

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 408 OF 2021**

**DISTRICT : PARBHANI**

**Smt. Urmila Marotrao Gaikwad,** )  
Age : 38 years, Occu. : Service as Talathi, )  
Tahsil Office, Parbhani, District Parbhani. )  
R/o : House No. 644, Near Hinglajsmata Mandir,) )  
Dattadham Parisar, Wasmat Road, Parbhani,) )  
District Parbhani. )  
.. **APPLICANT**

**V E R S U S**

1. **The District Collector,** Parbhani )  
Administrative Building, Collector Campus,) )  
Station Road, Gandhi Park, Parbhani, ) )  
District Parbhani -431401. ) )

2. **Shri Praveen Radhakrishna Khade,** )  
Age : 35 years, Occu. : Circle Officer, Purna,) )  
C/o. : Tahsil Office, Purna, Dist. Parbhani.) )  
.. **RESPONDENTS**

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**APPEARANCE** : Shri V.B. Wagh, Advocate for the  
Applicant.

: Shri V.R. Bhumkar, P.O. for the Respondent  
Authorities.

: Shri K.B. Jadhav, Advocate for respondent No.2.

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

**Reserved on** : **31.03.2023**

**Pronounced on** : **07.06.2023**  
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**ORDER****(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by one Smt. Urmila M. Gaikwad on 30.07.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, upon being aggrieved by impugned communication dated 21.06.2021, issued by the sole respondent dated rejecting claim of the applicant for promotion from the cadre of Talathi to Circle Officer on the ground of loss of seniority of the applicant on account of request transfer obtained by the applicant from Revenue Sub-Division of Selu to Revenue Sub-Division , Parbhani.

2. The learned Advocate appearing for the applicant sought leave of this Tribunal on 19.09.2022 made by oral submission, to add some candidates, according to him junior to the applicant selected for the promotional post as Part Respondent which was granted vide Oral Order dated 19.09.2022. Accordingly, one Shri Praveen Radhakrishnan Khade, working as Circle Officer, Purna, District-Parbhani was added as respondent No. 2 by carrying out amendment on 19.09.2022.

**3. Background Facts-** The background facts in the present matter may be summed up as follows :-

(a) It is admittedly that the cadre comprising of the posts of Talathi is a revenue sub-division cadre and the concerned appointing authority is Sub-Divisional Officer (Revenue).

(b) It is also admittedly that the applicant was initially appointed as Talathi in Revenue Sub-Division, Selu, District-Parbhani vide order of appointing authority i.e. the Sub-Divisional Officer, Selu. *However, for the reasons best known to the applicant that copy of her appointment order has not been appended with the present O.A.* Instead, the applicant has appended a communication sent by District Collector, Parbhani, bearing No. जा.क. २००९/अ-२/आस्थ-१/पदभरती-जिल्हाधिकारी कार्यालय, परभणी, dated 16.06.2010 and referred to the same in para 2 of the present O.A. (page 3 of paper-book) as "The copy of the appointment Order dated 16.06.2010 issued by District Collector, Parbhani." This is apparently, a factually wrong statement.

(c) The applicant has stated that she had applied for request transfer from Selu Revenue Sub-Division of Parbhani Revenue Sub-Division (*i.e. from jurisdiction of one appointing authority to another*) by an application dated

25.09.2017 but, the applicant has not enclosed copy of her application for the request transfer which may have mention of terms & conditions which the applicant may have accepted while making such request.

(d) The applicant has submitted a copy of Order passed by respondent No. 1, vide his letter No. जा.क. २०१९/ अ-२/आस्थ-१/ सिआर-जिल्हाधिकारी कार्यालय, परभणी, dated 31.05.2019 which is appended with the present O.A. at page No. 18 of paper-book and marked as Annexure A-2; which states that the request of the applicant for transfer from jurisdiction of Sub-Divisional Officer Selu to Sub-Divisional Officer Parbhani had been approved by the District Level Civil Services Board and spells out terms & conditions under which the said transfer was approved. But, the applicant has not enclosed copy of rules under which she claims that her application was approved by the competent authority.

(e) From the copy of approval of the application submitted by the applicant for inter-sub-division request transfer by the District level Civil Services Board, which was communicated to concerned sub-ordinate authorities by respondent No. 2 vide his letter No. जा.क. २०१९/ अ-२/आस्थ-१/

सिआर-जिल्हाधिकारी कार्यालय, परभणी, dated 31.05.2019 it is noticed that the applicant's application was approved under following term & conditions which, for ready reference, is reproduced as follows :-

“१. बदली नंतरच्या उपविभागात जेष्ठता ठरवितांना मागील सेवा फायदा मिळणार नाही. आणि त्यांची नवीन उपविभागांत व जिल्हयांचे एकत्रित जेष्ठता यादीत सर्वात शेवटच्या अनुक्रमांवर जेष्ठता लागेल.

२. बदली झालेल्या उपविभागांत प्रशासकीय कारणास्तव कोणत्याही सजावर बदली केल्यास आक्षेप राहणार नाही.

३. नव्याने बदलीवर रुजू झालेल्या जिल्हा आस्थापनेवर नोकर कपातीची शाश्वती / हमी देण्यात येणार नाही.

४. विनंतीवरून बदलीच्या ठिकाणी रुजू होणेस्तव प्रवासभत्ता व पदग्रहण कालावधी अनुज्ञेय होणार नाही.

५. या पुढे आंतरजिल्हा/अंतर उपविभाग बदलीचा फायदा अनुज्ञेय असणार नाही.

६. बदली अधिनियमातील व संदर्भ क्र. २ मधिल शासन निर्णयांतील सर्व अटी व शर्ती बंधनकारक राहतील.”

(f) It is apparent that the applicant accepted the terms & conditions including the one relating to zero-seniority in Parbhani sub-division as stipulated in aforementioned Order passed by respondent No. 1, dated 31.05.2019 and joined at Parbhani sub-division on 14.08.2019.

(g) It is at the time of promotion to the post of Circle Inspector that the applicant has contended that her seniority should be counted taking into account her services in Selu sub-division also.

(h) The applicant has not placed on record seniority list of Talathi cadre as on 01/01/2020 or 01.01.2021 i.e. after her joining in Parbhani sub-division; instead, she has submitted a worksheet showing service details including effect of passing sub-service departmental examination and revenue qualifying examination and remarks like that of loss of seniority due to inter-sub-division request transfer, if availed as a follow up action after order passed by this Tribunal in O.A. No. 354/2016.

(i) The applicant has contended that in the work-sheet prepared as a follow up action after order passed in O.A. No. 354/2016, her name appeared at serial number 345 but a remarks had been put against her name regarding loss of seniority on account of inter-sub-divisional transfer “आंतर उपविभाग बदली दि. ३१.०५.२०१९ मुळे ज्येष्ठता गमविली”.

(j) The Departmental Promotion Committee (in short, DPC) had its meeting on 05.03.2021 for recommending names of Talathis for promotion to the cadre of Circle Officers. Even though the applicant's name was under consideration for promotion, the DPC did not recommend

the applicant's name for promotion on the ground of loss of her seniority due to her inter-sub-division request transfer. The applicant further contends that the DPC recommended name of another Talathi whose name appears in the aforementioned work-sheet at serial No. 355. Thus the junior Talathi with lower serial number/ seniority position was promoted to the post of Circle Inspector vide order dated 05.04.2021.

(k) The applicant took objection to the promotion of the Talathi junior to her vide representation dated 06.04.2021. The respondent rejected the representation made by the applicant vide order passed on 21.06.2021 stating that as per the Cause 8 (9) of the Government Resolution dated 15.05.2019 the seniority of the applicant has to be decided w.r.t her joining on establishment of Talathis in Parbhani sub-division.

(l) The applicant has relied upon orders passed by Nagpur Bench of this Tribunal in O.A. No. 545/2015 dated 05.11.2018 and in O.A. No. 785 of 2014 dated 13.02.2017 copies of which have been appended as Annexure A-10, at

page Nos. 103 to 143 of the paper-book, and prayed for relief in following terms.

**4. Relief Prayed for:** The applicant has prayed for relief in terms of para 18 of this O.A. (page 11-12 of the paper-book) and Interim Relief in terms of para 19 of this O.A. (page 12 of the paper-book) which are being reproduced verbatim as follows: -

**“18) RELIEF (S) SOUGHT:**

***In view of the facts mentioned in para 6 above, the applicant prays for the following relief(s):-***

*(A) This Original Application may kindly be allowed.*

*(B) To hold and declare the applicant is entitled for promotion from the post of Talathi to Circle Officer Promotion pursuant to the Departmental Promotion Committee Meeting dated 03/05/2021 taking into consideration length of service.*

*(C) To direct the respondents to consider the claim of the applicant for promotion in the cadre of Talathi to Circle Officer pursuant to the Departmental Promotion Committee Meeting dated 03/05/2021 and taking into consideration of the length of service and also to extend all the consequential benefits.*

*(D) To quash and set aside the communication dated 21/06/2021 issued by the sole respondent rejecting the claim of the applicant for promotion from the cadre of Talathi to Circle Officer on the ground of absorption from one division to another division.*

*(E) Any other suitable relief may kindly be granted in favour of the applicant.*

19) **INTERIM RELIEF IF ANY PRAYED FOR:**

- a) *Pending hearing and final disposal of this Original application, the respondent authorities may be directed to consider the claim of the applicant for promotion pursuant to the Departmental Promotion Committee Meeting dated 05/03/2021 and to give her promotion on the post of Circle Officer taking into consideration the length of service forthwith.”*

**5. Chronology of Making Pleadings and Final Hearing :-**

- (a) Affidavit in reply was filed on behalf of respondent No. 1 on 29.11.2021 which was taken on record and a copy thereof, served on the other side.
- (b) The learned Presenting Officer was directed by this Tribunal vide Oral Order dated 20.04.2022 to place on record the seniority list, if maintained, of the period in which the present applicant was transferred from Selu sub-division to Parbhani sub-division, of the cadre of Talathis in both the sub-divisions.
- (c) Learned Advocate for the respondent No. 2 filed affidavit in reply on behalf of respondent No. 2 on 16.01.2023 which was taken on record and a copy thereof served on other parties each.
- (d) Learned Advocate for the applicant had filed rejoinder to the affidavit in reply filed by respondent Nos. 1 and 2 both not filed any sur-rejoinder affidavit but submitted

copies of following citations on which he relied during arguments/ final hearing.

*(i) Judgment of Hon'ble Supreme Court in Civil Appeal No. 1221 of 1987 with Civil Appeal No. 529 of 1989 and Civil Appeal No. 2320 of 1995, date of judgment: 05.12.1995, Union of India Vs. C. N. Ponnappan.*

*(ii) Judgment of Hon'ble Supreme Court in Civil Appeal No. 3749 of 1992, dated 14.01.1998, Scientific Advisor to Raksha Mantri Vs. V. M. Joseph.*

(e) The matter was finally heard on 31.03.2023 and reserved for order.

**6. Analysis of Facts:-** Following critical issues emerge from the above mentioned facts of the present matter :-

**ISSUE NO. I :-** *Whether the loss of seniority applied to the case of applicant due to her on request inter-sub-division transfer is in accordance with rules/ government orders issued in this regard?*

**Analysis:-**

(a) The applicant had applied for inter-sub-division request transfer vide her application dated 25.09.2017. At that point of time, Government Resolution issued by

General Administration Department, bearing No. SRV-2010/प्र.क्र.210/10/12, Mantralay, Mumbai-32, dated 03.06.2011 was applicable and reference of the same has been mentioned in the communication dated 31.05.2019 approving aforementioned inter-sub-decision request transfer. Though, the applicant has not enclosed copy of the said G.R. dated 03.06.2011, the same has been downloaded from government of Maharashtra website in the interest of justice and on perusal of the same, it is observed that clause No. (8) of the said G.R. reads as follows :-

“८) संबंधित कर्मचा-याची बदलीनंतर त्या पदावरील ज्येष्ठता रुजू झालेल्या दिनांकास निश्चित होईल. तसेच पुर्वीच्या सेवेचा लाभ वेतननिश्चिती, रजा, निवृत्तीवेतन याकरीता वित्त विभागाच्या संबंधित नियमातील तरतुदीनुसार अनुज्ञेय होईल.”

(b) It is also relevant to notice that by the time application of the applicant inter-sub-division request transfer was accepted on 31.05.2019 and by the time the applicant accepted terms & conditions attached to such transfer from Selu Sub-Division to Parbhani Sub-Division, the General Administration Department had issued amended G.R. in this regard bearing No. SRV 2016/प्र.क्र. 509/कार्या-12, Mantralay, Mumbai-32, dated 15.05.2019. Clause 8 (9) of the said G.R. reads as follows :-

“८. कायमस्वरूपी समावेशनासाठी अटी व शर्ती :-

(९) संबंधित कर्मचा-याचे कायमस्वरूपी समावेशन झाल्यानंतर, समावेशनाच्या पदावरील ज्येष्ठता तो त्या पदावर रुजू झाल्याच्या दिनांकास निश्चित होईल. त्याला मूळ कार्यालयातील पदाच्या ज्येष्ठतेचे कोणतेही लाभ अनुज्ञेय राहणार नाहीत. संबंधित कर्मचारी, समावेशनाच्या कार्यालयातील त्याच्या आगोदरच नियुक्ती केलेल्या कर्मचा-यांना कनिष्ठ समजण्यात यावा. तसचे, पूर्वीच्या सेवेचा लाभ, वेतननिश्चिती, रजा याकरीता वित्त विभागाच्या संबंधित नियमातील तरतूदी अनुज्ञेय होतील.”

**Inference:** - Based on above analysis it is clear beyond doubt that the applicant had voluntarily accepted the terms & conditions mentioned in G.R. dated 03.06.2011, as well as, the terms & conditions stipulated in G.R. dated 15.05.2019, therefore, action taken by the respondents is as per procedure laid down by the General Administration Department. As the applicant had consented to the terms & conditions, as discussed in preceding paras of this order, in our considered opinion, there is clearly no merit in her contention that she was not heard while applying condition of loss of seniority as per agreed terms & conditions of inter-sub-division request transfer.

**ISSUE NO. 2 :-** *What is the ratio of Orders passed by Nagpur Bench of this Tribunal in O.A. No. 545/2015 and batch, dated 05.11.2018 and O.A. No. 785/2014 dated 13.02.2017 and whether the said Orders set the precedent?*

**Analysis:** - On perusal of Order passed by Nagpur Bench of this Tribunal it is evident that the condition of loss of seniority on transfer of some of the foresters from one circle to another was not incorporated in the transfer orders. Moreover, inter-circle transfer was allowed without ensuring existence of vacancies under similar category of posts. In that sense, the ratio in O.A. No. 545/2015 and batch is different from the present matter. Order passed by Nagpur bench of this Tribunal in O.A. No. 785/2014 with O.A. No. 07/ 2016, order dated 13.02.2017 has defined transfer under question in three sub-categories and decided that one can be placed in seniority below the employees selected in the same batch. At the same time, the Nagpur Bench of this Tribunal has clarified in para (7) of its Order that- *“We are not expressing any opinion about the validity of G.R. dated 03.06.2011 though para 3 (8) appears to be not in consonance of Rule 4 (2) (C ) of the Regulation of Seniority Rules.*

**Inference-** The Order passed by this Tribunal has kept the issue of validity of G.R. issued by General Administration Department dated 03.06.2011 and 15.05.2019 in the light

of provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

**ISSUE NO. III:** - *Whether ratio in cited judgments delivered by Hon'ble Supreme Court applies in the present matter?*

**Analysis:** - Upon perusal of the judgments delivered by Hon'ble Supreme Court in the two cited Civil Applications, we find that both the Civil Application were regarding service length to be taken into account after loss of seniority after request transfer of an employee from jurisdiction of one appointing authority to another appointing authority. Therefore, in our considered opinion, the ratio being different, the same is not applicable / relevant in the present matter.

**ISSUE NO. IV :** - Whether the G.R. dated 03.06.2011 and 31.05.2019 issued by General Administration Department is ultra vires to the provisions relating to determination of seniority under the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (in short, '*Seniority Regulation*')?

**Analysis-**

(i) In this regard, provisions of rule 4 (2) (C) of the Regulation of Seniority is material which reads as follows:-

*“(C) the seniority of a transferred Government Servant vis a vis the Government servant in the post, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”*

(ii) As clause 8 of the G.R. dated 03.06.2011 and clause 8 (9) of the G.R. 31.05.2019, issued by the General Administration Department, provides for protection of pay, pay-fixation, entitlement of different kinds of leave and length of qualifying service for the purpose of pension and pensionary benefits, in our considered opinion, the two G.Rs. have been issued with due regard to *the class and pay-scale of the post, cadre or service from which he is transferred.*

(iii) Thus, dispute remains only with respect to determination of seniority. In this context the two conditions stipulated in rule 4 (2) (C) of the ‘Regulation of Seniority’ i.e., the ‘**length of his service therein**’ (from the post, cadre or service from which an employee is transferred) and ‘**the circumstances leading to his transfer**’ constitute the critical issues.

(iv) The basic admitted fact is that the seniority list of a post/ cadre / service is prepared by appointing authority for that post/ cadre or service. The critical question before us is whether the employees who have been on the seniority list prepared by an appointing authority as per extant rules, with reference to a date prior to the date of induction of another employee who comes on request-transfer from jurisdiction of another appointing authority, can be pushed down in seniority by securing seniority of newly inducted employee based on combined length of service of such newly inducted employee without following principles of natural justice? Service Jurisprudence in this regard goes in favour of creating a balance between public interest and interest of individual employees by having different rules for inter-cadre transfers on administrative grounds and such transfers on request of an employee for his/ her personal convenience. The present matter is regarding on-request inter-cadre transfer which constitutes a distinct '**circumstances leading to such transfer**'. It is not that in the present matter the applicant was not made aware of these facts and corresponding applicable rules. If the present G.Rs. are held to be ultra vires to the

*'Regulation of Seniority'* then only alternative which will be available to the respondents/ authorities is to approve inter-cadre request- transfer only when all the employees existing on the seniority list as on date of approving such inter-cadre transfer consent to the proposal, which in turn, will do no good to the employees like the present applicant and may end up in redundancy of special provision for inter-cadre transfers on humanitarian grounds.

**Inference-** The extant rules regarding determination of seniority on inter-cadre request-transfer is, in our considered opinion, in consonance with the rule 4 (2) (C) of MCS (Regulation of Seniority) Rules, 1982, is also just and fair.

**7. Conclusion :-** Based on above analysis of critical facts, in our considered opinion, the present Original Application is devoid of merit. Hence, following Order :-

**ORDER**

- (A) Original Application No. 408 of 2021 is dismissed for reason of being devoid of merit.
- B) No Order as to costs.

**MEMBER (A)**

**MEMBER (J)**