MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 349 OF 2021
(Subject : Benefits of G.R.)

DISTRICT : AURANGABAD

1. **Anil S/o Chandrakant Hugge**,)
Age :- 34 years, Occupation – Service (Talathi),)
R/o : New Kawansan, Annapurna Nagar,)
Sai Colony, Paithan, Dist. Aurangabad.)

2. **Smt. Seema W/o Chandrakant Bhosale**,)
Age :- 35 years, Occupation – Service (Talathi),)
R/o : House No. 13, Malhar Nagar,)
Holkar Chowk, Satara Parisar, Aurangabad.)..**APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai- 32.)

2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)

3. **The Collector**,)
Collector Office, Aurangabad,)
Tq. and Dist. Aurangabad.)..**RESPONDENTS**

APPEARANCE : Shri R.K. Ashtekar, Advocate for the Applicants.

: Shri V.R. Bhumkar, Presenting Officer for respondents.

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

Reserved on : **19.07.2022.**

Pronounced on : **27.07.2022.**

O R D E R

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

1. This Original Application was jointly filed by the two applicants on 30.06.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby challenging the seniority list of Talathis as on 01.01.2020, which was published by the Respondent No. 3 on 24.05.2021 rejecting objections raised by the Applicants to the provisional seniority list published on 02.02.2021.

2. The Applicants had also filed a Miscellaneous Application No. 191/2021 in this O.A. for grant of permission to sue jointly which was allowed by this Tribunal vide an oral order dated 16.07.2021.

3. Facts of the matter may be summed up as follows:-

(a) Particulars of the two applicants, their dates of appointments on the post of Talathi in Aurangabad district, number of years and number of attempts in which the applicants passed sub-service departmental examination and Revenue Qualifying Examination is depicted in TABLE-A and TABLE B respectively.

(b) It is a matter of service record and admitted by the two sides of dispute that the two applicants belong to S.T. category.

(c) It is also admittedly that no sub-service departmental examination was held during the years of 2012 and 2013.

(d) Applicant wise information regarding dates of their appointments on the post of Talathi, number of years and number of attempts in which the applicants had passed sub-service departmental examination is shown in **TABLE-A**.

TABLE-A
Sub-Service Departmental Examination
(4 years and 3 chances)

Applicant No.	**Name of Applicant**	**Date of Appointment as Talathi**	**Year 2010**	**Year 2011**	**Year 2012**	**Year 2013**	**Year 2014**	**Year 2015**
1	Anil C. Hugge	30.04.2010	**Not Allowed**	**Failed**	**Exam Not Conducted**		**Failed**	**Passed**
2	Smt. Seema C. Bhosale	11.03.2010	**Not Allowed**	**Not Appeared**	**Exam Not Conducted**		**Failed**	**Passed**

(e) Applicant-wise year of passing Revenue Qualifying Examination is shown in TABLE-B.

TABLE-B
Revenue Qualifying Examination
(9 years and 3 chances)

Applicant No.	**Name of Applicant**	**Date of Appointment as Talathi**	**Year 2017**	**Year 2018**
1	Anil C. Hugge	30.04.2010	**Passed**	
2	Smt. Seema C. Bhosale	11.03.2010		**Passed**

(f) Applicant wise seniority position in provisional and final seniority lists as on 01.01.2020 as published by Respondent No. 3 is shown in **TABLE-C.**

TABLE-C
Seniority Position as per Provisional and Final Seniority Lists

Applicant No.	**Name of Applicant**	**Date of Appointment as Talathi**	**SSDE Attempt No.**	**Date for Seniority**	**Seniority Position**	
					Provisional List	**Final List**
1	Anil C. Hugge	30.04.2010	4	01.08.2015	530	538
2	Smt. Seema C. Bhosale	11.03.2010	5	01.08.2015	529	537

4. **Relief Sought** :- The two applicants have prayed for reliefs in terms of para 9 of the O.A. which is being reproduced verbatim for ready reference:-

***"09. RELIEF SOUGHT FOR**:*

A) Original Application may please be allowed ;

B) The respondent No. 3 be directed to consider the claim of the applicants for promotion as Girdawar from the date of appointment and set-aside the order passed on objections filed by the applicants.

C) Pending hearing and final disposal of this Original Application the respondent No. 3 be directed not to promote any one as per Seniority List prepared in the month of May-2021.

D) Any other suitable and equitable order may kindly be granted in favour of applicants."

5. **Pleadings and Arguments**: As per service affidavit filed by Applicant No. 1, all the three Respondents had been served notice during July 27, 2021 to July 31, 2021. Affidavit in Reply was filed on behalf of Respondent No. 3 only on 07.12.2021 which was taken on record and a copy of which was supplied to the other side. Thereafter, in spite of four adjournments granted for filing affidavit in reply on behalf of remaining Respondents, no affidavit in reply has been submitted. Applicant too, did not submit and Rejoinder to the Affidavit in Reply submitted by Respondent No. 3. As the pleadings were complete, the matter

was fixed for Final Hearing on 18.04.2022. It is on 20.04.2022 that O.A. No. 58/2020 (Ritesh Kaware & Others Vs. State of Maharashtra & Ors.) was also taken up together for final hearing. After arguments on behalf of the Applicants were completed, the learned Advocate for the Applicants submitted a Written Note of Argument on 13.07.2022 which included a copy of order passed by this Tribunal in O.A. No. 281/2021, dated 13.11.2021. Learned Presenting Officer argued the case on 19.07.2022 and cited the Order passed by this Tribunal in O.A. No. 354/2015 to substantiate his arguments.

6. Analysis of Facts and Conclusions:-

(a) Rule position is explicit in respect of counting of number of years in which a candidate passes sub-service departmental examination and revenue qualifying examination. There is no ambiguity in Rules Provision that the years in which the authorities fail to conduct any of the aforesaid examinations is required to be excluded while counting the number of years in which a candidate passes the respective examination. A copy of communication made by Respondent No. 3 with Sub-Divisional Officers and Tahsildars of Aurangabad district, dated 27.06.2017 (Annexure A-5 to the O.A., page 153 of paper-book) shows

that no sub-service departmental examination was conducted in the years 2012 and 2013 therefore, as per the provisions of Rule 9 of the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathi) Rules, 1997, the years of 2012 and 2013 shall be excluded from counting of number of years in which the applicants have passed Sub-service Departmental Examination.

(b) The two applicants have passed the Revenue Qualifying Examination within 9 years and 3 attempts, is clear from the information depicted in TABLE-B and the same is not disputed.

(c) How the number of attempts in which a candidate has passed sub-service departmental examination is to be counted is the only critical factor in deciding this matter. At this stage, we proceed to refer to citations made by the two sides and the G.R. dated 31.03.2021 as follows:-

> *(i) Government Resolution issued by General Administration Department, bearing No. विपधो-२६२०/प्र.क्र. १६/का.१७, मंत्रालय, मुंबई, dated 31.03.2021 read with Order passed by this Tribunal in O.A. No. 280/2021 with O.A. No. 281/2021, dated 30.11.2021.*
>
> The G.R. dated 31.03.2021 had not been examined on merit while deciding the O.A. No.

280/2021 with O.A. No. 281/2021 on the ground that this G.R. cannot be given retrospective effect in respect of final seniority list which was published on 10.07.2020. Only an observation was made by this Tribunal that the G.R. or Circulars cannot override provisions of Rules and can only fill in the gap of issues not addressed by the Rules or clarify certain aspects to remove ambiguity in interpretation. Therefore, we proceed to examine the effect of the aforesaid G.R. on this matter.

Para (ड) of the Government Resolution issued by General Administration Department, bearing No. विपधो-२६२०/प्र.क्र.१६/का.१७, मंत्रालय, मुंबई, dated 31.03.2021, which deals with the date of giving effect to this G.R., makes it clear that the provisions of this G.R. dated 31.03.2021 will apply with effect from the date of issue of this G.R. in respect of counting number of chances availed by a candidate. To quote the relevant provision:

> ***"(ड) धोरण अंमलबजावणीबाबतची कार्यपध्दती :-***
>
> *विभागीय परीक्षेच्या सामाईक बाबींचे धोरण हे सदर शासन निर्णयाच्या दिनांकापासून लागू होईल.*

तथापि, सदर धोरणातील अ.क्र. अ(I) ४ व अ (II) (५) येथील तरतूद ही, संदर्भाधिन क्र. १ येथील दि. १ मार्च २०१८ रोजीच्या शासन निर्णयानुसार अंतर्भुत केले असल्यामुळे, सदर तरतूद ही त्या शासन निर्णयाच्या दिनांकापासून म्हणजेच दि. १ मार्च २०१८ पासून लागू होईल."

It may be noticed that the provisions mentioned in para *अ(I) (४) व अ (II) (५)* of this G.R. dated 31.03.2021 deals with raising age of granting exemption from passing Departmental Exams from 45 years to 50 years, and therefore, of no relevance in the present matter. For ready reference the provisions of para *अ (I) (४) व अ (II) (५)* are being quoted below:

"(अ) विभागीय परीक्षासंदर्भातील सामाईक बाबींचे धोरण :-

(I) संबधीत पदावर कायम करण्यासाठी घेण्यात येणारी विभागीय परीक्षा (उदा. सेवाप्रवेशोत्तर परीक्षा)-

१).....

२).....

३).....

***४)परीक्षा उत्तीर्ण होण्यापासून सूट** - संदर्भ क्र. १ येथील दि. १ मार्च २०१८ च्या शासन निर्णयानुसार, सदर परीक्षा उत्तीर्ण होण्यापासून शासकीय अधिकारी / कर्मचारी यांना वयाची ५० वर्षे पूर्ण झाल्याच्या दिनांकास सूट अनुज्ञेय राहील.*

***टीप-** प्रशासकीय विभागांनी त्यांच्याकडील तांत्रिक स्वरूपाचे कामकाज हाताळणा-या कर्मचा-यांना विभागीय परीक्षा उत्तीर्ण होण्यापासून वयोमर्यादेची सूट न देण्याबाबत जाणीवपूर्वक निर्णय घेउन त्यानुसार त्यांच्या विभागीय परीक्षा नियमामध्ये सूट देण्याबाबतची कोणती तरतूद विवक्षितपणे नमूद केली नसेल तर त्यांच्यासाठी सदर परीक्षा उत्तीर्ण होण्यापासूनची सूट लागू राहणार नाही.*

(II) वरीष्ठ पदावर पदोन्नती देण्यासाठीची पात्रता परीक्षा -

१).....

२).....

३).....

४).....

५) परीक्षा उत्तीर्ण होण्यापासून सूट *- संदर्भ क्र. १ येथील दि. १ मार्च २०१८ च्या शासन निर्णयानुसार, कर्मचा-याने सध्याच्या पदावर किमान १५ वर्षे सेवा पूर्ण केल्याच्या दिनांक किंवा त्यांच्या वयाची ५० वर्षे पूर्ण झाल्याचा दिनांक यापैकी जे नंतर घडेल त्यानंतरच्या लगतच्या दिनांकास त्याला सदर परीक्षा उत्तीर्ण होण्यापासून सूट अनुज्ञेय राहील."*

Therefore, in our considered opinion the provisions of G.R. dated 31.03.2021 do not find application in the present O.A.

(ii) *Order passed by this Tribunal in O.A. No. 576/2018, dated 09.01.2019* - In this case, the Tribunal had directed the Respondent i.e. Collector, Jalgaon to take into consideration the provisions of GR. issued by General Administration Department, bearing No. E.X.M.-1075/1681-XVII, Sachivalaya, Bombay, dated 24.08.1976 under which one additional year and one additional chance is allowed for candidates belonging to S.C., S.T., D.T and N.T. Categories. Therefore, as a natural corollary, the two Applicants may not lose their seniority even if they are treated to have passed sub-service departmental examination in 5 years and 4 attempts.

(iii) *Order passed by the Principal Bench of this Tribunal in O.A. No. 354/2015, dated 02.02.2017* - In the cited O.A. question before the Principal Bench of this Tribunal did not relate to manner of counting number of attempts. This aspect was also not decided by this Tribunal in the said O.A. The question before the Full Bench of this Tribunal at Mumbai in **O.A. No. 354/2015 (Shri Mahesh M. Sapre & 4 Ors. Vs. the State of Maharashtra & Ors.), dated 02.02.2017** was to settle the deferring interpretation of clauses dealing with effect of not passing Sub-Service Departmental Examination and/or Qualifying Examination within prescribed number of years and number of chances on seniority of an employee taken by the two Division Benches in **O.A. No. 288/2013 (Pravin Mahadu Varande and 20 others Vs. District Collector, District Raigad and 21 others), dated 16.12.2014 and O.A. No. 587/2008 (Shri Shriram Gurav Vs. The Collector, Dist.: Satara and 5 others), dated 23.06.2009**. Therefore, the same is not relevant in the present matter.

(d) It has been claimed by the Applicants that officers sub-ordinate to the Respondent No. 3 had given wrong

information to the Applicants that the applicants were not eligible to apply for appearing in sub-service departmental examination being conducted in same year as that of the year of their appointment. However, the Applicants have not substantiated their allegation so made by them by submission of any documentary evidence. Therefore, this claim made by the Applicants is fit to be rejected.

7. **Conclusion :** Based on above analysis, we are of considered opinion that the Applicants, who belong to S.T. category, have passed Sub-Service Departmental Examination within prescribed number of years and number of attempts. Therefore, this Original Application deserves to be allowed on merit. Hence, the following order :-

O R D E R

The Original Application No. 349/2021 is allowed in following terms :-

(A) The respondent No. 3 is directed to grant seniority to the applicants in the cadre of Talathi from the date of their appointment in that cadre and to consider their cases for promotion as per rules and merit of the case.

(B) No order as to costs.

MEMBER (A) **VICE CHAIRMAN**