

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 682 OF 2018**

**DISTRICT : AHMEDNAGAR**

**Rahul Sahebrao Shirsath,** )  
Age : 31 years, Occu. : Service as Clerk, )  
In the office of Tahsil Office, )  
Sangamner, Tq. Sangamner, Dist. Ahmednagar. )

.. **APPLICANT**

**V E R S U S**

1. **The Collector (Revenue),** )  
Collector Office, Ahmednagar, )  
Dist. Ahmednagar. )

.. **RESPONDENT**

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

: Smt. Sanjivani K. Deshmukh-Ghate,  
Presenting Officer for respondents.

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

**Reserved on** : **10.12.2021**

**Rehearing on and:** **11.04.2022.**  
**reserved on**

**Pronounced on** : **26.04.2022**  
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**O R D E R**

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

1. This Original Application has been filed by one Shri Rahul Sahebrao Shirsath, who is working as a Clerk in the in the office of Tahsildar, Sangamner, District-Ahmednagar, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985. The application

has been filed within limitation and the matter is within territorial jurisdiction of this Tribunal.

2. The applicant filed a Miscellaneous Application No. 447 of 2019 in the present Original Application on 16.09.2019 and thereby, sought leave to enclose seniority list of cadre of Clerk-cum-Typist as on 01.01.2017 and published on 24.08.2017 and also to make typographical correction in prayer clause "B" which was granted on 18.09.2019. Accordingly, a copy of the said seniority list was placed on record but in prayer clauses "B" and "C" the words "Class IV" were substituted in place of "Clerical Cadre" by carrying out amendment on 24.09.2019

**3. The facts of the matter** as narrated in Para (VI) of the Original Application may be summed up as follows :-

(a) The original applicant was initially appointed as a Watchman, which is a Class-IV cadre vide order of the District Collector, Ahmednagar bearing outward No. मह/आस्था/कार्या-५३/६०/२०१२, dated 16.01.2012. The applicant joined on the post of Watchman, in Tahsil Office, Sangamner, District-Ahmednagar on 20.01.2012.

(b) As per Government of Maharashtra in General Administration Department Resolution No. आस्टीआर-१४०३/८४/प्र.क्र० ५४/०३/१३, मंत्रालय, मुंबई, dated 10.05.2005, 25% of total sanctioned

posts in Clerk-cum-Typist cadre were required to be filled up by promotion of Class-IV employees, who met prescribed eligibility criterion. Applicant fulfilled all other eligibility criterion except the criteria of completing 3 years' continuous service in Class-IV cadre up to year 2014. No Class-IV employee was available for promotion in Clerk-cum-Typist cadre during the year of 2014 for reason of non-availability of eligible candidate. During the year 2015 too, for administrative reasons, including that of giving effect to increase in promotion quota from 25% to 50% as per GR of Finance Department dated 14.01.2016 and resultant change in running roster no promotion could be ordered. The applicant became eligible for promotion to the cadre of Clerk-cum-Typist on completion of 3 years regular service in Class IV cadre on 20.01.2015. However, the applicant had been promoted to the post of Clerk-cum-Typist vide order No. मह/आस्था/कार्या-५अ/२५०८/२०१६, dated 07.12.2016, passed by the District Collector, Ahmednagar and posted in the Office of Tahsildar, Sangamner, District-Ahmednagar.

(c) The respondent had published seniority list of cadre of Clerk-cum-Typist as on 01.01.2017 in which the date of regular service of the applicant in the cadre of Clerk-cum-Typist was mentioned as 07.12.2016 i.e. the date of joining of the applicant in the said cadre.

(d) The original applicant has filed this application on 30.08.2018 under provisions of Section 19 of the Administrative Tribunals Act, 1985, claiming that the date of his regular service in Clerical Cadre, which has been mentioned as 07.12.2016 in column No. 5 of the seniority list for cadre of Clerk-cum-Typist, be changed as 20.01.2015, which is the date on which the applicant became eligible for promotion as Clerk-cum-Typist. The applicant has justified his said claim on the ground that by the change in date of his regular service in the cadre of Clerk-cum-Typist he will acquire eligibility for next promotion one year earlier by meeting the eligibility criteria of minimum number of regular service in the present cadre.

**4. Relief Sought** :- The applicant has prayed for relief in terms of para 18 of the Original Application, which is being reproduced verbatim for ready reference as below :-

*“A. To allow this Original Application.*

*B. To hold and declare the applicant’s date of continuity of three years’ service in the Class IV i.e. 20.01.2015 should be treated permanently and continuously in service book as per the proposal which was sent by the respective authorities and further to correct in the column No. 5 of the seniority list and to extend the further benefits.*

- C. *To direct the respondents to take the decision in respect of correction of the assignment of date i.e. 20.01.2015 in the Class IV and to extend the further promotional benefit to the present applicant by issuing necessary directions.*
- D. *To grant any other relief to which the applicant entitled to.”*

**5. Pleadings and Arguments** :- Affidavit in reply on behalf of respondent was filed on 12.12.2018 and a copy thereof had been supplied to the other side. Rejoinder affidavit was filed on 29.01.2019 on behalf of the applicant. Sur-rejoinder on behalf of applicant was filed on 21.06.2019. In response, a short affidavit was filed on behalf of the applicant dated 05.12.2021. The matter was closed for final hearing to take place on 18.10.2021 which took place on 25.11.2021 and 10.12.2021. Thereafter, the matter was closed for orders on 10.12.2021. However, as the order could not be passed within reasonable time, it was decided by the Member-J to take up the matter for re-hearing, which took place on 11.04.2022 and the matter was reserved for orders. All written and oral submissions made on behalf of applicant and respondents may be said to be same as elaborated in preceding Para No. 3 except for following two facts :-

- (A) First, from the order passed by the Tribunal on 24.08.2017 it is informed that the applicant had submitted a copy of final seniority list of the cadre of

Clerk-cum-Typist as on 01.01.2017, which had been published and circulated by office of the District Collector, Ahmednagar to Sub-Divisional Officers, Tahsildars etc. vide his communication dated 24.08.2017, a copy of which had been taken on record on page Nos. 22 to 25 of the paper book. This Tribunal has recorded following observations vide its order dated 20.08.2019 in respect of the same which is a serious matter :-

*“ Heard Shri V.B. Wagh learned Advocate for the Applicant and Shri M.S. Mahajan learned Chief Presenting Officer for the Respondents.*

*2. Learned Advocate for the applicant has placed on record communication dated 24-08-2017 addressed to Tahsildar, S.D.O. etc. by R.D.C., Ahmednagar along with seniority list. Same is taken on record.*

*3. On perusal of record, it reveals that the applicant has already filed copy of the said communication with seniority list (paper book page 22 to 25). Minute perusal of the said seniority list at paper book page 24 & 25, it reveals that column number 5 of the said seniority list has been kept blank. But on perusal of the document i.e. seniority list produced by the applicant today it reveals that the column no.5 of the list has been duly filled with necessary information. It seems that the applicant has*

produced copy of the seniority list (paper book page 24 & 25) which has been tampered with.

4. At the request of learned Advocate for the applicant, S.O. to 26-09-2019.

Sd/-  
ACTING CHAIRMAN

(B) Secondly, the applicant has claimed in Para 8 of Rejoinder Affidavit (page 57 of paper-book) that he was allowed to appear in Revenue Qualifying Exam held in May 2018 which shows that his date of regular service in Clerk-cum-Typist had been accepted by respondents to be 20.01.2015. The respondent has, on the other hand, submitted through sur-rejoinder (para 9, page 111 and page 114 of paper book) that the applicant had submitted false information that he had completed three years' regular service in the cadre of Clerk-cum-Typist by 20.01.2015 and therefore, completed 3 years' service in cadre of Clerk-cum-Typist by May 2018 and thus, managed to appear in the Revenue Qualifying Exam held in May 2018. However, this was detected by authorities and his results for Revenue Qualifying Exam had been cancelled and a disciplinary proceeding has been initiated against those responsible for the lapse of allowing ineligible candidate i.e. the applicant, to appear in the said examination.

**6. Analysis of facts** :- From the facts stated in preceding paragraphs, it is noticed that :-

(i) The applicant, under legal advice from the learned senior counsel, has amended the prayer clauses “B” and “C”. In our considered opinion, the relief prayed for, is ambiguous and may be said to be in deviation with the context made out by the statement of facts in the O.A. As per amended clauses, the applicant is claiming date of 20.01.2015 as the date of continuity in Class IV cadre. For ready reference prayer clauses “B” and “C” are quoted as follows :-

“B. To hold and declare the applicant’s date of continuity of three years’ service in the **Class IV** i.e. 20.01.2015 should be treated permanently and continuously in service book as per the proposal which was sent by the respective authorities and further to correct in the column No. 5 of the seniority list and to extend the further benefits.”

“C. To direct the respondents to take the decision in respect of correction of the assignment of date i.e. 20.01.2015 in the **Class IV** and to extend the further promotional benefit to the present applicant by issuing necessary directions.”

(ii) If we go by the facts submitted by the applicant and derive what may have been intended by the applicant as relief sought, then we may say that the applicant is claiming start of his



regular service on the post of Clerk-cum-Typist with effect from the date he completed 3 years of regular service in the Class-IV cadre even though, he was not borne of the cadre of Clerk-cum-Typist on that date. However, the applicant has not substantiated claim of this nature by citing any provisions of extant rules, orders etc.

(iii) On the other hand, as per Rules settled by the judgments of the Hon'ble Apex Court in **Civil Appeal Nos. 1712-1713 of 2002, P. Sudhakar Rao & Ors. Vs. Govind Rao & Ors,** (judgment delivered on 03.07.2013) and a set of other judgments like **State of Uttaranchal Vs. Dinesh Kumar Sharma, (2007) 1 SCC 683,** referred to by the Hon'ble Apex Court in the said judgment, it may be inferred that mandate has been laid down as stated in para 60 of the said judgment which is quoted as below:-

*“60. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here, the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the*

*view taken by this Court in Jagdish Ch. Patnaik Vs. State of Orissa [(1998) 4 SCC 456]”.*

(iv) Cognizance needs to be taken of the fact that the applicant is working on the post of a regular Clerk-cum-Typist in Tahsil Office and therefore, he is expected to be conversant with the provisions of Maharashtra Civil Services Rules relating to General Conditions of Service, preparing seniority list, counting of years of regular service on a post, eligibility for appearing in Revenue Qualifying Examination etc. He is also expected to conduct himself with due sense of responsibility while submitting any document before the Tribunal during process of adjudication. In the present matter, neither the applicant nor the learned senior counsel for the applicant had taken care that no tampered document is submitted before the Tribunal and the applicant has made failed attempt to appear in Revenue Qualifying Examination by making factually wrong claims of regular service on the post of Clerk-cum-Typist in the year 2018, just around the time he had filed the present O.A. Therefore, it is inferred that the applicant has not come with clean hands before this Tribunal.

**7. Conclusion** :- After considering facts on record and oral submissions made by the two sides and also the case-laws discussed in foregoing para, we are of considered opinion that the Original

Application is misconceived and devoid of merit. Hence the following order :-

**ORDER**

- (A) The Original Application No. 682 of 2018 is dismissed for reason of being misconceived and devoid of merit.
  
- (B) Parties to bear their own costs.

**MEMBER (A)**

**VICE-CHAIRMAN**

**Kpb/D.B. O.A. 682 of 2018 PRB & BK 2022 Seniority/ Promotion**