

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**BENCH AT AURANGABAD****COMMON ORDER IN T.A. NO. 01/2021 (W.P. NO. 4908/2021)
AND
T.A. NO. 02/2021 (W.P. NO. 2612/2021)****1. TRANSFER APPLICATION NO. 01/2021 (W.P. NO.4908/2021)****DISTRICT : AURANGABAD &
LATUR**

1. **Shivaji S/o Tukaram Shinde,**)
Age:-54 years, Occu. : Service,)
(asAsstt. Commissioner [B.C. Cell] in)
O/o Div. Commissioner, Aurangabad,)
R/o. H.No. 13, Om-Akanksha Housing,)
Society, Plot No. 36, parijat Nagar,)
Cidco, N-4, Aurangabad.)
2. **Sunil Vitthalrao Yadav,**)
Age:-55 years, Occu. : Service,)
(as Sub-Divisional Officer, Latur),)
R/o. "Sinhgad", Govt. Quarter, Opp.)
Tahsil Office, Latur.)

...APPLICANTS**V E R S U S**

1. **The State of Maharashtra,**)
Through its Addl. Chief Secretary,)
Revenue & Forest Department,)
M.S., Mantralaya, Mumbai-32.)
2. **The Additional Chief Secretary,**)
General Administration Department,)
M.S., Mantralaya, Mumbai-32.)
3. **Shri Tushar s/o EknathThombre,**)
Addl. Collector, Beed,)
C/o : Collector Office, Nagar Road, Beed.)
4. **Shri Arvind/o Ramesh Rao Lokhande,**)
Addl. Collector, Latur,)
C/o : Collector Office, Latur.)

5. **Shri Shankar s/o Ramchandra Barge,**)
Addl. Collector, Hingoli,)
C/o : Collector Office, Hingoli.)
6. **Shri Pradeeps/o Prabhakar Kulkarni,**)
Residential Deputy Collector, Nanded,)
C/o : Collector Office, Nanded.)
7. **Shri Prataps/o Sugreev Kale,**)
Deputy Election Officer,)
C/o : Collector Office, Osmanabad.)
8. **Shri Pandurang s/o Shankarrao Kamble,**)
Sub Divisional Officer, Kandhar,)
Tal. Kandhar, Dist. Nanded.)

.. **RESPONDENTS**

W I T H

- 2. TRANSFER APPLICATION NO. 02/2021 (W.P. NO. 2612/2021)**
with CP 1/2022 with MA 1/2022 with MA 309/2021 with MA 337/2021

DISTRICT : AURANGABAD

1. **Smt. Samiksha D/o Ramakant Chandrakar,**)
Age:-50 years, Occu. : Service as,)
Deputy Commissioner (EGS), Divisional)
Commissioner (Revenue)'s office, Aurangabad)
R/o Plot No. 363, Sector -E, N-1,)
CIDCO, Aurangabad 431003.)
2. **Pandurang Ramrao Kulkarni,**)
Age:-55 years, Occu. : Service as)
Deputy Commissioner (Rehabilitation),)
Divisional Commissioner (Revenue)'s)
office, Aurangabad.)
R/o Kasliwal Corner, N-2, CIDCO,)
Aurangabad 431003.)

...APPLICANTS

V E R S U S

1. **The State of Maharashtra,**)
Through the Addl. Chief Secretary,)
Revenue & Forest Department,)
M.S., Mantralaya, Mumbai-400 032.)

2. **The Additional Chief Secretary,**)
General Administration Department,)
Mantralaya, Mumbai-400 032.)
 3. **The Additional Chief Secretary,**)
Finance Department,)
Mantralaya, Mumbai-400 032.)
 4. **The Principal Secretary,**)
Law and Judiciary Department,)
Mantralaya, Mumbai-400 032.)
 5. **Shri Vijay s/o Shankarrao Deshmukh,**)
Age : Major, Occ : Service as Additional,)
Collector, Collectorate, Pune.)
 6. **Shri Trigun S/o Shamrao Kulkarni,**)
Age : Major, Occ : Service as Deputy)
Commissioner (Supply), Divisional)
Commissioner (Revenue)'s office,)
Pune Division, Pune.)
 7. **Smt. Rupali d/o Vilas Awale,**)
Age : Major, Occ : Service as Additional)
Collector, Collectorate, Osmananabad.)
 8. **Smt. Swati s/o Laxmanrao Deshmukh,**)
Age : Major, Occ : Service as Deputy)
Deputy Commissioner (Supply),)
Divisional Commissioner (Revenue)'s)
Office, Nashik Division, Nasik.)
 9. **Shri Tushars/o Eknath Thombre,**)
Age : Major, Occ : Service as Additional,)
Collector, Collectorate, Beed.)
- .. **RESPONDENTS**

APPEARANCE : Shri AvinashDeshmukh, Counsel for the Applicants in T.A. No. 01/2021.

: Shri P.R. Katneshwarkar, Special Counsel for the respondent authorities in T.A. Nos.01 in both of 2021.

: Shri V.D. Sapkal, Counsel holding for Shri Ujjwal S. Patil, Counsel for the Respondent

Nos. 3 to 5 in T.A. No. 01/2021 and
respondent Nos. 5 to 10 in T.A. No. 02/2021

: Shri C.V. Dharurkar, Counsel for the
Respondent Nos. 6 to 8 in T.A. No. 01/2021.

: Shri Ajay Deshpande, Counsel for the
Applicants in T.A. No. 02/2021.

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

DATE : **26-08-2022**

C O M M O N - O R D E R

Per : Justice P.R. Bora, Vice Chairman

1. In both these Transfer Applications the challenge is to the final seniority list of the officers in the cadre of Deputy Collectors of the period 1.1.1999 to 31.12.2003, published by respondent no. 1 along with Circular dated 31.12.2020 (hereinafter referred to as impugned seniority list). We have therefore heard both these matters together and deem it appropriate to decide both these applications by a common order.

Grievance of the Applicants.

2. It is the grievance of the applicants in both these applications that in the impugned seniority list the applicants have been wrongly pushed down. As pleaded by the applicants in T.A. No. 1/2021, in the provisional seniority list published on 24.9.2009 the said

applicants were rightly placed at sr. nos. 411 & 413 respectively, however, in the impugned seniority list they are pushed down at sr. nos. 599 and 603 respectively. As has been contended by the applicants in T.A. No. 2/2021, in the provisional seniority list published on 24.9.2009 they were placed at sr. nos. 323 & 328 respectively, whereas in the impugned final seniority list they have been wrongly placed at sr. nos. 500 & 506 respectively. It is the common allegation of the applicants in both these TAs that in order to favour the directly recruited Deputy Collectors, the seniority of the promoted Deputy Collectors like the applicants have been wrongly reckoned from the date other than their date of continuous officiation. It is the further contention of the applicants that while determining the impugned seniority list the respondents have not followed the provisions under the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority Confirmation) Rules, 1977 (hereinafter referred to as 'Recruitment Rules').

3. The applicants have asserted in their respective applications that they have been duly promoted to the post of Deputy Collectors in accordance with the provisions under the Recruitment Rules. It is their further contention that since their promotional appointments were made in accordance with the provisions under the Recruitment Rules, the subsequent service benefits like Assured Career Progression Scheme (for short ACPS), promotion to the next higher

post i.e. of Deputy Collector (Selection Grade) are duly extended in their favour. As has been contended by the applicants in T.A. No. 2/2021, both the applicants have been promoted to the post of Additional Collector w.e.f. 30.1.2020 and since then they are working on the said post. It is the contention of the applicants in T.A. no. 1/2021 that the benefit of ACPS was granted to both of them after having completed 12 years continuous service in the cadre of Deputy Collectors from the date of initial entry therein in 2001. As provided further the said benefits were granted to the said applicants w.e.f. 2.10.2013. It is the further contention of the applicants in T.A. no. 1/2021 that vide order dated 2.9.2020 they have been conferred with the Selection Grade in the cadre of Deputy Collectors w.e.f. 4.10.2017.

4. The applicants in T.A. No. 2/2021 have alleged that the respondent State has falsely shown the number of permanent posts of Deputy Collectors to have been increased to 514. According to them permanent posts of Deputy Collectors are only 383 and have never been increased. The said applicants have alleged that permanent posts are shown to have been increased with the only intention to proportionately increase the number of directly recruited Deputy Collectors in the cadre. The applicants have therefore prayed for quashment of the impugned seniority list. The applicants have

also prayed for determining their seniority in the cadre of Deputy Collectors from the date of their initial appointment.

Contentions raised by the Respondents.

5. The respondents have resisted the contentions raised in these Transfer Applications and the prayers made therein. On behalf of respondent No. 1, Dr. Madhav Veer, the Joint Secretary has filed the affidavit in reply. Respondent No. 1 has taken a plea that in the relevant period the cadre strength of Deputy Collectors in the State was 514. It is the further contention of respondent No. 1 that the number of permanent posts of Deputy Collectors is also 514. According to respondent No. 1, the permanent posts of 514 include therein temporary posts also. It is further contended that when the applicants in T.A. No. 1/2021 and T.A. No. 2/2021 were promoted to the cadre of Deputy Collectors there were no vacancies in the permanent posts of Deputy Collectors in the State. It is further contended that as and when vacancies occurred in the permanent posts, the officers alike the applicants who were granted *ad-hoc* promotions were chronologically absorbed against the permanent posts. It is the further contention of respondent No. 1 that the seniority of the applicants in the cadre of Deputy Collectors is reckoned from the dates on which the applicants were absorbed against the permanent posts. It is further contended that number of permanent posts of Deputy Collectors has been time to time increased in accordance with the relevant provisions. Respondent

No. 1 has denied the allegation that the number of permanent posts has been illegally increased without following the prescribed procedure. It is further contended that in the promotion orders issued in favour of the applicants it has been clearly averred that the applicants may not be entitled to claim the seniority in the promoted post from the date of the order. It is further contended that the dates as are mentioned in column No. 8 of the impugned final seniority list are the deemed date assigned to the applicants after their entry in the permanent post and their seniority in the cadre of Deputy Collectors is rightly reckoned from the said date. On the aforesaid grounds respondent No. 1 has prayed for dismissal of both the Transfer Applications.

6. The private respondents, who are directly recruited Deputy Collectors have also opposed the Transfer Applications by filing their affidavits in reply. Some of the private respondents have filed such affidavits in reply. The contentions raised in their respective affidavits are more or less same. The private respondents have contended that the very entry of the applicants in the cadre of Deputy Collectors is illegal and unauthorized. These respondents have alleged that the promotions to the applicants in both the Transfer Applications are given without following the provisions under the Recruitment Rules. It is further contended that initial appointments of the applicants by way of promotion in the cadre of Deputy Collectors were made without inclusion of their names in the select

list prepared under Rule 9 (7) of the Recruitment Rules. It is further contended that because of administrative exigency the applicants were given ad-hoc appointments by way of stop-gap arrangement. The services rendered by these applicants on the basis of said order have to be held as fortuitous services and therefore cannot be counted while determining their seniority in the cadre of Deputy Collectors. According to respondent No.1, seniority of the applicants can be reckoned only from the date of their absorption in the permanent posts of Deputy Collector. It is further contended that for lack of review taken in regard to the performance of the applicants under Rule 12 of the Recruitment Rules, the applicants cannot be said to have been confirmed in the cadre of Deputy Collectors and their seniority, therefore, cannot be reckoned from their date of appointment. It is further contended that though State has always unduly favored the applicants, the said mistake has been corrected while preparing the impugned final seniority list. The private respondents have also therefore, sought dismissal of both the Transfer Applications.

Arguments on behalf of the Applicants.

7. Shri A.S. Deshpande, learned Counsel appearing for the applicants in T.A.No.02/2021 in his arguments has raised serious objection as about the number of permanent posts of Deputy Collectors stated as 514 by the State Government. The learned Counsel submitted that there were only 383 permanent posts of

Deputy Collectors in the relevant period i.e. up to the year 2003. The learned Counsel relying on the judgment of this Tribunal in O.A.No.526/2004 submitted that in the said petition the State Government on affidavit has stated that the number of permanent posts of Deputy Collectors in the State is 383. The learned Counsel submitted that the State has not placed on record any authentic document to show in what manner the permanent posts of Deputy Collectors have been increased from 383 to 514 and whether the Rules of Business were followed in that regard or not. The learned Counsel was very persuasive in his submission that till today, permanent posts of Deputy Collector are 383 only and the figure of 514 is falsely shown by the State with the only intent to proportionately increase the number of posts for directly recruited Deputy Collectors. The learned Counsel further submitted that the applicants were duly promoted after following procedure prescribed in the recruitment rules. The learned Counsel submitted that names of the applicants were selected in the meeting of DPC held on 15-04-1999. The learned Counsel further submitted that up to the year 2018, the applicants were correctly placed in the previous provisional seniority lists and their seniority in the cadre of Deputy Collectors was rightly reckoned from the date of their appointment i.e. from 08-07-1999. The learned Counsel pointed out that the appointments of the applicants were the regular promotional appointments and there was no reason for giving or assigning any other deemed date to them

for reckoning their seniority in the cadre of Deputy Collectors. The learned Counsel further submitted that had there been a slight doubt about the promotion granted to the applicants or their seniority, the State would have never further promoted the applicants to the post of Deputy Collector Selection Grade, that too in the year 2013 and 2015, respectively. The learned Counsel further submitted that subsequent to grant of selection grade, the applicants have been granted further promotion to the post of Additional Collector w.e.f. 30-01-2020. The learned Counsel reiterated that had there been any illegality in granting promotions to the applicants, the objections could have been raised at the time when the Selection Grade was conferred to the applicants in the cadre of Deputy Collectors in the year 2013 and 2015, respectively. The learned Counsel further submitted that in about four provisional seniority lists prepared by the State during the period between 1999 to 2020, in each of the said lists different dates are shown against the names of the present applicants for their absorption in the cadre of Deputy Collectors and the State has not provided any explanation therefor. The learned Counsel further submitted that the manner adopted by respondent no.1 in determining the impugned final seniority list is contrary to the provisions under the recruitment rules.

8. The learned Counsel further submitted that the applicants have placed on record copy of the G.R. dated 03-03-1999 whereby

the selection committee was constituted by respondent no.1 which selected the applicants for their promotion to the cadre of Deputy Collectors. Learned Counsel further submitted that since then the applicants have been uninterruptedly occupying the position as Deputy Collector, thereafter as Selection Grade Deputy Collector, and presently as Additional Collector. The learned Counsel further submitted that though it may be a fact that no review as envisaged under rule 12 of the recruitment rules is made despite the order passed by this Tribunal in O.A.No.526/2004, in the G.R. dated 31-12-2020, the State itself has foreclosed the issue of review once for all. The learned Counsel pointed out that as mentioned in the aforesaid Government Resolution the decision taken by the Government as about 'review' is a conscious decision. In support of the contentions raised on behalf of the applicants, the learned Counsel has cited few judgments. We may refer to the said judgments at appropriate stage.

9. Shri A.S.Deshmukh, learned Counsel appearing for the applicants in T.A.No.01/2021 while adopting the arguments advanced by learned Counsel Shri Deshpande made certain additional submissions. The learned Counsel submitted that proviso to rule 4 of the recruitment rules provides the minimum and maximum percentage for the directly recruited Deputy Collectors vis-à-vis the permanent posts in the cadre of Deputy Collectors. It does not provide any quota or proportion for the posts to be filled in by

promotion, meaning thereby that all the remaining posts in the cadre, whether permanent or temporary, are to be filled in through mode of promotion. According to the learned Counsel, the contentions raised by the respondent State that while determining the impugned final seniority list, care and caution is taken for complying with the quota rule prescribed under the recruitment rules is fallacious. The learned Counsel submitted that in O.A.No.526/2004 decided by the Tribunal principles for determination of seniority of the officers in the cadre of Deputy Collectors are elaborately discussed. The learned Counsel submitted that the State did not challenge the said decision. On the contrary, the State had published provisional seniority list on 24-09-2009 in compliance of the direction given by this Tribunal in O.A.No.526/2004. According to the learned Counsel, the applicants have been assigned due and proper placement in the said provisional seniority list published on 24-09-2009.

10. The learned Counsel further submitted that since the promotions granted to the applicants were in consonance with the recruitment rules, no objections have been raised against the said promotions awarded in the year 2001. The learned Counsel further submitted that both the applicants have been conferred with ACPS benefit as well as the Selection Grade in the cadre of Deputy Collectors. Learned Counsel submitted that ACPS benefit has been awarded to the applicants with retrospective effect from 02-10-2013

whereas the Selection Grade has been conferred w.e.f. 04-10-2017. The learned Counsel submitted that the grant of ACPS and conferment of Selection Grade are indicative of the fact that the applicants have been held to be in continuous service in the cadre of Deputy Collectors from the date of their appointment. The learned Counsel submitted that for reckoning seniority of an officer in the cadre of Deputy Collectors the most important factor is the date from which the said officer is held to be in continuous service in the said cadre. The learned Counsel submitted that for wrong reasons and because of misinterpretation of the provisions under the recruitment rules, in the impugned final seniority list, the seniority of the applicants has been unnecessarily and illegally disturbed. The learned Counsel in the circumstances, prayed for setting aside the impugned seniority list and to finalize the provisional seniority list published on 24-09-2009. Learned Counsel had also relied upon certain judgments to which we will be referring at the appropriate stage.

Argument on behalf of State

11. Shri Katneshwarkar, learned special counsel appearing for respondent no. 1 submitted that the impugned seniority list has been prepared strictly in accordance with the provisions under the Recruitment Rules. The learned special counsel submitted that the permanent posts of the Deputy Collectors have been time to time increased and in the G.R. dated 31.12.2020 (Exh. F in TA No.

2/2021) the relevant particulars are provided. Referring to the aforesaid G.R. the learned special counsel submitted that up to the year 1998 there were 491 permanent posts of Deputy Collectors in the State. In the year 1999, 23 posts were created and the permanent posts of Deputy Collectors therefore reached to 514. The learned special counsel further pointed out that 86 posts were created in the year 2013, and the permanent posts of the Deputy Collectors have reached to 600.

12. The learned special counsel further submitted that when the applicants in the present TAs were promoted to the cadre of Deputy Collectors there were no vacancies in the permanent posts of Deputy Collectors but as and when vacancies occurred thereafter, the respondent no. 1 has chronologically absorbed the applicants and similarly situated others, against the vacancies so occurred. The learned special counsel submitted that the applicants have been absorbed against the permanent posts on the dates as mentioned in column no. 8 of the impugned seniority list against their names. To illustrate, the learned special counsel pointed out that though the date of appointment of the applicant no. 1 in T.A. no. 2/2021, Smt. Samiksha D/o. Ramakant Chandrakar, is 8.7.1999, she was absorbed against the permanent posts on 1.2.2002 and the said date is mentioned against her name in column no. 8 of the impugned seniority list. The learned special counsel submitted that in the case

of similarly situated officers the same criteria has been applied by the respondent no. 1. The learned special counsel further submitted that the applicants and similarly situated officers are held to be in continuous service in the cadre of Deputy Collectors from the date as mentioned against their names in column no. 8 of the impugned seniority list. The learned special counsel further submitted that the seniority of the applicants and similarly situated officers has been reckoned from the said date.

13. The learned special counsel further submitted that the period of service rendered by the applicants and like candidates from the date of their appointment till the date of their absorption against the permanent posts has been held to be fortuitous service and the same has not been counted while considering their seniority in the cadre of Deputy Collectors. The learned special counsel further submitted that in the year 1999 there were 514 sanctioned posts and total officiating persons were 744. The learned special counsel submitted that in the said year directly recruited Deputy Collectors were occupying 39% posts and as a result 61% posts were given to the promotee Deputy Collectors. Bringing to our notice tabular information placed on record by respondent no. 1 (page 205 in TA No. 2/2021) the learned special counsel submitted that though 103 officers were accommodated against the permanent posts, which became vacant because of the retirement of some of the officers and

promotions of some of the officers even then 100 officers were in excess and the services being rendered by the said officers were held to be fortuitous service and the appointments of the said officers were treated as fortuitous appointments.

14. The learned special counsel pointed out that the permanent posts of Deputy Collectors have been time to time increased in consultation with the Finance Department, as well as, General Administration Department. The learned special counsel submitted that the objections raised by the applicants against the impugned seniority list are without any substance. He therefore prayed for dismissal of the applications.

Arguments on behalf of the Private Respondents.

15. Shri V.D. Sapkal, learned senior counsel appearing for private respondents in both the T.As. has vehemently argued that the State has always been partial insofar as the promotee Deputy Collectors are concerned. The learned senior counsel taking us through the Rules of 1977 argued that the very initial appointments of the applicants in both the T.As. have been made contrary to the provisions under 1977 Rules. The learned senior counsel submitted that the applicants have not provided the necessary particulars to show that before giving them promotion the procedure as prescribed in rules 8 & 9 was followed. The learned senior counsel further submitted that before promoting the applicants Government has not

prepared the 'select list' as envisaged under rule 9(7) of the Recruitment Rules, without which no promotions could have been effected.

16. The learned senior counsel has further argued that the applicants seem to have been promoted due to exigencies of services by the Government on ad-hoc basis as per proviso to rule 10(1) of Recruitment Rules. The learned senior counsel further argued that the promotions given to the applicants were thus a stop-gap arrangement, and as such, they have been rightly pushed down in the impugned seniority list. It has been also argued by the learned senior counsel that though rule 12 of Rules of 1977 mandates the Selection Committee to review the cases of the officers who have been promoted as Deputy Collectors and who have officiated for period not less than 3 years, the said exercise has not been carried out in the cases of the applicants. The learned senior counsel has further argued that since procedure as prescribed in rule 9(7) and rule 12, was not followed, the applicants cannot be said to have been validly appointed to the cadre of Deputy Collectors. According to the learned senior counsel, though it may be a fact that the applicants are working on the posts of Deputy Collectors for a quite long period, for non-observance of the procedure prescribed under rule 9(7) and rule 12, the services rendered by applicants cannot be considered for the purposes of seniority in the cadre of Deputy Collectors and the entire

said service period has to be held as fortuitous service. The learned senior counsel pointed out that even in the orders of appointment issued in favour of the applicants, it has been specifically incorporated that because of promotions, no benefits shall be held to have been bestowed on the said candidates for the purposes of seniority, pay fixation etc. The learned senior counsel has emphasized that the review provided under rule 12 cannot be dispensed with.

17. The learned senior counsel submitted that the applicants have accepted the order of promotion without making any grievance in respect of the conditions mentioned in the said order of promotion. In the circumstances, according to the learned counsel the applicants are estopped from claiming seniority in the cadre of Deputy Collectors from the date of promotion.

18. The learned senior counsel inviting our attention to sub-rule 4 of rule 9 which reads as under :-

“9. Constitution of Selection Committee and preparation of select list of Tahsildars –

(4) Number of Tahsildars to be included in the select list shall be, as nearly as may be, equal to the vacancies in the cadre of Deputy Collectors which are likely to arise during the next twelve months (i.e. from 1st September to 31st August)

submitted that even if the contention of the applicants is accepted that the selection committee in its meeting held on 15.4.1999

selected them, the selection so made by the said committee would be against the vacancies likely to arise during next 12 months. As such, the applicants cannot claim seniority from the date of order of promotion or any date prior to 1.9.1999. Emphasis of learned senior counsel was on the issue that the seniority of the applicants in the cadre of Deputy Collectors cannot be reckoned from the date of their actual promotion.

19. The learned senior counsel submitted that none of the applicants has challenged the G.R. dated 31.12.2020 in respect of increase in the cadre strength, as such, the applicants must be deemed to have accepted the cadre strength fixed by the said G.R. The judgments relied upon by the learned senior counsel will be discussed at the appropriate stage. The learned senior counsel on the aforesaid grounds prayed for dismissal of both the T.As.

20. Shri Dharurkar, learned counsel appearing for respondent Nos. 6 to 8 in T.A. No. 01/2021 adopted the arguments advanced by the learned senior counsel.

Objections raised by Private Respondents.

21. First, we will consider the objections raised by the Private Respondents. Private respondents have raised the objection in regard to the eligibility of the applicants to be promoted to the post of Deputy Collector from the post of Tahsildar. **They have first drawn**

reference to provisions of rule 8 (1) and 8 (5) and asserted that the applicants had not completed minimum 5 years' service in the cadre of Tahsildars by the time of preparation of Select Lis before the dates of their promotions and therefore, here is no question of their names appearing in the combined seniority list prepared as per rule 8 (1). He has further argued that the applicants or the respondent authorities have not produced any evidence of preparation followed by putting in public domain the information that such a list had been prepared as prescribed by rule 8 (5). For ready reference provisions rule 8 (1) and rule 8 (5) are being quoted below:

"8. Preparation of combined seniority list of Tahsildars:- (1) In each year, in accordance with the seniority of all the Tahsildars determined under sub-rule (6) of rule 7, a combined provisional seniority list of Tahsildars serving in all the revenue Divisions in the State (hereinafter referred to as "the provisional seniority list of Tahsildars") who have put in continuous service of five years or more, shall be prepared by the Government in Form I showing their inter-se seniority as on the 1st day of April of that year. (emphasis supplied).

(2).....

(3).....

(4).....

(5) A copy of such final seniority list of Tasildars shall be kept by Government in the office of every Commissioner and every Collector for information of the persons interested therein. Government shall also issue a press note announcing that copies of the final seniority list of Tahsildars have been kept as afore said" (emphasis supplied).

Based on above assertions made, according to the private respondents, there is a sound ground.

22. The applicants in T.A.No.02/2021 have placed on record the Government Resolution dated 03-03-1999 whereby the committee was appointed by the Government under rule 9 of the recruitment rules for the purpose of preparing a select list of Tahsildars. The State Government has not denied the aforesaid fact nor there is any specific denial of the said fact by the private respondents. Further, the applicants in T.A.No.02/2021 have specifically pleaded in their rejoinder affidavit II to the affidavit in reply of respondent no.5 that the meeting of the DPC was held on 15-04-1999 in which the names of the applicants were considered and ultimately were included in the select list. In the said rejoinder affidavit, applicant no.1 in T.A.No.02/2021 has also clarified that she and applicant no.2 both were assigned the deemed date in the cadre of Tahsildar as 02-03-1994 and as such both the applicants were eligible to be considered for promotion on 15-04-1999 when DPC was held. We did not find any specific denial of the said fact deposed on oath by the applicants. The said applicants have also placed on record two G.Rs. i.e. one dated 24-06-2010 and another dated 30-12-2010, which are marked as Exhibit-X-3 (page 466 to 469 of compilation in T.A.No.02/2021). Vide the aforesaid G.Rs. the State has granted deemed dates to Shri Waman Ganpat Kadam and Shri A.B.Gavane in the cadre of Deputy Collectors. The perusal of the aforesaid G.Rs. reveals that Shri Waman Ganpat Kadam and Shri A.B.Gavane both were included in the select list prepared of the Tahsildars for the purpose of their

promotion to the post of Deputy Collector. From the aforesaid G.Rs. the contention raised on behalf of the applicants has been supported that the meeting of DPC was held on 15-04-1999 and select list was prepared by the DPC. Name of Shri A.B.Gavane is appearing in the impugned seniority list also showing the date of his appointment as 10-07-1999 as is mentioned in the G.R. dated 30-12-2010.

23. It is however true that as provided under sub rule 2 of rule 9, the committee constituted for the purpose of preparing the select list of Tahsildars shall meet in the month of September or as soon as possible thereafter every year. In the present case, the meeting of the said committee is admittedly held on 15-04-1999 and the promotion orders are also issued in the month of July, 1999. To this extent, there is reason to believe that there is some deviation from the Recruitment Rules. However, the said minor contravention has to be treated as irregularity, and on the said count alone, it would be unjust and unfair to treat appointments by way of promotion granted in favour of the applicants in T.A.No.02/2021 as illegal that too after a long period of 20 years. In so far as the applicants in T.A.No.02/2021 are concerned, their promotions though are of the date 30-08-2001, they have resumed the promoted posts in the month of September, 2001 and the said applicants have not disputed for reckoning their seniority from 01-10-2001 and 06-09-2001, respectively.

24. We would like to refer to one more circumstance also. It is not in dispute that the applicants in both the TAs have been granted Selection Grade in the cadre of Deputy Collectors. The applicant no.1 in T.A.No.02/2021 was granted Selection Grade in Deputy Collectors cadre vide order dated 13-05-2015 and applicant no.2 was granted the Selection Grade in the cadre of Deputy Collector vide order dated 03-10-2017. Similarly, both the applicants in T.A.No.01/2021 have been granted Selection Grade in the Deputy Collectors cadre vide order dated 02-09-2020. As provided in the recruitment rules of 1977, the Selection Grade is granted as per the procedure laid down in rule 16 thereof. As provided in sub rule 3 of rule 16, the committee constituted under sub rule 1 of rule 16 considers the cases of all Deputy Collectors whose names are included in the final seniority list of Deputy Collectors published under sub rule 4 of rule 13. It appears that it must be sub rule 4 of rule 14 because the final seniority list of Deputy Collectors is being published under the said provision. It, therefore, can be reasonably inferred that the names of the applicants were included in the seniority list of Deputy Collectors published under sub rule 4 of rule 14.

25. It is not the case of any of the private respondents that objections were raised at that time against the applicants objecting to their eligibility for to be considered for grant of Selection Grade in the Deputy Collectors cadre. We have elaborately mentioned all these facts for the reasons that the appointments made of the applicants by

way of promotion in the cadre of Deputy Collector were not objected to even at initial stage and thereafter at the time of granting them the Selection Grade in the said cadre. It is the matter of record that the applicants in T.A.No.02/2021 have been granted further promotion to the post of Additional Collector. The objection which was not raised which could have been raised at the appropriate stage, in our opinion, do not deserve to be considered at such belated stage. Moreover, merely because the select list under sub rule 7 of rule 9 has not been placed on record by the applicants, the other events and circumstances which have come on record cannot be lost sight of, and cannot be kept out of consideration.

26. The applicants have brought on record the facts as well as the documents from which a reasonable inference can be drawn that their selection in the cadre of Deputy Collectors cannot be held to be illegal as alleged by the private respondents. In fact, the authentic information in this regard was liable to be placed on record by respondent no.1. Respondent no.1 has, however, not placed the said information on record. It is also, however, a fact that the respondent no.1 has not expressly denied the facts pleaded by the applicants as about their promotion to the post of Deputy Collector as well as the further promotion granted in their favour.

Insofar as the objection in regard to not conducting a review as prescribed under rule 12 of the Recruitment Rules, the Government

itself has taken a conscious decision to hold the review deemed to be conducted having regard to the fact that the applicants are continued for years together and have also been granted the further promotions in the cadre of Deputy Collectors and as such to confirm the promotions granted to the applicants.

27. One more objection has been raised by learned senior counsel in respect of non-consultation with MPSC. According to learned senior counsel the recruitment rules when provide for such consultation the respondent State was under an obligation to comply with the said requirement. The learned senior counsel referred to sub-rule 7 of rule 9 and proviso to sub-rule 3 of rule 10. According to learned senior counsel the select list prepared under sub-rule 7 of rule 9 if not prepared with consultation of MPSC, would be rendered invalid. Similarly if any Deputy Collector is reverted the Commission needs to be consulted within 6 months of the reversion. In the present matters we are not concerned with the aspect of reversion. The learned senior counsel relying upon judgment of Hon'ble Supreme Court in the case of **Gajanan Babulal Bansode Vs. State of Maharashtra, AIR 2021 SC 811** submitted that the relaxations made by the State in the recruitment rules known as Maharashtra Police Sub-Inspector (Recruitment) Rules, 1995 were disapproved by the Hon'ble Supreme Court only on the ground that the State brought the said change without consultation with MPSC. According to learned senior counsel on this ground select list if any prepared

under sub-rule 7 of rule 9 without consulting MPSC would be liable to be set aside on that count alone.

28. The learned senior counsel submitted that admittedly the MPSC has not been consulted while determining the select list under rule 9(7) of the recruitment rules. According to learned senior counsel the said list is thus liable to be set aside on this count also. The submissions so raised are opposed by the learned counsel appearing for the applicants. Shri Deshpande, learned counsel submitted that looking to the tenor of the recruitment rules the absence of consultation may not result in negating the acts done by the Government of preparing the select list of the Deputy Collectors under sub-rule 7 of rule 9. In support of his said contention the learned counsel has relied on the judgment of Hon'ble Supreme court in the case of **State of U.P. Vs. Manbodhan Lal Shrivastava, AIR 1957 SC 912**. The learned counsel further submitted that as held by the Hon'ble Supreme court in the case of **Ajay Kumar Singh Vs. State of Uttar Pradesh, 2018 SCC Online SC 1075** the non-consultation with MPSC is irregularity and not illegality and, as such, irregularity can be cured through prospective consultation.

29. It is true that Sub-rule 9 of Rule 7 provides for consultation with MPSC while determining the seniority list drawn up by the committee of the Tahsildars fit to be promoted as Deputy Collectors. It is also true that there is nothing on record to show that the MPSC

was consulted by the State before determining the final select list of Tahsildars under Sub-rule 7 of Rule 9. However, question arises whether such objection assumes any value and significance after the period of more than 20 years of the alleged action. According to us, the delay caused has rendered the objection raised on behalf of private respondents redundant. Moreover, as has been held by Hon'ble Supreme Court in the case of **State of U.P. Vs. Manbodhan Lal Shrivastava** (cited supra) absence of consultation with MPSC can be treated as irregularity and not illegality. The said irregularity can be cured as held by Hon'ble Supreme Court in the case of **Ajay Kumar Singh Vs. State of Uttar Pradesh** (cited supra) through prospective consultation. The promotions granted in favour of the applicants and inclusion of their names in the select list determined under Rule 9(7), therefore cannot be negated on the ground of 'non-consultation' with MPSC.

30. Objection has also been raised that each and every officer who could be affected by the order in these applications must have been made respondents in the present applications. According to the respondents, in absence of such necessary parties added as respondents, the present T.As are liable to be rejected. We however, see no force in the objection so raised in view of the judgment of the **Hon'ble Supreme Court** in the case of **Ajay Kumar Shukla and Ors.**

Vs. Arvind Rai and Ors., 2021 SCC Online SC 1195. In the said case the Hon'ble Supreme Court has held that,

“it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected”.

In the present matters admittedly some directly Deputy Collectors are made as party respondents. In view of the law laid down in the aforesaid judgment according to us adding of few affected employees would be sufficient compliance of the principles of joinder of parties and the said respondents can defend the interest of affected persons in their representative capacity. Non-joinder of parties cannot be therefore, held to be fatal.

Permanent posts of Deputy Collectors whether 383 or 514?

31. The contention of the applicants that there are only 383 permanent posts of Deputy Collectors in the cadre of Deputy Collectors is based on the affidavit in reply submitted by respondent No. 1 in O.A. No. 526/2004. Our attention was invited by Shri Ajay Deshpande, learned counsel appearing for the applicants in T.A. No. 2/2021 to the chart at internal page No. 89 of the judgment delivered by this Tribunal in O.A. No. 526/2004. Learned counsel submitted that the said chart was filed on record by the respondent No. 1 in the said matter. Learned counsel submitted that though respondent No. 1 is now claiming the permanent posts of Deputy Collector to have been increased to 514, has not placed on record any authentic

document showing that the procedural requirements are fully complied with while increasing the number of permanent posts. Learned counsel has heavily relied upon the 'Maharashtra Government Rules of Business' and instructions issued thereunder. Referring to the said instructions learned counsel submitted that in absence of any such information brought on record by respondent No. 1, it cannot be accepted that the number of permanent posts have been legally increased from 383 to 514. Learned counsel submitted that in the Resolutions dated 22.11.2013 and 31.12.2020 it is nowhere mentioned that the procedure as prescribed in 'Rules of Business' was followed and complied with. In the circumstances, according to the learned counsel while considering the dispute raised in the present application the number of permanent posts of Deputy Collectors shall be considered to be 383 only and proportionate to that be considered the minimum and maximum number of directly recruited candidates.

32. Shri Katneshwarkar, learned Special Counsel submitted that while submitting the information as about the number of permanent posts of Deputy Collectors in O.A. No. 526/2004 some inadvertent mistake seems to have occurred. Learned counsel invited our attention to the information noted by the Tribunal in paragraph No. 53 of the judgment in O.A. No. 526/2004, wherein the Tribunal has recorded that "on perusal of the Government Resolution dated 17.9.1981 about fixation of cadre strength of the Deputy Collectors, it

is evident that total number of permanent posts of Deputy Collectors as on 11.8.1980 was 413, which includes 389 in ordinary grade and 124 in selection grade". Learned Special Counsel pointed out that in the chart, which is at page No. 90 of the judgment in O.A. No. 526/2004, also the number of permanent posts of Deputy Collectors is mentioned as 413. Learned counsel submitted that in the Government Resolution dated 22.11.2013, as well as, 31.12.2020 it has been in detail provided in what manner the number of permanent posts of Deputy Collectors have been increased. Learned Special Counsel further submitted that both the aforesaid GRs have been concurred by the Finance Department. Learned counsel further submitted that in no case the contention of the applicants can be accepted that today also the number of permanent posts of Deputy Collectors is 383 when as mentioned in the judgment in O.A. No. 526/2004, as on 11.8.1980 the number of permanent post of Deputy Collectors was 413.

33. It is true that in the documents filed on behalf of Government in O.A. No. 526/2004 the number of permanent posts of Deputy Collectors is stated to be 383. However, it is also a fact that certain other documents are also there on record in the said O.A. revealing the number of permanent posts to be 413 as on 11.8.1980. The Division Bench has taken cognizance of the said information in para 53 of its judgment and has observed :-

“53. Apart from the two charts the respondent nos. 1 to 3 have also placed on record Government Resolution dated 17th September, 1981, Revenue & Forest Department No. CDR 1080(1866)/2 about fixation of cadre strength of the Deputy Collectors. From this resolution it is evident that total number of permanent posts of Deputy Collector as on 11th August, 1980 being 413, which includes 289 in ordinary grade and 124 in Selection Grade posts.”

There is no possibility of decrease in the number of permanent posts of Deputy Collector, than were in year 1980. On the contrary there is reason to believe that the said number must have been gradually increased up till year 1999.

We have also gone through the text of G.R. dated 17.9.1981 which specifically speaks that as on 11.8.1980 the number of permanent posts of Deputy Collectors was 413. In the said G.R. 413 is specifically stated to be the number of **permanent posts** of Deputy Collectors as on 11.8.1980. However, in the subsequent GRs including G.R. dated 31.12.2020 the word used is **“the cadre strength”**. In G.R. dated 31.12.2020 it is stated as under in vernacular: -

“संदर्भ क्र. २ येथील शासन निर्णय दि. १७.९.१०८१ अन्वये दि. ११.८.१९८० रोजी अखेर उप जिल्हाधिकारी संवर्गाचे निश्चित केलेले एकूण संख्याबळ ४१३ असे होते..”

There is apparent mistake in the aforementioned averment in G.R. dated 31.12.2020. It is incorrectly mentioned that 413 was the ‘cadre strength’ whereas in G.R. dated 11.8.1980 it was mentioned as the number of ‘permanent posts’.

Considering the G.R. dated 11.8.1980 and the information submitted in O.A. No. 526/2004 it appears that in G.R. dated 31.12.2020 though word 'cadre' is used, in fact, it's a number of permanent posts. In the aforesaid G.R. the particulars are provided as to in what order the number of permanent posts of Deputy Collectors went on increasing. We deem it appropriate to reproduce herein below the said chart as it is in vernacular :-

“महाराष्ट्र शासन
महसुल व वन विभाग,
शासन निर्णय क्र. संकिर्ण-१२२०/प्र.क.१५२/ई-२,
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई - ४०० ०३२.
दिनांक ३१.१२.२०२०

शासन निर्णय

संदर्भ क्र.२ येथील शासन निर्णय दि. १७.०९.१९८१ अन्वये दि. ११.०८.१९८० रोजी अखेर उप जिल्हाधिकारी संवर्गाचे निश्चित केलेले एकूण संख्याबळ ४१३ असे होते. तदनंतर संदर्भ क्र.३ अन्वये उप जिल्हाधिकारी संवर्गाचे ६०० इतके संख्याबळ निश्चित करण्यात आलेले आहे. उपरोक्त पार्श्वभूमीवर उप जिल्हाधिकारी संवर्गातील सन १९८१ ते २०१२ व सन २०१३ ते २०२० पर्यंतचे वर्षानिहाय मंजूर संख्याबळ खालीलप्रमाणे निश्चित करण्यात येत आहे.

अ.क्र.	कालावधी	नव निर्मात पदे	एकूण पदे-४१३
१.	सन १९८१ अखेर उपलब्ध पदे	२४	४३७
२.	सन १९८२ अखेर उपलब्ध पदे	२७	४६४
३.	सन १९८३ अखेर उपलब्ध पदे	--	४६४
४.	सन १९८४ अखेर उपलब्ध पदे	--	४६४
५.	सन १९८५ अखेर उपलब्ध पदे	--	४६४
६.	सन १९८६ अखेर उपलब्ध पदे	--	४६४
७.	सन १९८७ अखेर उपलब्ध पदे	--	४६४
८.	सन १९८८ अखेर उपलब्ध पदे	--	४६४
९.	सन १९८९ अखेर उपलब्ध पदे	--	४६४
१०.	सन १९९० अखेर उपलब्ध पदे	--	४६४
११.	सन १९९० अखेर उपलब्ध पदे	१०	४७४
१२.	सन १९९१ अखेर उपलब्ध पदे	--	४७४
१३.	सन १९९२ अखेर उपलब्ध पदे	--	४७४
१४.	सन १९९३ अखेर उपलब्ध पदे	--	४७४
१५.	सन १९९४ अखेर उपलब्ध पदे	--	४७४
१६.	सन १९९५ अखेर उपलब्ध पदे	--	४७४
१७.	सन १९९६ अखेर उपलब्ध पदे	--	४७४
१८.	सन १९९७ अखेर उपलब्ध पदे	--	४७४
१९.	सन १९९८ अखेर उपलब्ध पदे	१७	४९१
२०.	सन १९९९पर्यंत उपलब्ध पदे	२३	५१४

२१.	सन २००० अखेर उपलब्ध पदे	--	५१४
२२.	सन २००१ अखेर उपलब्ध पदे	--	५१४
२३.	सन २००२ अखेर उपलब्ध पदे	--	५१४
२४.	सन २००३ अखेर उपलब्ध पदे	--	५१४
२५.	सन २००४ अखेर उपलब्ध पदे	--	५१४
२६.	सन २००५ अखेर उपलब्ध पदे	--	५१४
२७.	सन २००६ अखेर उपलब्ध पदे	--	५१४
२८.	सन २००७ अखेर उपलब्ध पदे	--	५१४
२९.	सन २००८ अखेर उपलब्ध पदे	--	५१४
३०.	सन २००९ अखेर उपलब्ध पदे	--	५१४
३१.	सन २०१० अखेर उपलब्ध पदे	--	५१४
३२.	सन २०११ अखेर उपलब्ध पदे	--	५१४
३३.	सन २०१२ अखेर उपलब्ध पदे	--	५१४
३४.	सन २०१३ अखेर एकुण पदे (शा.नि.दि. २२.११.२०१३ नुसार)	८६	६००
३५.	सन २०१४ अखेर एकुण पदे	--	६००
३६.	सन २०१५ अखेर एकुण पदे	--	६००
३७.	सन २०१६ अखेर एकुण पदे	--	६००
३८.	सन २०१७ अखेर एकुण पदे	--	६००
३९.	सन २०१८ अखेर एकुण पदे	--	६००
४०.	सन २०१९ अखेर एकुण पदे	--	६००
४१.	सन २०२० अखेर एकुण पदे	--	६००

”

Having regard to the evidence as aforesaid we do not see any force in the contentions raised on behalf of the applicants in TA no. 2/2021 that the number of permanent posts of Deputy Collectors was 383 during 1999 to 2003 and even thereafter till today. From GRs, which are placed on record there is reason to believe that permanent posts of Deputy Collectors have been time to time increased by following the due process of law. As such, we see no difficulty in holding that at the relevant time permanent posts of Deputy Collectors were 514.

Cadre Strength.

34. The next question which falls for our consideration is whether 514 is the cadre strength of the Deputy Collectors in the State or is

the number of permanent posts of Deputy Collectors in the cadre of Deputy Collectors ? As has been argued by the learned Special Counsel for respondent no.1, 514 is the cadre strength of the Deputy Collectors in the State and all these 514 posts are permanent posts. The argument so advanced by the learned Special Counsel apparently appears unconscionable. The word “cadre” is admittedly not defined in the recruitment rules. The Maharashtra Civil Services (General Conditions of Service) Rules, 1981 defines the cadre as “*a group of permanent as well as temporary posts. sanctioned from time to time, of a service or a part of service sanctioned as a separate unit.*” The Recruitment Rules of 1977 also differentiate between permanent posts and the cadre. The proviso to sub rule 1 of Rule 4 of the recruitment rules reads thus:

*“provided that the appointment by nomination shall be made in such manner as to ensure that the total number directly recruited Deputy Collectors in the **cadre of Deputy Collectors** shall not at any time be less than 35% and not more than 50% of the total number of **permanent posts in that cadre.**”*

35. Reading of the aforesaid provision leaves no doubt that the cadre strength is definitely larger than the permanent posts, since the quota prescribed of directly recruited Deputy Collectors is only against the permanent posts in the cadre of Deputy Collectors, and not against the entire strength of Deputy Collectors in the cadre. The words used as “**total number of permanent posts in that cadre**” signify that the cadre of Deputy Collectors does not comprise of only

permanent posts but even the posts otherwise than permanent posts. It is further significant to note that the words “permanent posts” is used only in proviso to sub rule 1 to rule 4 of the recruitment rules and at all other places word used is “cadre”.

36. The voluminous record which is there before us reveals that there have been always certain temporary/ seasonal posts in addition to the permanent posts for which time to time, extension has been given by the State. In the circumstances, we are really surprised by the stand taken by the respondent no.1 that 514 posts include therein permanent posts as well as temporary/seasonal posts of Deputy Collectors. In the judgment delivered in O.A.No.526/2004, this Tribunal has elaborately dealt with the present issue. The discussion made in that regard also leads to the only inference that along with the permanent posts always there have been some temporary/seasonal posts.

37. It has to be stated that the conclusion recorded by the Tribunal in the order passed in O.A.No.526/2004, in context with the permanent posts and the strength cadre has been wrongly interpreted by respondent no.1 in the G.R. dated 31-12-2020. In the G.R. dated 31-12-2020 reference has also been given of another G.R. dated 07-03-1996 to canvass that any percentage of quota prescribed would be applicable against the permanent as well as temporary posts in that cadre. Clause 1(b) was particularly emphasized. We

deem it appropriate to reproduce clause nos.1 and 2 herein below as it is in vernacular :

“१. (अ) शासन सेवेतील निरनिराळ्या वेतनश्रेणी मधील आणि गटांमधील पदांवर पदोन्नती आणि नामनिर्देशन या मार्गांनी करावयाच्या सेवाभरतीचे प्रमाण यापूर्वीच, सेवाप्रवेश नियमांत विवक्षित तरतूद अंतर्भूत करून निश्चित केले नसेल तर हे प्रमाण पुढील आदेश होईपर्यंत शासन परिपत्रक, सामान्य प्रशासन विभाग, क्रमांक : एकआरव्ही-१०६९/ड, दिनांक २६ मार्च, १९७० अन्वये निश्चित केलेल्या प्रमाणानुसार निश्चित करण्यात यावे आणि त्याप्रमाणे त्या त्या पदांच्या सेवाप्रवेश नियमांत योग्य ती तरतूद करावी. तसेच हे प्रमाण शक्यतो निश्चित स्वरूपाचे असावे.

(ब) हे प्रमाण त्या त्या संवर्गातील कायम (**Permanent**) आणि हंगामी (**Temporary**) अशा दोन्ही स्वरूपाच्या एकूण मंजूर पदाच्या पदसंख्येला लावण्यात यावे.

२. महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम, १९८१ च्या नियम ९(५) मध्ये “संवर्ग” या संज्ञेची व्याख्या दिली आहे. ती व्याख्या खालील प्रमाणे सुधारण्यात यावी.

“संवर्ग म्हणजे एक स्वतंत्र घटक म्हणून, मंजूर केलेली एखाद्या सेवेतील किंवा सेवेच्या भागातील” कायम, त्याच प्रमाणे वेळोवेळी मंजूर केलेली हंगामी “पदे यांचा समूह म्हणून समजण्यांत येईल.”

38. Perusal of the aforesaid Government Resolution also reveals that ordinarily there are certain number of permanent posts and in addition to that the temporary posts, sanctioned by the Government time to time and total of permanent and temporary posts is held to be the ‘cadre’ strength.

39. The Circular dated 31.12.2020 along with which the impugned seniority list has been published, contains the explanation in regard to the cadre strength, permanent posts, and temporary posts etc. We deem it necessary to reproduce the relevant clause 5(1) in the said circular herein below, which reads thus :-

“५.१ संवर्गसंख्या व विहित कोटयाचे प्रमाण :-

महाराष्ट्र उप जिल्हाधिकारी (सेवाप्रवेश, जेष्ठता निश्चित करणे व स्थायीकरण) नियम १९७७ मध्ये नियम २ येथे "संवर्ग" या शब्दाची व्याख्या नमूद नाही. सबब महाराष्ट्र नागरीसेवा (सेवेच्या सर्व साधारण शर्ती), नियम १९८१ मधील नियम ९(५) मध्ये नमूद केलेली "संवर्ग" या शब्दाची व्याख्या या प्रकरणी लागू होते. तसेच सामान्य प्रशासन विभागाच्या शासन निर्णय दि. ०७.०३.१९९६ मध्ये परि. १ (ब) येथे "हेप्रमाण त्याच्या संवर्गातील कायम (Permanent) व हंगामी (Temporary) अशा दोन्ही स्वरूपाच्या पद संख्येला लावण्यात यावेत सेच तीन वर्ष किंवा त्यापेक्षा अधिकका लावधीसाठी नियमित आस्थापनेवरील हंगामी पदे पुढे चालू असल्याचे आढळून आल्यास त्यापैकी ८०% इतकी पदे कायम करण्याची तरतूद आहे." या बाबी विचारात घेता, उप जिल्हाधिकारी संवर्ग कायम व हंगामी पदांसह विचारात घेण्यात आला आहे.

उप जिल्हाधिकारी सेवा प्रवेश नियम, १९७७ मधील नियम ४ मध्ये सरळसेवा, पदोन्नती व अवर सचिव संवर्गातून बदलीने नियुक्ती करण्याचे मार्ग विहित केलेले आहेत. त्यातील सरळ सेवा मार्गाने या संवर्गात प्रवेश करण्यासाठी एकूण संवर्गाच्या कायम संवर्गाच्या कायम पदांपैकी ३५% पेक्षा कमी नाही व ५०% पेक्षा जास्त नाही, एवढी मर्यादा विहित केली आहे.

तसेच मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल मूळ अर्ज क्र. ५३६/२००४ वरील दि. १७.०४.२००८ च्या आदेशातील परि. ७४ मध्ये नमूद केले आहे की, "we have minutely consider those charts and are satisfied that the respondent Nos. 1 to 3 have ensured that the appointments by nomination are not less than 35%."

सदर सेवाप्रवेश नियमामध्ये फक्त "कायमपद" हा शब्द वापरला असून कायम पदे या शब्दाची व्याख्या दिलेली नाही. तसेच, सेवा प्रवेश नियमामध्ये संवर्ग, हंगामी पदे व अस्थायी पदे इत्यादी शब्दाचे अर्थ व व्याख्याही नमूद केलेल्या नाहीत. मुंबई नागरी सेवा नियम, १९५९ मध्ये संवर्ग या संज्ञेची व्याख्या (Cadre means the Strength of a service sanctioned as a separate unit) नमूद असून सदर संज्ञेचे अधिक स्पष्टीकरण करताना, संवर्गामध्ये सरळ सेवा आणि पदोन्नती कोटयातील पदांचा समावेश होतो (Though drawn from two sources, the direct recruits and promottees constitute a single integrated cadre) असे स्पष्ट करण्यात आलेले आहे. मुंबई नागरी सेवा नियम मधील संवर्ग शब्दाची व्याख्या महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती), १९८१ मध्येही अशीच घेण्यात आलेली आहे.

महाराष्ट्र नागरीसेवा (सेवेच्या सर्वसाधारण शर्ती), १९८१ मध्ये "संवर्ग" म्हणजे एक स्वतंत्र घटक म्हणून, मंजूर केलेली एखाद्या सेवेतील किंवा सेवेच्या भागातील "कायम, त्याच प्रमाणे वेळोवेळी मंजूर केलेली हंगामी पदे यांचा समूह म्हणून समजण्यात येईल." सदर व्याख्या आणि उप

जिल्हाधिकारी संवर्गाच्या १९७७ च्या सेवाप्रवेश नियमातील कायम पदाअंतर्गत उप जिल्हाधिका-यांची निश्चित पदसंख्या ही समान असल्याचे दिसून येते. यावरून असे स्पष्ट होते की, कायम पदे आणि संवर्ग हे दोन्ही शब्दप्रयोग समानार्थी आहेत. तसेच मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल मूळ अर्ज क्र. ५३६/२००४ वरील दि. १७.०४.२००८ च्या आदेशातील परि. ५६ मध्ये नमूद केले आहे की.

“Thus, from the statement of law supra, there is no difficulty for us to hold that cadre includes both permanent and temporary posts.”

सेवा प्रवेश नियम, १९७७ मधील कायम पदे म्हणजेच शासनाने म.ना.से.(सेवेच्या सर्वसाधारण शर्ती), १९८१ मध्ये वेळोवेळी जाहीर केलेली संवर्ग पदे असा होतो. त्यामुळे सदर कायम पदांमध्येच संवर्गाच्या व्याख्येनुसार कायम तसेच अस्थायी / हंगामी या दोन्ही पदांचा अंतर्भाव होत असल्याने कायम पदे म्हणजेच संवर्गीय पदे हे सिद्ध होते. त्याचप्रमाणे, सा.प्र.वि. शासन निर्णय दि. ०७.०३.१९९६ नुसार संवर्ग संख्येला (Cadre Strength) सरळ सेवा व पदोन्नतीचा कोटा लागू होतो. त्याधर्तीवर १९७७ च्या सेवा प्रवेश नियमातील नियम ४ मध्ये नमूद पदांनाच म्हणजेच संवर्गीय पदांना (Cadre Strength) सरळ सेवा व पदोन्नतीचा कोटा लागू होतो, यास सामान्य प्रशासन विभागाने सहमती दिलेली आहे. तसेच संवर्गीय पदांना सरळ सेवा व पदोन्नतीचा कोटा लागू असल्यामुळे सेवाज्येष्ठतेचा पदसंख्येशी संबंध आहे.”

40. Vide corrigendum dated 31.1.2022 some corrections have been made in the aforesaid G.R. more particularly in para 5(1) of the said G.R. The following corrections are made.

शासन शुद्धिपत्रक :-

शासन सम क्रमांकाच्या दिनांक ३१.१२.२०२० रोजीच्या परिपत्रका मध्ये खालील तक्त्यात नमूद केल्याप्रमाणे सुधारणा / दुरुस्त्या करण्यात येत आहेत :-

अ. क्र.	दिनांक ३१.१२.२०२० रोजीच्या शासन परिपत्रकातील परिच्छेदमुद्दा / ओळख क्रमांक	दिनांक ३१.१२.२०२० रोजीच्या शासन परिपत्रकातील मूळ तरतूद / बाब	श्रकाना क्र. ३ मध्ये खालील प्रमाणे सुधारणा / दुरुस्ती करण्यात येत आहे.
१	२	३	४
१	परि. क्र. ५ मधील मुद्दाक्र. ५.१ मधील उप परि. ३ (पू.क्र.९) येथील ओळक. ७ व उप परि.५ मधील ओळक. २४	“महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल मूळ अर्ज क्र. ५३६/२००४”	“महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल मूळ अर्ज क्र. ५२६/२००४”

२	परि. क्र. ५ मधील अनु. क्र. ५. १ मधील उप परि. ५ मध्ये नमूद केलेली ओळक. ३ ते ६	“सदर व्याख्या आणि उप जिल्हाधिकारी संवर्गाच्या १९७७ च्या सेवाप्रवेश नियमातील कायमपदाअंतर्गत उपजिल्हाधिका-यांची निश्चित पद संख्या ही समान असल्याचे दिसून येते. यावरून असे स्पष्ट होते की, कायम पदे आणि संवर्ग हे दोन्ही शब्दप्रयोग समानार्थी आहेत.”	संपूर्णवाक्य वगळण्यात येत आहे.
३	परि. क्र. ५ मधील मुद्दा क्र. ५.१ मधील उप परि. ६ मध्ये नमूद केलेली ओळक. २	“त्यामुळे सदर कायम पदांमध्येच संवर्गाच्या व्याख्ये नुसार कायम तसेच अस्थायी / हंगामी या दोन्ही पदांचा अंतर्भाव होत असल्याने कायम पदे म्हणजेच संवर्गीय पदे हे सिद्ध होते.”	“त्यामुळे सदर कायम पदां मध्येच संवर्गाच्या व्याख्ये नुसार कायम तसेच अस्थायी / हंगामी आहे.”

41. Thus, according to the State, 514 is the strength of the Deputy Collectors' cadre and it includes both permanent, as well as, temporary/seasonal posts. The plea so raised by the State in G.R. dated 31.12.2020 read with corrigendum dated 31.1.2022 is self-contradictory and contrary to the provisions under the Recruitment Rules of 1977. In GR dated 31.12.2020 one averment in para 56 of the judgment delivered by this Tribunal in O.A. No. 526/2004 is reproduced, which is thus :-

“Thus, from the statement of law supra, there is no difficulty for us to hold that cadre includes both permanent and temporary posts.”

Based on the findings recorded by this Tribunal as above, in the aforesaid GR the State has drawn an inference that the word used

‘permanent posts’ in the Recruitment Rules of 1977 means the cadre posts from time to time declared by the State.

The conclusion so recorded by this Tribunal cannot be interpreted to mean that the permanent posts mean the cadre posts and hence the ‘permanent posts’ must be held to be including therein the temporary posts also. If the posts are permanent, no temporary posts can be said to be included therein. Similarly if the posts are temporary, such posts cannot be included in the permanent posts. The characteristic of ‘permanent posts’ and ‘temporary posts’ are different. Permanent and temporary posts are distinguished in Bombay Civil Services Rules, 1959. Under Rule 9(43) of the said rule, a ‘permanent post’ is a post carrying a definite rate of pay sanctioned without limit of time and under Rule 9(56) a ‘temporary post is’ a post carrying a definite rate of pay sanctioned for a limited time. The State has thus manifestly eared in saying that the permanent posts mean the cadre posts (“कायम पदे म्हणजेचसंवर्गीय पदे”).

42. Having considered the definitions of the word ‘cadre’, permanent post and temporary post and the meaning attached to the said words in the judicial pronouncement, we can reasonably conclude that the permanent posts and cadre strength cannot be ordinarily same and the permanent posts may not include therein the temporary posts;both having different characteristics. As such, we

are unable to accept the contention raised on behalf of respondent No. 1 that 514 is the cadre strength of Deputy Collectors in the State.

43. Under the Recruitment Rules the Tahsildars can be promoted to the post of Deputy Collectors only in the manner provided by rule 10 of the Recruitment Rules. We find it necessary to reproduce the entire said rule, which reads thus :-

“10. Provisional promotion to Deputy Collector’s cadre.-(1) The Tahsildars whose names are included in the final select list determined by Government under sub-rule (7) of rule 9 shall be provisionally promoted to a post in the cadre of Deputy Collectors in the order of their ranking in that list as and when vacancies occur in that cadre :

Provided that, where such final select list is exhausted and the exigencies of administration require the vacancies in that cadre to be filled up immediately, Government may, purely as a stop gap arrangement, appoint,-

(i) where the fresh select list is yet to be prepared. Tahsildars included in the final seniority list of Tahsildars prepared under rule 8 in the order of their seniority in that list and who are considered fit by it for promotion to the cadre of Deputy Collectors after considering up-to-date confidential reports about them,

(ii) where the Committee has drawn up a select list but Government has not determined the final select list in consultation with the Commission as provided in sub-rule (7) of rule 9, the Tahsildars included in the select list drawn by the Committee in the order of their ranking in that list;

(2) The appointment made as a stop-gap arrangement under the proviso to sub-rule (1) shall be deemed to be a regular provisional appointment under sub-rule (1) when the officer in question is included in the final select list determined by Government under sub-rule (7) of rule 9. Where the officer appointed as a stop-gap arrangement under the proviso to sub-rule (1) is not included in such final select list, he shall be reverted immediately after such final select list is determined by Government under sub-rule (7) of rule 9.

(3) The promotion under sub-rule (1) or under sub-rule (2) shall continue to be provisional until the officer has been considered fit to be continued in the cadre of Deputy Collectors in the review made under rule 12 :

Provided that it shall be competent to Government to revert any Deputy Collector even before the completion of the review under rule 12 if his work is considered unsatisfactory or for any other reason considered sufficient by Government for such reversion; and in such cases, the Commission shall be consulted within six months of the reversion."

44. As is revealing from the sub-rule (1) of rule 10 whoever is to be promoted from the cadre of Tahsildars to the cadre of Deputy Collectors is to be provisionally promoted in the said cadre as and when vacancies occur in that cadre. It is thus evident that for appointment under rule 10 (1) occurrence of vacancies is a sine-qua-non. Further words under rule 10 are "as and when vacancies occur in that **cadre**" and not that "as against the vacancies occur in the **permanent posts**". In the circumstances, if the Government has promoted any officer from the cadre of Tahsildars to the cadre of Deputy Collector it has to be presumed that there was a vacancy in the cadre of Deputy Collectors. Even the stop-gap-arrangement as provided under proviso to rule 10(1) cannot be made if there is no vacancy.

45. The applicants in T.A. no. 2/2021 were promoted vide order dated 8.7.1999. The copy of the said order is placed on record. Vide order dated 8.7.1999, 96 officers working in the cadre of Tahsildars were provisionally promoted to the cadre of Deputy Collectors.

Insofar as the applicants in T.A. no. 2/2021 are concerned, the said order demonstrates that the applicant no. 1, Smt. Samiksha D/o. Ramakant Chandrakar, was after her promotion posted as Special Land Acquisition Officer (Bembla Project), Yavtmal and the applicant no. 2 Shri P.R. Kulkarni was posted as Sub Divisional Officer at Ambajogai. It is the plea taken by the respondent no. 1 that when the applicants were promoted vide order dated 8.7.1999 there were no vacancies in the cadre of Deputy Collectors. The averment so taken by respondent no. 1 in his affidavit in reply and arguments advanced by the learned special counsel are *per-se* contrary to the provisions under the Recruitment Rules. We have referred to rule 10, which is the only provision under the Recruitment Rules under which the Tahsildars are promoted to the cadre of Deputy Collectors and rule 10 unambiguously provides that the promotions under the said rule are to be made as and when vacancies occur in that cadre. In other words, if there are no vacancies no promotions are to be effected.

46. Vide order dated 8.7.1999, total 96 officers working as Tahsildars, including the applicants, were promoted to the cadre of Deputy Collector. If now this is the contention of respondent no. 1 that without vacancies the applicants etc. 96 were promoted, the burden lies on respondent no. 1 to explain what was the nature of the posts on which the applicants and 94 others were given posting.

Out of said 96 Tahsildars promoted to the cadre of Deputy Collectors the candidate at sr. no. 6 was posted as City Magistrate (नगर दंडाधिकारी) at Nagpur, candidate at sr. no. 7 was posted as Deputy Collector at Hingoli, candidate at sr. no. 23 was given posting as Sub-Divisional Officer at Chandrapur, candidate at sr. no. 27 was posted as Deputy Collector (Supply) at Gondiya, candidate at sr. no. 31 was posted as Sub Divisional Officer at Bhandara, candidates at sr. nos. 34 & 35 were posted at Gondiya as Deputy Collectors, candidate at sr. no. 36 was posted as Sub Divisional Officer at Varora, candidate at sr. no. 39 was given posting as Deputy Collector (Appeal) at Mumbai Suburban, candidate at sr. no. 45 was posted as Deputy Collector (EGS), Satara, candidate at sr. no. 59 was given posting as Deputy Collector at Vashim, candidate at sr. no. 67 was given posting as Deputy Collector (EGS) at Nanded, candidate at sr. no. 74 was given posting as Deputy Collector (EGS), Osmanabad, candidate at sr. no. 81 i.e. the applicant no. 2 in TA no. 2/2021 was given posting as Sub Divisional Officer at Ambajogai, candidate at sr. no. 90 was given as District Supply Officer at Osmanabad. The respondent no. 1 has to explain whether the aforesaid posts on which postings were given to the promoted Deputy Collectors were the sanctioned permanent posts or sanctioned temporary posts or there was no sanction at all for the said posts. We have purposely illustrated some of the posting, which from its nature can be gathered are the permanent posts or if not permanent, were temporary posts for which periodical sanctions were

obtained from time to time as is revealing from the record produced by respondent no. 1 itself. The point which we intend to emphasize is that it was impossible to make appointments in such huge number in excess of sanctioned posts. Had the State come out with the case that for these posts there was no permanent sanction, it could have been certainly accepted. However, plea has been taken that there were no vacancies at all. No one would accept that the post to which there is no sanction at all either permanent or temporary, the Government will issue the orders of postings.

47. According to respondent no. 1 the 96 Tahsildars promoted to the cadre of Deputy Collectors vide order dated 8.7.1999 were in excess of the cadre strength of 514 of the Deputy Collectors and as and when vacancies occurred the promoted Deputy Collectors have been chronologically absorbed in the permanent posts. Respondent No. 1, however, still owes the responsibility to explain the nature of the posts on which 96 officers were posted vide order dated 8.7.1999, if not permanent or temporary. What could be gathered from the material is the fact that after their promotion to the cadre of Deputy Collector the posts on which applicants were appointed, some of them were certainly permanent and remaining may be temporary. However, the contention that aforesaid posts were not falling even in the temporary posts cannot be in any case accepted. A reasonable conclusion emerges from the facts which have come on record that in

addition to the permanent post of Deputy Collectors (according to State 514) there were temporary posts also on which the promotions were made. In fact, the State was expected to take a true stand that the applicants and other officers were appointed initially on the posts for which there was no permanent sanction meaning thereby that said posts were temporary posts.

48. In the judgment delivered by this Tribunal in O.A. No. 526/2004 elaborate discussion has been made as about the permanent posts and temporary posts. The Tribunal has gone one step ahead in making discussion on the types of temporary posts. We deem it appropriate to reproduce entire discussion which is made in para Nos. 54 to 57, which reads thus,

*“54. Smt. Mahajan, learned advocate has submitted that the ‘cadre’ strength as decided by the Government is total permanent post and the ratio of direct recruit has nexus with permanent post. As against this learned counsel for respondents by referring to the definition of term given in the then Bombay Civil Service Rules, 1959 and its successor rules i.e. Maharashtra Civil Services (General Conditions of Service) Rules, 1981 contended that the term cadre include both permanent as well as temporary post. While considering this aspect we will also have to consider the definition of term ‘temporary post’ and the law on the point settled by the Apex Court in the case of **G.K. DUDANI AND OTHERS VERSUS S.D. SHARMA AND OTHERS, AIR 1986 SC 1455.** Term cadre as defined in Bombay Civil Services Rules is retained in Rules of 1981, which reads as under: -*

“9(5) ‘cadre’ means the strength of a service or a part of a service sanctioned as a separate unit.”

55. Thus, by this definition whatever doubt or controversy stood cleared and the cadre now includes both permanent as well as temporary post. But even prior to this amendment, the

Apex Court in G.K. Dudani's case considering the definition and meaning of term 'cadre' has ruled that includes permanent or temporary posts as well. In Dudani's case (supra) the Apex Court was deciding a case of promoted Mamlatdar as Deputy Collector as the rules then applicable to State of Bombay and Gujarat and by taking note of the case of **RAMCHANDRA SHANKAR DEODHAR AND OTHERS VS. THE STATE OF MAHARASHTRA AND OTHERS, AIR 1974 SC 259** and interpreting term 'cadre' has held:

"Rule 9(8) of the Bombay Service Rules, 1959, defines 'cadre' as meaning the strength of a service or a part of service sanctioned as a separate unit. The service of Deputy Collectors is admittedly a separate unit under the Revenue Department. A cadre consists of permanent posts and temporary posts added to the cadre from time to time according to the exigencies of the services. The difference between permanent and temporary posts is brought out by the definition of these expressions given in Rule 9. Under Rule 9(43), a permanent post is a post carrying a definite rate of pay sanctioned without limit of time and under Rule 9(56) a temporary post is a post carrying a definite rate of pay sanctioned for a limited time. Rule 71 sets out the manner of fixation of pay of the officer appointed to a temporary post. The note below Rule 8 is illuminative and is as follows:

'Substantive appointments to temporary posts should be made in a limited number of cases only, as for example, when posts are to all intents and purposes, quasi permanent or when they have been sanctioned for a period of not less than, or there is reason to believe that they will not terminate within a period of three years. In all other cases, appointments in temporary posts should be made in an officiating capacity only'.

Instruction No.3 to Rule 71 is also illuminative, it provides as follows:

'Temporary posts may be divided into the categories- (i) posts created to perform the ordinary work for which permanent posts already exist in a cadre; the only distinction being that the new posts are temporary, and not permanent and (ii) isolated post created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. An example of the latter type of post is on a commission of enquiry. A distinction by strict verbal definition is difficult, but in practice there should be little difficulty in applying

the distinction in individual cases. The former class of post should be considered as a temporary addition to the cadre of a service whoever may be the individual appointed to the post. The latter class of temporary posts should be considered as unclassified and isolated Ex-cadre posts. Temporary posts which by this criterion should be considered as temporary addition to the cadre of a service should be created in the time-scale of the service ordinarily without extra remuneration. Incumbents of these posts will, therefore, draw their ordinary time-scale pay.'

This is precisely what has been done in the case of officers whom the Division Bench has categorized as promotees appointed to hold ex-cadre posts or promotees appointed to a temporary post, whether an ex-cadre post or a cadre post. Even officers holding permanent posts are often deputed to hold an ex-cadre post. It was, therefore, immaterial whether these promotees after being appointed Deputy Collectors were deputed to hold an ex-cadre post or not. The position that a temporary post can be held in a substantive capacity is now firmly established by decision of this Court in Baleshwar Dass v. State of U.P. (1981) 1 SCR 449; (AIR 1981 SC 41) and O.P. Singla V. Union of India (1984) 4 SCC 450: (AIR 1984 SC 1595). According to these decisions, all persons holding substantive posts or temporary posts in substantive capacity are members of the service. In Singla's case this Court further pointed out (at page 483) (of SCC): (at P.1616 of AIR) "A person can be said to hold a post, permanent or temporary, in a substantive capacity only if his appointment to that post is not fortuitous or ad hoc." The judgment in Chauhan's Case (AIR 1977 SC 251) is clear on the point that the appointment of none of the promotees in question was a fortuitous or an ad hoc appointment."

56. Thus, from the statement of law supra, there is no difficulty for us to hold that cadre includes both permanent and temporary post. Once it is held that cadre includes both temporary and permanent post then next question whether promotees temporarily promoted not are made as regular promotion. Thus, we have to go back to the rules. In foregoing part we have reproduced the rules. Now we consider them. Rule 4 of the rules deals with mode of recruitment to post of Deputy Collectors. As per the rules, mode of recruitment to be made either by nomination or by promotion. The manner of appointment is provided by Rule 5 and 10. Proviso to rule 4 says that the appointment by nomination shall be in such

manner as to ensure that the total of directly recruited Deputy Collectors in the cadre of Deputy Collectors shall not at any time be less than 35% and not more than 50% of total number of permanent posts in that cadre. And for purpose of complying with the proviso, the Government shall determine in advance the number of nominations to be made in each year.

57. The rule, thus no doubt provides for appointment by nomination but that quota is not fixed one as we find number of recruitment rules of other departments. All the authorities relied on by Smt. Mahajan were dealing with the fixed quota in particular ratio be it 50:50, 60:40 so on so forth, but the rule makers in the present case have not laid down fixed percentage but have kept that quota flexible one giving a discretion to the State Government that at any time the appointment shall not be less than 35% or more than 50%. Thus having not laid down fixed quota but what we have noted that (from the charts) that minimum of 35% was tried to be maintained. Naturally left out posts of Deputy Collectors were usually filled in by promoting the Tahsildars in terms of Rule 10. But one thing is clear that appointment by nomination is only against permanent post.”

49. From the facts and circumstances discussed hereinabove we have no doubt in our mind that in addition to permanent posts of 514, definitely some temporary posts were there in existence meaning thereby that the cadre strength at the relevant time was more than 514 and applicants in both these applications were part of the cadre of Deputy Collectors.

Promotions to the applicants whether stop-gap arrangement ?

50. According to the private respondents the applicants are promoted to the post of Deputy Collector purely as a stop-gap arrangement, meaning thereby that the promotions granted in favour of the applicants are under proviso to Sub-rule 1 of Rule 10. In this context it is the further contention of the private respondents that the

seniority of the applicants in the cadre of Deputy Collectors can only be reckoned from the date, their names are included in the final select list determined under Rule 9(7). The applicants have off-course denied the objections so raised on behalf of the private respondents. The respondent no. 1 has not taken any firm stand in this regard. But, it is also not contended by respondent no. 1 that the applicants were promoted in the cadre of Deputy Collector by invoking the proviso to sub-rule 1 of rule 10 of the Recruitment Rules. The promotion orders of the applicants in both the applications are there on record. Though in the said orders, it has been stated that the promotions so granted are purely temporary and further that the applicants may not be entitled to claim any benefit on the basis of the said temporary promotion like seniority etc., it is nowhere mentioned in the said order under which provision of the Recruitment Rules such promotions were given. It is not mentioned in the said orders that the promotions granted in favour of the applicants are by way of stop-gap arrangement or on ad-hoc basis.

51. The Recruitment Rules considered as a whole and rule 10 thereof in particular, the stop-gap-arrangement in other words the stop-gap-appointment by way of promotion to the post of Deputy Collector can only be made under proviso to rule 10 and which period can be held to be a period of stop-gap-arrangement is explained in proviso to sub-rule 1 of rule 10 to which we have referred

hereinabove. Proviso to sub-rule (1) of Rule 10 can be invoked in the following circumstances :-

(A) The proviso can be pressed into service only after the final select list is exhausted.

(B) There must be some administrative exigency.

(C) The administrative exigencies shall be of such nature which may require urgent appointment of certain number of officers in the cadre of Deputy Collectors.

(D) To meet the administrative exigencies, by way of stop gap arrangement the Government may promote the Tahsildars included in the final select list of Tahsildars prepared under rule 8 in order of their seniority in that list and who are considered fit by it for promotion to the post of Deputy Collectors where the fresh select list is yet to be prepared under sub-rule 7 of rule 9.

(E) Where the selection committee has drawn up a select list but the Government has not determined the final select list in consultation with the Commission as provided in sub-rule 7 of rule 9, the Tahsildars included in the select list drawn by the committee in the order of their ranking in that list can be appointed by way of promotion.

(F) The appointment made as a stop-gap-arrangement under the proviso to sub-rule 1 shall be deemed to be regular provisional appointment under sub rule 1 when the officer in question is included in the final select list determined by the Government under sub-rule 7 of rule 9.

(G) Where the officer appointed as a stop-gap-arrangement is not included in the final select list, he shall be reverted immediately after such final select list is determined by the Government under sub-rule 7 of rule 9.

52. We have reproduced the proviso to Sub-rule (1) of Rule 10 hereinbefore. We have also noted in what circumstances the promotions can be granted by the Government under the said provision. In the affidavit in reply submitted on behalf of respondent

no. 1 it is not its case that at the time when the applicants and other 94 officers in the cadre of Tahsildars were promoted to the post of Deputy Collector, there was any administrative exigency. Respondent no. 1 has also not provided any such information or has raised any such plea that at the time when the applicants were promoted, the final select list prepared under Sub-rule 7 of Rule 9 was already exhausted. It is also not disclosed by respondent No. 1 whether administrative exigency was of the nature that the vacancies in the cadre of Deputy Collectors were to be filled up immediately. Respondent No. 1 has further not provided any information whether names of the applicants for promoting them to the post of Deputy Collector under the said provision were required to be taken from the final select list of the Tahsildars prepared under Rule 8. It is also not stated by respondent No. 1 whether the names of the applicants were selected from the select list which was awaiting its determination under Sub-rule 7 of Rule 9 by the Government. It is undisputed that once promoted to the post of Deputy Collector, the applicants did not suffer reversion to any lower cadre and they have been discharging their duties uninterruptedly on the promoted post of Deputy Collector.

53. In premise of the above facts, it cannot be said that the promotions to the applicants were granted invoking the proviso to Sub-rule 1 of Rule 10 of the Recruitment Rules. In the case of **Rudra Kumar Sain & Ors. Vs. Union of India & Ors., AIR 2000 SC page-**

2808, the Hon'ble Supreme Court was required to decide whether appointments to the promotee officers therein were *ad-hoc* or fortuitous or in the nature of stop-gap arrangement. While deciding the said issue the Hon'ble Apex Court has held that,

“If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment.”

The appointment would fall in the category of stop-gap or ad-hoc appointment in the circumstances illustrated as above by the Hon'ble Apex Court. This is the import of the proviso to Sub-rule (1) of Rule 10. It is not the contention of respondent No. 1 that appointments of the applicants to the posts of Deputy Collector or the posts equivalent thereto were made in any of the circumstances or reason enumerated by the Hon'ble Apex Court. It, therefore, cannot be accepted that the applicants were promoted to the posts of Deputy Collector or equivalent thereto as stop-gap arrangement by invoking the proviso to Sub-rule (1) of Rule 10.

54. It is brought to our notice by the learned Counsel appearing for the applicants that, when needed, the Government had issued such ad-hoc promotion orders. One such order is filed on record. In the said order it is specifically stated that the promotions so granted were **ad-hoc** promotions for a particular period. The said order is at page 511 and marked as Annexure A-1 in the paper book of T.A.No.01/2021. The order is dated 02.01.2002. It is also brought to our notice that the promotions so made vide order dated 02.01.2002, the period of which was extended by the further order dated 31.03.2002, were not extended further and the officers so promoted on ad hoc basis were reverted to their original cadre of Tahsildar vide order dated 31-05-2002. The said order is at page 516 of the paper book of T.A.No.01/2021 marked as Annexure A-1 Collectively. Insofar as promotions granted in favour of the applicants are concerned, though in their orders, it has been mentioned that they are purely temporary and the promotees may not have any right to claim seniority on the basis of the said order, the applicants have never been reverted to the post of Tahsildar. On the contrary, further promotions were granted to the applicants. As such also, the promotions granted in favour of the applicants cannot be termed as the ad-hoc or stop-gap arrangement.

55. Learned Senior Counsel has heavily relied upon the judgment of the Hon'ble Apex Court in the case of **Keshav Chandra Joshi & Ors. V/s. Union of India & Ors., 1992 Supp (1) SCC 272**. We have

carefully perused entire text of the said judgment. It does not appear to us that the ratio laid down in the said judgment would apply to the facts of the present case. The learned Senior Counsel was very persuasive in submitting that the facts involved in the present matters are identical with the facts which were existing in the said case and hence the ratio laid down in the said judgment would squarely apply in the present matters. Hon'ble Apex Court in the said case has held that,

“employees appointed purely on ad-hoc or officiating basis due to administrative exigency, even though continued for long spell cannot claim advantage of seniority over the direct recruits by virtue of their ad hoc promotions.”

The aforesaid case before the Hon'ble Apex Court was related to fixation of seniority of the petitioners, who were promoted on ad- hoc basis as Assistant Conservator of Forest. They had rendered 5 to 12 years ad-hoc service on the promoted post. In the meanwhile some direct recruits were appointed on probation against the substantive vacancies of the Assistant Conservator of Forest. When the occasion arose of promotions to the post of Deputy Conservator of Forest, the promotees claimed seniority over the direct recruits. While rejecting their claim, it was held by the Hon'ble Apex Court that the promotees cannot claim advantage of seniority over direct recruits by virtue of their ad-hoc promotion when their initial appointment was ad-hoc and outside the quota. It was further held that the ad-hoc promotion granted to the promotees would be regular only from the date of the

vacancies within the quota. There cannot be a dispute about the ratio laid down by the Hon'ble Apex Court in the aforesaid matter. However, it has to be understood that the conclusions arrived at by the Hon'ble Apex Court in the said matter were based on the interpretation of the UP Forest Services Rules, 1952 and more particularly rules 3(h), 5(a), 5 (b) and 27 of the said rules. Under the said rules the officer concerned was required to become a Member of the service and must have held the post of Assistant Conservator of Forest in substantive capacity and further that the appointment must be according to the rules and within the quota. In the Recruitment Rules of 1977, admittedly there is no such provision. Further the appointment by way of promotion granted in favour of the applicants in any sense cannot be termed as the ad-hoc or stop gap arrangement. We need not to repeat the entire discussion which we have already made in the earlier paragraphs. As such, it does not appear to us that the ratio laid down in the case of **Keshav Chandra Joshi** (cited supra) would apply to the facts of the present case.

56. The learned senior counsel has also relied upon another judgment of the Hon'ble Apex Court in the case of **Malook Singh and Others Vs. State of Punjab and Others in Civil Appeal Nos. 6026-6028 of 2021**. After having gone through the facts involved in the said case and the law laid down by the Hon'ble Apex Court therein, in our humble opinion the ratio laid down in the said judgment would also not apply to the facts of the present case. In the said matter also

Hon'ble Apex Court was required to deal with the issue of seniority inter-se the candidates recruited after following the regular procedure for selection and the candidates whose initial appointment was not in accordance with rules and was made without following the due procedure though ultimately the services of the said employees were regularized. The Hon'ble Apex Court held that where initial appointment is only ad-hoc and not according to the rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for the purpose of seniority. In the present matters we have held that the promotions granted in favour of the applicants are not on ad-hoc basis or by way of stop gap arrangement or in breach of the rules.

57. The senior counsel has also relied on the following judgments :-

- (1) Union of India and another Vs. Prof. S.K. Sharma, AIR 1992 SC 1188;
- (2) Excise Commissioner, Karnataka and another Vs. V. Sreekanta, AIR 1993 SC 1564; and
- (3) P.K. Singh Vs. Bool Chand Chablani and others, AIR 1999 SC 1478.

It may not be necessary to elaborately discuss each of the said judgment, for the reason that in all these judgments the principle laid down is the same that the 'services rendered on ad-hoc basis cannot be considered for the purpose of reckoning seniority.'

58. Insofar as the judgment relied upon of the Hon'ble Division Bench of the Bombay High Court in the case of **Babanrao Prabatrao**

Chavan and others Vs. State of Maharashtra & Others, 2004(6) Bom. C.R. 936, is concerned, after having noticed the facts involved in the said case and the ratio laid down it does not appear to us that the said judgment would also be of any help to buttress the contentions raised by private respondents. In the aforesaid case the Hon'ble Bombay High Court has held that the State Government has no power, authority or jurisdiction to grant deemed date of seniority from the date of initial appointment, if the said appointment is not in accordance with Rules of Recruitment and the State would have jurisdiction only to grant the deemed date of seniority from the date of regularization of the service and not prior thereto. We reiterate that in the present matters it has not been established that initial appointment granted in favour of the applicants were not in accordance with the Rules of Recruitment. On the contrary, we have held that in all probabilities the inference will be that the applicants have been promoted to the post of Deputy Collector in accordance with the Recruitment Rules. On the basis of material available on record, according to us, the deemed dates which are assigned in the impugned seniority lists are contrary to provisions in the Recruitment Rules. As such the ratio laid down in the cited judgment may not be useful for the applicants to canvass their objections.

59. In the case of **O.P. Singla & Anr. Vs. Union of India & Ors., (1985) 1 SCR 351** the Hon'ble Apex Court (3 Judges Bench by majority) had issued certain directions for preparation of seniority

list. According to such directions, the seniority list was prepared by the respondents therein, however, the continuous officiation of the promotees was not taken into account. The Hon'ble High Court excluded the promotees on the ground that they held post on ad-hoc basis or for fortuitous reasons or by way of stop-gap arrangement even though their appointments were made under rules 16 and 17 of the Delhi Higher Judicial Services Rules, 1970. In the case of **Rudra Kumar Sein & Ors. Vs. Union of India & Ors., (2008) 8 SCC 25** the issue before the Hon'ble Supreme Court was whether in determining the inter-se seniority between the promotees and direct recruits, the guidelines and directions given by the said court in the case of **O.P. Singla & Anr. Vs. Union of India & Ors.** (cited supra) were followed or not. The observations made and the findings recorded by the Hon'ble Supreme Court while deciding the aforesaid matter (Rudra Sain's case) are quite relevant to understand the controversy raised in the present matter. We deem it appropriate to reproduce herein below some of the paragraphs from the judgment in the case of **Rudra Kumar Sain** (cited supra), wherein the Hon'ble Supreme Court has interpreted the terms ad-hoc, stop-gap and fortuitous, thus,

“The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made.

For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or stop-gap. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.”

It was also held by the Hon’ble Supreme Court that,

“The appointments were neither ad hoc, nor fortuitous, nor in the nature of a stop-gap arrangement. Indeed, no further orders have ever been passed recalling the four promotees and, others similarly situated, to their original posts in the subordinate Delhi Judicial Service. Promotees who were under Rule 16 have been officiating continuously, without a break, as Additional District and Sessions Judges for a long number of years. It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not take up to the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years.”

60. The committee constituted by the Delhi High Court had recorded finding that, “if the position of the person whose seniority is under consideration is beyond the total number of posts in the

service, then also its appointment must necessarily fall within the description of ad-hoc, fortuitous, stop-gap and having said so the Committee assigned Ms. Usha Mehra, the 30th post and then adjusted the seniority accordingly. The conclusion of the committee that ‘a person, promoted to the Higher Judicial Service under Rules 16 and 17 of the Rules to a post against which some other person has a lien, would ipso facto make such appointment ad hoc/fortuitous/stop-gap’ was held by the Apex Court contrary to the conclusions recorded in Singla’s case.” As observed by the Hon’ble Apex Court in Singla’s case, ‘appointment made under rule 16 and 17 after due consideration and/or approval of the Hon’ble High Court, the appointee did qualify to hold the promotional post, as required under Rule 7 of the Recruitment Rules, then such appointment of the appointee will not be ignored for the purpose of determining the inter se seniority in the cadre and on the other hand, continuous length of service should be the basis.

61. In the matters in hand, recruitment rules do not differentiate the appointment of directly recruited person to the post of Deputy Collector and the appointment of the officer in the cadre of Tahsildar by way of promotion to the post of Deputy Collector. Only the modes of recruitment are different. Considering the provisions under the recruitment rules, once the officer is either directly recruited to the post of Deputy Collector or appointed by way of promotion to the said

post, while determining the seniority, inter se, the promoted and nominated officers, the only criteria is length of service.

62. The Hon'ble Apex Court has further held in the said matter that if a person who possesses the requisite qualification for being appointed to a particular post and he is appointed on approval and consultation of the appropriate authority and continues in the post for fairly long period, then such appointment cannot be held to be a stop-gap, fortuitous or purely ad-hoc. Considering the provisions under Recruitment Rules also had it been the stop-gap arrangement would not have continued beyond few months. For the reasons elaborated above it cannot be accepted that promotions granted to the applicants and similarly situated others to the cadre of Deputy Collector were ad-hoc or by way of stop-gap arrangement so as to hold the services rendered by them in the relevant period as fortuitous services.

Method adopted for preparing the impugned seniority list whether can be sustained?

63. The next question which falls for our consideration is whether the methodology adopted by respondent no. 1 in preparing the impugned seniority list can be sustained. As is revealing from the contentions raised by respondent no. 1 in his written statement and as has been argued by learned special counsel appearing for the State, the promoted Deputy Collectors shall be held to be in

continuous service in the cadre of Deputy Collectors from the date of their absorption against the permanent posts of Deputy Collectors and their seniority shall be reckoned from the said date. In the impugned seniority list the said date is mentioned in column no. 8. It is the further contention of respondent no. 1 that as and when vacancies occurred in the permanent posts the respondent no. 1 has chronologically absorbed the promoted Deputy Collectors against the said vacancies. As per the method so adopted by respondent no. 1 the applicants in TA No. 2/2021 are shown to have been absorbed against the permanent posts respectively on 1.2.2002 and 1.10.2002 when their appointment orders are of the date 8.7.1999. Insofar as the applicants in TA No. 1/2021 are concerned, though their date of appointment is mentioned as 30.8.2001, column no. 8 against their names is kept blank and in remark column against their names the remark is entered as "fortuitous service" meaning thereby that the said applicants were not absorbed till the end of year 2003 and their services have been treated as 'fortuitous'.

64. Respondent No. 1 has filed one chart at Page 205 (A) of the compilation of T.A. No.2 of 2021. Strenuous efforts are made by the learned Special Counsel appearing for the State to explain the methodology used in preparing the said chart and in giving the deemed dates to the applicants and similarly situated others for the purpose of reckoning their seniority in the cadre of Deputy Collector. The sum and substance of the submissions made by the learned

Special Counsel was that for reckoning the seniority of the applicants; the date of their absorption in the permanent post of Deputy Collectors was material and not the date of their appointment or continuous officiation in the said date.

65. The submission so made and the plea so raised by the respondent No. 1 has to be examined in light of the provisions under the Recruitment Rules. The seniority list which has been impugned in the present applications is admittedly prepared and published under Rule 14 (4) of the Recruitment Rules. It would be appropriate to read Sub-rule (1), as well as, sub-rule 4 of Rule 14 which read thus:-

“14. Preparation of seniority list of Dety Collectors.-

(1) In each year, in accordance with the seniority of all the Deputy Collectors determined under sub-rule (5) of rule 13, a provisional seniority list of all the Deputy Collectors serving in the State (hereinafter referred to as “the provisional seniority list of Deputy Collectors”) showing their *inter-se* seniority as on the 1st day of April of that year shall be prepared by Government in Form II:

Provided that the names of the directly recruited Deputy Collectors, who are on probation on the 1st day of April of the said year shall be shown separately, their names being arranged according to sub-rules (3) and (4) of rule 13.

(4) Government shall, after considering the suggestions and objections and the remarks of all the Commissioners, finalize and publish the final seniority list of Deputy Collectors for information of all persons concerned in the manner provided in sub-rule (2).”

66. Aforesaid Sub-rule refers to Rule 13 (5) under which the seniority of all the Deputy Collectors i.e. promoted Deputy Collectors and directly recruited Deputy Collectors is determined. Said Sub-rule (5) of Rule 13 reads thus,

“(13) Principles according to which seniority of Deputy Collectors shall be determined –

(1)

(2)

(3)

(4)

(5) After having determined the seniority of promoted Deputy Collectors and directly recruited Deputy Collectors in the manner provided in sub-rules (2), (3), (4) and (5), Government shall determine the seniority of all the Deputy Collectors according to the date of continuous service in the cadre of Deputy Collectors or, as the case may be, according to the deemed dates assigned to them under sub-rule (2) or sub-rule (4) :”

67. As provided in the aforesaid Sub-rule the seniority of all the Deputy Collectors is to be determined according to the date of continuous service of the officer concerned in the cadre of Deputy Collector or as the case may be according to deemed date assigned to them under Sub-rule 2 or Sub-rule 4 of Rule 13. Proviso (a) to the Sub-rule speaks that any service rendered in fortuitous appointment shall be excluded. For appreciation of the aforesaid provision first we will see the definition of ‘continuous service’ as provided in the Recruitment Rules. Rule 2 (d) defines continuous service thus,

2 (d) ‘continuous service’ in relation to any cadre, means service continuously rendered by an officer in that cadre or in

any higher cadre without an interruption by way of reversion to a lower cadre.

Since in the definition of continuous service there is reference of the deemed date, the definition of deemed date also has to be seen, which is thus,

“2. (e) “deemed date” has the meaning assigned to it in rules 7 and 10.

At this juncture itself the definition of fortuitous service as provided in the Recruitment Rules also has to be read, which is thus,

“2. (i) “fortuitous service” means that service, which is rendered by a person during the period commencing on the date of his actual continuous officiation in a cadre and ending on the deemed date of continuous officiation in that cadre (such deemed date being later than the date of actual continuous officiation of such a person in the said cadre)”

68. In order to record any finding as to from which date the officer concerned shall be held to be in continuous service, the definitions of “deemed date”, “fortuitous service” and “continuous service” have to be conjointly read and understood.

69. We would first discuss the concept of deemed date as provided under Rule 2(e). Deemed date has the meaning assigned to it in Rule 7 & 13. Insofar as controversy arisen in the present matter is concerned, Rule 7 is not that material. We would, therefore, look into Rule 13, which reads thus,

“(13) Principles according to which seniority of Deputy Collectors shall be determined – (1) The seniority inter-se of the promoted Deputy Collectors shall be in the same order in which their names appear in the final select list determined by Government under sub-rule (7) of rule 9 :

Provided that the seniority of the promoted Deputy Collectors appointed as a stop-gap arrangement under the proviso to sub-rule (1) of rule 10, shall be deemed to be provisional till his appointment becomes regular under sub-rule (2) of that rule.

(2) Where the dates of continuous service of the promoted Deputy Collectors in the cadre of Deputy Collectors are not chronologically in conformity with their inter-se seniority as provided in sub-rule (1) due to the seniority of any Deputy Collector being revised subsequent to his promotion as Deputy Collector in order to remove an injustice done to him in fixing his seniority in the cadre of Deputy Collectors or Tahsildars or, as the case may be, Awal Karkuns, or Naib-Tahsildars, or for rectifying an error made in the fixation of such seniority, the dates of continuous service as Deputy Collectors shall be assigned to the promoted Deputy Collectors in such manner as to be chronologically in conformity with their order of seniority (that is to say, the senior officer will have the earlier date of continuous service than his junior in the seniority list). The dates so assigned shall be called “the deemed dates” of continuous service in the Deputy Collectors’ cadre and shall be taken into consideration for the purpose of this rule.

(3) The inter-se seniority of the directly recruited Deputy Collectors, selected in one batch by the Commission shall be determined in accordance with the order of preference recommended for them by the Commission irrespective of the dates of their joining the cadre of Deputy Collectors, subject to the condition that they join the cadre within one month of their appointment order or where an extension of the period for joining the cadre is sanctioned by Government, within such extended period; and if they join such cadre after the expiry of the period of one month or, as the case may be of the extended period, then such seniority shall be determined according to the dates of their joining the cadre.

(4) Where the dates of appointment of directly recruited Deputy Collectors are not chronologically in conformity with their inter-se seniority as provided in sub-rule (3), such dates shall be assigned to them in such manner as to be chronologically in conformity with their order of seniority. The dates as assigned shall be called “the deemed dates” of

appointment on probation of the directly recruited Deputy Collectors and shall be taken into consideration for the purpose of this rule.

(5) After having determined the seniority of promoted Deputy Collectors and directly recruited Deputy Collectors in the manner provided in sub-rules (2), (3), (4) and (5), Government shall determine the seniority of all the Deputy Collectors according to the date of continuous service in the cadre of Deputy Collectors or, as the case may be, according to the deemed dates assigned to them under sub-rule (2) or sub-rule (4) :

Provided that, -

(a) any service rendered in a fortuitous appointment shall be excluded,

(b) where the dates of continuous service or, as the case may be, of joining the cadre of Deputy Collectors of any two or more officers are identical, the officer senior in age shall be considered as senior for the purpose of determining such seniority.”

70. Insofar as the promoted Deputy Collectors are concerned, Sub-rule 2 of Rule 13 is material. Ordinarily the seniority *inter se* of the promoted Deputy Collectors shall be in the same order in which their names appear in the final seniority list determined by the Government under Sub-rule 7 of Rule 9 as provided under Sub-rule 1. An error may occur in fixation of such seniority for different reasons. Some time it may happen that injustice done to any promoted Deputy Collector in fixing his seniority in the cadre of Tahsildar or as the case may be Awwal Karkoon or Naib Tahsildar is required to be removed and while doing so the seniority position of the said Deputy Collector will have to be revised. Sub-rule 2 permits the rectification of such mistakes. The said Sub-rule further provides

that after rectification of such mistakes if it is noticed that the dates of continuous service of the promoted Deputy Collectors are not chronologically in conformity with their *inter se* seniority as provided in Sub-rule 1, the date of continuous service as Deputy Collector shall be assigned to them in such manner so as to be chronologically in conformity with their order of seniority (that is to say the senior officer will have the earlier date of continuous service than his junior in the seniority list). Sub-rule 2 further provides that the dates so assigned shall be called the deemed dates of continuous service in the Deputy Collectors cadre and shall be taken into consideration for the purpose of the said rule.

71. It has to be further clarified that even if the occasion arises of assigning any deemed date to such officers as provided in sub-rule 2 or sub-rule 4 of rule 13, such deemed date is not likely to be later than the date of actual continuous officiation of such officer in the said cadre. The deemed date however would definitely be later than the date of actual continuous officiation of the officer in the cadre, if he has rendered fortuitous services. Under the Recruitment Rules any officer promoted under proviso to sub rule 1 of rule 10 will only be held to have rendered fortuitous services from the date of actual officiation in that cadre till his name is included in the final select list determined by the Government under sub-rule 7 of rule 9. In cases of such officers only the deemed date from which the seniority of such officer is to be reckoned will be later than the date of his

appointment or in other words his actual officiation in the said cadre. In all other matters the date of actual continuous officiation will be the starting point for reckoning the seniority of the officers concerned.

72. In the instant matter it does not seem to be the case of any of the parties that for the reasons as are stated in Sub-rule 2 of Rule 13 any of the promoted Deputy Collector was required to be given a deemed date of continuous service different than the order in which the names of the said promotee Deputy Collectors had appeared in the final select list determined by the Government under Sub-rule 7 of Rule 9. According to the applicants, their names had appeared in the provisional seniority lists earlier published in the same order in which their names appeared in the final select list determined by Government under Sub-rule 7 of Rule 9.

73. We have already held that the applicants cannot be held to have been promoted under proviso to Sub-rule 1 of Rule 10. The applicants therefore, cannot be said to have rendered services in a fortuitous appointment, so as to exclude the said period of fortuitous appointment. The applicants therefore, must be held to be in continuous service on the promoted post of Deputy Collector from the date of their continuous officiation in the said cadre. From the available material on record it is sufficiently proved that the

applicants in these matters are continuously officiating the post of Deputy Collectors from the following days: -

T.A. No.1/2021

1. Applicant No.1, Shivaji S/o Tukaram Shinde - 1.10.2001
2. Applicant No. 2, Sunil Vitthalrao Yadav - 6.9.2001

T.A. NO. 2/2021

1. Applicant No. 1, Smt. Samiksha R. Chandrakar- 9.7.1999
2. Applicant No. 2, Pandurang Ramrao Kulkarni- 9.7.1999

The seniority of the applicants is therefore, liable to be considered in the cadre of Deputy Collectors from the said dates.

74. We reiterate that for determining the seniority of the applicants in the cadre of Deputy Collectors what is essential is the period of continuous service rendered by the said officer in that cadre or in any higher cadre without interruption by way of reversion to a lower cadre. We have elaborately discussed as to in what manner the period of continuous service can be computed in terms of the Recruitment Rules. In the Recruitment Rules it is nowhere provided that the promoted Deputy Collector shall be held to be in continuous service in the said cadre from the date of his entry within the permanent posts of Deputy Collectors in the cadre of Deputy Collectors. Method of reckoning the seniority of the promoted Deputy

Collectors from the date of their absorption in the permanent posts of Deputy Collectors seems to have been adopted by Respondent No. 1 for the first time. In various provisional seniority lists published during the period between 1999-2020 no such criteria seems to have applied or else in all the said provisional previous list also the dates for reckoning the seniority of the applicants would have been same as are mentioned in the impugned seniority list. We have also discussed that though the State has not provided correct information as about the cadre strength of Deputy Collectors, from the available material on record it is certainly larger than the number of permanent posts of Deputy Collectors and insofar as counting the period of continuous service of the Deputy Collector is concerned, there are no different norms for directly recruited Deputy Collector and the promoted Deputy Collector or even for the Deputy Collectors falling within the number of permanent posts and the Deputy Collectors working on the temporary posts beyond the number of permanent posts. The only exception as earlier discussed by us is the period of fortuitous service which cannot be applied to the applicants as well the similarly situated other promoted Deputy Collectors. The method adopted by Respondent No. 1 to reckon the seniority of promoted Deputy Collectors from the date of their absorption in the permanent posts is apparently contrary to the provisions in the Recruitment Rules. We therefore, disapprove the same and declare it to be invalid and unsustainable.

What order?

75. The logical consequence of the finding so recorded by us must lead to setting aside the impugned seniority list being unsustainable. However, before recording any such final conclusion and passing such order, we deem it appropriate to place on record following circumstances:

76. The impugned seniority list though is containing the names of 700 officers in the cadre of Deputy Collectors, in our scrutiny, we have noticed that, 391 officers out of 700 stood retired by the end of May, 2022. Thus, 309 officers in the said list may be presumed to have some interest in the decision in the present matter. In the said 309 officers, 211 are directly recruited Deputy Collectors and 98 promoted Deputy Collectors. We have, further, noticed that out of 309 officers, 171 Deputy Collectors have been already promoted to the post of Additional Collector. In the said 171 promoted Deputy Collectors, the number of directly recruited Deputy Collectors is 133 whereas the promoted Deputy Collectors are 38. Deducting the said 171 officers from 309 officers, now remain only 138 officers, who do not seem to have been yet promoted to the post of Additional Collector. In the said 138, the directly recruited Deputy Collectors are 78 whereas 60 are the promoted Deputy Collectors. We have been informed that out of aforesaid 138 Deputy Collectors, around 40 Deputy Collectors have already been granted appointment in the cadre of Deputy Collectors Selection Grade. Thus, 98 Deputy

Collectors can be said to be in Deputy Collector's cadre awaiting for their promotion, first to the cadre of Deputy Collector Selection Grade, and thereafter to the post of Additional Collector.

77. During the course of hearing in the present matters, it has come on record that there are 87 vacancies in the cadre of Additional Collector which the Government intends to fill up as early as possible. It is the matter of record that such a request has also been made by preferring an application in that regard by the State Government. For Selection Grade Deputy Collectors, there are immediate chances of promotion against 87 vacancies in the cadre of Additional Collector. It has to be stated that unless the officer concerned is granted the appointment in the Deputy Collector Selection Grade, he cannot be considered for further promotion to the post of Additional Collector.

78. On our direction, learned Special Counsel has provided us latest information that at present 144 posts of 'Deputy Collector Selection Grade' are vacant and required to be filled up immediately. If this be so, almost all the officers in the impugned seniority list who have not yet been promoted to the post of Deputy Collector Selection Grade, are having bright chances to be selected for the said post. As already noted above, the persons who are already there in the 'Deputy Collector Selection Grade' are having chances of promotion to the post of Additional Collector since as per the latest information

provided by the Special Counsel, the 54 posts of Additional Collector are at present vacant and 28 posts are expected to be vacant after eligible officers in the said cadre are further promoted as Additional Collector Selection Grade.

79. What we intend to emphasize is the fact that if the Government takes appropriate prompt steps, each and every officer in the cadre of Deputy Collector in the impugned seniority list is having chance of securing the further promotion unless any of such officer is found to be totally unfit for the further promotion.

80. It has to be further noted that during the course of hearing in the present matters, the statement has been made on behalf of the Government that applicants in T.A.No.02/2021 who have been promoted to the post of Additional Collector w.e.f. 30-01-2020 i.e. prior to publication of impugned seniority list and obviously before filing of the present petition by them, will not be reverted. In so far as the applicants in T.A.No.01/2021 are concerned, both the applicants have already been promoted to the cadre of Deputy Collector Selection Grade. In their cases also the Government has made a statement that they will not be reverted.

81. In aforesaid factual matrix what transpires to us is the fact that no cause of action is surviving for the applicants in both these applications to prosecute these applications further. Had it been the case that the placement of these applicants in the seniority list of the

cadre of Deputy Collectors had some bearing on the promotion already received to them, certainly it could have been said that the cause of action is surviving for them to prosecute this application further. However, if the recruitment rules for the recruitment to the post of Additional Collector are perused, rule 2 thereof provides that “the appointment to the post of Additional Collector or post equivalent thereto shall be made by promotion of a suitable person on the basis of selection from amongst the persons holding the post of Selection Grade Deputy Collector in the cadre of Deputy Collectors.” It is thus, explicitly clear that, promotion to the post of Deputy Collector is based purely on merit and the seniority of the concerned Deputy Collector in the list of Selection Grade Deputy Collectors does not seem to have any weightage. Now the applicants in T.A.No.02/2021 have also crossed that hurdle and have already entered into the cadre of Additional Collector. As assured by the Government, they are not likely to be reverted. Of course, in the said cadre, the applicants will aspire for further promotion to the post of Additional Collector Selection Grade. The Rules in that regard demonstrate that the said promotion is based on seniority. When the seniority of the applicants in T.A.No.02/2021 is not likely to get adversely affected because of any change in their position in the seniority list of Deputy Collectors, in fact, no cause of action is now surviving for the said applicants to claim relief as has been claimed by them that of setting aside the impugned seniority list.

82. As noted by us hereinabove, almost all the officers in the impugned seniority list who are not yet promoted to the post of Deputy Collector Selection Grade are likely to be promoted to the said post except such officers who may be found totally unfit for such promotion. The officers who are awaiting their promotion to the post of Deputy Collector Selection Grade are working on the said post for more than 17-18 years, as such, there appear bright chances of their promotion to the post of Selection Grade Deputy Collector. Once these officers are also promoted to the post of Deputy Collector Selection Grade, for their further promotion to the post of Additional Collector, criteria is merit and not the seniority. As such, for the said candidates also though all of them are not before this Tribunal, whether the impugned seniority list is maintained or set aside, may not matter.

83. For the reasons as aforesaid, it appears to us that though we have disapproved the method adopted by respondent no.1 in determining the impugned seniority list, there seems no propriety for setting aside the said seniority list and to issue the consequent direction for preparation of the said seniority list afresh, having regard to the observations made by us in the present order. According to us, passing of any such order will prove counter-productive and may cause damage to the said officers instead of giving any benefit to them.

84. In so far as the present applicants are concerned, we have already observed that because of the developments occurred during the pendency of the present TAs and having regard to the fact that the applicants in both these TAs have already been promoted to the further promotional posts and have been assured that they will not be reverted, no cause of action is surviving for them. Whether the impugned seniority list is set aside or maintained may not have any positive or negative impact on their promotions already secured and even for their further promotions. Though the apprehension has been expressed on behalf of these applicants that the promotions granted to them may be to the post of Additional Collector or to the post of Deputy Collector Selection Grade, since are granted subject to the judicial decision, it shall not happen that for want of formal order by this Tribunal setting aside the impugned seniority list, some adverse orders are passed referring to the placement of the applicants in the impugned seniority list. According to us, such apprehension is also misplaced for the reasons, firstly that, the respondent no.1 has given assurance at bar that the promotions granted in favour of the applicants will not be disturbed and that they will not be reverted from the said posts, which has been recorded in the orders passed by this Tribunal. It does not appear to us that Government will renege from such assurance. Secondly, as we have sufficiently explained hereinabove once the officer concerned has entered into the cadre of Deputy Collector Selection Grade, his position in the seniority list of

Deputy Collectors loses significance, since the further promotion to the post of Additional Collector is purely on merit. As provided in rule 2 of the Additional Collector Recruitment Rules, 1989, 'appointment to the post of Additional Collector or post equivalent thereto shall be made by promotion of suitable person on the basis of selection from amongst the persons holding the post of Selection Grade Deputy Collectors in the cadre of Deputy Collectors'. Similarly, for the further promotion to the post of 'Additional Collector Selection Grade', seniority of the officer concerned in the cadre of Additional Collector will only be material and not his seniority in the seniority list of Deputy Collectors.

85. It is the matter of record that, as because the dispute is raised against the final seniority list of Deputy Collectors published on 31-12-2020, the process of granting further promotions has been to some extent stalled. It was brought to our notice that though several posts in the cadre of Additional Collector are vacant and posts are also vacant of the Deputy Collector Selection Grade, the respondents could not carry out the said process. It was also brought to our notice that the posts of Additional Collector Selection Grade are also vacant and no orders are issued even in that regard. In the circumstances, if we pass an order thereby setting aside the impugned seniority list, there may be a more chaotic situation. We cannot be oblivious of the consequences of our order. We do not wish that the administration should in any way get adversely affected

due to the orders passed by the Tribunal, more particularly, when passing of such order can be possibly avoided.

86. Right accrued in favour of the employee/officer to get promotion to a further post is a most valuable right so far as his individual case is concerned. It is well said that the court order shall not cause injustice to either of the parties. We, thus, owe responsibility to ensure that if any right is really accrued in favour of any individual, which has been arbitrarily denied to him, same has to be awarded and injustice caused to him has to be removed. Though there appear certain discrepancies in the appointments of the applicants on the post of Deputy Collector as are high-lighted by the private respondents, it does not appear to us that the promotions so granted are outrightly illegal so that there shall not be any alternative except to revert the applicants or not to consider the services rendered by them in the said particular period. As held by the Hon'ble Apex Court in the case of Direct Recruits,

“if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

Moreover, the question remains for omission or non-compliance of any rule by the then concerned officers why to jeopardise the career of the applicants and similarly situated others. At the same time, we have also to consider whether there is any propriety in setting aside

the impugned final seniority list even though we may have disapproved the method adopted in determining the said list. Thus, equities are to be adjusted in such a manner that no injustice is caused to any of the parties. In the instant matter, as we have elaborately discussed hereinabove, there is absolutely no possibility of causing any injustice to the applicants in both these matters even if the impugned seniority list is not set aside. As against it, if it is set aside, the consequences are more damaging. For the reasons stated as above, though we are issuing certain directions in the present matter, we are not inclined to accept the request made in both the TAs of quashing and setting aside the impugned seniority list.

Suggestions

87. Before concluding the present order we are constrained to observe that while hearing the present TAs and deciding the same what has been glaringly transpired is the gross negligence and serious lapses on part of Government machinery in following the provisions in the Recruitment Rules of 1977 in appropriate manner. The Principal Bench of this Tribunal in the interim orders passed in O.A. Nos. 236 & 234 both of 2021 has also observed that there is unjustifiable delay, lack of sense of responsibility and inaction on part of the Government in not preparing the seniority list and not conducting the review. We expect that at least henceforth the officers concerned will be diligent and careful in timely compliance of the provisions under Recruitment Rules of 1977 and while preparing and

determining the seniority list will give due regard to the observation made in the present order. Broadly the following aspects shall be necessarily taken care of :-

(1) the number of vacancies likely to occur in next 12 months (from 1st September to 31 August) shall be ascertained in advance so that while preparing the select list, the officers are selected in that proportion and their names are included in the final select list to be determined by the Government under Rule 9(7).

(2) similarly, the Government shall determine in advance the number of nominations to be made in each year.

(3) selection committees under rule 9 and rule 16 shall be constituted at the appropriate time and strictly in consonance with the provisions in that regard in the Recruitment Rules.

(4) while issuing the order of promotion, the relevant rule under which the promotion is made shall be invariably mentioned.

If the promotion is to be made under proviso to sub-rule 1 of Rule 10 the nature of administrative exigencies shall also be explained, in brief.

(5) review under rule 12 shall be mandatorily taken within three months after the promoted Deputy Collector has completed three years continuous period of service without any break.

(6) the list of the officers found to be fit to be continued in the Deputy Collectors cadre shall be timely declared and shall

be promptly submitted to the Government together with all the relevant material including the CRs of the officers concerned.

(7) the list of the officers not fit to be continued shall also be prepared and submitted to the Government in the same manner.

(8) officers who are not found fit for continuing in the cadre shall be immediately reverted and their names shall be deleted from the select list determined under sub rule 7 of Rule 9.

(9) the record in respect of the probation period shall be maintained of the directly recruited Deputy Collectors, orders for extension and completion of probation period must be passed in writing and be maintained in record.

(10) the Deputy Collectors on probation who do not pass the Departmental Examination or who fail to complete the probation period satisfactorily within prescribed or extended period shall be discharged from the service promptly.

(11) In the Recruitment Rules wherever consultation with the MPSC is necessitated, the State shall mandatorily have such consultation.

(12) the list drawn up by the committee constituted under sub rule 1 of Rule 9 shall timely be submitted to the Government.

(13) combined seniority list of promoted Deputy Collectors and directly recruited Deputy Collectors under sub rule 5 of rule 13 shall be determined in the manner provided under said rule.

(14) the provisional seniority list shall be published in the manner as indicated in the rules and it shall be ensured that due publicity is given to the said list.

(15) the select list of the Deputy Collectors fit to be promoted to the Selection Grade Deputy Collectors shall be prepared in time schedule as provided under rule 16 and the appointments shall be accordingly issued within time.

(16) We emphasize that the State shall declare the cadre strength immediately specifying number of permanent posts and temporary posts.

88. In the facts and circumstances of these matters and for the reasons discussed by us hereinabove we deem it appropriate to pass the following order :-

ORDER

1. Respondent No. 1 shall commence the process for filling in vacant posts of Deputy Collector Selection Grade within two weeks from the date of this order and order of appointments shall be issued within two weeks thereafter to the candidates in the select list as would be determined by the Government under Sub-rule 7 of Rule 16 of the Recruitment Rules of 1977 in the order of their ranks.

2. Simultaneously the process for promotions to the post of Additional Collector and further promotions may also be commenced by respondent No. 1.

3. The seniority list of the Deputy Collectors for the period 1.1.2004 onwards shall be prepared having regard to the

observations made in the present order and strictly in observance of the Recruitment Rules of 1977, within the period of next 6 months from the date of this order.

4. Though we have declined to set aside the impugned seniority list we deem it appropriate to direct the respondent no. 1 to delete the remark 'fortuitous service' against the names of the Deputy Collectors, whose names are included in the seniority list from sr. nos. 582 to 700.

5. On the basis of the impugned seniority list if any change has been effected in the dates of Selection Grade granted to the applicants or similarly situated others in the cadre of Deputy Collectors Selection Grade, the respondents shall not cause any recovery on the said count of the monetary benefits paid to the concerned Deputy Collectors including the applicants.

6. Both the Transfer Applications stand disposed of in the aforesaid terms. No order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

Per : Hon'ble Member (A)

Most humbly and respectfully, I put on record my analysis in respect of certain critical aspects impinging upon the matters before us, as follows:-

1. The present Transfer Applications, referred to as TA-1 (Writ Petition No. 4908 of 2021) and TA-2 (Writ Petition No. 2612 of 2021)

relate to a dispute of a triangular dimension. The matters are being contested by the Original Applicants who are the *Promotee Deputy Collectors*, the Private Respondents who are *Deputy Collectors appointed by mode of nomination* and the *Respondent Authorities*. The applicants, respondent authorities and the private respondents, all agree on the point of applicability of provisions of the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority, Confirmation) Rules, 1977 (in brief, "the Rules of 1977"), in the dispute resolution in the present matter.

2. The present dispute comprises of the objections raised by the four Original Applicants to the seniority list of the cadre of Deputy Collectors for the period from 01.01.1999 to 31.12.2003. The applicants had entered in to the cadre of Deputy Collectors as *Promotee Deputy Collectors*. The applicants have claimed seniority in the cadre of Deputy Collectors as per dates of their appointments. The applicants rely on the argument that technical lacunae in the form of noncompliance with the various rules regarding preparation of Combined Seniority List of Tahsildars as per procedure laid down by rule 8, drawing of the select list by the *select committee as per rule 9 (2) to 9 (6)*, approval of the *select list* by government in consultation with the Maharashtra Public Service Commission (in short, "**MPSC**") as per rule 9 (7) and review of their services as per provisions of *rule 12 of "the Rules of 1977"* do not disentitle them from getting seniority position w.e.f. their respective dates of appointments in the cadre of Deputy Collectors under any formula whatsoever, adopted by the respondent authorities, after they have put in a long service of about two decades, received annual increments and promotions to substantive positions of Deputy Collectors (selection Grade/ Additional Collectors/ Additional Collectors (selection grade).

3. The Deputy Collectors appointed by mode of nomination, hereinafter, referred to as the '*Direct Deputy Collectors*', have advanced their arguments with respect to provisions of "*the Rules of 1977*" and asserted that the initial appointments of the applicants had been of ad hoc and fortuitous by nature; therefore, as per judgments of Hon'ble Apex Court, they are fit to be reverted back to their parent cadre of Tahsildars.

4. The respondent Nos. 1 and 2, i.e. the respondent authorities impliedly admit that the initial appointments of the applicants had not been strictly in accordance with the provisions of "*the Rules of 1977*" and the respondent authorities have claimed that a sincere effort has been made by them through the process of preparation and publication of combined seniority list of officers in the cadre of Deputy Collectors for the period from 01.01.1999 to 31.12.2003 by assigning the Direct Deputy Collectors their due seniority position and at the same time regularizing the *ad hoc and fortuitous* services rendered by the Promotee Deputy Collectors.

5. The issue of *locus-standi* of the Applicants has been raised in explicit terms by the Private Respondents and we have required undisputed facts before us for carrying out an in-depth analysis of this issue. Therefore, in my considered opinion the question of *locus standi* of the Applicants needs to be examined first before going on to the merits of the case.

6. Admittedly, the applicants have not placed on record the copy of *final combined seniority list* for the cadre of Tahsildars which was prepared and published by the Respondent Authorities as per provisions of rule 8 (4) and rule 8 (5) for the purpose of drawing *select list* of Tahsildars for promotion to the post of Deputy Collectors by the Selection Committee constituted under rule 9 (1). Likewise, the applicants have also not put on record the *final select list* prepared by

the Government under Sub-rule 7 of Rule 9 in which, as claimed by the applicants, their names were included. Respondent No. 1 in this regard has not taken any clear stand.

7. To the contrary, the private respondents have first drawn reference to provisions of rule 8 (1) and 8 (5) and asserted that the applicants had not completed minimum 5 years' service in the cadre of Tahsildars by the time of preparation of *combined seniority list as per rule 8*; therefore, there is no question of their names appearing in the *combined provisional seniority list* prepared as per rule 8 (1). From this, an inference can be drawn that the names of the applicants were not eligible for inclusion in the *final combined seniority list* prepared as per rule 8 (4) for placing the same for consideration by the *selection committee* for their promotions to the cadre of Deputy Collectors. The learned special counsel for the private respondents has further argued that the applicants or the respondent authorities have not produced any evidence of preparation followed by putting in public domain the information that final combined seniority list of Tahsildars had been prepared as prescribed by rule 8 (5).

8. Based on above contentions made, according to the private respondents, there is a sound ground to infer that no such select list was ever prepared and if at all, one had been prepared, there is no evidence showing that names of the applicants in both the Transfer Applications were eligible to be incorporated in the said *final select list* prepared under rule 9 (7). It is the further contention of these private respondents that, not only that provisions of the sub-rule 7 of rule 9 were not complied with by respondent No. 1 but even other procedural requirement have also not been complied with as are provided under Rule 7, 8, 9 and 12 etc. of "*the Rules of 1977*", which leads to inference that the matter of promotion of the applicants was, for reasons best known to the applicants and respondent authorities

only, kept away from scrutiny by MPSC at the stage of approval of *final select list* as well as at the stage when *review of services* were mandatorily required.

9. A question may arise as to what extent the objections, as has been raised by the private respondents who are directly recruited Deputy Collectors deserves to be entertained. In my considered opinion, insofar as the seniority *inter se* of the promoted Deputy Collectors is concerned, the grievance may be lodged preferably by any of the promotee Deputy Collector and not by any directly recruited Deputy Collector. However, a directly recruited Deputy Collectors cannot be justifiably excluded from raising objections in respect of inclusion of names of any promotee Deputy Collector in the *final combined seniority list* prepared as per rule 8 (4) on the ground that such a deputy collector did not meet eligibility criterion prescribed in rule 8 (1) for the purpose. This is so because the names of only such Tahsildars whose names have been included in the said *final combined seniority* prepared as per rule 8 (4) can be included in the *select list prepared under provisions of rule 9 (7)*.

10. In view of above contentions, following critical issues emerge for analysis and drawing inferences which may clarify the true nature of the dispute under provisions of “*the Rules of 1977*”:

- i. **Issue No. 1:** *Whether the applicants in TA-1 and TA-2 were qualified to be included in the state-level final combined seniority list of Tahsildars as per provisions of rule 8 (1) of “the Rules of 1977”.*

Analysis & Inference: for ready reference, rule 8 (1) and 8 (5) are being quoted below:

“8. Preparation of combined seniority list of Tahsildars:-
(1) In each year, in accordance with the seniority of all the

Tahsildars determined under sub-rule (6) of rule 7, a combined provisional seniority list of Tahsildars serving in all the revenue Divisions in the State (hereinafter referred to as “the provisional seniority list of Tahsildars”) who have put in continuous service of five years or more, shall be prepared by the Government in Form I showing their inter-se seniority as on the 1st day of April of that year (emphasis supplied).

(2).....

(3).....

(4).....

(5) *A copy of such final seniority list of Tasildars shall be kept by Government in the office of every Commissioner and every Collector for information of the persons interested therein. Government shall also issue a press note announcing that copies of the final seniority list of Tahsildars have been kept as afore said.* (emphasis supplied)

Now, first of all, it is to be noticed that the applicants have not produced any documentary evidence regarding compliance of provisions of sub-rule 2 and sub-rule 5 of rule 8 of “*the Rules of 1977*”. This indicates that neither the *provisional combined seniority list* nor the *final combined seniority* of Tahsildars was put in public domain by issue of press notes. Further, in order to examine compliance of provisions of sub-rule (1) of rule 8 of “*the Rules of 1977*”, particulars regarding dates of joining of the four applicants is tabulated below primarily for verifying whether the applicants had put in continuous service of five years as on 1st day of April of that year in which the “provisional Seniority List” of Tahsildars had been prepared-

Depiction of Compliance of Rule 8 (1) of “the Rules of 1977”				
Case No.	Applicant No.	Name of Applicant	Date of Appointment as Tahsildar	Date of promotion as Deputy Collector
TA-1	1	Shivaji T. Shinde	12.07.1995	30.08.2001
	2	Sunil V. Yadav	08.08.1995	30.08.2001
TA-2	1	Samiksha R. Chandrakar	24.02.1994	08.07.1999
	2	Pandurang R. Kulkarni	31.05.1994	08.07.1999

From above table, it is revealed that as the two applicants in TA-1 had been promoted to the cadre of Deputy Collectors in the month of August 2001, then their names may have been considered by the Selection Committee constituted under provisions of rule 9 (1) of “the Rules of 1977” in its meeting held in September 2000 which may have considered *final seniority list* of Tahsildars prepared under rule 8 (4) of “the Rules of 1977” by which date the two applicants in TA-1 may not have completed requirement of continuous service of 5 years in the cadre of Tahsildars. As per the similar corollary, the two applicants in TA-2 too, would not have completed continuous service of 5 years as on 1st day of April 1998 so as to get incorporated in the final seniority list prepared under rule 8 (4), which may have been considered by the Selection Committee held in the month of September 1998. The position may not change even if the argument that the *combined seniority lists* as on 01.04.1999 and 01.04.2001 had been prepared for placing the same before the *selection committee* as per provisions of rule 9 (3) (iii) as the intervening period available for preparation of select list as per rules was

not the bare minimum required for the purpose. It is important to note that minimum 75 days are required to prepare *final combined seniority list* as per rule 8 (4) from the date *combined provisional seniority list* of Tahsildars is prepared under rule 8 (1) of “*the Rules of 1977*”. It is argued by the senior counsel for the applicants that meeting of departmental promotion committee had been held which had the same officers as members as are there in the Selection Committee constituted under rule 9 (1) and therefore, the same may be treated as a meeting of the Selection Committee, however, this argument is without basis as the meeting of Selection Committee is to be held in the manner prescribed by *the Rules of 1977*.

ii. Issue No. 3: *Whether the names of the applicants in TA-1 and TA-2 had been included in the select list of Tahsildars as per provisions of rule 9 of “the Rules of 1977”*

As it is clear that the names of the four applicants could be incorporated in select list by the selection committee, only under provisions of rule 9 (3) (iii) of “*the Rules of 1977*”, which requires the names to appear first in the *final combined seniority list* of Tahsildars prepared under rule 8 (4) of “*the Rules of 1977*”. From the analysis of Issue No. 2 in the preceding paragraphs, it can be inferred that the names of the four applicants had not been included in the *select list* of Tahsildars, if any, as per provisions of rule 9 (3) (iii) of “*the Rules of 1977*”. This leads us to infer that the four applicants do not have *locus-standi* to contest the Transfer Applications before us.

- iii. Issue No. 4:** *Whether the appointment of the applicants listed in TA-1 and TA-2 can be classified as a stop-gap arrangement as per provisions of rule 10 (1) of “the Rules of 1977”*

Proviso (i) and (ii) of rule 10 (1) of “the Rules of 1977” provide for filling up the vacancies in the cadre of Deputy Collector purely as a stop gap arrangement. However, from plain reading of the said proviso (i), it is evident beyond doubt that only an officer in the cadre of Tahsildar whose name has been included in the combined final seniority list prepared under provisions of rule 8 (4) of “the Rules of 1977” may be appointed on the post of Deputy Collector on stop-gap basis. Therefore, it is inferred that the applicants were not eligible for appointment even on stop-gap basis on the post of Deputy Collector under provisions of proviso (i) of rule 10 (1) of “the Rules of 1977”.

- iv. Issue No. 5:** *Whether the names of applicants included in select list by approval of government with prior consultation with MPSC as per provisions of rule 9 (7) of “the Rules of 1977” ?*

Admittedly, there was no select list prepared under provisions of rule 9 (7) of “the Rules of 1977” which stipulated, in addition to other conditions, consultation with MPSC.

- v. Issue No. 6:** *Whether review of services of the applicants in TA-1 and TA-2 had been duly carried out as per provisions of rule 12 of “the Rules of 1977”-*

Admittedly, there was no review of services of the applicants had been carried out as per provisions of rule 12 of “the Rules of 1977”.

- vi. Issue No. 7:** *How the seniority of the applicants in TA-1 and TA-2 is to be determined under provisions of rule 13 of “the Rules of 1977”*

It is obvious that as the recruitment of the applicants and several others who have not disputed the impugned seniority list prepared and published by the respondent No. 1 and 2, had not been in accordance with the relevant provisions of “the Rules of 1977”; therefore, combined seniority of Direct and Promotee Deputy Collectors cannot be prepared in accordance with the principles laid down by rule 13 of “the Rules of 1977” without finding a legal route of regularization of recruitment of the applicants and similarly situated other promotee Deputy Collectors. In absence of any provisions in this regard in “the Rules of 1977”, the case laws may be referred to which permits regularization of recruitment which is irregular ab initio.

- vii. Issue No. 8:** *As the applicants in TA-1 and TA-2 have continued in cadre of Deputy Collectors for a continuous period of 20-22 years, how does inaction on part of respondent No. 1 and 2 to take action as per relevant rules under “the Rules of 1977” affect the right of the applicants to claim and get seniority w.e.f. their respective dates of appointments in the cadre of Deputy Collectors vis a vis the seniority of Direct Recruit Deputy Collectors?*

The senior counsel for the private respondents has cited case laws according to which the applicants need to be reverted back to the cadre of Tahsildar. However, it may amount to ‘turning the clock back’ which may lead to multiple administrative complications. On the other

hand, conceding to the prayer / demand of the applicants to grant them seniority w.e.f date of their joining in the cadre of Deputy Collectors, may amount to injustice to direct Deputy Collectors. The matrix based regularization of promotee deputy collectors in the combined seniority list seems to be one middle path which has apparently been accepted by most of the promotee Deputy Collectors with exception of the four original applicants who stand on a weak ground of *locus-standi*.

- viii. **Issue No. 9:** Whether the exact number of posts in the cadre of Deputy Collectors material to decide the claims of the four applicants?

Keeping in view above discussion on facts and the rule position under “*the Rules of 1977*”, it is crystal clear that the four applicants do not have *locus-standi*, therefore, the total number of posts in the cadre of Deputy Collectors may not be material for deciding the present Transfer / Original Applications. However, the respondents may, in order to be fair to all the officers in the said cadre, like to reconfirm the data depicted in matrix enclosed along with the Circular issued by the Government in Revenue & Forest Department, bearing No. □ . एसएनट-२०२०/□.□ . ९७/ई-१अ, मंालय, मुंबई -३२, dated December 31, 2020, with especial reference to creation of posts of Deputy Collectors and its total number along with the break-up of temporary and permanent posts.

Conclusion: On one hand, we have recorded an unambiguous finding that the method which has been adopted and applied by the

respondent no.1 while determining the impugned seniority list is, strictly speaking, not in precise conformity with the provisions under “the Rules of 1977”. On the other hand, we also observe that prima facie, the applicants do not seem to have *locus-standi* in the present matter. The argument put forth by the leaned Special Counsel for private respondent that the applicants having been promoted in violation of rules need to be reverted back to their parent cadre of Tahsildars, can be said to be administratively impractical in view of the fact of long service rendered by the applicants. These two sides of the matter put us in a dilemma as to how a legally valid, workable resolution to the problem can be worked out without letting the matter to stale further. From above analysis, it is also inferred by me that the issue of seniority position of the original applicants cannot be decided by the provisions of the Recruitment Rules, 1977 and passing an order in the present matters requires superior learning and ability to analyze the judgments delivered by Hon’ble High Courts and Hon’ble Apex Court touching upon similar aspects of service matters. Therefore, after putting my views on record as above for consideration, I may prefer to concur with operative part of the order passed by Hon’ble Justice P. R. Bora, the Vice Chairman.

(BIJAY KUMAR)
MEMBER (A)

Place : Aurangabad

Date : 26.08.2022.

FINAL ORDER IN T.A. 1-2021 **ARJ HDD YUK**