

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

**COMMON ORDER IN O.A. NO. 835/2015 WITH
M.A. NO. 371/2016 WITH M.A. NO. 179/2016 WITH
O.A. NO. 397/2016 WITH M.A. NO. 273/2016 WITH
O.A. NO. 393/2016 WITH M.A. NO. 274/2016 WITH
O.A. NO. 398/2016 WITH M.A. NO. 275/2016 WITH
O.A. NO. 32/2016 WITH M.A. NO. 370/2016 WITH
M.A. NO. 180/2016 WITH O.A. NO. 400/2016 WITH
O.A. NO. 361/2016 WITH M.A. NO. 277/2016 WITH
O.A. NO. 370/2016 M.A. NO. 207/2016 WITH M.A. NO.
302/2016 With M.A. NO. 281/2016 WITH O.A. NO.
371/2016 WITH M.A. NO. 303/2016 WITH M.A. NO.
280/2016 WITH M.A. NO. 208/2016**

**1. ORIGINAL APPLICATION NO. 835/2015 WITH
M.A.NO. 371/2016 WITH M.A. NO. 179/2016**

DISTRICT: JALGAON

1. Shri Sudhakar Omkar Jadhav,
Age : 53 years, Occ. Service as Agril. Supervisor,
District Soil Conservation Officer,
Jalgaon, Dist. Jalgaon
C/o. Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.
2. Shri Satish Uttamrao Vinchurkar,
Age : 54 years, Occ. Service as Agril. Supervisor,
C/o. Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.
3. Shri Dilip Nimba Sangale,
Age : 53 years, Occ. Service as Agril. Supervisor,
C/o. Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.
4. Shri Rajendrasingh Dongarsing Girase,
Age : 45 years, Occ. Service as Agril. Supervisor,
C/o. Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.

5. Shri Vilas Bhaginath Veljali,
Age : 53 years, Occ. Service as Agril. Supervisor,
District Soil Conservation Officer,
Jalgaon, Dist. Jalgaon
C/o. Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.

.. APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissionrate Maharashtra State,
Pune-1.
3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.

.. RESPONDENTS

WITH

**2. ORIGINAL APPLICATION NO. 397/2016 WITH
M.A. NO. 273/2016**

DISTRICT: NANDURBAR

1. Shri Parshuram Sitaram Bramhne,
Age : 53 years, Occ. Service as Agri. Supervisor,
At T.A.O., Sakri, R/o. : 37, Adarshnagar, Sakri,
Tq. Sakri, Dist. Dhule.
2. Shri Dilip Tukaram Jagtap,
Age : 54 years, Occ. Service as Agri. Supervisor,
At T.A.O., Sakri, R/o. : 37, Tq. Sakri, Dist. Dhule.
R/o. : Shri Swami Samarth Colony, Satana Road,
Pimpalner, Tq. Sakri, Dist. Dhule.

3. Shri Eknath Raghunath Khairnar,
Age : 56 years, Occ. Service as Agri. Supervisor,
At T.A.O., Dhule, Tq. Dhule, Dist. Dhule.
R/o. Prathamesh Bungalow, Navapur Road,
Near Church Gate, Malegaon Camp, Dist. Nashik.
4. Shri Uttam Devchand Suryawanshi,
Age : 54 years, Occ. Service as Agri. Supervisor,
At T.A.O., Satana, Tq. At. Sadakpada, Po. Dahiwal,
Tq. Sakri, Dist. Dhule.
5. Shri Parshram Chindha Shinde,
Age : 56 years, Occ. Service as Agri. Supervisor,
At T.A.O., Nandurbar, Dist. Nandurbar,
R/o : 63, Vidyanagar, Dondaicha,
Tq. Shindkheda, Dist. Dhule.
6. Shri Arun Yadav Savale,
Age : 54 years, Occ. Service as Agri. Supervisor,
At T.A.O., Shirpur, R/o. : At & Post : Tarhad Kasbe,
Tq. Shirpur, Dist. Nandurbar.
7. Shri Vishwas Vinayak Baviskar,
Age : 53 years, Occ. Service as Agri. Supervisor,
At T.A.O., Shindkheda, R/o. : 21, Shivpratap Colony,
Nakane Road, Deopur, Ta. & Dist. Dhule.
8. Shri Ganesh Bhatu Mahale,
Age : 44 years, Occ. Service as Agri. Supervisor,
At T.A.O., Chopda, R/o. : 21, Balaji Nagar,
Karwand Naka, Shirpur, Ta. Shirpur, Dist. : Dhule.
9. Shri Sunil Shankarrao Gujrathi,
Age : 53 years, Occ. Service as Agri. Supervisor,
At T.A.O., Chopda, R/o. : Gujrathi Galli,
Ta. Chopda, Dist. : Jalgaon.
10. Shri Ganesh Narayan Jadhav,
Age : 44 years, Occ. Service as Agri. Supervisor,
At T.A.O., Surgana, R/o. Navdeep Jyoti Hsg. Soc.,
F.No. 9, Dattanagar, Peth Rd. Panchavati, Nashik-03.

11. Shri Raju Chhagan Hire,
Age : 52 years, Occ. Service as Agri. Supervisor,
At T.A.O., Navapur, R/o. : 112, Vardhamannagar,
Waghewari Road, Nandurbar, Dist. Nandurbar.
12. Shri Ashok Pandharinath Maid,
Age : 53 years, Occ. Service as Agri. Supervisor,
At T.A.O., Surgana, R/o :At & Po. A 54, Jankivallabh
Soc., Amrutdham, Ayodhyanagar, Nashik.
13. Shri Ashok Sadashivrao Tale
Age : 55 years, Occ. Service as Agri. Supervisor,
At T.A.O., Yeola, R/o. : 2, Mrudgandh,
Kalangar, Dindori Rd., Nashik.
14. Shri Karansing Bondya Tadvi,
Age : 55 years, Occ. Service as Agri. Supervisor,
At T.A.O., Akkalkuwa, R/o. : 34, Jai Hind Colony,
Taloda Road, Nandurbar, Dist. Nandurbar.
15. Shri Bhojraj Hiranman Samudre,
Age : 56 years, Occ. Service as Agri. Supervisor,
At T.A.F., Nandurbar, R/o. : 35, Vijaymohannagar,
Jijamata College Rd., Nandurbar.
16. Shri Yuvraj Bhila Ahire,
Age : 53 years, Occ. Service as Agri. Supervisor,
At T.A.O., Sinnar, R/o. : Anant Apartment,
Jagtap Mala, Nisargdattangar, Nashik Rd., Nashik.
17. Shri Chandrakant Bhikan Deore,
Age : 51 years, Occ. Service as Agri. Supervisor,
At T.A.O., Deola, R/o. : 4, Gajanan Apartment,
Behind Sukhdeo School, Indirangar, Nashik.
18. Shri Mukund Karbhari Chaudhari,
Age : 55 years, Occ. Service as Agri. Supervisor,
At T.A.O., Surgana, R/o. : 3, Jai Shankar Apts. ,
Jadhav Colony, Panchvati, Nashik.
19. Shri Sanjay Narsinh Kulkarni,
Age : 52 years, Occ. Service as Agril. Supervisor,
At T.A.O., Surgana, R/o. : "Sneh", Ashish Society,
Omkarnagar, Nashik.

20. Shri Dnyaneshwar Madhavrao Kote,
Age : 52 years, Occ. Service as Agril. Supervisor,
At T.A.O., Trymbakeshwar, R/o. : 20, Greenpeace
Apts., Dhongdenagar, Nashik Rd., Nashik.
21. Shri Ramesh Ragho Wagh,
Age : 57 years, Occ. Service as Agril. Supervisor,
At T.A.O., Satana, R/o. : Sonai Niwas,
New Kacheri Road, Satana, Dist. : Nashik.
22. Shri Vilas Vasudev Kolse,
Age : 54 years, Occ. Service as Agril. Supervisor,
At T.A.O., Kalwan, R/o. : 1, Payal Apts.,
Chetnanagar, Nashik.
23. Shri Dnyandeo Ganpat Harde,
Age : 56 years, Occ. Service as Agril. Supervisor,
At T.A.O., Surgana, R/o. : Greenpeace Apts.,
Dhongdenagar, Nashik Rd., Nashik.
24. Shri Baban Hari Thorat,
Age : 52 years, Occ. Service as Agril. Supervisor,
At T.A.O., Kalwan, R/o. : Shradhha Row House,
Kalanagar, Dindori Road, Nashik.
25. Shri Subhash Baburao Khairnar,
Age : 54 years, Occ. Service as Agril. Supervisor,
At T.A.O., Chandwad, R/o. : 3, Vaishali Apts. ,
Rajpal Colony, Panchvati, Nashik.

.. APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissionrate Maharashtra State,
Pune-1.

3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.
4. Shri Sainath Kisanrao Malik,
Age : 40 Years, Occ. Service,
R/o, Anwiksha Pimpri, Tq. Niphad,
Dist. Nashik. **.. RESPONDENTS**

WITH**3. ORIGINAL APPLICATION NO. 393/2016 WITH
M.A. NO. 274/2016****DISTRICT: JALGAON**

Shri Arun Pandit Patil,
Age : 52 years, Occ. Service as Agri. Supervisor,
At T.A.O., Pachora, R/o. : 12, Vrundavannagar,
Bhadgaon Road, Pachora, Ta. : Pachora,
Dist. Jalgaon.

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

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissionrate Maharashtra State,
Pune-1.
3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.

.. RESPONDENTS**WITH****4. ORIGINAL APPLICATION NO. 398/2016 WITH
M.A. NO. 275/2016****DISTRICT: JALGAON/DHULE ETC**

1. Shri Madhukar S/o Ananda Patil,
Age : 52 years, Occ. Service as
Agri. Supervisor, At T.A.O., Nandurbar,
R/o. : Raulnagar, Malhari Chowk,
Dondayicha, Tq. Shindkheda, District : Dhule.
2. Shri Madhukar S/o Dinkar Patil,
Age : 52 years, Occ. Service as
Agri. Supervisor, Bio-Control Lab, Mamurabad,
District : Jalgaon, R/o 94/314, Plot No. 2, Shriram
Nagar, Dadawadi, Near Jain Temple, Jalgaon.
3. Shri Tulshiram S/o Waman Thakare,
Age : 55 years, Occ. Service as
Agri. Supervisor, Sub Divisional Agriculture Office,
Malegaon, District : Nashik R/o Ravalgaon Colony,
Malegaon Camp, Dist : Nashik.
4. Shri Gopinath Dashrath Kakad,
Age : 53 years, Occ. Service as
Agri. Supervisor, At T.A.O., Sinnar, Ta. Sinnar,
Dist. Nashik, R/o. "Gurukrupa", Shri Swami
Samarhnagar, Aringale Mala, Sinnar Phata,
Nashik Road, Nashik.
5. Shri Yeshwant Sukhdeo Bachav,
Age : 54 years, Occ. Service as Agri. Supervisor,
At T.A.O., Tq. Malegaon, Dist. Nashik,
R/o Anandnagar, Patil Chowk, Soygaon,
Ta. Malegaon, Dist. Nashik.
6. Shri Yeshwant S/o Keshav Salve,
Age : 57 years, Occ. Service as Agri. Supervisor
At Sub-Divisional A.O., Ta. Malegaon, Dist. Nashik,
R/o. Kartikeshwar Housing Society,
Ta Chandwad, Dist. Nashik.
7. Shri Pandit S/o Shravan Kapadnis,
Age : 53 years, Occ. Service as Agri. Supervisor,
At Sub Divisional A.O., Ta. Malegaon, Dist. Nashik,
R/o. : Nampur, Sharda Colony, Behind Petrol Pump,
Ta. Satana, Dist. Nashik.

8. Shri Ramdas S/o Fakira Jadhav,
Age : 48 years, Occ. Service as Agri. Supervisor,
At Sub-Divisional A.O., Sinnar, Ta. Malegaon,
Dist. Nashik, R/o. : At post Dhamori, Ta. Rahuri,
District : Ahmednagar.
9. Shri Vijay S/o Chandrabhan Bramhane,
Age : 51 years, Occ. Service as Agri. Supervisor,
At Sub-Divisional A.O., Ta. Nifad, Dist. Nashik,
R/o. Hanumantgaon, Post Pathre (Bu),
Tq. Shrirampur, Dist. Ahmednagar.

.. APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissioner Maharashtra State,
Pune-1.
3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.
4. Shri Sanjay Yadavrao Sawant,
Age: 45 Years, Occ. Govt. Service,
R/o : 16, Shivprabhu Niwas, Wakhri Road,
Deola, Dist. Nashik.

.. RESPONDENTS

WITH

**5. ORIGINAL APPLICATION NO. 32/2016 WITH
M.A. NO. 370/2016 WITH M.A. NO. 180/2016**

DISTRICT: NANDURBAR

1. Shri Dilip Babulal Bhoi,
Age : 46 Years, Occ. Service as Agril. Supervisor,
Taluka Agriculture Office, Shahada,
Dist.: Nandurbar, C/o Shri Sudhir Patil, Advocate,
"Omvenkatesha", 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.

2. Shri Chandrashekhar Govindrao Gangurde,
Age : 43 Years, Occ. Service as Agril. Supervisor,
C/o Shri Sudhir Patil, Advocate,
“Omvenkatesha”, 213, Parijatnagar, N-4,
CIDCO, Aurangabad 431003.

.. APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissionrate Maharashtra State,
Pune-1.
3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.

.. RESPONDENTS

WITH

6. ORIGINAL APPLICATION NO. 400/2016

DISTRICT: JALGOAN/DHULE ETC

1. Shri Chandrashkhar S/o Laxman Wani,
Age : 53 Years, Occupation : Service, at present as
Agriculture Supervisor, T.A.O., Chalisgaon, Dist.
Jalgaon R/o. : Raulnagar, Malhari Chowk,
Dondayicha, Ta. Shindkheda, Dist. Dhule.
2. Shri Vitthal S/o Deoram Nagrale,
Age : 57 Years, Occupation : Service, at present as
Agriculture Supervisor, T.A.O., Dhule,
R/o. : 93, Rampushp Housing Society,
Golibar Tekadi, Sakri Road, Dhule.

3. Shri Nimba S/o Namdeo Jadhav,
Age : 53 Years, Occupation : Service, at present as
Agriculture Supervisor, T.A.O., Parola, Jalgaon,
R/o. : 26, Devidas Colony, Subhash Nagar,
Old Dhule, Ta. & Dist. Dhule.
4. Shri Dilip S/o Baburao More,
Age : 56 Years, Occupation : Service, at present as
Agriculture Supervisor, JDA, Nashik,
R/o. : Jai Yogeshwar Building,
Plot No. 11, Atmavishwas Colony,
Indiranagar, Nashik.
5. Shri Balu S/o Waman Detha,
Age : 44 Years, Occ. Service, at present as
Agriculture Supervisor, JDA, Nashik,
R/o At Post Padalane, Ta. Akole,
Dist. Ahmednagar.

.. APPLICANTS**V E R S U S**

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.
(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).
2. The Agricultural Commissioner,
Agricultural Commissionerate Maharashtra State,
Pune-1.
3. The Divisional Agricultural Joint Director,
Nashik Division, Nashik.

.. RESPONDENTS**WITH****7. ORIGINAL APPLICATION NO. 361/2016 WITH
M.A. NO. 277/2016****DISTRICT: DHULE**

1. Shri Pravin Naval Deore,
Age : 53 years, Occ. Service,
R/o 141, Jai Hind Colony,
Deopur, Dhule, Taluka and Dist. Dhule

.. APPLICANTS**V E R S U S**

- 1) The State of Maharashtra,
Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai.

(Copy to be served through P.O.M.A.T.,
Bench at Aurangabad).

2. The Director/Commissioner of Agriculture,
Maharashtra State, Pune-1.
3. Divisional Joint Director of Agricultural,
Nashik Division, Nashik.
4. District Superintendent Agriculture Officer,
Dhule, Taluka and District Dhule.

.. RESPONDENTS**WITH**

**8. ORIGINAL APPLICATION NO. 370/2016 WITH
M.A. NO. 207/2016 WITH M.A. No. 302/2016
With M.A. NO. 281/2016**

DISTRICT: NANDURBAR

Shri Sanjay Pundlik Deore,
Age : 47 years, Occ. Service as
Agricultural Supervisor,
R/o C/o Sub Divisional Agricultural
Officer, Office at Shahada,
Tq. Shahada, Dist. Nandurbar.

.. APPLICANTS**V E R S U S**

- 1) The State of Maharashtra,
(Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai-32)

2. The Commissioner for Agriculture,
Natawadi, Agricultural College,
Campus, Shivaginagar, Pune.
3. The Divisional Joint Director of Agricultural,
Nashik Division, Nashik.
4. Sub Divisional Agriculture Officer,
Shahada, Tq. Shahada,
Dist. Nandurbar.

.. RESPONDENTS**WITH**

**9. ORIGINAL APPLICATION NO. 371/2016 WITH
M.A. NO. 303/2016 WITH M.A. NO. 280/2016
WITH M.A. NO. 208/2016**

DISTRICT: NANDURBAR

Shri Ramesh Vamanrao Pawar,
Age : 53 years, Occ. Service as
Agricultural Supervisor,
R/o C/o Office of Taluka,
Agricultural Office, Nandurbar,
Tq. And Dsit. Nandurbar.

.. APPLICANTS**V E R S U S**

- 1) The State of Maharashtra,
(Through the Secretary,
Agriculture Department,
Mantralaya, Mumbai-32)
2. The Commissioner for Agriculture,
Natawadi, Agricultural College,
Campus, Shivaginagar, Pune.
3. The Divisional Joint Director of Agricultural,
Nashik Division, Nashik.
4. Taluka Agricultural Officer,
Nandurbar, Tq. Shahada,
Dist. Nandurbar.

.. RESPONDENTS

APPEARANCE : Dr. Smt. Kalpalata Patil-
Bharaswadkar/Shri Sudhir Patil and]
Shri V.B. Wagh, learned Advocates for
the applicants in all these Respective
matters.

: Smt. Priya R. Bharaswadkar, learned
Presenting Officer for the Respondents in
all these O.As.

: Shri C.T. Chandratre, learned Advocate
for respondent no. 4 in O.A. No.
397/2016 with M.A. No. 273/2016 &
O.A.No. 398/2016 with M.A. 275/2016.

**CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)**

DATE : 24.03.2017.

C O M M O N O R D E R

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

1. Heard Shri Sudhir Patil/Dr. Smt. Kalpalata Patil Bharaswadkar, Shri V.B. Wagh, learned Advocates for the applicants in respective O.As., Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents in all these O.As. and Shri C.T. Chandrate, learned Advocate for respondent No. 4 in in O.A. No. 397/2016 with M.A. No. 273/2016 & O.A. No. 398/2016 with M.A. No. 275/2016.

2. These O.As. and M.As. were heard together and are being disposed of by a common order as the issues to be decided in these O.As. are more or less identical.

3. In O.A. No. 835/2015, the Applicants were working as Agriculture Supervisor in Nashik Division under the control of the Divisional Joint Director of Agriculture, Nashik Division, Nashik, the Respondent no. 3 in the O.A. The Applicants have challenged the seniority list of Agriculture Assistant published on 31.12.2015 and 22.2.2016 and are praying that earlier seniority list of 5.10.2011 may be restored. The Applicants are also challenging Rule 9(2) and 9(3) of the Agriculture Department Sub Ordinate Services (Post Recruitment Examination) Rules, 1975 as unconstitutional, being arbitrary, unreasonable, discriminatory and violative of fundamental rights enshrined in the Constitution of India. The Applicants have also challenged order dated 22.4.2016 reverting the Applicants to be posted of Agriculture Assistant.

3. Learned Advocates for the Applicants argued that there was an earlier round of litigation to determine

whether to count the seniority of those diploma holders, who completed degree while in service, from the date of acquisition of degree or from the date of entry in service. This Tribunal in O.A. Nos. 253/2005, 363 /2005 and 429/2005 held that continuous officiation should be the criteria for promotion and not the date of passing of the degree examination. This order was confirmed by Hon'ble High Court in W.P. No. 8288/2005, 8290/2005 and 8301/2005. Learned Advocates for the Applicants argued that continuous officiation has to be the only criteria for determining the seniority and in the present case, the same criteria needs to be applied.

4. Learned Advocates the Applicants argued that the present Applicants were promoted long back as Agriculture Supervisors on the basis of their seniority. However, the Respondent no. 3 hatched a conspiracy with some employees who wanted promotions as Agriculture Supervisors (stated in Written Notes of Arguments, para 2 also), and who had filed O.A. Nos. 12/2012, 1033/2013, 1052/2013, 1138/2013, 1139/2013 and 1184/2013 in the Mumbai Bench of this Tribunal. The State Government and Commissioner of Agriculture were not

made a party in those O.As. This Tribunal, (Mumbai Bench) passed order, behind the back of the present Applicants who were not made party in those O.As. The Respondent no. 3 has revised the sonority list by bringing the Applicants again in the list of Agriculture Assistants, though they were already working as Agriculture Supervisor and so their names were not included in the seniority list of Agriculture Assistant. No notice was given to the Applicants before revising seniority lists as on 1.1.2015 and thereafter.

5. Learned Advocate for the applicants stated that the Rule 3 of the Agriculture Subordinate Services (Post Recruitment Examination) Rules 1975 (hereinafter called the Departmental Examination Rules) has proviso (d) which exempts, inter alia, the following employees from passing the Departmental Examinations :-

“(d) Those who have completed three years continuous service in any of the post in the subordinate service to which this examination is applicable.”

As Rule 2(c), the definition of subordinate service is given as meaning service in any of the Class III posts under the Agriculture Department. Learned Counsel for the Applicants stated that plain reading of this Rule makes it clear that the Applicants were working in subordinate service, Class III as Agriculture Assistants, and after three years, they were not required to pass the Departmental Examination. This aspect was not considered by the Tribunal (Mumbai Bench) while deciding O.A. no. 12/2012 etc. That judgment has, therefore, to be treated as 'per incuriam'. The Respondent no. 3 has malafidely misinterpreted rule 9(3) of the Rules and has placed the present Applicants below even those Agriculture Assistant, who passed the Departmental Examination after the Applicant.

6. Learned Advocates for the Applicants stated that Rule 7 of the Departmental Examination Rules, provides for holding the Departmental Examination twice in a year. If the examination is held only once in a year, the number of years should get doubled to enable an employee to pass the examination. The inaction of the Respondents in not holding the examination regularly was

not the fault of the Applicants. The Applicants were not given training which was required under the rules. The doctrines of estoppel and legitimate expectation will be attracted and the Applicants should be deemed to have passed the examination in time.

7. Learned counsel for the Applicants contended that this Tribunal had issued notices to the Respondents, before passing any order on interim relief. The matter was placed for hearing on 20.01.2016. The Respondent no. 2 on 30.12.2015, informed the Chief Presenting Officer, M.A.T., Mumbai that seniority list as on 1.1.2015 will not be published up to 20.01.2016. However, it was published on 31.12.2015. This is in violation of G.R. dated 20.11.2011. The respondent no. 3 showed undue haste in publishing the seniority list.

8. The order of reversion of the Applicants were issued on 22.4.2016. The Misc. Applicant for staying the order was filed before this Tribunal. This Tribunal stayed the reversion order dated 28.04.2016. 72 Agriculture Supervisors were reverted and 58 Agriculture Assistants were promoted. The promoted persons challenged the stay

order in the Hon'ble High Court, but they were not granted any relief. Hon'ble High Court directed to maintain the status quo. All W.Ps. were disposed of by Hon'ble High Court and this Tribunal was asked to decide the O.A. within a period of 14 weeks. The Respondent no. 3 then gave notices to all reverted persons and belatedly issued stereotype order reverting them, though in case of 51 persons, their reversion was stayed by various orders of this Tribunal. The reversion orders have been passed in flagrant violation of the principles of natural justice. Learned Advocate for the Applicants argued that the order dated 8.9.2016 of the Respondent no. 3 relieving the Applicants from the post of Agriculture Supervisors amount to playing fraud on this Tribunal and violates the directives of Hon'ble High Court to maintain status-quo.

9. Learned Advocate for the Applicants summed up that the Respondents have violated the following :

- (i) Departmental Examination Rules of 1975
- (ii) Recruitment Rules, 2004 (60:40)
- (iii) The Maharashtra Civil Services (Regulation of Seniority) Rules, 1982

- (iv) Disobeyed the order of M.A.T. Aurangabad dated 5.12.2005 in O.A. Nos. 253, 363, 429/2005.
- (v) Disobeyed order passed by Hon'ble High Court (Aurangabad Bench) dated 20.12.2005 in W.P. No. 8288, 8200, 8301 all of 2005
- (vi) Disobeyed orders of this Tribunal dated 9.5.2016, 10.05.2016, 17.05.2016 and 28.07.2016 by not allowing the Applicants to rejoin the posts from which they have reverted.
- (vii) Violated status quo orders of Hon'ble High Court dated 14.07.2016.

10. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants have made baseless allegations against the Respondent no. 3 alleging that he entered in to a conspiracy which some Agriculture Assistants, who had filed O.A. No. 1033/2013 etc., before Mumbai Bench of this Tribunal. In facts, many similarly situated persons as the Applicants were a party to those proceedings. It is not necessary that each and every persons, who is likely to be affected be made a part in such litigations. When 8-9 of the persons, who were wrongly promoted as Agriculture Supervisors in violation

of Departmental Examinations Rules were a party, and who vigorously defended their case in the aforesaid O.As., the claim of the Applicants that judgment of this Tribunal is 'per incuriam' has to be rejected. In any case, this Tribunal (Mumbai Bench) had analyzed the Rules and correctly interpreted them in the aforesaid O.As. The Applicants' claim that there was a conspiracy between the Respondent no. 3 and some Agriculture Assistants has no basis at all. Not an iota of evidence has been placed on record to support this allegation by the Respondents.

11. Learned P.O. contended that the Applicants are relying on order of this Tribunal dated 5.12.2005 in O.A. Nos. 253/363, 429/2005 and orders dated 20.12.2005 passed by Hon'ble High court in W.P. Nos. 8288, 8200, 8301/2005 to claim that continuous officiation is the only criteria to determine seniority. This is complete misinterpretation of order of this Tribunal, confirmed by Hon'ble High Court in that case. The Departmental Examination Rules were never examined by this Tribunal or Hon'ble High Court in that case. The only issue was how to determine the seniority of diploma holder Agriculture Assistants, who acquire degree qualification.

As the Recruitment Rules of 2004 provide 60% quota for degree holders for promotion and 40% for diploma holders, in the post of Agriculture Supervisor, it was held that seniority of a diploma holder who acquires degree, would be reckoned from date of his joining service and not from the date when he acquired degree for being eligible to be promoted from 60% quota for degree holders. Learned P.O. argued that issue involved was quite different, and no ratio was laid down by this Tribunal or Hon'ble High Court that continuous officiation is the only criteria to determine seniority. The Maharashtra Civil Services (Regulation of Seniority) Rules, have to be read along with Departmental Examination Rules, and cannot be read in isolation to decide seniority in a particular cadre and date of joining a service/cadre or continuous officiation cannot be the sole criteria to determine seniority.

12. Learned P.O. argued that it was not necessary for the Respondent no. 3 to consult the Respondent no. 2 or the Respondent no. 1 while revising seniority list of the Agriculture Assistants. The Respondent no. 3 is the competent authority and he had acted as per orders of this Tribunal (Mumbai Bench) in O.A. Nos. 1033/2013

etc. Even G.R. dated 21.10.2011 has not been violated by the Respondent no. 3 at all.

13. Learned P.O. stated that the Applicants had claimed that the Respondent no. 3 had violated stay orders granted by this Tribunal in this group of O.As. and also the order of the Hon'ble High Court to maintain status quo. Learned P.O. stated that there has not been any violation of any orders of this Tribunal. The stay order of this Tribunal did not prevent the Respondent no. 3 from giving a show cause notices to the persons like the present Applicants, who were promoted in violation of relevant rules, and pass fresh orders. Orders of Hon'ble High Court were regarding maintaining status-quo. As the Applicants were already reverted on the dates of orders after show cause notices were given to them and after considering their replies, before the order of maintaining status quo was passed, there was no question of violating any order of Hon'ble High Court.

13. Learned Presenting Officer (P.O.) argued that the Applicants are completely misinterpreting Rule 3 of the Departmental Examination Rules. If the claim of the

Applicants that Agriculture Assistants are not required to pass Departmental Examinations after three years in service is accepted, the whole rules will be reduced to nothingness and will be meaningless. In fact, a particular rule or part thereof cannot be read in isolation, but have to be construed harmoniously taking the rules as a whole. If a Class III person in Agriculture Department is not required to pass departmental Examination after three years of service, then there was no need to provide for passing of the Departmental Examination in 4 years and 3 chances. Similarly, there was no need to have provision of exemption from passing Departmental Examination on reaching the age of 45 years. If the Rules are interpreted in the manner suggested by the Applicants, the very purpose of framing the rules would be defeated and no one would be required to pass the departmental Examination as it will not be necessary to do so after three years of service.

14. In O.A. No. 397/2016, learned Advocate Shri C.T. Chandratre, represented the Respondent no. 4, who is seeking seniority on the basis of passing the Departmental Examination in requisite chances and

years, and was claiming that the persons like the Applicants had lost seniority as they failed to pass the examinations as per Rules. Learned Advocate Shri Chandratre stated that he adopted the arguments on behalf of the Respondent nos. 1 to 3. The Appointment orders as Agriculture Assistants issued to the Applicants clearly mentioned that they were required to pass Departmental Examination as per the Departmental Examination Rules of 1975. The Seniority list of Agriculture Assistants published on 8.10.2013 by the respondent no. 3 for the first time was based on the Department Examination Rules of 1975. This was done pursuant to the O.A. No. 72/2012 being filed before the Mumbai Bench of this Tribunal, challenging promotion of some persons who had failed to pass Departmental Examination in time as per Rules and had, therefore, lost seniority. However, they were promoted, without making them lose their seniority. The Mumbai Bench of the Tribunal upheld the challenge and held that seniority has to be fixed strictly in accordance with the Rules and promotions were required to be given accordingly. The Respondent no. 3 published a provisional seniority list on

22.8.2015, inviting objections. A total of 471 objections were received and considered. Final Seniority list was published on 31.12.2015. All the Applicants had submitted objections, which were duly considered. As such, the claim that reversion orders were passed behind the backs of the Applicants is not correct. Learned Advocate Chantratve argued that the Applicants case is based on complete misinterpretation of Rules, which will make the Rules meaningless, if the interpretation given by the Applicants is accepted.

15. Learned Advocate Shri V.B. Wagh was also heard on behalf of the Applicants in O.A. No. 370/2016 with M.A. No. 207/2016 in M.A. No. 302/2016 and O.A. No. 371/2016 with M.A. No. 303/2016 with M.A. NO. 280/2016 with M.A. No. 208/2016. Learned Advocate Shri V.B. Wagh adopted the arguments of learned Advocate Mrs. Kalpalata Patil-Bharaswadkar and Shri Shudhir Patil for the Applicants in other O.As.

16. Let us first examine the judgment of this Tribunal dated 5.12.2005 in O.A. Nos. 253, 363 and 429/2005. It is at Page no. 30 of the Paper Book in O.A.

No. 835/2015. Rule 3 of the Agriculture Supervisor/Laboratory Inspector/Computer (Statistical Brach) and Agriculture Assistant/ Laboratory Assistant in Group 'C' in the Commissionrate of Agriculture under the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department (Recruitment) Rules, 2004 notified on 19.08.2004 was the subject matter of dispute. This Rule is regarding appointment to the post of Agriculture Supervisor/Laboratory Inspector/Computer (Statistical Brach) in Group 'C' by promotion and nomination. Rule 3(a) is for appointment by nomination and proviso reads.

“ Provided that, the ratio for promotion amongst the persons who possess a degree and who do not possess a degree, diploma shall be 60:40 of the vacancies available for promotion;”

The order of this Tribunal is contained in para 6 which reads :

“6. When the rule position is absolutely clear and unambiguous, something which is not there in the Rule cannot be read into the Rule. Therefore, there is absolutely no scope for drawing any inference that the seniority of degree holders, who were initially diploma holders but acquired degree qualification later

shall count only from the date of acquisition of the degree. There are two baskets, one of degree holders and the other of diploma holders. As per the provisions contained in the seniority rules, the seniority gets regulated on the basis of continuous officiation. Therefore, the degree holders, who have acquired degree qualification later do retain their original seniority on the basis of continuous officiation.”

The seniority Rules mentioned in the aforesaid order are the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 2 of these Rules has a proviso which reads:

“ Provided that, where any separate rules or orders are prescribed for regulating seniority in any particular posts, cadre or service, the seniority of holders of such posts or the members of such cadre or service shall be regulated in accordance with such separate rules or orders”

It is absolutely clear that the rule that seniority will be decided on the basis of continuous officiation is applicable only when separate rules for regulating seniority of a particular post (in the present case post of

Agriculture Assistant) are not available or if they are silent on this particular point. This Tribunal has observed in the aforesaid order that Recruitment Rules of 2004 are silent regarding the seniority of a person, who was a diploma holder, as to how on his acquisition of degree qualification, his seniority will be determined. As there was no provision in the relevant rules, this Tribunal held that in this particular case, date of continuous officiation will be considered as date of seniority, which is provided in Rule 4(1) of the Seniority Rules. This rule also uses the word 'ordinarily', which makes it clear that this rule has no general application in all circumstances. This judgment dated 5.12.2005 of this Tribunal was confirmed by Hon'ble High Court by judgment dated 20.12.2005 by Hon'ble High Court in W.P. Nos. 8288, 8200 and 8301 all of 2005. This order of Hon'ble High Court was not the final order as para (6) of the same makes clear. Hon'ble High Court has issued rule with a view to have deeper scrutiny. The final judgment has not been filed before us. However, based on the judgment of this Tribunal dated 5.12.2005, as upheld by Hon'ble High Court by judgment dated 20.12.2005, it cannot be said that continuous officiation is the only

criteria to determine seniority. That would be complete misreading of judgment of this Tribunal and Hon'ble High Court. This claim of the Applicants has to be firmly rejected. The seniority will be governed by the Agriculture Department Subordinate Service (Post Recruitment Examination) Rules, 1975 as amended from time to time for the sake of convenience we have been calling these rules a Departmental Examination Rules of 1975.

17. Mumbai Bench of this Tribunal by judgment dated 10.11.2014 in O.A. Nos. 1033/2013, 1052/2013, 1138/2013, 1139/2013, 1184/2013 and 12/2012 has held that:-

“16. We have discussed contentions raised by different parties in some detail. One thing emerges clearly that the final seniority list published on 8.10.2013 is in accordance with the Rules of 1975 as amended from time to time. We are, therefore, dismissing O.A. No. 1052/2013.”

It is further stated in the aforesaid order that:

“ In other Original Applications, the main grievance of the Applicants about the seniority list has already been addressed. They are

seeking quashing of promotion order of those who are now junior to them in the seniority list.”

It is clear that this judgment of Mumbai Bench of this Tribunal in clear and unambiguous terms held the seniority list, which was published on 8.10.2013, was in accordance with the Departmental Examination Rules of 1975 and it was held to be valid. It was done after some of the persons, who were promoted as Agriculture Supervisors, without making them lose seniority due to failure to pass the Departmental Examination as per Rules, were made the Respondents in those O.As. The O.As. were vigorously contested as can be seen on perusal of the judgment dated 10.11.2014. In these O.As., promotion of at least 17 persons promoted as Agriculture Supervisors was challenged. The claims of the Applicants in the present Original Application that this Tribunal has passed judgment without considering the Departmental Examination Rules is obviously incorrect. The case of those, who were promoted without losing seniority though they had failed to pass the Department Examination as per rules was also heard. It cannot be said that the judgment of this Tribunal (Mumbai Bench) was ‘per

incuriam'. Many of the persons, as similarly situated to the present Applicants were party respondents in these O.As. To claim that there was any conspiracy between the Applicants before Mumbai Bench of this Tribunal and the present Joint Director of Agriculture would be a travesty of truth. In fact the Applicants in those O.As. were agitating their legitimate rights before Mumbai Bench of this Tribunal and the present Respondent No. 3 had conceded that promotions in the past were made without following the Departmental Examination Rules of 1975. This stand of the Respondent no. 3 was legally correct. The Applicants should not have made such allegations without any evidence against the present Respondent no. 3. There is no truth in these allegations. The Respondents in those O.As. have never made a grievance that the State Government or Commissioner of Agriculture was a necessary party. In fact, there is no doubt that for Class III personnel, the cadre is a divisional cadre and the Respondent no. 3 is the Appointing Authority. He has to decide the seniority of Class III Cadre. There is nothing on record that he had violated any orders of the Government or Commissioner. Merely

because the Government of Commissioner were not party in the O.As. before Mumbai Bench, proceedings in no way are vitiated.

18. The Applicants have claimed that the Respondent no. 3 had violated the provisions of G.R. dated 21.10.2011 (Exhibit A-9. On page 114 of the Paper Book in O.A. No. 835/20015) especially para 3 of the aforesaid G.R. It is stated that para 2(A) of the aforesaid G.R. bars using final seniority list of last year for preparing provisional seniority list of next year. Reliance is also placed on para B(3) of this G.R. it reads:

“ज्या संवर्गात दि. १.१.२०१० पर्यंतच्या तात्पुरत्या (provisional) व त्यानंतर अंतिम (final) ज्येष्ठतासूचीच्या अद्याप प्रसिध्द झालेल्या नाहीत त्यांच्याबाबतीत खालील प्रमाणे कार्यवाही करावी.”

In the present case, the seniority lists were prepared before 1.1.2010 from time to time. Seniority list as on 1.1.2011 was published on 5.10.2011. This G.R. does not appear to be applicable in the present case. In any case, the seniority lists under challenge presently were prepared on the basis of orders of Mumbai Bench of this Tribunal based on the Departmental Examination Rules of 1975. It

is the legal position that statutory Rules would prevail over any G.R. We are not convinced that violation of this G.R. had actually occurred and if any such violation has taken place that would cause any prejudice to the Applicants. The main issue in these O.As. is whether the seniority list were prepared correctly as per the Departmental Examination Rules of 1975.

19. The Applicants have claimed that the Respondent no. 3 had violated interim order of this Tribunal and also order of Hon'ble Supreme Court for maintaining status quo. This O.A. was originally given stamp no. 2002 of 2015. Notices were issued on 23.12.2015 and it was noted that objections received to the provisional seniority list were being considered. The Applicants are relying on letter dated 30.12.2015 issued by the Respondent no. 3 on 30.12.2015 (Annexure A-12, page 170 of Paper Book) in which he has stated that he was not in a position to published the final seniority list on or before 31.12.2015 in view of the order dated 23.12.2015 by this Tribunal. The Respondent no. 3, however, published the final seniority list on 31.12.2015, as per orders of Mumbai Bench of this Tribunal dated

10.11.2014 in O.A. No. 1033/2013 etc. and order dated 15.04.2015 in M.A. No. 1138/2013. The copy of order dated 15.04.2015 is not available on record. However, it appears that the Respondent no. 3 was given time to finalize the seniority list on or before 31.12.2015. This order read with earlier order dated 10.11.2014 of the Mumbai Bench, in which the present respondent no. 3 was given three months time to finalize the seniority list, must have prevailed upon the Respondent no. 3 to declare final seniority list on 31.12.2015. Order of this Tribunal in the O.A. Stamp no. 2002 of 2015 had not given any stay order to publication of final seniority list. In the circumstances by publishing final seniority list on 31.12.2015, the present Respondent no. 3 only followed the orders of Mumbai Bench of this Tribunal. It will not be correct to hold that he violated any orders of this Tribunal. Stay order was granted against order of reversion dated 22.04.2016 by this Tribunal on 28.04.2016 in M.A. No. 179/2016 in O.A. No. 835/2015 with M.A. No. 180/2016 in O.A. NO. 32/2016 with M.A. NO. 181/2016 in O.A.NO. 067/2016. By another order dated 5.5.2016, in O.A. No. 371/201, this Tribunal gave liberty to the Respondents to

issue show cause notice to the Applicants who were reverted and after considering their replies, decide afresh about their reversion. In short, no stay order was granted by order dated 5.5.2016 against the order of reversion (which were all dated 22.4.2016). The matter was taken to Hon'ble High Court (Aurangabad Bench) which granted the order of status quo and referred the matter to be decided by this Tribunal by judgment dated 14.7.2016 in a group of W.P. No. 5474 of 2016 etc. Hon'ble High Court observed in the aforesaid judgment that:

“9. Be that as it may, in our considered view, the learned Single Member of the Maharashtra Administrative Tribunal, in the absence of challenge to the actual reversion order should not have hurriedly proceeded to pass the interim order on 20.4.2016. As already observed the Presiding Officer, (sic.) who appeared for the State, had brought to the notice of the Tribunal that there was no formal application/amendment to the Original Application praying stay to the reversion order.”

It is clear that Hon'ble High Court had reservations about the stay order granted in O.A. No. 835/2015 etc by order dated 28.04.2016 by this Tribunal. However, that

order was allowed to continue unchanged. In the meanwhile in O.A. No. No. 371/2016, this Tribunal by order dated 5.5.2016 gave liberty to the Respondents to issue fresh show cause notices to the persons who were reverted. Accordingly, the present Respondent no. 3 issued notices to all the Applicants (including those covered by stay order dated 28.04.2016) and after considering their replies passed fresh reversion orders. The order of maintaining status quo was passed by Hon'ble High Court on 14.07.2016. On that date, the Applicants apparently already stood relieved from the post of Agriculture Supervisors. As such, technically it appears that there was no violation of the order of Hon'ble High Court. However, if any of the Applicants has any grievance that order of Hon'ble High Court was violated, he could have taken remedial steps by approaching Hon'ble High Court. We do not find that any order of this Tribunal was violated.

20. We now come to the crux of the matter viz interpretation of the Departmental Examination Rules of 1975. There rules have been appended at Annexure A-6

(page 71 of the Paper Book in O.A. No. 835/2015). The Applicants' main arguments is that proviso (d) to Rule 3 makes it clear that the Applicants who were appointed as Agriculture Assistants in class-III were not required to pass the examination after completion of three years of service. It appears that most of the Applicants in this group of O.As. were directly recruited as Agriculture Assistant, which is admittedly a Class III post. Rule 3 makes it clear that a person appointed directly to any post in subordinate service is required to pass this examination. In other words, if a person is directly appointed in the post of Agriculture Supervisor, he would be required to pass the Departmental Examination. However, persons like the present Applicants would be required to pass the examination only while working as Agriculture Assistants and would not be required to pass the examination again on being promoted as Agriculture Supervisor. This simple provision is explained somewhat in detail. To appreciate the proviso to this Rule, it may be read:

“Provided that the following members of the subordinate service shall not be required to pass the examination, that is to say.-

(d) Those who have completed three years continuous service in any of the posts in subordinate service to which this examination is applicable.”

It is the case of the Applicants, that for the post of Agriculture Assistant, this proviso is applicable. Accordingly, on completion of three years of continuous service, the Applicants were not required to pass this examination. This according to the Applicants is the plain meaning of this Rule. The Applicants have argued that Hon'ble Supreme Court in the case **of B. Premanand and others Vs. Mohan Koikul & Others in Civil Appeal No. 2684 of 2007** by judgment dated 16.03.2011 has held that the literal Rule of interpretation should be followed to interpret a statute. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. This lateral rule of interpretation will prevail over all others principles.

Learned Advocate for the

Applicants argued that the lateral interpretation of proviso (d) makes it clear that the Applicants were not required to pass that examination after three years of service. We are afraid that this is too simplistic a view to be taken in the facts of this case. It has been held by Hon'ble Supreme Court that the rules are to be interpreted harmoniously, when more than one rules are apparently contradictory to each other. Intention of the lawmakers is also an important factor in such cases. In Maharashtra, for all services, including the All India Services, it is necessary for the members to pass the Departmental Examination, before an employee earns increments or can be considered for promotion. For some cadres like the Maharashtra Development Service, just to give one example, failure to pass the Departmental Examination may result in discharge of a direct recruit from service, or reversion of a promote. In many cases, failure to pass the Departmental Examination in given time and chances may result in the employee losing his seniority, as in the case of Talathis in Revenue Department. The intention of the law makes it clear that an employee should get some proficiency in the matter, in which he is required to discharge his duties. In

the present case, Rule 3 makes it very clear that a person appointed to a Class III post in Agriculture Department has to pass the examination at same stage in his career. The Rule 3 as amended by notification dated 22.11.1983, provides for passing the examination within 3 chances and within four years of joining the post. Sub-section (g) of first proviso, provides that an employee, who reaches the age of 45 years, will not be required to pass the examination. If this Rule 3 is read as a whole, after various Sub-Clauses have been harmoniously interpreted, the intention of the lawmakers is clear that a class-III employee has to pass the departmental examination within 4 years and three chances of joining the service. If the intention of the lawmakers was to exempt an employee from passing the examination after three years of continuous service, there was no need to frame such elaborate rules. The main clause of Rule 3, which provides that an employee has to pass the Departmental Examination within four years, would be totally redundant in that case. The question of grating exemption to any employee on reaching the age of 45 years would simply not arise in such a scenario. The simple rule would have been

that if an employee has completed three years of service, he will not be required to pass the examination. In such a situation, no employee would even try to pass the examination, when he can be exempted after three years, and has to pass the examination within four years of joining service. The interpretation of the Applicants, which they are calling literal interpretation, will make the rule meaningless or nugatory. Such an interpretation cannot be accepted. Learned Presenting Officer has cited the judgment of Hon'ble High Court in the case of **Ulhas Y. Somwanshi Vs. the State of Maharashtra 2008(3) Bom. C.R. 99.** In this Case the Maharashtra Development Service Class-I and Class-II (Departmental Examination) Rules, 1999 were interpreted by Hon'ble High Court. The issue was whether an employee, who has failed to pass the Departmental Examination as per Rule 7 (a) and as a result was required to be reverted to the post from which he was promoted, will be entitled to be exempted from passing the said examination, on reaching the age of 45 years under Rule 5(a). Hon'ble High Court has observed as follows:

“Last but not the least, although both provisions i.e. Rule 5(a) reading exemption from passing

examination on attaining age of 45 years and Rule 7(a) regarding consequences of failure to pass examination, are worded by inclusion of 'shall be' thereby indicating no option/discretion with the Department, neither of the two is so worded as to have an overriding effect over the other. Both the provisions are therefore, required to be so construed or operated that neither supersedes/nullifies the other."

In the Rule 3, it is clearly provided that a Class-III employee has to pass the Departmental Examination within 3 chances and 4 years. In the first proviso, Clause (d) obviously, cannot nullify the rule itself. We are inclined to consider favorably, the interpretation given by the learned Advocate Shri Chandratre, in his written notes of Arguments dated 13.12.2016, which reads:

"When some consequences of non-passing the examination are prescribed it means that the passing of the examination is mandatory. On this background, if Clause (d) of the proviso to Rule 3 is read, then it is noticed that this clause is totally vague. If at all some meaning is required to be given to this clause then it can be said that, the members of the subordinate service who had completed three years of

service on 4.12.1975 are exempted from passing the examination.”

Whether this interpretation of Clause (d) of first proviso to Rule 3 is accepted or not, one thing is quite clear that interpretation of the Applicants in this regard is totally unacceptable and it rejected firmly.

21. The Applicants have relied on Rule 7 which reads :-

“7. Examination when to be held. – The examination shall ordinarily be held twice in a year in the months of January and July.”

It was argued that the Respondents have not held the examination regularly. The Applicants have annexed a chart (Annexure R-A.7 on page 448 of the Paper Book in O.A. No. 835/2015) showing the dates on which the examinations were held. It is claimed that examinations were held once in 1992, twice in 1993 and once every year thereafter. Learned Counsel for the Applicants have claimed that as the Respondents failed to held the examination twice in a year, the period of passing the examination should have been doubled, i.e. from 4

years to 8 years. We have ascertained from the Respondents that the period of 4 years is counted from October, 1992, for passing the examination. During the period of four years up to October, 1996, Departmental Examination was conducted on six occasions. The Applicants were allowed three chances. We see no reason, as to why the Applicants could not pass the examination, when they could have appeared during six occasions when the examination was held. This claim is totally unjustified and no prejudice is caused to the Applicants, even if the examination was held once a year.

22. The Applicants have claimed that in their appointment letters, they were not informed about the consequences of failure to pass the examination as per rules, except that they will not earn any increments. As the Respondents did not take any action to make the Applicants lose seniority, they are estopped for doing so. One sample order issued sometime in 1983 in respect of Shri Sudhakar Onkar Jadhav, the Applicant no. 1, to the post of Agriculture Assistant is enclosed at Annexure A-1 (P. 23 of the Paper Book in O.A. No. 835/2015). This

order has a condition that as per Departmental Examination Rules of 1975, the candidate was required to pass the examination in 5 years (which was subsequently reduced to 4 years) and three chances. Failure to do so would result in stoppage of increments. Learned Counsel for the Applicants argued that as it was not mentioned that such failure would also entail loss of seniority in the appointment letter and the fact that no action to make the Applicant lose seniority was taken by the Respondents, they are stopped from doing so now. This argument has no merit, as it was not necessary to mention such consequences of failure to pass the departmental examination as per rules in the appointment letters. The rules are applicable to all Government servants and violation cannot be condoned on the ground of ignorance. It is evident that the Applicants want to take advantage of the mistake at the Respondents in not following the rules strictly. However, Hon'ble Supreme Court in the case of **Union of India and Another Vs. Narendra Singh : AIR 2008 SC (Supp.) 240** has held :-

“28. It is true that the mistake was of the Department and the respondent was

promoted though he was not eligible and qualified. But we cannot countenance the submission of the respondent that the mistake cannot be corrected. In Indian Council of Agricultural Research & Another Vs. T.K. Suryanarayan & Others : (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employee cannot be prevented from applying the rule rightly and in correcting the mistake, it may cause hardship to the employee but a Court of Law cannot ignore statutory Rules.”

In that case, the ‘respondent’ was promoted 17 years back. Nevertheless, his pension was fixed in the lower post, as he had only a few months to retire, he was allowed to continue in the higher post. In the present case, the Respondents have corrected their mistake in preparing the seniority list, which is now prepared in accordance with statutory rules.

Rule 9 (2) of the aforesaid rules provides for loss of seniority if an employees fail to pass the examination within given chances and time. If the seniority is fixed by applying this rule, the Applicants cannot challenge it. We

are unable to hold that Rule 9 (2) and 9 (3) of the aforesaid rules are unconstitutional or that these rules are arbitrary or discriminatory. In fact, those rules are quite logical and have been incorporated to serve a public purpose that all the public servants should acquire knowledge of the relevant rules / procedures etc. of the job they are recruited for. These rules make a lot of sense and are equally applicable to all. The Applicants are not been discriminated at all. The rules are neither arbitrary nor discriminatory. The Applicants have no fundamental right to such promotion in violation of statutory rules. This prayer is rejected.

23. The Applicants have challenged their reversion by order dated 22.4.2016 to the post of Agriculture Assistant. The Applicants have challenged in mainly on the ground that no notice was given to them before these orders were passed. This was in violation of the principles of natural justice. A large number of cases law has been cited. By order dated 5.5.2016 in O.A. No. 371/2016 this Tribunal has held that:

“5. In our view, as the respondent has acted pursuant to the order by Principal Bench of this

Tribunal in O.A. No. 1033/2013 and the mistake committed by the respondent can be rectified in following manner:-

A show cause notice may be issued to the applicant and other persons, who have been demoted to show cause notice as to why they should not be demoted. The reasons for the proposed action quoting relevant rules and facts may be given in the said notice. The applicant and other persons should be given a period of four weeks for reply to the show cause notice and after their reply are received, reasoned orders should be passed in each and every case within a period of three weeks. This process should be completed within a period of around 2 months from the date of this order. Till then this O.A. will remain pending and all the issues are kept open.”

It appears that the Respondent no. 3 had issued show cause notices to all those who were reverted as a result of orders dated 22.04.2016 and after considering their replies, passed fresh orders of reversion. The order dated 5.5.2016, gave liberty to the Respondent no. 3 to issue show cause notice, not only to the Applicant in O.A. No. 371/2016 but other similarly situated persons also. By implication, even the Applicant covered by stay

order dated 28.04.2016 was covered by this order. The Applicants have stated that a total of 72 Agriculture Supervisors were reverted to the post of Agriculture Assistant and 54 reverted Agriculture Supervisors had filed O.As. out of which stay order was granted in the matter of 51 Applicants and 3 Applicants were not granted stay order. The Respondent No. 3, however, gave notices to the Applicants in all the O.As.

24. It is argued that the Respondent no. 3 treated order dated 5.5.2016 in O.A. No. 371/2016 as a tool to cover his illegal actions. The replies of the Applicants were not considered and predetermined orders were passed in all matters (para 36 & 37 of the rejoinder dated 17.10.2016 in O.A. No. 835/2015). We are unable to accept this contention. The Applicants were reverted as they were earlier promoted in violation of rules.

The Respondent no. 3 on 13.1.2017 has filed his affidavit in reply to the amended O.A. The Respondents have claimed that the seniority list of Agriculture Assistants as on 1.1.2015 was published on 22.2.2016 as per the Post Recruitment Rules, 1975 as amended from

time to time. The Applicants, who were wrongly promoted, were reverted by order dated 22.4.2016. Earlier seniority lists were prepared in violation of these rules. However, the Principal Bench of this Tribunal by order dated 10.11.2014 in O.A. No. 1033/2013 etc. had directed the Respondent no.3 to prepare seniority list in accordance with the statutory rules. The Respondent no. 3 had prepared a provisional seniority list in accordance with the statutory rules and invited objections from all including the present Applicants camps were held in Nandurbar, Dhule, Jalgaon and Nashik districts in August/September, 2015. A total of 471 objections were received. The list was finalized on 22.2.2016 showing position as on 1.1.2015. The meeting of the Departmental Promotion Committee (DPC) was held on 31.03.2016. The Committee approved reversion of 56 Agriculture Supervisors from promotion quota and 16 Agriculture Supervisors promoted against nomination quota. 58 Agriculture Assistants were promoted and promotion of 43 Agriculture Supervisors, who were promoted in the posts from nomination quota, were regularized. We find the Applicant in O.A. No. 835/2015 has not only

challenged reversion of 56 Agriculture Supervisors from promotion quota but also of 16 Agriculture Supervisors who were promoted in the vacancy in nomination quota, without specifying to which category the Applicants in O.A. No. 835/2015 belong. It is however, a fact that all the Applicants in this Group of O.As. were reverted as they were promoted wrongly and on the basis of revised seniority list prepared strictly in accordance with statutory rules. The Respondent no. 3 passed order on 22.4.2016 reverting the Applicants. It appears that many of the persons were party Respondents in O.A. No. 1033/2013 etc. before Mumbai Bench of this Tribunal. The Seniority list of the Agriculture Assistants was freshly prepared as on 1.1.2015. Camps were organized and 471 objections were received. It is clear from these facts, that the Applicants were aware that seniority list was prepared in terms of statutory rules, which would necessarily result in their losing seniority, which may result in their reversion. As such, it cannot be said that reversion orders dated 22.4.2016 were passed behind the back of the Applicants. The mistake, if any, of the Respondent no. 3 was allowed to be rectified by order dated 5.5.2016 of this

Tribunal in O.A. No. 371/2016. It appears that fresh show cause notices were given to the Applicants and after hearing their say, fresh orders have been passed reverting them.

The Learned Advocate Shri Chandratre in O.A. No. 397/2016 has cited the judgment of Hon'ble Supreme Court in **M/s Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati & others : 2015 AIR SCW 3884.** It was held by Hon'ble Supreme Court that:

“In this behalf, we need to notice one other exception which has been carved out to be aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles for natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedure requirements in those cases where non-grant of hearing has not caused any prejudice to the person against whom action is taken. Therefore, every violation of fact of natural justice may not head to the conclusion the order passed in always null and void. The validity of the order has to be decided on the touchstone of ‘prejudice’. The

ultimate test is the same viz. the test of prejudice or the test of fair hearing.”

The action of the Respondent no. 3 could have been held valid, as the order of reversion cannot be said to have caused any prejudice to them, as they were wrongly promoted in violation of statutory rules. In the present case, the following facts are relevant:

- (i) Seniority list as on 1.1.2015 was prepared pursuant to the order of Mumbai Bench of this Tribunal dated 10.11.2014 in O.A. No. 1033/2013 etc.
- (ii) By the aforesaid order of this Tribunal had directed the present Respondent no. 3 to prepare seniority list of the Agriculture Assistants strictly in accordance with statutory Rules.
- (iii) Some of the persons, who are affected by order dated 22.4.2016, reverting them were party respondent in the aforesaid proceedings.
- (iv) Before the seniority list as on 1.1.2015 was finalized, camps were organized to invite objections. A total of

471 objections were received and considered before finalizing the seniority list.

- (v) The result of the finalization of the list was promotion of persons, who were earlier not promoted, due to wrong application of rules. This would necessarily result in reversion of many persons like the present Applicants, who were wrongly promoted earlier.

If all these facts are considered in proper perspective, it is clear that the reversion orders dated 22.04.2016 were not issued out of the blue. The requirement of natural justice was substantially complied with. By order dated 5.5.2016 in O.A. No. 371/2016, this Tribunal directed the Respondent no. 3 to give another opportunity to affected persons by directing to issue fresh show cause notice to them. It is admitted that fresh show cause notices were issued to the Applicants and after considering their replies, fresh orders of reversion has been passed, though, strictly speaking it was perhaps not necessary to issue fresh show cause notices to the Applicants, as no prejudice was caused to them. Their claim that they were rightly promoted on the basis of

seniority lists, correctly drawn, has been rejected by us. In fact, the Applicants have enjoyed unmerited promotions for long years, and it cannot be said that by reversion, any injustice is caused to them.

25. We have examined all the issues raised by the Respondents. We have concluded that the seniority list prepared by the Respondent no. 3 as on 1.1.2015 was correct and the Applicants were promoted as Agriculture Supervisors earlier on the basis of seniority lists prepared wrongly in violation of Departmental Examination Rules of 1975. The Respondent no. 3 was directed to prepare the seniority list of Agriculture Assistant strictly in accordance with the aforesaid Rules by Mumbai Bench of this Tribunal by order dated 10.11.2014 in O.A. No. 1033/2013 etc. As a result, some persons were liable to be reverted who were wrongly promoted earlier. As noted by Hon'ble Supreme Court in Narendra Singh's case (Supra) such hardship to some employee is inevitable, but the Courts cannot ignore statutory Rules, even when the wrong promotions are of long standing. The Applicants have failed to make out any case of our interference in the matter, either in the matter of the final seniority list or of

their reversion as a consequence. The facts in other O.As. are more or less identical with the facts in O.A. No. 835/2015. All these O.As have no merit and are dismissed with no order as to costs. As the O.As. are dismissed, nothing survive in the all M.As. in these O.As. These M.As. are also dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 835 of 2015 & others RA 2017