

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN ORIGINAL APPLICATION NOS. 444, 445,
446, 447, 448, 449, 450, 277, 278, 279 AND 401 ALL OF 2018

(1) ORIGINAL APPLICATION NO. 444 OF 2018

DIST. : JALNA

Gajanan s/o Shirpa Mahanur,
Age. 42 years, Occ. Service,
(as a Junior Clerk),
R/o Yeshwant Nagar, Ambad Road,
Jalna, Tq. & Dist. Jalna.

-- APPLICANT

VER S U S

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna.

-- RESPONDENTS

W I T H

(2) ORIGINAL APPLICATION NO. 445 OF 2018

DIST. : JALNA

Dhanraj s/o Laxman Bhute,
Age. 43 years, Occ. Service,
(as a Junior Clerk),
R/o Dhamangaon Dhat,
Tq. & Dist. Buldhana,
At present residing at Jalna,
Tq. & Dist. Jalna.

-- APPLICANT

VER S U S

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

2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

W I T H**(3) ORIGINAL APPLICATION NO. 446 OF 2018**

DIST. : JALNA

Jivan s/o Balasaheb Thosar,
Age. 37 years, Occ. Service,
(as a Junior Clerk),
R/o Ambad Chauphully (chowk),
Mahasul Colony, Ambad Road,
Jalna, Tq. & Dist. Jalna. -- APPLICANT

VER S U S

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

W I T H**(4) ORIGINAL APPLICATION NO. 447 OF 2018**

DIST. : JALNA

Santosh s/o Shankarrao Perke,
Age. 39 years, Occ. Service,
(as a Junior Clerk),
R/o Mukteshwar colony, Old Jalna,
B & C Quarter, D-6/23,
Jalna, Tq. & Dist. Jalna. -- APPLICANT

VER S U S

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

W I T H**(5) ORIGINAL APPLICATION NO. 448 OF 2018**

DIST. : JALNA

Vilas s/o Malhari Komatwar,
Age. 49 years, Occ. Service,
(as a Junior Clerk),
R/o Jamuna Nagar,
Jalna, Tq. & Dist. Jalna. -- APPLICANT

V E R S U S

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

W I T H**(6) ORIGINAL APPLICATION NO. 449 OF 2018**

DIST. : JALNA

Rejendra s/o Ranganath Helgat,
Age. 35 years, Occ. Service,
(as a Junior Clerk),
R/o Shastri Mohalla,
Old Jalna, Tq. & Dist. Jalna. -- APPLICANT

VERSUS

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

WITH**(7) ORIGINAL APPLICATION NO. 450 OF 2018**

DIST. : JALNA

Punjab s/o Sakharam Suradkar,
Age. 44 years, Occ. Service,
(as a Junior Clerk),
R/o T.V. Centre,
Jalna, Tq. & Dist. Jalna. -- APPLICANT

VERSUS

1. **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai -32.
2. **The Divisional Commissioner,**
Aurangabad.
3. **The Collector, Jalna,**
Tq. & Dist. Jalna. -- RESPONDENTS

WITH**(8) ORIGINAL APPLICATION NO. 277 OF 2018****DISTRICT: - JALNA.**

Ramesh S/o Bhanudas Walekar,
Age: - 38 years, Occu.: - Service
(As a Junior Clerk), R/o At : Math
Tanda, Post : Shahapur,
Tq. Ambad, Dist: Jalna. .. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) **The Divisional Commissioner,**
Aurangabad.
- 3) **The Collector,**
Jalna, Tq. & Dist: Jalna. .. **RESPONDENTS**

W I T H

- (9) **ORIGINAL APPLICATION NO. 278 OF 2018**

DISTRICT: - JALNA.

Uday S/o. Vishwanath Hande,
Age: - 40 years, Occu.: - Service
(As a Junior Clerk),
R/o At : Dehedkarwadi,
Tq. & Dist: Jalna. .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) **The Divisional Commissioner,**
Aurangabad.
- 3) **The Collector,**
Jalna, Tq. & Dist: Jalna. .. **RESPONDENTS**

W I T H

(10) ORIGINAL APPLICATION NO. 279 OF 2018**DISTRICT: - JALNA.**

Ashok S/o Panditrao Shelke,
Age: - 37 years, Occu.: - Service
(As a Junior Clerk),
R/o Sharda Nagar, Ambad,
Tq. Ambad, Dist: Jalna.

.. APPLICANT**V E R S U S**

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

2) The Divisional Commissioner,
Aurangabad.

3) The Collector,
Jalna, Tq. & Dist: Jalna.

.. RESPONDENTS**WITH****(11) ORIGINAL APPLICATION NO. 401 OF 2018****DISTRICT: - JALNA.**

Ramesh S/o Bhivasan Bansod,
Age: - 50 years, Occu.: - Service
(As a Junior Clerk),
R/o At : Plot No. 7, Maji Sainikcolony,
Tq. & Dist: Aurangabad.

.. APPLICANT**V E R S U S**

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

2) The Divisional Commissioner,
Aurangabad.

3) The Collector, Jalna,
Collectorate office, Dist: Jalna. .. **RESPONDENTS**

APPEARANCE : Shri Avinash S. Deshmukh, learned Advocate holding for Shri Swapnil A. Deshmukh, learned Advocate for the applicants in O.A. nos. 277, 278, 279, 444, 445, 446, 447, 448, 449 and 450/2018,

Shri Kiran D. Jadhav, learned Advocate for the applicant in O.A. no. 401/2018.

Shri M.S. Mahajan & Smt. Sanjivani Deshmukh Ghate, learned Chief Presenting Officer & Presenting Officer for the respective respondents in respective matters.

**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : 30th November, 2018

ORAL - ORDER

(Per : Justice M.T. Joshi, Vice Chairman)

Heard Shri Avinash S. Deshmukh, learned Advocate holding for Shri Swapnil A. Deshmukh, learned Advocate for the applicants in O.A. nos. 277, 278, 279, 444, 445, 446, 447, 448, 449 and 450/2018, Shri Kiran D. Jadhav, learned Advocate for the applicant in O.A. no. 401/2018 and Shri M.S. Mahajan & Smt. Sanjivani Deshmukh Ghate, learned Chief Presenting Officer

& Presenting Officer for the respective respondents in respective matters.

2. In O.A. nos. 444, 445, 446, 447, 448, 449 and 450 all of 2018 the respective applicants are challenging the show cause notice dtd. 1.6.2018 issued to them mentioning therein as to why they shall not be reverted from the post of Clerk-Cum-Typist to the lower post of Peon, under the control of res. no. 3 the Collector, Jalna.

The fact in the respective cases would show that these applicants were promoted on ad-hoc basis. Admitted fact is that at that time they were not possessing requisite qualifications in typing i.e. Government Commercial Certificate examination as required under the concerned rules. It appears that some spirited citizen has filed complaint before the concerned respondent in this regard and, therefore, show cause notices were issued to the respective applicants on 1.6.2018. The said show cause notices are challenged by the respective applicants in these O.As.

3. In O.A. nos. 277, 278, 279 & 401 all of 2018 the respective applicants are already reverted for the similar reasons as per the impugned order in each of the case.

4. Shri Deshmukh, learned Advocate holding for Shri Swapnil A. Deshmukh, learned Advocate for the applicants submits that during the period of getting promotion and issuing of show cause notices or passing of impugned order of reversion, the applicants in **O.A. nos. 444, 445, 446, 447, 448, 449 and 450 all of 2018** had acquired the requisite qualification in typing. He also points towards the averments made by the res. no. 3 in his affidavit in reply at para 16 and submits that the res. no. 3 is also of the opinion that the fresh promotions of these applicants would require to be made from the date they acquired the requisite qualification. The submission of the res. no. 3 in the affidavit in reply at para no. 16 is as under :-

“16. ... The inter-se communication dtd. 4.6.2018 addressing to this office in the same line that, the employees those who do not fulfill the requisite qualification of promotion at the relevant time ought to have been reverted and such reverted candidate ought to have given effect of promotion from the date of acquisition of requisite qualification for promotion (including Typewriting Certificate). It is further clarified that promotions which was effected from the period 2006 to 2016 that deemed date of promotion has to be awarded to the concerned eligible employee in Class – III cadre from the date of their acquisition of requisite qualification as per the number of post falls vacant in the year 2016.”

5. Further relying on the ratio of Hon’ble Supreme Court in the case of **M.A. Hameed Vs. State of A.P. and another [(2001) 9 SCC 261]**, he submits that since, if any, irregularity is caused in

promoting the applicants, the respondents did not act promptly and within a reasonable period, the impugned decision either taken or being taken in the respective cases is against equity and, therefore, he submits that in equity the promotions granted to the applicants be protected.

6. In the case of **M.A. Hameed (supra)**, relied upon by the learned Advocate for the applicants, it would appear that the petitioner therein was appointed as a District Inspector of Local Funds (Accounts) and after 11 years the authorities therein have found that the petitioner therein was appointed irregularly against the relevant rules. The promotion continued in view of stay granted by the Hon'ble High Court. In the meantime the applicant therein retired. In these circumstances, it was observed by the Hon'ble Supreme Court that the reversion ought to have been carried within a reasonable period. It was further directed that the State shall fix the revised pension of the said petitioner on the basis of notional pay in rank of District Inspector on the date of retirement, however, the back wages should not be granted.

7. In the present cases, all the applicants are in service. Within the period of 5 to 11 years the impugned decision is either taken or is proposed to be taken. Therefore the ratio laid down by the Hon'ble Supreme Court in the case of **M.A. Hameed** (supra),

on which the learned Advocate for the applicants has placed reliance, would not be applicable in the present cases.

8. Further it would appear that in the cases wherein the applicants have acquired the qualification meantime, would lose the seniority only and they are entitled for the seniority in the promotional post from the date of acquiring requisite qualification, in view of para 16 of the affidavit in reply of res. no. 3 (supra).

9. So far as O.A. no. 401/2018 Shri Kiran D. Jadhav, learned Advocate for the applicant submits that the applicant is a Ex-serviceman and this additional fact should be considered for considering the case of applicant in equity. However, this submission is irrelevant as the said applicant still has not acquired the requisite qualification.

10. In the circumstances, we pass following order:-

ORDER

- (i) O.A. nos. 444, 445, 446, 447, 448, 449 and 450 all of 2018 are hereby partly allowed without any order as to costs and the impugned reversion orders passed therein are hereby quashed and set aside. In the circumstances, the res. no. 3 the Collector, Jalna is directed to act on the basis of statement made in the affidavit in reply at para 16, within a period of three months from the date of this order.

- (ii) So far as rest of the matters in the group i.e. O.A. nos. 277, 278, 279 & 401 all of 2018, for the reasons stated above, are hereby dismissed without any order as to costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(M.T. JOSHI)
VICE CHAIRMAN

Place : Aurangabad

Date : 30.11.2018

ARJ O.A. NOS. 444 TO 450 AND 277, 278, 279 AND 401 OF 2018 (D.B.) (SHOW CAUSE NOTICE REVERSION)