

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATIONS NO 5 & 6 OF 2015

DISTRICT : PARBHANI

1) ORIGINAL APPLICATION NO. 5 OF 2015

1. Madhav s/o Uddhavrao Yadav,)
Occ :Service as Office Superintendent)
C/o: O/o District Deputy Registrar,)
Cooperative Societies, Parbhani.)
2. Anil s/o Balasaheb Chavan,)
Service as Cooperative Officer,)
Grade-I in O/o Assistant Registrar)
Cooperative Societies, Purna],)
R/o: Mathura Niwas, Gajanan)
Nagar, Karegaon Road, Parbhani.)
3. Balasaheb s/o S. Nandapurkar,)
Service as Cooperative Officer,)
Grade-I, in O/o Assisant Registrar)
C.S, Sonpeth, R/o: Nandapurkar)
Niwas, New Mondha, Parbhani.)...**Applicants**

Versus

1. The State of Maharashtra)
[copy to be served on C.P.O,)
M.A.T, bench at Aurangabad.)
2. The Commissioner of Cooperative)
& Registrar of Cooperative Societies)
M.S, Pune.)
3. The Divisional Joint Registrar,)
Cooperative Societies, Aurangabad.)
4. Mr S.N Bargaje,)
Cooperative Officer, Gr-I,)
C/o: O/o Assistant Registrar,)
Cooperative Societies, Phulambri,)
Dist-Aurangabad.)
5. Mr S.B Mavhare,)
Cooperative Officer, Gr-I,)
C/o: O/o Assistant Registrar,)
Cooperative Societies, Kalamnoori,)
Dist-Hingoli.)
6. Mr J.B Bhalerao,)
Cooperative Officer, Gr-I,)
C/o: O/o Assistant Registrar,)
Cooperative Societies, Manwat,)
Dist-Parbhani.)...**Respondents**

2) ORIGINAL APPLICATION NO. 6 OF 2015

1. Rahul s/o Ashokrao Sarsamkar,)
Occ :Service as Cooperative Officer)

- Gr.I, in O/o Dy. Registrar, C.S.,)
 Tal-Nanded, presently on deputation)
 At Pune], R/o: At Post Sarsam,)
 Tal-Himayatnagr, Dist-Nanded.)
2. Sachin s/o Shivajirao Mali,)
 Service as Cooperative Officer,)
 Grade-I in O/o Assistant Registrar)
 Cooperative Societies, Latur],)
 R/o: Akkai Niwas, Krushi Nagar,)
 Old Ausa Road, Near Lal Bahadur)
 Shastri Vidyalaya, Latur.)...**Applicants**

Versus

1. The State of Maharashtra)
 [copy to be served on C.P.O,)
 M.A.T, bench at Aurangabad.)
2. The Commissioner of Cooperative)
 & Registrar of Cooperative Societies)
 M.S, Pune.)
3. The Divisional Joint Registrar,)
 Cooperative Societies, Latur.)
4. Smt H.Y Kamble,)
 Cooperative Officer, Gr-I,)
 C/o: O/o Assistant Registrar,)
 Cooperative Societies, Devni,)
 Dist-Latur.)
5. Mr S.N Gadhave)

- Cooperative Officer, Gr-I,)
 C/o: O/o Assistant Registrar,)
 Cooperative Societies, Mahur,)
 Dist-Nanded.)
6. Mr R.M Mote,)
 Cooperative Officer, Gr-I,)
 C/o: O/o Deputy Registrar,)
 Cooperative Societies, Beed,)
 Dist-Beed.)
7. Mr H.H Surodwar,)
 Cooperative Officer, Gr-I,)
 C/o: O/o Assistant Registrar,)
 Cooperative Societies, Naigaon,)
 Dist-Nanded.)...**Respondents**

Shri A.S Deshmukh, learned advocate for the Applicant in O.A 5/2015 and Ms Priti Wankhede, learned advocate for the Applicants in O.A 6/2015.

Shri V.R Bhumkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri B.P Patil (Member) (J)

DATE : 16.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S Deshmukh, learned advocate for the Applicants in O.A 5/2015, Ms Priti Wankhede, learned advocate for the Applicants in O.A 6/2015 and Shri V.R Bhumkar, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. Learned Counsel for the Applicants in O.A no 5/2015 argued that the final seniority lists of Cooperative Officers, Grade-I as on 1.1.2013 and 1.1.2014 were prepared and published by the Respondent no. 3 on 9.9.2014 and 2.12.2014 respectively. The Applicants are not placed in the seniority lists on the basis of initial date of appointment, i.e. 14.3.2008. However, the Applicants have been given seniority on the basis of the date of their inter divisional transfers to Aurangabad Division. This is in clear violation of clause 4(e) of G.R dated 21.1.1983 which provides that seniority of Class-III employees on transfer from one division would be fixed as per the date of initial appointment. However, such transferees may be placed below those who were recruited / promoted on that post in the same year as the year of appointment/promotion of the transferees in the division

to which the employee is transferred. This Tribunal (Mumbai Bench) in O.A no 36 of 2006 by judgment dated 14.3.2007 has held that an employee would not lose his seniority on transfer from one division to another. The Respondent no. 2 in O.A no 36/2006 was the present Respondent no. 2 and that judgment was implemented. Now the Respondents cannot take a view contrary to the aforesaid judgment of this Tribunal.

4. Learned Presenting Officer argued on behalf of the Respondents that the Respondent no. 2 by his letter dated 9.12.2010 had informed Divisional Joint Registrar that seniority of Cooperative Officer, Grade-I will not change on inter-divisional transfers, even when such transfers were on request. Seniority lists for 2011 and 2012 were prepared on that basis. However, seniority lists for 2013 and 2014 have been prepared on the basis of G.R dated 21.1.1983 and letter issued by the Government of Maharashtra on 9.8.2006 to the Commissioner of Cooperation, who had issued letters/circulars dated 2.8.2013, 9.7.2014, 5.3.2014, 31.7.2014 and 14.7.2015. It is now directed by the Respondent no. 2 that an employee will lose his past service if his inter-divisional transfer is on request. The Respondent no. 2 has consolidated State Level Seniority Lists for 2013 and 2014 for Cooperative Officer, Grade-I on that basis. The Applicants were transferred to Aurangabad Division on 27.2.2009, 10.2.2009 and

27.10.2009 respectively on their own request. Their seniority in Aurangabad Division is from the date on which they joined in this division. Learned Presenting Officer argued that Cooperative Officer, Grade-I is not a State cadre. Only to facilitate promotion to the post of Assistant Registrar, Group 'B', which is a State cadre, the consolidated Seniority list of Cooperative Officers, Grade-II is prepared by the Respondent no. 2 by merging seniority lists at divisional level. Learned Presenting Officer argued that the seniority lists, which are impugned have been prepared as per G.Rs issued by the Government from time to time.

5. We find that G.R dated 21.1.1983 (Annexure A-3) deals with the seniority of class-III employees in the Cooperation Department. Clause 4(e) reads as under:-

“4(e) In case of transfer of Class-III employees from one division to other, seniority of the employees concerned should be fixed as per date of his/her recruitment/promotion in the cadre or post and he/she will be placed below the persons recruited/promoted during the year of recruitment/promotion of the employees for transferred.”

This clause is quite clear that on transfer from one division to another, a class-III employee does not lose his

seniority. Mumbai Bench of this Tribunal in O.A no 36 of 2006 (judgment dated 14.3.2007) has observed that seniority of an employee has to be fixed in terms of Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. In para 12 of the judgment, it is observed that:-

“12..... The applicant’s services all the while being valid, legal and proper as such his placement in the seniority, has to be in terms of Rule 4 of the Seniority Rules. Even assuming that his transfer to Pune Division was on his request, and his placement at Pune Division being in excess of quota thus fortuitous one, but for that matter applicant will not lose his placing in the State seniority, which has to be prepared and maintained in terms of Rules.”

Rule 4(2)(c) of the aforesaid Rules reads as below:-

“(c) the seniority of a transferred Government servant vis-à-vis the Government servants in the post, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the class and pay scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”

It is clear that length of service of an employee is a relevant factor while deciding his seniority when his cadre is changed. He cannot be asked to forgo his earlier service even when transfer is on request. In O.A no 785/2014, Nagpur Bench of this Tribunal by judgment dated 13.2.2017 has held that para 3(8) of G.R dated 3.6.2011 is not in consonance with Rule 4(2)(c) of the Regulation of Seniority Rules and Rules will prevail over the G.R. In the present case, the Applicants cannot be made to lose their seniority, even if their transfer to Aurangabad Division was on their request. At the most, they may be placed below those employees, who were promoted in the same year in Aurangabad, when the Applicants were promoted in other divisions, as Cooperative Officer, Grade-I, before their respective transfers to Aurangabad Division.

6. The seniority lists published by the Respondent no. 3 for Cooperative Officer, Grade-I as on 1.1.2013 and 1.1.2014 published on 9.9.2014 and 2.12.2014 are quashed and set aside. The Respondent no. 3 shall publish seniority lists as on 1.1.2013 and 1.1.2014 as directed in the preceding paragraph.

7. In O.A no 6/2015, identical reliefs are sought. This Original Application is also allowed and the order in O.A no 5/2015 will apply in toto. The Respondent no.3 is directed to publish fresh seniority lists accordingly

within a period of 3 months from the date of this order.
There will be no order as to costs.

Sd/-
(B.P Patil)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 16.08.2017
Dictation taken by : A.K. Nair.

H:Nair\MAT AURANGABAD BENCH JUDGMENTS, AUG. 17\O.A 559.15 Recruitment process challenged, DB.0817.doc