

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 390 OF 2020

DISTRICT: - NANDED.

Aashatai Pandurang Metkar,
Age -37 years, Occu. : Service as a
Jr. Clerk, R/o. Tahsil Office, Mudkhed,
Tq. Mudkhed, Dist. Nanded.

.. APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai – 32.
- 2. The Divisional Commissioner,**
Divisional Commissioner Office
At Aurangabad, Tq. Dist. Aurangabad.
- 3. The District Collector,**
Nanded, Tq. & Dist. Nanded.
- 4. The Tahsildar,**
Mudkhed, Tq. Mudkhed,
Dist. Nanded.

.. RESPONDENTS

APPEARANCE : Shri J.M. Murkute, learned counsel for
the applicant.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

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

DATE : **30.03.2022.**

ORDER**[Per : Shri Bijay Kumar, Member (A)]**

1. This Original Application has been filed by one Ms. Aashatai Pandurang Metkar, R/o Mudkhed, Dist. Nanded on 25.09.2020 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby, challenging the seniority list with reference to the date of 01.01.2019 for the cadre of Junior Clerks which had been published on 26.05.2020 by respondent No. 3 i.e. the District Collector, Nanded. As the applicant has been working as a Junior Clerk in the office of District Collector, Nanded and Respondent Nos. 2 to 4 are also situated within Aurangabad revenue division; it is evident that this matter falls within the territorial jurisdiction of this bench of Maharashtra Administrative Tribunal. It is also noticed that this Original Application has been filed within time limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

2. The background facts as stated by the applicant in the Original Application may be summed up as follows: -

(a) The applicant had been initially appointed as a Class-IV employee in the cadre of Peon (*Shipai* - शिपाई) by the respondent No. 3, vide his order dated 02.07.2007.

(b) The applicant was promoted to the post of Clerk vide order of Respondent No. 3, dated 25.03.2011.

(c) The applicant claims that she passed the Sub-Service Departmental Examination held on 04.12.2014 and result declared on 12.03.2015 i.e. within 4 years from the date of appointment in clerical cadre and 3 chances, as required by the provisions of Section 4(a) of the Maharashtra Sub-Service Departmental Examination Rules, 1988 (in short, "The Rules, 1988"). Accordingly the Respondent No. 3 had published the draft seniority list w.r.t. the date of 01.01.2019 vide Notification dated 18.01.2020 (Annexure A-9, page No. 40 of the paper book) and granted seniority to the applicant w.e.f. 25.03.2011. Accordingly, the applicant was declared to be eligible for promotion to the post of Sr. Clerk.

(d) However, General Administration Department, Government of Maharashtra, (*in short*, "GAD") issued a Circular No. संकीर्ण २३१७/प्र.क्र. ३३/का. १७, मंत्रालय, मुंबई, dated 17.11.2017 giving clarification for the term 'Number of Chances' and the method of counting 'number of chances'. Adopting the same, the Respondent No. 3 revised the seniority list of Jr. Clerks w.t.t. 01.01.2019 published on 18.01.2020 vide another Notification dated 14.02.2020 (Annexure A-12, page No. 49 of the paper book) as a result of which the Seniority List position of the applicant was down-

graded by reckoning the same w.e.f. date of appearing in Sub-Service Departmental Examination-2014 i.e. 04.12.2014.

(e) The applicant further claims that she submitted her representation on 18.02.2019 (Annexure A-13, page No. 53 of the paper book) through Respondent No. 4 in respect of the revised seniority list dated 14.02.2020. However, Respondent No. 3 rejected her representation on 26.05.2020 and finalized the revised seniority list in which the applicant's seniority position was finally settled at w.r.t. dated 04.12.2014 instead of 25.03.2011. Being aggrieved by this order of Respondent No. 3 dated 26.05.2020 (Page Nos. 54-58 of the paper book) that the applicant has filed this Original Application.

3. **Relief Sought** – The applicant prayed for relief as per prayer clause, which is reproduced verbatim as follows :-

- “A) This Original Application may kindly be allowed.*
- B) The final seniority list dated 26.05.2020 prepared and published by the respondent No. 3, the District Collector at Nanded may kindly be quashed and set aside.*
- C) The order dated 26.05.2020 passed by the respondent No. 3, the District Collector, Nanded*

rejecting the objection filed by the applicant to the seniority list may kindly be quashed and set aside.

- D) The respondents may kindly be directed to determine the seniority of the applicant from her date of recruitment / appointment on the post of Clerk i.e. from 25.03.2011 and uphold the final seniority list prepared and published on 18.01.2020 by the respondent No. 3 the District Collector Nanded.*
- E) The respondents may kindly be directed to consider and give promotion to the applicant on the post of Senior Clerk as per her tenure and as per the seniority list published on 18.01.2020.*
- F) Pending hearing and final disposal of this Original Application the final seniority list dated 26.05.2020 prepared and published by respondent No. 3 the District Collector at Nanded may kindly be stayed.*
- G) Pending hearing and final disposal of this Original Application stay may kindly be granted to the final seniority list dated 26.05.2020 and the respondents may kindly be directed to consider and give promotion to the applicant on the post of Senior Clerk as per her tenure and as per the seniority list published on 18.01.2020.*
- H) Any other suitable and equitable relief may kindly be granted in favour of the applicant.”*

4. The Tribunal passed following order in term of para 4 of the order dated 17.12.2020 in view of prayer for interim relief made by the applicant :-

“4. In this background, the respondents are directed to decide the objection of the applicant and to decide the same on the basis of law laid down in the O.A. 354/2015 decided by the Principal Seat of this Tribunal at Mumbai on 03.02.2017 and Rules framed by the Government of Maharashtra applicable to the applicants and without hearing the applicants they shall not pass any order.”

5. **Pleadings : –**

(a) Affidavit in reply was filed on behalf of Respondent No. 03 on 11.12.2020 which was taken on record vide Tribunal's order dated 17.12.2020 and a copy thereof was supplied to the other side. As the pleadings were complete, the matter was closed for final hearing vide Tribunal's order dated 17.12.2020, which finally took place on 07.03.2022 and the matter was reserved for orders.

6. **Analysis of Facts :-**

(a) It is admittedly that the Respondent No. 3 has revised the seniority list of Junior Clerks w.t.t. 01.01.2019 and published the same on 26.05.2020 in accordance with clarification provided by the above mentioned Circular issued by the “GAD”, dated 17.11.2017. Clarification issued by the said Circular had been considered by this Tribunal while dealing with O.A. No. 280/2021 and 281/2021 and a common order had been passed on 30.11.2021. Even

though, the said circular was issued in respect of different set of departmental examinations, the same had dealt with the term 'Number of Chances', which has been referred to by the respondent No. 3 while taking decision and for that reason the same has been challenged by the applicant; therefore, the same is being revisited in the interest of justice.

(b) As directed by this Tribunal vide its order dated 17.12.2020, the respondents were required to decide the objection of the applicant on the basis of law laid down by order passed by the Principal Bench of this Tribunal at Mumbai, dated 03.02.2017 in O.A. No. 354/2015 and therefore, the same is also being taken into account before passing order in the present O.A.

(c) On perusal of the order dated 03.02.2017 passed by the Principal Bench of this Tribunal in O.A. No. 354/2015, it appears that the larger bench had been constituted to consider the two differing orders, the one passed by the 1st Division Bench of this Tribunal which decided Gurav's case (O.A. No. 587/2008, Shri Shriram Gurav Vs. The Collector, Dist : Satara and 5 others, dated 23.6.2008 / CORAM : Shri R.B. Budhiraja, Vice-Chairman and Shri Justice S.R. Sathe, Member (J), and the second order passed by the 2nd Division

Bench in Varande's case, O.A. No. 288/2013, Pravin Mahadu Varande and 20 others Vs. District Collector, District Raigad and 21 others, dated 16.12.2014 rendered by a Bench comprising two of us (Shri Rajiv Agarwal, Vice-Chairman and Shri R.B. Malik, Member (J) and give finality to the issue. Following questions were framed by the Larger Bench comprising of Shri Rajiv Agarwal (Vice-Chairman), Shri R.B. Malik (Member-J) and Shri J.D. Kulkarni, Member (J) in O.A. No. 354/2015, in which order was passed on 02.02.2017.

(i) Whether in Varande's O.A. it was rightly decided that a part of relevant rule discussed in said order regarding loss of seniority in the clerical cadre was superfluous?

(ii) Whether the rule of precedents was accurately followed in Varande's O.A. in the context of the earlier order in Gurav's O.A.?

(iii) Whether in Varande's O.A., the issue of loss of seniority was correctly decided?

The larger Bench decided all the above mentioned 3 points of reference in negative.

(d) Now, we revisit the provisions of Circular dated 17.11.2017 issued by "GAD" (Annexure A-11, page 46 of paper book) in the interest of justice and also to deliberate

on the procedure as laid down by this Tribunal in O.A. No. 280/2021 and 281/2021, by passing a common order dated 30.11.2021 which is as follows :-

(i) The above mentioned Circular dated 17.11.2017 issued by the G.A.D. provides in its para (5) as follows:-

“५. उपरोक्त स्पष्टीकरण लक्षात घेता, परीक्षेला बसण्यास पात्र असूनही जर एखादया वर्षी उमेदवाराने परीक्षेचा अर्ज सादर केला नाही किंवा परीक्षेचा अर्ज सादर करून परीक्षेस अनुपस्थित राहिला तरी त्या वर्षी आयोजित होणारी परीक्षा ही तीन संधीमधील एक संधी म्हणून गणण्यात येते.”

(ii) Above provision has been justified by explaining the reasons by means of information tabulated and depicted under para (2) of the said Circular dated 17.11.2017. Reference is drawn to the said table which is being reproduced below:-

“ परीक्षा उत्तीर्ण हाण्यासाठीचे निकष व परीक्षा आयोजनाचे वेळापत्रक पाहता, उमेदवारांच्या नियुक्तीच्या वेगवेगळ्या दिनांकामुळे उमेदवार परीक्षेस बसण्यासाठी पात्र ठरण्याच्या वेगवेगळ्या संधी उपलब्ध होतात हे पुढील तक्त्याद्वारे स्पष्ट करण्यात येत आहे :-

बाब	उमेदवार “अ”	उमेदवार “ब”
नियुक्तीचा दिनांक	१० जानेवारी, २०१०	४ नोव्हेंबर, २०१०
सेवेची ५ वर्षे पूर्ण झाल्याचा दिनांक	९ जानेवारी, २०१५	३ नोव्हेंबर, २०१५
प्रथम संधी (नोव्हें. /डिसें. २०१५)	३१ ऑक्टोबर पर्यंत ५ वर्षे अखंड सेवा पूर्ण झाल्यामुळे परीक्षेचा अर्ज भरण्यास व परीक्षेस बसण्यास पात्र	३१ ऑक्टोबर रोजी ५ वर्षे अखंड सेवा पूर्ण न झाल्यामुळे परीक्षेचा अर्ज भरण्यास अपात्र
द्वितीय संधी (नोव्हें. /डिसें. २०१६)	परीक्षेला बसण्यास पात्र	परीक्षेस बसण्यास पात्र
तृतीय संधी (नोव्हें. /डिसें. २०१७)	परीक्षेला बसण्यास पात्र	परीक्षेला बसण्यास पात्र
चतुर्थ संधी (नोव्हें. /डिसें. २०१८)	परीक्षेला बसण्यास पात्र	परीक्षेला बसण्यास पात्र

सेवेची ९ वर्षे पूर्ण झाल्याचा दिनांक	९ जानेवारी, २०१९ (नियुक्तीच्या दिनांकापासून ९ वर्षांची अखंड सेवा पूर्ण होत असल्याने नोव्हें/डिसें. २०१९ ची परीक्षा ही परीक्षा उत्तीर्ण होण्यासाठी उमेदवारास विहित केलेल्या कालावधीनंतर होणारी परीक्षा असेल)	३ नोव्हेंबर, २०१९ (परीक्षेचा अर्ज भरण्यास पात्र, मात्र नोव्हें/डिसेंबर २०१९ मधील परीक्षा आयोजनाच्या कार्यवाहीपूर्वी ९ वर्षांची अखंड सेवा पूर्ण होत असल्याने, नोव्हें/डिसें. २०१९ ची परीक्षा ही परीक्षा उत्तीर्ण होण्यासाठी उमेदवारास विहित केलेल्या कालावधीनंतर होणारी परीक्षा असेल)
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(iii) Further reasoning has been given in para (3) of the said Circular, which read as follows:-

“३. उपरोक्त सोदाहरण स्पष्टीकरणाचे अवलोकन करता असे दिसून येते की, विभागीय परीक्षा नियमातील तरतुदीनुसार नियुक्तीची तारीख विभिन्न असल्यामुळे चार वर्षांमध्ये परीक्षेला बसण्यास उमेदवार “अ” यास चार संधी तर उमेदवार “ब” यास केवळ तीनच संधी प्राप्त होतात. त्यामुळे ज्या उमेदवारांना परीक्षेला बसण्याच्या केवळ तीन संधी प्राप्त होतात त्या उमेदवारांवर अन्याय होवू नये व सर्व उमेदवारांना समान संधी प्राप्त व्हाव्यात या उद्देशाने परीक्षा आयोजन हीच संधी म्हणून गणण्यात आली असून चार वर्षात तीन संधीची तरतूद परीक्षा नियमावलीत करण्यात आली आहे. सदर तरतुदीमुळे उमेदवार “अ” हा परीक्षेस बसण्यासाठी चार वेळा पात्र ठरत असला तरी परीक्षा आयोजन हीच संधी असल्यामुळे सदर उमेदवारास पहिल्या तीन संधीत म्हणजेच नोव्हें/डिसें. २०१५ ते नोव्हें/डिसें. २०१७ या पहिल्या तीन वर्षातच परीक्षा उत्तीर्ण होणे क्रमप्राप्त आहे. तसेच उमेदवार “ब” हा परीक्षेस बसण्यास केवळ तीन वेळा पात्र ठरत असून परीक्षा आयोजन हीच संधी असल्यामुळे सदर उमेदवारास देखील तीन संधी (नोव्हें/डिसें. २०१६ ते नोव्हें/डिसें. २०१८) उपलब्ध होतात. सबब दोन्ही उमेदवारास चार वर्षात तीनच संधी उपलब्ध होतात अशा प्रकारे सर्वांना समान संधी उपलब्ध करून देण्यात येतात.”

(iv) Now, a reference is made to rule (3) of the Maharashtra Sub-Service Departmental Examination Rules, 1988, which reads as follows:-

“3. Examination when to be held.- The examination shall be held by the Commissioner of the respective Revenue Division once in a year in the month of September, at the headquarters of the District in that Division”

Similarly reference is drawn to Rule 4(b) of the Maharashtra Sub-Service Departmental Examination Rules, 1988, which reads as follows:-

“4(b) The Collector may, at his discretion, grant any deserving person an additional chance and an extension of the period prescribed for passing the examination up to two years;”

(e) In the present matter, the applicant, who was promoted as Clerk on 25.03.2011, appeared in Sub-Service Departmental Examination as per following details :-

- (i) Date 15.06.2011 – Applicant did not appear due to illness.
- (iii) Date 12.01.2012 – Applicant did not appear due to being on maternity leave.
- (iv) Date 12.11.2012 – Appeared in exam. but Failed
- (v) Date 21.12.2013– Appeared in exam. but Failed.
- (vi) 19.10.2014 – Passed, result published on 15.03.2015.

The above information shows that the applicant could not avail opportunity to appear in examinations held in June 2011 and January 2012 due to bona-fide reasons and also that the exams were not synchronized with the schedule prescribed under rule (3) of the “The Rules, 1988” and had been held erratically in any month of the year and sometimes, for more than once in the same year. Therefore, the rationale for prescribing the manner of counting ‘number of chances’ as given in GAD Circular dated 17.11.2017 does

not hold ground. Objective of granting equal opportunity to all the candidates could be achieved just by applying simple meaning to the term “Three Chances” instead of interpreting the same as “Three Consecutive Chances”. Though “The Rules, 1988” do not provide for contingency under which four opportunities to appear in examination are not available to any candidates, therefore, the competent authority may invoke power under Rule 4(b) of “The Rules, 1988”.

(f) Last but not the list, plain reading of the provisions of Rule 4(a) of “The Rules, 1988” does not show that the phrase ‘*number of chances*’ is intended to be interpreted as “*number of consecutive chances*” therefore, imparting restrictive interpretation to the phrase “Number of Chances” to mean “Number of Consecutive Chances” is prima facie, *ultra-vires* to the Rule 4(a) of the “The Rules 1988”.

7. **Conclusion** :- Upon considering all the facts on record and oral submissions made by both the contesting parties, we are of the considered opinion that there is merit in the contention of the applicant, therefore, following order is being passed :-

ORDER

The Original Application No. 390 of 2020 is, hereby, allowed in following terms:-

- (A) Rule 4 (a) of the Maharashtra Sub-Service Departmental Examination Rules, 1988 are unambiguous and therefore, attributing any restrictive interpretation to the same by way of issue of clarification / guideline, including the Circular issued by the General Administration Department of the State Government, dated 17.11.2017 without amending “The Rules, 1988”, having effect of interpreting the phrase ‘*number of chances*’ as “*number of consecutive chances*” are, hereby, held to be ultra vires to the said Rules, 1988.
- (B) Interpretation / clarification provided by the circular of General Administration Department, dated 17.11.2017 to the phrase “Number of Chances” for passing Sub-Service Departmental Examination as per Provisions of Rule 4(a) of The Maharashtra Sub-Service Departmental Examination Rules, 1988 is, hereby, quashed and set aside and this decision shall have only prospective effect in respective of identical cases/ claims.
- (C) The seniority list dated 26.05.2020, prepared and published by the respondent No. 3, the District Collector, Nanded w.r.t. 01.01.2019 is, hereby, quashed and set aside.
- (D) The order dated 26.05.2020, passed by the respondent No. 3, the District Collector, Nanded, rejecting / not accepting the objection filed by the applicant to the above mentioned seniority list dated 26.05.2020 is, hereby, quashed and set aside.

- (E) The respondents are hereby directed to accordingly revise the said seniority list for the post of Junior Clerks, as per the provisions of Rule 4(c) of the Maharashtra Sub-Service Departmental Examination Rules, 1988, giving effect to the manner of counting “number of chances” as decided by this order, for the purpose of passing the sub-service departmental examination within the period and chances prescribed under Rule 4(a) of the “The Rules 1988”.
- (F) The respondents to consider the case of the applicant for promotion to the post of Senior Clerk as per the revised seniority, as per the seniority cum merit criterion and applicable rules, orders and guidelines. Accordingly, the applicant may be extended all the consequential benefits as per the extant rules in this regard.
- (G) No order as to costs.

MEMBER (A)

O.A.NO.390-2020(DB-) Promotion-HDD (kpb)

MEMBER (J)