

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.901/2022

DISTRICT:- LATUR

Madhav s/o. Vasudeorao Joshi,
Age : 41 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.
: Smt. Deepali Deshpande, 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 Smt. Deepali Deshpande, learned
Presenting Officer for the respondent nos.1 to 3.

2. Brief facts of the case :-

Applicant has submitted that he was appointed as Talathi by order dated 25-08-2011 from Open category but joined service as Talathi on 07-09-2011. Applicant has passed Sub Services Departmental Examination ("SSDE" for short) in 2015 and also passed Revenue Qualifying Examination ("RQE" for short) and is eligible for promotion as Mandal Adhikari (Circle Officer). Respondent no.3 had published provisional seniority list dated 05-07-2022 and objections were called within 15 days from the said date of publication. The applicant filed detailed objection before the respondent no.3 contending that he has passed SSDE within 4 years and 3 chances and Revenue Qualifying Examination (RQE) within 9 years and 3 chances. Therefore, the seniority should be reckoned from the date of appointment. Respondent no.3 rejected the objection of the applicant stating that the applicant has not passed the SSDE within the stipulated time and attempts. Respondent no.3 finalized the seniority list and applicant was shown junior because he has not passed the SSDE within the stipulated period and attempts.

3. Submissions of the applicant :-

[a] Applicant was appointed as Talathi by order dated 25-08-2011 from Open category and he joined service as Talathi on 07-09-2011. 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. One Talathi, namely, Shri S.S.Swami from Nilanga Taluka raised objection stating that the applicant has passed SSDE examination in 4 years and 23 days, and therefore, he is not eligible for promotion from the date of appointment. It is further submitted that the respondent no.3 without giving an opportunity of being heard to the applicant passed order which is contrary to the principles of natural justice, and therefore, it is liable to be set aside. Applicant submitted that he did not appear for SSD Examination in the year 2012 and 2013. Applicant appeared for SSDE in the year 2014 and he was given exemption in two subjects. Thereafter applicant again appeared for SSDE and passed the examination on 01-10-2015. The date of notification of that examination is 20-08-2015. Therefore, the applicant claims that he has passed the examination within 4 years and 3 chances. Applicant has further submitted that the respondents have not

considered this aspect and finalized the seniority list which is contrary to the provisions of law. Applicant further submitted that the respondents have finalized his seniority from the date of passing the SSDE and not from the date of appointment. The applicant submits that as per the rules framed by Revenue and Forest Department in the year 1997 and 1998 if SSDE examination is passed by a Talathi within the period of 4 years and 3 chances then his seniority should be reckoned from the date of his appointment. The applicant further submits that as per G.R. dated 30-03-2022 in Rule 4(2) of 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] Considering this sub rule (3), the applicant claims that one chance should be given to him because he did not appear for examination in the year 2012. This aspect has not been considered by the respondent authorities while allowing the objection filed by one S.S.Swami against the applicant. Applicant has, therefore,

submitted that seniority list finalized by the authority on 12-08-2022 should be set aside.

4. Submissions of respondents:-

Respondents have submitted that 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	18/10/2012 to 21/10/2012	1 st	Did not appear
2	10/02/2014 to 13/02/2014	2 nd	Did not appear
3	29/12/2014 to 1/1/2015	3 rd	Appeared and given exemption in two subjects
4	28/09/2015 to 1/10/2015	4 th	Appeared and passed

Respondents have submitted that the applicant has passed the SSDE in the 4th attempt. Since the applicant has passed SSDE in more than 3 attempts, therefore, seniority has been fixed from the date of passing the examination. It is further submitted that the seniority list prepared by respondent no.3 is legal and proper. Respondents have submitted that the applicant is not entitled for one more chance and one more year for passing SSDE. Respondents have, therefore, prayed for dismissal of the O.A.

5. Analysis of facts and conclusions:-

(a) 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)"."

(b) Sub rule 2 of Government notification dated 30-03-2022 clearly state that 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). In view of the facts and circumstances of the case, since the applicant has passed SSDE in 4th attempt, therefore, he has not passed the said examination within the stipulated time and number of attempts (4 years and 3 attempts). Hence, the applicant shall lose the seniority and his seniority shall be reckoned from the date of passing the SSDE. Hence, the following order is passed:

ORDER

Original Application stands dismissed. No order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 05-03-2024.