

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.900/2022

DISTRICT:- LATUR

Navneet s/o. Chandrakant Jamnik,
Age : 37 years, Occ. Govt. Service as Talathi,
R/o. C/o: Tahsil Office, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector,
Collector Office, Latur,
Tq. & Dist. Latur.

...RESPONDENTS

APPEARANCE : Shri R.K.Ashtekar, Counsel for the
Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**Reserved on : 13-02-2024
Pronounced on : 05-03-2024**

O R D E R

[Per : Shri Vinay Kargaonkar]

1. Heard Shri R.K.Ashtekar, learned Counsel for
the Applicant and Shri V.R.Bhumkar, learned Presenting
Officer for the respondent nos.1 to 3.

2. Brief facts of the case :-

Applicant was appointed as Talathi in the year 2011. Applicant has passed Sub Services Departmental Examination ("SSDE" for short) and Revenue Qualifying Examination ("RQE" for short) and now he is eligible for promotion as Mandal Adhikari (Circle Officer). Respondent no.3 had published provisional seniority list and objections were called within 15 days from the date of publication. The applicant filed detailed objection before the respondent no.3. Respondent no.3 has considered the objections raised by the applicant and same was rejected on the ground that the applicant has not passed the SSDE within the stipulated time and attempts.

3. Submissions of the applicant :-

(a) Applicant submits that the provisional seniority list was published on 05-7-2022 and objections were called for on the said seniority list within 15 days from the date of publication of the provisional seniority list. The applicant had submitted objection to the provisional seniority list on 06-07-2022. Applicant contends that he has passed the SSDE examination in the year 2016. It is further

submitted that, as per G.Rs. dated 24-08-1976 and 16-11-2006, the employees from the reserved category should be given one more chance and one more year for passing the SSDE. Applicant submits that, as per the G.R. dated 24-08-1976, the applicant has passed the examination within 5 years and 4 chances. SSDE was conducted in the year 2016 in the month of December and results were declared in the month of March, 2017. Therefore, the authority is not considering that the applicant has passed the SSDE within 5 years and 4 chances. Rules of 1997 and 1998 prescribe that the examination should be conducted in the month of August or September every year. Applicant further submitted that as per the Government Notification dated 30-03-2022, in Rule 4(2) of the 1997 following sub rule (3) has been inserted:

“(3) The conduct of Examination shall be counted as an attempt availed of by the candidate who is otherwise eligible to appear the examination. The eligible candidate failing to apply for the Examination or failing to appear at examination despite applying, shall be treated as one attempt available to such candidate under sub-rule (1) or (2).”

[b] Applicant submits that as per the Rules and G.Rs. dated 24-08-1976 and 16-11-2006 if SSDE is passed by the employees from reserved category within the period

of 5 years and 4 chances then his seniority should be counted from the date of appointment. Considering this provision, applicant has passed the SSDE and RQE as per Rules and G.Rs. within the stipulated period, therefore, his seniority should be counted from the date of appointment. Since the applicant has passed the SSDE in the year 2016 and RQE in the year 2019, therefore, seniority list prepared by the respondent no.3 on 12-08-2022 is contrary to the provisions of law as well as contrary to the G.Rs. Applicant further submits that in O.A.No.576/2018 this Tribunal has taken a view that the candidates from reserved category should be given one more chance and one more year for passing the prescribed departmental examinations.

4. Submissions of respondents:-

[a] Respondents have submitted that the applicant did not pass the departmental examination within the prescribed chances and as such his date of seniority is reckoned from his date of passing the examination. The applicant has passed the SSDE by availing 5th chance, therefore, the claim of the applicant that he passed the SSDE within the prescribed chances is not true. Therefore, seniority of the applicant has been determined on the basis

of the date of passing the examination and as per Rule 4 of the SSDE Rules.

[b] Respondents further submitted that Government has issued letter dated 30-07-2018 in respect of G.Rs. dated 24-08-1976 and 16-11-2016. Respondents have further stated that as per letter dated 30-07-2018 G.Rs. dated 24-08-1976 and 16-11-2016 are not applicable for SSDE. Therefore, the applicant has to pass the SSDE within 4 years and within 3 attempts. Respondents have accordingly prayed for dismissal of the O.A.

5. Analysis of facts and conclusions:-

[a] There are 2 main issues which need to be addressed; (i) firstly, whether or no G.R. dated 24-08-1976 is applicable for SSDE. Relevant extract of G. R. dated 24.8.1976 is as follows:

“The Government has now decided that in the Departmental examination rules for promotion to the higher posts and Non-Gazetted, in all the Government offices, a provision should be made therein to the effect, that the candidates from (i) Scheduled Castes, (ii) Scheduled Tribes, and (iii) Denotified Tribes and Nomadic Tribes, should be given one more chance and one more year to pass the Departmental examinations, than is permissible under the rules to other candidates.”

(b) Principal Seat of this Tribunal at Mumbai had decided similar issue of seniority in O.A.No.480 & 481 of 2021. Relevant extract of the said judgement is as follows:

“The G.R. dated 24.8.1976 is very clear and thus the applicants who have passed the Departmental examinations in the year 2012 within four years and four chances should not be pushed down in the seniority list published on 29.6.2021. The concerned authority should have understood the spirit of the G.R. dated 24.8.1976 properly and should have treated that the fourth chance is equivalent to the third chance.”

(c) As held by the Principal Seat of this Tribunal in OA No 480 & 481, G. R. dated 24-08-1976 is applicable to SSDE and candidates belonging to backward class should be given one more chance and one more year to pass the Departmental examination. Since G.R. dated 24-08-1976 is applicable to SSDE, and therefore, the candidates belonging to backward class will be given one more chance and one more year to pass the departmental examination which means that the backward class candidate should pass the SSDE within the period of 5 years and 4 chances.

[d] Secondly, if the backward class candidate passes the SSDE within 5 years and 4 chances then he will not lose his seniority. The number of attempts available to

the applicant for passing the SSDE is given in the tabular format as under:

Sr. No.	Year of Examination	Attempts	Remarks
1	18/12/2012 to 21/10/2015	1 st	Did not appear
2	10/2/2014 to 13/2/2014	2 nd	Did not appear
3	29/12/2014 to 1/1/2015	3 rd	Appeared and given exemption in one subject
4	28/9/2015 to 1/10/2015	4 th	Appeared and given exemption in one subject
5	26/12/2016 to 28/12/2016	5 th	Appeared and Passed

[e] From the above table, it reveals that the applicant has passed the SSDE in 5th attempt. It is the case of the applicant that first SSDE was conducted in 2012 and at that time the applicant did not appear for the examination because of his personal difficulty. The applicant also did not appear for the examination conducted in the year 2013. The applicant has appeared for SSDE in the year 2014 and he failed but he was given exemption in one subject. The applicant again appeared for the examination in the year 2015 and he was given exemption in one more subject. The applicant appeared for SSDE in the year 2016 and he passed the examination. Applicant has submitted that, since the applicant has not

appeared for examination in the year 2012, therefore, he should be given one more chance.

[f] Relevant extract of Government notification dated 30-03-2022 is reproduced as under:

“CONSTITUTION OF INDIA.

No. MIS-2015/C.R. 137/E-10.-In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules further to amend the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathis) Rules, 1997, namely:-

1. These rules may be called the Maharashtra Sub-Service Departmental Examination for the cadre of Talathis) (First Amendment) Rules, 2022.

2. In rule 4 of the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathis) Rules, 1997 (hereinafter referred to as the principal Rules"), after sub-rule (2), the following sub-rule shall be added, namely:-

"The conduct of Examination shall be counted as an attempt availed of by the candidate who is otherwise eligible to appear the examination. The eligible candidate failing to apply for the Examination or failing to appear at examination despite applying, shall be treated as one attempt available to such candidate under sub-rule (1) or (2)"."

(g) The above mentioned G.R. clearly states that the eligible candidates failing to apply for the examination or failing to appear in the examination despite applying shall

be treated as one attempt available to such candidate as per sub-rule (1) or (2). Thus, the said Rule and the table mentioned above show that the applicant has availed 5th attempt to pass the SSDE. Since the applicant has not passed the SSDE within 4 attempts, therefore, his seniority will be reckoned from the date of passing the examination.

[h] Having considered the facts as aforesaid, we see no error on part of the respondents in determining the seniority of the applicant. The O.A. being devoid of any substance deserves to be dismissed, and is accordingly dismissed, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 05-03-2024.