MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANG ABAD

ORIGINAL APPLICATION NO. 222 OF 2022
DISTRICT : AURANGABAD

1. Annasaheb Marutirao Shinde,
Age: 56 years, Occu: Service,
(Presently working Chief Officer,
Aurangabad, Housing & Area Development Board)
R/O. Plot No. 26, N-4, Cidco,
Aurangabad.

2. Ashok Vishnu Patil,
Age: 54 years, Occu: Service,
(Presently working Registrar SARTHI,
C/O. SARTHI, Balchitrawani, C.T.S. No. 173,
B/1, Gopal Ganesh Agarkar Road,
Pune.

3. Shahaji Rajaram Pawar,
Age: 55 years, Occu: Service,
(Additional Collector Washim)
C/O. Collector Office, Washim.

4. Sanjeev Shankar Jadhav,
Age: 53 years, Occu: Service,
(Additional Collector, Sopalpur)
C/O. Collector Office, Solapur.

(Applicant Nos. 2 to 4 deleted as per order dated 22.2.2022)
.. APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through, Add. Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400032.

2. The Establishment Board,
Through Additional Chief Secretary (Services),
General Administration Department,
Mantralaya, Mumbai-400032.

3. The Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai-400032. **.. RESPONDENTS**

APPEARANCE : Shri Jiwan Patil, Advocate for the Applicant.

: Shri M.S. Mahajan, C.P.O. for respondents.

: Shri P.R. Katneshwar, Special Counsel for respondents (**Absent**).

CORAM : Shri V.D. Dongre, Member (J)
and
Shri Bijay Kumar, Member (A)

Reserved on : 10.02.2023

Pronounced on : 29.03.2023

O R D E R

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

1. This Original Application (St.) No. 1723 of 2021 had been filed by Shri Annasaheb Marutirao Shinde r/o Aurangabad and three others invoking provisions of Section 19 of the Administrative Tribunals Act, 1985 on 10.12.2021. A Miscellaneous Application No. 395/2021 for grant of permission to sue jointly too, was filed on the same day. As the applicant Nos. 2 to 4 do not come under territorial jurisdiction of this Tribunal, the learned Advocate for the applicants submitted that the Miscellaneous Application was not being pressed and the same may be treated as disposed of. Accordingly, the applicant No. 1 was to be treated as the sole original applicant in the present matter. Accordingly, the M.A. was disposed of without any cost.

2. The applicant is aggrieved by the respondents treating him as junior to directly recruited Deputy Collectors as per principles stipulated by the respondent no. 1 in the seniority list for the period from 01.01.1999 to 31.12.2003 published on 31.12.2020.

3. The admitted facts of the matter are as follows :-

a) The applicant joined the service in revenue department of the government of Maharashtra on the post of Tahsildar on 01.07.1993. He had been promoted to the post of Deputy Collector on 08.07.1999. The applicant had been granted selection grade in the cadre of Deputy Collector on 12.12.2012 and subsequently, promoted to the post of additional collector vide order dated 03.10.2017.

b) The applicant had been promoted to the post of Additional Collector based on seniority list of Deputy Collectors dated 25.04.2014. The Terms & Conditions under which the applicant had been granted ad hoc promotion to the post of Additional Collector is mentioned in para 4 of the promotion order dated 03.10.2017, a copy of which has been appended as Annexure A, page 27 of the paper-book, relevant parts of which read as follows :-

"४. सदर तदर्थपदोन्नत्या खालील अटी व शर्तीच्या अधीन राहून देण्यात येत आहेत :-

(अ) पदोन्नतीसाठी पात्र ठरलेल्या उपरोक्त अधिकाऱ्यांना देण्यात येणा-या अपर जिल्हाधिकारी संवर्गातील पदोन्नत्या तदर्थ स्वरुपाच्या आहेत.

(ब) प्रतिनियुक्तीवर असलेले ज्येष्ठ अधिकारी यांचे प्रत्यावर्तन झाल्यानंतर त्यांच्यासाठी अपर जिल्हाधिकारी संवर्गात रिक्त पद उपलब्ध नसल्यास या आदेशातील कनिष्ठतम अधिकाऱ्यांना पदावनत करण्याच्या अधीन राहून सदर तदर्थ पदोन्नत्या देण्यात येत आहेत.

(क) संदर्भ क्र. १ येथील नमुद सामान्य प्रशासन विभागाच्या पत्रान्वये प्राप्त <u>अपर जिल्हाधिकारी पदावरील पदोन्नतीचे निवडसूची उपजिल्हाधिकारी संवर्गाची तात्पुरती ज्येष्ठता सूची विचारात घेऊन तयार करण्यात आली असल्याने सदर पदोन्नत्या तदर्थ स्वरुपाच्या राहतील व उपजिल्हाधिकारी संवर्गाची ज्येष्ठता सूची अंतीम झाल्यावर सदर अधिकाऱ्यांच्या पदोन्नत्या नियमित करण्यासंदर्भात आदेश निर्गमित करण्यात येतील.</u>

(ड) सदर तदर्थ पदोन्नतीसाठी उपजिल्हाधिकारी या संवर्गाची तात्पुरत्या ज्येष्ठतासूची विचारात घेण्यात आल्या असल्याने सदर पदोन्नत्या अंतिम ज्येष्ठतासूचीमधील बदलाच्या व सेवाज्येष्ठतेबाबत मा.महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल व प्रलंबित असलेल्या मूळ अर्ज क्र. ९१६/ २०१६ (श्री एम.बी पाटील व इतर वि. महाराष्ट्र शासन), मूळ अर्ज क्र.१०९९/ २०१६ (श्री जे. एस फड व इतर वि. महाराष्ट्र शासन) मूळ अर्ज क्र.६९७/ २०१७ (श्री एस. एस. पाटील व इतर वि. महाराष्ट्र शासन) आणि मूळ अर्ज क्र. ७५३/ २०१७ (श्री कमलाकर फंड व इतर वि. महाराष्ट्र शासन) च्या अनुषंगाने होणा-या निर्णयाच्या अधीन राहून देण्यात येत आहे.

(इ) ज्या अधिकाऱ्यांनी एतदर्थ मंडळाची मराठी/ हिंदी भाषा परीक्षा उत्तीर्ण केली नसेल किंवा सदर परीक्षा उत्तीर्ण होण्यापासून सूट मिळविली नसेल अशा अधिकान्यांना पदोन्नतीनंतर सदर परीक्षा उत्तीर्ण होणे किंवा उत्तीर्ण होण्यापासून सूट मिळविणे आवश्यक राहील."

(ई) <u>पदोन्नतीचे पद महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील असल्याने सदर निवडसुचीस / पदोन्नतीस महाराष्ट्र लोकसेवा आयोगाच्या</u>

मान्यतेने नियमित केल्यानंतर पदोन्नतीच्या पदावर सेवाज्येष्ठता व अन्य सेवाविषयक लाभ मिळण्यास पदोन्नत अधिकारी पात्र ठरतात."

(c) The Departmental Promotion Committee (in short, DPC) headed by respondent No. 3 has, in its meeting held on 04.10.2021, recommended names of 21 Additional Collectors for promoting them to Additional Collector (Selection Grade). The DPC took into account the seniority list of Deputy Collectors published on 31.12.2020 as on 31.12.2003, thereby, treating the applicant junior to a number of Directly recruited Deputy Collectors, who were earlier shown to be junior to the applicant in seniority list of Deputy Collectors published on 25.04.2014 and on that basis, DPC has not recommended name of the application for promotion to the Additional Collector (Selection Grade). Being aggrieved by this decision of the DPC, this Original Application has been filed with prayer for relief as mentioned in following paras.

4. Prayer of the Applicant :- The applicant has prayed for relief in terms of para 8 of the Original Application which is reproduced verbatim for ready reference:-

"8) IT IS THEREFORE PRAYED THAT YOUR HONOURS WILL BE PLEASED TO:

A) *Allow the Original Application.*

B) *Hold and declare that the applicants are eligible for promotion to the post of the Additional Collector (Selection Grade) and further direct the Respondent No. 2 Establishment Board to include the names of the Applicant in the decision and recommendation dated 04.10.2021 by carrying out necessary changes.*
OR

C) *Quash and set aside the decision and recommendations of the Respondent No. 2 Establishment Board dated 04.10.2021 and further direct the Respondent No. 2 to prepare the afresh list of the eligible Additional Collectors for promotion to the post of the Additional Collector (Selection Grade) in the light of the seniority list of the Additional Collector cadre dated 05.08.2021.*

INTERIM RELIEF, IF ANY, PRAYED FOR:

D) Pending hearing and final disposal of Original Application grant stay to the further course of action based on the decision and recommendation dated 04.10.2021 made by the Respondent No. 2 Establishment Board.

E) Grant ad interim relief in terms of prayer Clause (D).

F) Grant any other relief to which the applicant is entitled in the interest of justice."

5. **Pleadings and Final Hearing**:-

(a) Learned Special Counsel had submitted affidavit in reply on behalf of respondent No. 1 on 23.12.2021. Rejoinder affidavit to the affidavit in reply dated 23.12.2021 filed on behalf of respondent no. 1 was filed by the applicant on 14.01.2022.

(b) It is on 10.03.2022 that the learned Chief Presenting Officer submitted that the contesting respondent has already filed affidavit in reply and therefore, there may not be any difficulty for keeping the matter for final hearing. As respondent No. 2 is not a legal person and respondent No. 3 is not going to file any separate affidavit in reply the matter was fixed for final hearing on 05.04.2022.

(c) Before final hearing could take place, it is on 21.12.2022 that the learned Chief Presenting Officer requested the Tribunal to grant permission to place on record a short affidavit explaining the effect of previous litigation which was granted with time limit up to 04.01.2023 which was subsequently extended up to 12.01.2023 on which date, the learned Presenting Officer placed on record a copy of communication dated 11.01.2023 received from the respondent no. 1 giving details of six Writ Petitions arising out of order of this Tribunal dated 26.08.2022 in T.A. No. 1 & 2 of 2022 which are pending before Hon'ble High Court of Judicature at Bombay. The copy of communication was taken on record. The six writ petitions may be listed as follows :-

(i) *Civil Writ Petition No. 9163- Smt. Samiksha Chandrakar Vs. Maharashtra State*

(ii) *Civil Writ Petition No. 9631- Shri Vijay Singh Vs. Maharashtra State*

(iii) *Civil Writ Petition No. 9632- Shri Tushar Thombre Vs. Maharashtra State*

(iv) *Civil Writ Petition No. 12675- Mr. Suryakrishnamurthy Vs. State of Maharashtra*

(v) *Civil Writ Petition No. 12699- Shri Nitin Mahajan Vs. Maharashtra State*

(vi) *Petitions filed by the Government, Civil Writ Petition No. 11762/2022 Government of Maharashtra Vs. Samiksha Chandrakar and Civil Writ Petition No. 11692/2022 Government of Maharashtra Vs. Shivaji Shinde*

(d) It is undisputed that in none of the aforementioned Writ Petitions any interim order has been passed by Hon'ble High Court of Judicature, Principal Bench at Bombay. At this stage, request of the learned Presenting Officer for grant of two weeks' time to file additional affidavit was rejected vide Oral Order dated 12.01.2023 in view of the fact that the respondents were granted

permission to file short affidavit explaining the effect of previous litigation but they failed to do so.

(e) The matter was given final hearing on 10.02.2023 and reserved for orders.

6. **Gist of contentions of the contesting parties**:-

a) There is no opposition from the respondents to the contention of the applicant that the promotions of Tahsildars to the post of Dy. Collector and their seniority in the said cadre is of great concern as the Respondent authorities have not followed the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority and Confirmation) Rules, 1977 in letter and spirit and, by the reason of it chaotic situation has emerged. Respondent authorities do not say so in so many words but they too have advanced the same, by way of oral submission as reason for publication of seniority list of Deputy Collectors for the period from 01.01.1999 to 31.12.2003 on 31.12.2020, which is at the core of the dispute.

b) The applicant has claimed that he has been promoted to the post of Deputy Collector (selection grade) w.e.f. 12.12.2012 vide order dated 13.05.2015. However, copy of

order of such promotion has not been enclosed by the applicant, as a result of which terms and conditions under which the applicant had been promoted to Deputy Collector (Selection Grade) has not come on record.

c) The applicant has further submitted that he has been promoted on the post of Additional Collector on ad hoc basis vide G.R. dated 03.10.2017 based on seniority in the cadre of Deputy Collectors dated 25.04.2014 in which his seniority was shown as 43 of year 1999. A copy of the said promotion order has been appended as Annexure A of the paper-book at page no. 27 to 30 of the paper-book. Respondents have not disputed this submission of the applicant at any stage of hearing. Terms & Conditions under which the applicant had been granted ad hoc promotion to the post of Additional Collector is quoted in para 3(b) of this order and being referred to for ready reference. As the condition mentioned in clause 4 of the terms and conditions of promotion is relevant, the same is reproduced as follows :

> *"४. सदर तदर्थपदोन्नत्या खालील अटी व शर्तीच्या अधीन राहून देण्यात येत आहेत :-*

(अ) पदोन्नतीसाठी पात्र ठरलेल्या उपरोक्त अधिकाऱ्यांना देण्यात येणा-या अपर जिल्हाधिकारी संवर्गातील पदोन्नत्या तदर्थ स्वरुपाच्या आहेत.

(ब) प्रतिनियुक्तीवर असलेले ज्येष्ठ अधिकारी यांचे प्रत्यावर्तन झाल्यानंतर त्यांच्यासाठी अपर जिल्हाधिकारी संवर्गात रिक्त पद उपलब्ध नसल्यास या आदेशातील कनिष्ठतम अधिकाऱ्यांना पदावनत करण्याच्या अधीन राहून सदर तदर्थ पदोन्नत्या देण्यात येत आहेत.

(क) संदर्भ क्र. १ येथील नमुद सामान्य प्रशासन विभागाच्या पत्रान्वये प्राप्त <u>अपर जिल्हाधिकारी पदावरील पदोन्नतीच्या निवडसूची उपजिल्हाधिकारी संवर्गाची तात्पुरती ज्येष्ठता सूची विचारात घेऊन तयार करण्यात आली असल्याने सदर पदोन्नत्या तदर्थ स्वरुपाच्या राहतील व उपजिल्हाधिकारी संवर्गाची ज्येष्ठता सूची अंतीम झाल्यावर सदर अधिकाऱ्यांच्या पदोन्नत्या नियमित करण्यासंदर्भात आदेश निर्गमित करण्यात येतील.</u>

(ड) सदर तदर्थ पदोन्नतीसाठी उपजिल्हाधिकारी या संवर्गाची तात्पुरत्या ज्येष्ठतासूची विचारात घेण्यात आल्या असल्याने सदर पदोन्नत्या अंतिम ज्येष्ठतासूचीमधील बदलाच्या व सेवाज्येष्ठतेबाबत मा.महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल व प्रलंबित असलेल्या मूळ अर्ज क्र. ९१६/२०१६ (श्री.एम.बी. पाटील व इतर वि. महाराष्ट्र शासन), मूळ अर्ज क्र.१०९९/२०१६ (श्री. जे. एस फडे व इतर वि. महाराष्ट्र शासन) मूळ अर्ज क्र.६९७/२०१७ (श्री. एस. एस. पाटील व इतर वि. महाराष्ट्र शासन) आणि मूळ अर्ज क्र. ७५३/२०१७ (श्री. कमलाकर फंडे व इतर वि. महाराष्ट्र शासन) च्या अनुषंगाने होणा-या निर्णयाच्या अधीन राहून देण्यात येत आहे.

(इ) ज्या अधिकाऱ्यांना एतदर्थ मंडळाची मराठी/हिंदी भाषा परीक्षा उत्तीर्ण केली नसेल किंवा सदर परीक्षा उत्तीर्ण होण्यापासून सूट मिळविली नसेल अशा अधिकान्यांना पदोन्नतीनंतर सदर परीक्षा उत्तीर्ण होणे किंवा उत्तीर्ण होण्यापासून सूट मिळविणे आवश्यक राहील."

(ई) <u>पदोन्नतीचे पद महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील असल्याने सदर निवडसुचीस / पदोन्नतीस महाराष्ट्र लोकसेवा आयोगाच्या मान्यतेने नियमित केल्यानंतर पदोन्नतीच्या पदावर सेवाज्येष्ठता व अन्य सेवाविषयक लाभ मिळण्यास पदोन्नत अधिकारी पात्र ठरतील."</u>

(e) It is, therefore, informed that the condition No. 4 (ई) out of aforementioned mandatory Terms & Conditions of promotion of the applicant to the post of Additional Collector has not been complied as yet and needs to be complied forthwith. Before referring the case of applicant and similarly situated other Additional Collectors who had been promoted vide order of respondent No. 1, dated 03.10.2017 for post-facto concurrence of Maharashtra Public Service Commission (in short, 'MPSC) to their promotions to the post of Additional Collectors as per condition No. ४(ई), it is necessary to ensure that condition No. ४(क) has been complied. This, inter alia, leads us to necessity of taking in to account decision of this Tribunal in T.A. No. 1 (W.P. No. 4908/ 2021) & T.A. No. 2 of 2021 (W.P. No. 2612 of 2021) and subsequent developments, if any.

(f) The applicant has also contended that provisional seniority of Additional Collectors as on 31.12.2020 had been published vide circular issued by respondent no. 1 dated 05.08.2021 which is appended and marked as Annexure C, at page no 56 to 61 of the paper-book. Applicant's name is at serial no. 42 of the said provisional seniority list. This claim of the applicant too, has not been

contested by the respondents. The provisional seniority list for the period from 01.01.2017 to 31.12.2019 published vide Government Circular on 05.08.2021 is subject to condition stipulated in para 2 of the said government circular which reads as follows :-

> *"२. यासंदर्भात नमूद करण्यात येते की, अपर जिल्हाधिकारी संवर्गात पदोन्नताही उप जिल्हाधिकारी (निवडश्रेणी) संवर्गातून देण्यात येते. उप जिल्हाधिकारी संवर्गासाठी महाराष्ट्र उप जिल्हाधिकारी (भरती, सेवेत जेष्ठता देणे व सेवेत स्थायी करणे) नियम १९७७ नावाचे स्वतंत्र सेवा प्रवेश निगम आहेत. सदर सेवा प्रवेश नियमानुसार उप जिल्हाधिकारी संवर्गातील अधिकाऱ्यांची सेवा जेष्ठता निश्चित करण्यात येते. उप जिल्हाधिकारी संवर्गाची दि.०१.०१.१९९९ से दि.३१.१२.२००३ या कालावधीची दि.०१.०१.२००४ श्री सद्य:स्थितो दर्शविणारी अंतिम जेष्ठतासुची दि. ३१.१२.२०२० रोजी प्रसिद्ध करण्यात आली आहे. सदर ज्येष्ठता सुचीसंदर्भात मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे दाखल असलेल्या मूळ अर्ज क्र.२३६/२०२१ व मूळ अर्ज क्र.२३७/२०२१ मध्ये मा. न्यायाधिकरणाने दि. २७.०७, २०२१ रोजी दिलेल्या अंतरिम आदेशानुसार व मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ औरंगाबाद येथे वर्ग झालेल्या याचिका क्र.टो १/२०२१ व क्र.टी २/२०२१ या याचिकांमध्ये होणा-या न्यायनिर्णयांच्या रासेच मा. उच्च न्यायालय, मुंबई व मा. सर्वोच्च न्यायालय येथे पदोन्नती आरक्षण य सेवाज्येष्ठतासंदर्भात दाखल असलेल्या सर्व प्रलंबित याचिकांमध्ये होणा-या न्यायनिर्णयांच्या अधीन राहून देण्यात येत आहे."*

(g) The applicant has further contended that a DPC was held on 04.10.2021 during which period this Tribunal had ordered continuation of *status quo* on the impugned seniority list of Deputy Collectors dated 31.12.2020. The DPC meeting made recommendation of names of Additional

Collectors for promotion to the post of Additional Collector (Selection Grade) based on provisional seniority list of Additional Collectors dated 05.08.2021 in which the name of applicant has not been recommended for promotion to the post of Additional Collector (selection grade) but the names of applicant's junior direct-recruit Deputy Collectors have been recommended on the ground that as per impugned seniority list of Deputy Collectors dated 31.12.2020, a number of direct-recruit Deputy Collectors are senior to the applicants. *Thus, it is again clear that the seniority list of Deputy Collectors published on 31.12.2020 is at the core of the dispute.*

(h) The applicant has further contended that he was promoted to the post of Additional Collector from the post of Deputy Collector (selection grade) as per provisions of Additional Collector (Recruitment) Rules, 1989 which provides as follows :-

> *"2 (1) 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 posts of Selection Grade Deputy Collector in the cadre of Deputy Collectors."*

Therefore, the applicant has claimed that once he has been promoted to the Deputy Collector (selection grade) he should not be affected by seniority list of Deputy Collectors published thereafter. On the other hand, the respondents have disputed this claim of the applicant and contended that the promotion of the applicant to the post of Deputy Collector (selection grade) as well as to the post of Additional Collector were subject to finalization of seniority list of Deputy Collectors and the same was mentioned in unambiguous terms in the respective promotion orders and seniority lists.

(i) Finally, the applicant has further contended that the respondent authorities cannot travel beyond the seniority list of the Additional Collectors as published on 05.08.2021 for seniority as on 01.01.2020. As the applicant has held the post of Additional Collector for more than three years on continuous basis, he is next to the last candidate of the select list of dated 04.10.2021 prepared by respondent no. 2 and eligible for promotion and out of vacant 43 posts of Additional Collectors to be filled up by other than disability affected officers of feeder cadre only 21 names have been

recommended by DPC, the name of the applicant deserves to be recommended by the DPC for promotion to the post of Additional Collector (selection grade).

(j) Learned Advocate for the applicant has cited following judgments :-

(i) ***(1999) 7 Supreme Court Cases 209, Ajit Singh and ors Vs. State of Punjab & Ors., judgment dated 16.09.1999***

(ii) ***1992) Supp (2) Supreme Court Cases 481, (National Institute of Mental Health and Neuro Sciences Vs Dr. K. Kalyana Raman and Ors., judgment delivered on 28.11.1991***

7. **Analysis of Facts**:-

(a) After hearing contentions of the two sides, we consider it necessary to examine the facts to ascertain whether any one junior to the applicant has been promoted to the post of Additional Collector (selection grade). For this purpose, relevant service details of applicant and the officers who have been promoted to Additional Collector (selection grade) are depicted in tabular for as follows :-

S. No.	Name of Additional Collector	Direct/ Promotee Deputy Collector	Date of Appointment / Promotion as Deputy Collector	Deemed date for seniority	Seniority No. as Dy. Collector as on 01.01.2004	Seniority No. as Dy. Collector as on 01.01.2004	Dare of Promotion as Additional Collector	Serial No. on Seniority on Additional Collector as on 01.01.2020
1	Ramchandra Tatoba Shinde	Promotee	17.11.1997	17.11.1997	302	302	03.10.2017	3
2	Smt. Madhavi S. Sardeshmukh	Direct Recruit	30.11.1998	06.11.1998	324	324	03.10.2017	4
3	Smt. Jyotsana V. Hirmukhe	Direct Recruit	09.11.2018	09.11.1998	325	325	03.10.2017	5
4	Anna Saheb D. Chavan	Direct Recruit	16.11.1998	06.11.1998	327	327	03.10.2017	6
5	Gopichand M. Kadam	Direct Recruit	01.11.1998	06.11.1998	328	328	03.10.2017	7
6	Mahesh V. Avhad	Direct Recruit	16.11.1998	06.11.1998	331	331	06.08.2014	
7	Smt. Vaidehi M. Ranade	Direct Recruit	09.11.1998	06.11.1998	335	335	03.10.2017	11
8	Vivek B. Gayakwad	Direct Recruit	11.11.1998	06.11.1998	336	336	27.06.2016	
9	Smt. Nandini M. Awade	Direct Recruit	06.11.1998	06.11.1998	337	337	03.10.2017	12
10	Smt. Varsha M. Untawal	Direct Recruit	10.11.1998	09.11.1998	339	339	03.10.2017	13
11	Mangesh Hiraman Joshi	Direct Recruit	09.11.1998	09.11.1998	340	340	03.10.2017	14
12	Smt. Anita B. Bankhede	Direct Recruit	05.12.1998	10.11.1998	341	341	27.06.2016	
13	Smt. Gitanjali S. Babiskar	Direct Recruit	10.11.1998	10.11.1998	342	342	27.06.2016	
14	Dilip Dyandev Jagdale	Promotee	17.12.1998	07.12.1998	348	348	03.10.2017	15
15	Suresh D. Jadhav	Promotee	16.04.1999	07.12.1998	353	353	03.10.2017	17
16	Dattatray M. Borude	Promotee	27.01.1999	07.12.1998	354	354	03.10.2017	18
17	Arjun K. Chikhale	Promotee	07.01.1999	07.12.1998	355	355	03.10.2017	19
18	Arun G. Abhang	Promotee	24.12.1999	07.12.1998	358	358	27.06.2016	
19	Rajkumar M. Sagar	Promotee	07.12.1998	07.12.1998	359	359	27.06.2016	
20	Shailendra Kumar M. Meshram	Promotee	22.12.1998	16.12.1998	363	363	03.10.2017	22
1	A. V. Patil	Promotee	08.07.1999	01.02.2001	449	449	03.10.2017	41
2	A. M. Shinde	Promotee	08.07.1999	20.02.2001	450	450	03.10.2017	42
3	S. R. Pawar	Promotee	08.07.1999	01.03.2001	451	451	03.10.2017	43
4	S. S. Jadhav	Promotee	08.07.1999	01.05.2001	461	461	03.10.2017	45

Analysis and Inference- *From the information depicted above, we see that all the 20 Additional Collectors who have been promoted on the post of Additional Collectors (selection grade) vide order dated 22.12.2021 are early entrants in the cadre of Deputy Collectors than the applicant and, all of them had also been appointed on the post of Additional Collector on the date of appointment of the applicant on the post of Additional Collector or earlier than that date. Therefore, in our considered opinion, there is no merit in Prayer Cause in terms of para 8 (C), 8 (D) and 8 (E).*

(b) The applicant has also claimed that he is eligible for promotion to the post of Additional Collector (selection grade) and therefore, respondents no. 2 may be directed to include his name of the applicant in the decision and recommendation dated 04.10.2021 by carrying out necessary changes.

Analysis of facts and inference drawn: (i) As per minutes of the *DPC meeting dated 01.12.2021, 45 posts of Additional Collector (selection grade) were proposed to be filled. However, only 23 names for promotion had been recommended by the DPC (out of these, 2 names have been subsequently withheld due to pendency of certain compliances). Reasons for not recommending names of other Additional Collectors for promotion has been mentioned in page 72 to 80 of the paper-book. Gist of given reasons are;*

18 names have not been recommended as the concerned officer had availed benefit of caste based reservation in promotion and 5 names, including the name of the applicant, were not recommended for the reason of revision in their seniority in the cadre of Deputy Collectors as per seniority published vide circular dated 31.12.2020 for the period from 1.01.1999 till 31.12.2003. Therefore, it is necessary to examine this issue in the light of Order of this Tribunal in T.A. No. 1 & 2, both of year 2021.

(ii) It is noted that this Tribunal has passed final order in T.A. Nos. 1 & 2 of 2021 on 26.08.2022 directing that the process for promotions to the post of Additional Collector and further promotions may also be commenced by respondent No. 1 in *T.A. No. 1 & 2, both of year 2021*. M.A. No. 01/2022 in T.A. No. 02/2021 which is pending before this Tribunal relates to issue of contempt of Court only in which affidavit in reply has been received, which is being heard separately and may not have bearing on the present matter.

(iii) This Tribunal had observed in para 29 of its aforesaid order that:-

> *"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."

(iv) Observation regarding apparent lack of *locus-standi* of applicants for promotion from the cadre of Tahsldar to the post of Deputy Collector was made by Member (A) by a separate part of the order in TA 1 & 2, of 2021. Examination of locus-stand of the applicant finds applicability in the present matter too. In the present matter too, the applicant or respondent authorities have not placed on record a 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 (1) to 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) which comes in the way of examining locus-standi of the applicant. For ready reference, rule 8 (1) and

Rule 8 (5) of Recruitment Rules are being quoted as 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 aforesaid" (**emphasis supplied**).*

(v) The applicants have also not put on record the final select list prepared by the Government under Sub-rule 7 of Rule 9. Respondent No. 1 in this regard has not taken any clear stand. In our considered opinion, Non submission of final select list prepared after 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. For this, the respondent No. 1 may first examine conformity with Rule 8 (1) to Rule (5) of the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority and Confirmation) Rule, 1977 and submit suitable proposal to MPSC for consultation as stipulated in rule 9 (7) of the Recruitment) Rules based on whatever records are available with the department after extensive fire-damage that took place in Mantralaya. Thereafter, respondent No. 1 may take decision on merit of facts and delete the remark 'fortuitous service' against the names of the applicant and similarly situated other Deputy Collectors and grant promotion to the applicant and similarly situated Additional Collectors to the post of Additional Collector (selection grade) while drawing process for promotion to fill up remaining vacancies under 33.33% quota for Additional Collector (Selection Grade) out of total number of sanctioned posts for Additional Collector. Hence, the following order :-

O R D E R

Original Application No. 222 of 2022 is partly allowed in following terms :-

(I) In respect of prayer clause (B), Respondents Nos. 1 and 2 are directed to consider proposal of promotion of the applicant and similarly situated other Additional Collectors against vacancies out of 33.33% quota for Additional Collector (Selection Grade) out of

total number of sanctioned posts of Additional Collectors after complying with procedural requirement outlined in para 7(b) above; on merit as per extant rules.

(II) Prayer Clause (C), (D) & (E) are hereby rejected being devoid of merit.

(III) No order as to cost.

MEMBER (A) **MEMBER (J)**

Kpb/D.B. O.A. No. 222/2022 Promotion