kaij, Dist. Beed.))
E-mail:- ganesh.bhadre007@gmial.com))
Mob:- No.9049627778))
8. **Namdev s/o Raosaheb Bahirwal,**)
Age:-30 years, Occ. Service as a Kotwal,))
R/o Mandavjali, Tq. & Dist. Beed.))
E-mail :- bahirwalnamdev8873@gmail.com))
Mob:- No.9405829283))
9. **Amol s/o Laxman Zoje,**)
Age:-29 years, Occ. Service as a Kotwal,))
R/o Navgan Rajuri, Tq. & Dist. Beed.))
10. **Shrikant s/o Ashok Hajare,**)
Age:-30 years, Occ. Service as a Kotwal,))
R/o Bhimnagar, Tq. Kaij, Dist. Beed.))
E-mail :- shrikanthajareo@gmail.com))
Mob:- No.9423230880))
11. **Mahadev s/o Baburao Parve,**)
Age:-29 years, Occ. Service as a Kotwal,))
R/o Kaij, Tq. Kaij, Dist. Beed.))
E-mail:- bappaparve4445@gmail.com))
Mob:- No.9657914445))
12. **Kamesh s/o Ramesh Wghmare,**)
Age:- 28 years, Occ. Service as a Kotwal,))
R/o Vida, Tq. Kaij, Dist. Beed.))
E-mail:- kameshw1111@gmail.com))
Mob:- No.8888796262) ... **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through, Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)
2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)

3. **The Collector,**)
Beed, Tq. & Dist. Beed.)
4. **The Sub Divisional Officer/
President Taluka Selection Committee,**)
Beed. Tq. & Dist. Beed.)
5. **The Sub Divisional Officer/
President Taluka Selection Committee,**)
Ambajogai, Tq. Ambajogai, Dist. Beed.)
6. **The Tahsildar/ Member Secretary,**)
Taluka Selection Committee,)
Tahsil Office, Beed, Tq. & Dist, Beed)
7. **The Tahsildar/ Member Secretary,**)
Taluka Selection Committee,)
Tahsil Office, Kaij, Tq. Kaij,)
Dist. Beed.)
8. **The Tahsildar/ Member Secretary,**)
Taluka Selection Committee)
Tahsil Office, Shirur-Ka, Tq. Shirur-Ka,))
Dist. Beed.)
9. **Sangita Ashruba Chitale,**)
Age:-44 years, Occ. Service)
R/o Chinchala, Post. Beedsangavi,)
Tq. Ashti, Dist. Beed.)
10. **Gayabai Bhgawan Garje,**)
Age:-42 years, Occ. Service,)
R/o Andhalewadi post Ashta (H.N.))
Tq. Ashti, Dist. Beed.)
11. **Nirmala Kantarao Dhonde,**)
Age:-42 years, Occ. Service,)
R/o Ashti, Tq. Ashti, Dist. Beed.)
12. **Ravindra Namdev Jadhav,**)
Age:-41 years, Occ. Service,)
R/o Ashti, Tq. Ashti, Dist. Beed.)

13. **Vithal Ramrao Sutar,**)
Age:-41 years, Occ. Service,)
R/o Georai, Tq. Georai, Dist. Beed.)
14. **Sakharam Gopinath Khandagale,**)
Age:-44 years, Occ. Service,)
R/o Kingaon, Tq. Georai, Dist. Beed,)
15. **Sachin Sarjerao Shinde,**)
Age:- 35 years, Occ. Service,)
R/o Padalsinghi, Tq. Georai, Dist. Beed.) ..**RESPONDENTS**

W I T H

2. ORIGINAL APPLICATION NO. 204 OF 2021

DISTRICT : HINGOLI

1. **Mr. Ganesh Gangadhar Jaybhaye,**)
Age : 30 years, Occu. : Service,)
R/o. Siddeshwar, Tq. Aundha,)
Dist. Hongoli, Mob. No. 8605302170.)
2. **Mr. Sandip Sudamrao Mundhe,**)
Age : 30 years, Occu. : Service,)
R/o. Anjanwadi, Tq. Aundha Nagnath,)
Dist. Hingoli.)
3. **Mr. Kailas Devrao Jadhav,**)
Age : 32 years, Occu. : Service,)
R/o. Nandgaon, Post, Siddeshwar,)
Tq. Aundha Nagnath, Dist. Hingoli.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through: Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-400 001.)
- 2) **The Revenu Commissioner,**)
Revenue Commissioner Officer,)
Aurangabad.)

- 3) **The Collector,**)
Collector Office, Hingoli,)
Tq. and Dist. Hingoli.)
- 4) **The Tahsildar,**)
Tahsil Office Sengaon.)
Tq. Sengaon, Dist. Hingoli 431 542.).. **RESPONDENTS**

APPEARANCE : Shri S.D. Munde, Advocate for the
Applicants in O.A. No. 198/2021.

: Shri S.D. Dhongde, Advocate for the
Applicants in O.A. No. 204/2021.

: Shri V.R. Bhumkar, Presenting Officer for
Respondent Nos. 1 to 8 in O.A. No. 198/2021.

: Shri S.R. Shirsat, Advocate for respondent
Nos. 9 to 15 in O.A. No. 198/2021.

: Shri N.U. Yadav, Presenting Officer for
respondents in O.A. No. 204/2021.

CORAM : **Justice Shri P.R. Bora, Member (J)**
AND
Shri Bijay Kumar, Member (A)

DATE : **14.01.2022.**

ORDER

(Pronounced on 14th January, 2022)

(Per : Shri Bijay Kumar, Member (A))

1. There are 2 Original Applications bearing No. 198 of 2021 and O.A. No. 204 of 2021, which have very much identical background facts and relief has been prayed for against the same impugned clarificatory communication bearing outward No. संकीर्ण

-२०२०/प्र.क. ७१/ई-१०, dated 06.04.2021 issued by Dr. Santosh Bhogale, Joint Secretary, Revenue & Forest Department (in brief, R&FD), on behalf of respondent No. 1, which is addressed to respondent No. 2; therefore, a common order is being passed without prejudice to any of the contesting parties.

2. Underlying common background facts in O.A. No. 198 of 2021 and O.A. No. 204 of 2021 are that the applicants in both the O.As. have been appointed on the posts of Kotwal in the year 2015 which is a non-classified village-level post. Kotwals who meet prescribed qualifications are eligible for direct appointment to the post of peon which is a Class-IV post of district cadre for which a select list is required to be prepared. For Preparing select list of Kotwals district level service seniority is one of the important requirements which is done by consolidation of taluka-level seniority lists of Kotwals.

3. In order to bring in standardization, recruitment procedure for the post of Kotwal has been modified vide Government Resolution of "R&FD" bearing No. केओटी-२०१२/प्र.क. ४३२/ई-१०, dated 05.09.2013 and "R&FD" has prescribed by a letter No. संकीर्ण-२०१९/प्र.क.११२/ई.१०, dated- 22.07.2019 (copy at Annexure A-9, page 55 of paper-book) that the select list of Kotwals be prepared

based on their meeting prescribed qualifications for the post of peon and service seniority of Kotwals. Therefore, need for taluka-level and its further consolidation as district level seniority of Kotwals has arisen for the purpose of preparation of select list of Kotwals for appointing them by nomination on the post of peons against 25% reserved vacancies for them which may be increased to 40%.

4. Original Application No. 198 of 2021 has been filed by one Shri Ramesh Ashokrao Bhavare and 11 others who constitute a group of Kotwals selected and appointed in pursuance of the order dated 13.01.2015, issued by the District Collector Beed, a copy of which is at Annexure A-1, page 17 of the paper-book. The applicants have challenged the impugned communication bearing outward No. संकीर्ण -२०२०/प्र.क. ७१/ई-१०, dated 06.04.2021 issued by Dr. Santosh Bhogale, Joint Secretary, Revenue & Forest Department (in brief, R & FS), on behalf of respondent No. 1, which is addressed to respondent No. 2 whereby, clarification has been issued regarding preparation of district level consolidated seniority list of Kotwals which is a village level post for which Mamlatdar is the appointing authority.

5. In the present case of Beed, the District Collector, Beed had appointed a committee headed by respective revenue Sub-Divisional Officer as Chairman of the committee entrusted with carrying out selection process of Kotwals comprising of a written test of 75 marks and oral test of 25 marks and preparing merit list of selected candidates based on total marks secured by the candidates. Accordingly, all the Sub divisional officers of Beed district got written tests conducted based on a common question paper, on 08.02.2015 and prepared merit list for calling candidates for oral test. The committee carried out oral tests at Taluka level as per their convenience and accordingly, merit list of each Taluka was finalized and appointment orders to successful candidates were issued by Tahsildars. As a result, successful candidates of different talukas or within a taluka, had different joining dates, as depicted in TABLE-1 below. But, the same did not lead to grievances of successful candidates so far as Taluka level seniority list is concerned for obvious reason that there was no visible direct adverse effect on the interests of selected Kotwals. However, it is at the time of preparation of district level consolidated service seniority list that the Kotwals from Talukas who finalized merit list late and thereafter, issued appointment orders were listed as junior to the Kotwals who had

joined early due to speedier work at the level of respective Mamlatdars. The effect as discussed above is depicted in TABLE-1 which follows :-

Table 1
Information Regarding Beed District

Sr. No.	Taluka	Date of Written Exam	Date of Notification of Final Merit List	Remarks
1	Gevrai	08.02.2015	27.02.2015	
2	Ashti	08.02.2015	02.03.2015	
3	Parali Bajjnath	08.02.2015	02.03.2015	
4	Vadawani	08.02.2015	04.03.2015	
5	Kaij	08.02.2015	05.03.2015	
6	Ambajogai	08.02.2015	05.03.2015	
7	Shirur Kasar	08.02.2015	10.03.2015	
8	Patoda	08.02.2015	10.03.2015	
9	Dharur	08.02.2015	10.03.2015	
10	Majalgaon	08.02.2015	12.03.2015	
11	Beed	08.02.2015	25.03.2015	

6. Original Application No. 204 of 2021 has been filed by Mr. Ganesh Gangadhar Jaybhaye and 2 others, all from Aundha Nagnath Taluka of Hingoli district challenging the impugned communication bearing outward No. संकीर्ण -२०२०/प्र.क. ७१/ई-१०, dated 06.04.2021 issued by Dr. Santosh Bhogale, Joint Secretary, Revenue & Forest Department (in brief, R &FS), on behalf of respondent No. 1, which is addressed to respondent No. 2 whereby, clarification has been issued regarding preparation of district level consolidated seniority list of Kotwals. In Hingoli

district, original taluka-wise service seniority list of Kotwals was prepared based on marks secured by the successful candidates, however, in pursuance of the impugned order the Mamlatdars revised the final taluka level service seniority lists, according to date of joining on the post of Kotwals.

Table 2
Information Regarding Hingoli District

Sr. No.	Taluka	Date of Written Exam	Date of Notification of Final Merit List	Remarks
1	SDO Hingoli	08.02.2015	13.02.2015	Exam conducted at SDO level
2	SDO Kalmanuri	08.02.2015	13.02.2015	
3	SDO Vasmat	08.02.2015	13.02.2015	

7. As the Collector Beed has prepared district level consolidated service seniority list of Kotwals based on their service length (in other words, on the basis of date of joining), the applicants which had visible adverse effect due to late finalization of final merit list and resultantly, delay in issue of appointment orders have prayed for revision of the said seniority list on the basis of total marks secured in the selection procedure for which written exam was conducted on 08.02.2015 by filing the O.A. No. 198 of 2021.

8. In case of Hingoli district final merit list for all the Talukas were published on the same day i.e. 13.02.2015, appointment orders in each Taluka were issued on different dates. Therefore, in order to neutralize adverse effect of administrative delays caused in issuing appointment orders the Collector Hingoli had initially prepared the final seniority list based on total marks secured by successful candidates and had later on, revised the same in pursuance of directives received from respondent No. 1 by impugned order, the Applicants of Hingoli district have also prepared for restoration of seniority list prepared on 21.08.2018.

9. **Grounds for seeking relief** :- The applicants have relied mainly on two grounds as elaborated below : -

- (a) As per G.R. dated 07.05.1959, MCS (Regulation of Seniority) Rules, 1982 are not applicable for Kotwals
- (b) Kotwals selected in year 2015 have been selected in the same batch. Therefore, seniority has to be decided as per provisions of Rule 4, Sub-Rule 2 (A) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, which is being reproduced below for ready reference :-

“ 4. General Principles of Seniority.

(2) *Notwithstanding anything contained in sub-rule (1)-*

(a) *the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;*

(c) Kotwals in all the Talukas have cleared the same written examination. The delay in appointment and resultantly, in joining of Kotwals in some talukas has been due to reasons of delay in conducting Oral Tests, Compilation of Results of Written test and oral test and declaring final merit list, delay in issuing appointment orders by some talukas. If ill-effect of such administrative delays is not neutralized by preparing seniority list on the basis of total marks secured in the common recruitment

process of year 2015, then Kotwals of such Talukas will suffer irreparable losses for no fault of theirs despite such Kotwals having higher total marks.

(d) The applicants have cited example of Kotwals selected for Gevrai, Ashti and Parali Talukas, who get into advantageous position causing prejudice to Kotwals from Beed, Majalgaon, Shirur Kasar even though candidates from these Talukas are more meritorious. The applicant has cited one specific case of applicant No. 2, Shri Devidas Netake from Shirur Kasar Taluka is given district level service seniority of Sr. No. 235 based on date of joining whereas, he deserves to be placed at district level service seniority of 2. Another applicant No. 5 namely, Shri Chandrakant Ghodake from Beed Taluka is placed at combined district level seniority of 285 whereas, he deserves seniority of 3 based on marks secured by him in selection process of year 2015.

10. **Analysis of facts and conclusion** :-

(a) First of all, there is no separate Regulation of Seniority Rules for Kotwals, therefore, as per provisions of Rule (2) of MCS (Regulation of Seniority) Rules, 1982 the

MCS Rules shall apply. Therefore, it is determined that the objection raised by the applicants in this regard in O.A No. 204 of 2021 is not sustainable.

(b) The applicants in the O.A. Nos. 198 and 204, both of year 2021 have put forward contention that the seniority of Kotwals need to be determined under provisions of Rule 4 (2) (A) of MCS (Regulation of Seniority) Rules, 1982 only. It is clear that the Rules 4 (1) and Rule 4 (2) of the said “Rules” have to be read together. Rule 4 (2) (A) provides for protection of seniority in cases dates of joining may be different but is within permitted / sanctioned time-limit.

(c) As per clause 12 of the G.R. dated 07.05.1959 Mamlatdar is the appointing authority for Kotwals. Kotwal is an unclassified post, which has been limited to village of appointment. After a decision was taken to reserve certain proportion of vacant posts of peons in “R&FD” that effort has been made to formulate the process of appointment to the post of Kotwals and prepare select list of Kotwals to be appointed as Peon by nomination. Seniority of Kotwals selected in a Taluka is prepared by applying first level filter of date of appointment. Inter-se seniority of Kotwals

selected in the same batch and having same date of appointment, who have joined within prescribed time limit after receiving appointment orders is decided as per their positions in merit list of selection. In other words, taluka level inter-se seniority of Kotwals selected in the same batch is decided as per provisions of Rule 4, Sub-Rule 2 (A) of MCS (Regulation of Seniority) Rules, 1982. As there is no dispute regarding Taluka-level seniority of Kotwals, the above analysis remains of limited use / academic interest in the present case.

(d) However, Kotwals appointed by different appointing authorities, i.e. different Mamlatdars in a district will have different set of taluka-level service-seniority. If dates of appointments of Kotwals are the same across the Talukas district-level combined service-seniority may be decided without difficulty by merging the Taluka level seniority lists based on date of joining. However, in the present cases, different appointing authorities (Mamlatdars) in a district have issued appointment orders on different dates. This has obviously resulted in to Kotwals in laggard talukas joining late as compared to their counter-parts in Talukas which have issued appointment orders early. Therefore,

such Kotwals from laggard talukas seek relief by modifying the rules for determining seniority.

(e) As argued by the applicants that majority of districts in Aurangabad division had conducted written test on the same date in the year 2015, i.e. 08.02.2015. However, the date of written exam cannot be the basis of taking first level filter, to be topped up by second level-filter of total marks secured by a selected Kotwal for the reason that on the date of written exam there in no one selected for appointment and seniority cannot be assigned with reference to a date a prior to his appointment in the cadre/ post.

(f) A reference is made by us to the Judgment of the Hon'ble Supreme Court of India in **Civil Appeal No. 8833-8835 of 2019 (Arising out of SLP (C) Nos. 19565-19567 of 2019**, dated-19.11.2019, **K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors.** Though the main issue for adjudication in this SLP was application of seniority rules in Quota-Rota system, the judgment of Hon'ble Apex Court also laid down mandatory nature of date of joining service as criteria for determining seniority. In this cited case, it has been ruled that under Service Jurisprudence, seniority

cannot be claimed from a date when the incumbent is yet to be borne in the cadre. Therefore, it is inferred that first layer filter for determining seniority of any employee is the date of appointment. Marks secured in selection process or any other filter like, age of selected candidates etc. are applicable for the purpose to determine inter-se seniority in a case the date of appointment for more than one candidate is the same.

10. **Conclusion** :- After considering facts on record and oral submissions made by the contesting sides, we are of the considered opinion that both the Original Applications are devoid of merit and deserve to be dismissed. We, therefore, pass following order: -

ORDER

- (A) Original Applications Nos. 198 and 204, both of 2021 are, hereby, dismissed for being devoid of merit.
- (B) No order as to costs.

MEMBER (A)
(Bijay Kumar)

MEMBER (J)
(P.R. Bora)

At this juncture learned counsel Shri Sandeep D. Munde, appearing in O.A. No. 198/2021 for the applicants submits that the applicants intend to challenge the order passed by this Tribunal today i.e. on 14.1.2022 before the Hon'ble High Court. He further submitted that during pendency of the O.A. the stay was granted vide order dated 28.05.2021 by which, the respondents were directed not to take further steps in respect of the seniority list dated 10.05.2021 of the post of Kotwals published by the respondent No. 3, the Collector, Beed, till filing of the affidavit in reply by the respondents. He further argued that the stay order should be deemed to continue unless withdrawn by the Hon'ble Tribunal by passing a specific order. On the other hand, learned Presenting Officer contended that the stay order was having force only till filing of the affidavit in reply by the respondents and not thereafter. The contentions of the learned counsel for the applicants was also strongly opposed by the learned Advocate appearing for respondent Nos. 9 to 15 (intervenors) in the matter. According to him, few of the intervenors have already crossed the age of 45 years and have lost the chance and if stay is granted, more prejudice is likely to be caused to the intervenors. After considering contentions of the parties, we are of the view that even though the stay was

granted till filing of the affidavit in reply by the respondents, it may be deemed to be operating during pendency of the Original Applications and the request of the applicant deserves to be accepted. In the result following order is passed :-

ORDER

The effect of the order passed by this Tribunal today i.e. on 14.1.2022 shall stand stayed for the period of 3 weeks from the date of this order.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. 198 wit 204 both of 2021 P RB & BK Seniority list