

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.535 OF 2021

DISTRICT : MUMBAI

Shri Anudeep Shrinivas Dighe,)
General Manager, [Finance], and Financial)
Advisor, Mumbai.)
R/o: Varuna, A/202, Dosti Vihar,)
Vartak Nagar, Near Cadbury Junction,)
Thane [W] 400 606.)...**Applicant**

Versus

1. The Government of Maharashtra)
Through Addl. Chief Secretary,)
Finance Department, Mantralaya,)
Mumbai.)
2. Shri G.B Patil,)
Joint Director, Local Funds,)
Audit Department, Pune Region,)
Dist-Pune.)
3. Shri A.C Kolhe,)
Joint Director, presently posted as)
Chief Accounts Officer,)
Vasai-Virar Municipal Corporation,)
Vasai.)

4. K.B Dhotre,)
Joint Director, Local Funds,)
Aurangabad Region, City-Aurangabad)
5. Shri S.S Kale,)
Joint Director, working as)
Chief Auditor, Mumbai,)
Municipal Corporation, Mumbai.)
6. Shri G.N Deshmukh,)
Joint Director, Local Funds,)
Nasik Region, City Nasik.)
7. Shri A.D Dhande,)
Joint Director, Deputy Secretary,)
Cum Financial Advisor,)
Food and Civil Supply Department,)
Mantralaya, Mumbai 400 032.)
8. Shri V.N Kolhe,)
Joint Director, Chief Accounts Officer))
Nagpur Municipal Corporation,)
Nagpur.)
9. Smt. B.R Deshmukh,)
Joint Director, Local Funds Dept,)
Konkan Region, Navi Mumbai.)
10. Smt S.A Patole,)
Joint Director, Accounts & Treasury))
Pune Region, Dist-Pune.)

11. Shri I.S Gore,)
 Joint Director, Deputy Secretary and)
 O.S.D, Finance Department,)
 Mantralaya, Mumbai 400 032.)
12. Government of Maharashtra,)
 Through Principal Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, learned Advocate for the Applicant.

Shri R.S Apte, learned Senior Counsel with Mrs K.S Gaikwad, learned Presenting Officer for the Respondents 1 and 12.

Shri U.V Bhosle, learned counsel for Respondents no 3, 4, 5, 6 and 11.

CORAM : **Justice Ms. Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

RESERVED ON : **28.10.2021**

PRONOUNCED ON : **23.11.2021**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant, General Manager [Finance] and Financial Advisor, Mumbai, working in the office of Respondent-State, challenges the order dated 2.7.2021 issued by Respondent no. 1, by which the seniority accorded to the applicant at serial No. 53 in the seniority list as of 1.1.2017 to 1.1.2020 in the cadre of Joint Director, Group-A, Maharashtra Finance and Accounts Services as illegal and bad in law. It is further prayed that Respondent no. 1 be directed to accord seniority to the applicant at Serial No. 43 below one Shri A.R Navale and above Shri G.B Patil, Respondent no. 2.

2. The case of the applicant in brief is that the applicant whose parent department is Finance Department was posted as Deputy Director and Financial Advisor in the office of Director of Municipal Administration, Mumbai on deputation. He proceeded on medical leave from 21.11.2016 to 23.12.2016 as he was diagnosed with Chicken Guniya. In between, Respondent no.1 issued the promotion orders of the applicant along with Respondents no.2 to 11, of the cadre of Joint Director. The name of the applicant was appearing at Serial No. 5 on the basis of the strength of ranking mentioned in the original select list. In clause No.5 of the said order, Respondent no.1 has specifically mentioned that the officers who are promoted should accept the charge within 30 days from the date of issuance of the order and if they had not joined within 30 days, then the order of promotion would be cancelled. The applicant was on medical leave till 22.12.2016. So he reported for duties on 26.12.2016 and on that date he came across his promotion order dated 26.11.2016. He applied for sanctioned leave which was approved and he handed over the charge. He was relieved on the same day and he reported accordingly to his parent office, Respondent no. 1. Pursuant to the same, Respondent no. 1, issued order dated 28.12.2016 and allowed the applicant to report on the promotional post w.e.f 27.12.2016. It is the case of the applicant that Respondent no. 1 issued Circular on 24.5.2021 by which the seniority list as of 1.1.2017 to 1.1.2020 was published, wherein the applicant was shown at Serial No. 15. However, the applicant has contended that his name should have been shown at Serial No. 4, in view of the order of promotion dated 22.11.2016. The applicant raised objection to the seniority list and made representation dated 28.5.2021 for rectification of the error. However, on 22.6.2021, Respondent no. 1 held the applicant responsible for reporting for the duty beyond 30 days and rejected the representation.

3. Learned counsel for the applicant, Mr Lonkar, has submitted that the applicant has challenged the order dated 22.6.2021 rejecting his representation, mainly on the ground that the Respondents have illegally applied proviso 3 of sub Rule 3 of Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as 'the said Rules' for brevity), while considering the seniority of the applicant. Learned counsel for the applicant contended that the period of 30 days stated in the rules is only for the employees, who are joining by nomination and it was while deciding their inter-se seniority. Such restriction is not available for the employees who are promoted and are supposed to report for duty. Learned counsel for the applicant further argued that more over the Respondents should ought to have considered the reason for which he could not join and report on the promotional post. Learned counsel for the applicant pointed out the Medical Certificate issued by the Doctor that he was suffering from Chicken Guniya from 21.11.2016 till 23.12.2016 and his leave is sanctioned by the Department where he was working. Thus, the applicant has taken all the necessary steps which were required to be officially taken. Learned counsel for the applicant had submitted that the Government has recently invoked proviso 3 of Rule 5 of the said Rules which is in fact not applicable to the case of the Applicant. Moreover, the applicant cannot be held personally responsible for his absence, and therefore, his application be allowed.

4. Respondent no. 1 and the private Respondents have filed their affidavit in reply opposing the application. Respondent no. 1 has filed affidavit in reply dated 5.10.2021 through Under Secretary, in the office of Principal Secretary, (Accounts & Treasury), Finance Department, Mantralaya, Mumbai and the private Respondent no. 11 filed affidavit in reply dated 18.10.2021 for himself and on behalf of Respondents no 3, 4, 5 & 6.

5. Learned Senior Counsel Mr Apte, has submitted that this application is false, misleading and deserves to be dismissed. The Respondents have rightly fixed the seniority of the applicant from the date on which he reported for duty on his promotional post. The applicant joined clearly 5 to 6 days late after the period of 30 days which is not prescribed under the said Rules. Learned Senior Counsel Mr Apte and learned counsel Mr U.V Bhosle, submitted that the applicant has behaved in irresponsible manner and was negligent in informing about his illness to his Department as he was not available for the work. It was the duty of the applicant to communicate about the possible delay in reporting in the promotional post due to his illness. However, he did not do so and that conduct cannot be condoned and his seniority was rightly fixed in accordance with the rules. Learned Senior Counsel Mr Apte, further submitted that the State Government was on the contrary lenient towards the applicant in not cancelling his promotion itself when the powers to cancel the promotion vests with the Government under the said Rules. Learned Senior Counsel submitted that in the year 2010, when the applicant was promoted to the post of Deputy Director, at that time also he did not join the said post for more than a month and went on leave till he was given a posting of his choice. Thus, there is a history of the applicant of joining the duty after the stipulated period of 30 days in the event of getting promotion. Respondent no.1 has considered the habitual conduct of the applicant while considering the seniority.

6. Learned counsel Mr. Bhosle for Respondents no. 3, 4, 5, 6 & 11 contended that the Respondents have joined the promotional post within the stipulated period of 30 days and if the applicant's delay in joining the promotional post is condoned, it will send a wrong signal to the other Government employees. If at all he is placed in the seniority list as per his claim, the private Respondents are going to be affected for no fault on their part. Learned counsel Mr Bhosle in support of his submissions relied on

the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka & Ors Vs. C. Lalitha, (2006) 2 SCC 747**, wherein it is held that justice demands that a person should not be allowed to derive any undue advantage over other employees. The applicant has got what could be given to him in law.

7. According to the Respondents the action of pushing the applicant down in the seniority list is justified under the proviso of sub Rule 3 of Rule 5, therefore it is necessary that the Sub Rule 3 of Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 is reproduced :-

“(3) Where two or more Government servants who are eligible for promotion to any higher post, cadre or service according to any Select List are promoted to such higher post, cadre or service and the actual dates on which such Government servants report for duty in such higher posts, cadre or service are not chronologically in conformity with their inter se seniority as provided in Clause (b) of sub-rule (2) of Rule (4), the senior person, who reports for duty later than his junior, shall be assigned as deemed date of appointment, the date on which the junior reports for duty.

Provided that in a case where a Government servant himself is deemed responsible for delay in assuming charge of the promotional post, his inter se seniority shall be fixed with reference to the date he actually assumes charge, of such posts.”

8. Learned Senior Counsel Mr. Apte has relied on the judgment of the Hon'ble Bombay High Court dated 21.1.2020 in Writ Petition No.10148/2019, Shri Udayraj K. Chavan Vs. The State of Maharashtra & Ors, wherein the Petitioner, Respondent no. 4 in the Writ Petition was the original Applicant, has challenged his placement in the seniority list before the Tribunal and the said order was challenged by the Petitioner, who was Respondent no. 4 in the Original Application. The Division Bench of the Hon'ble High Court had an opportunity to discuss Rule 5(3) of the said Rules. We would like to point out that the said judgment is not

helpful in the present case because it was mainly on the point of inter-se seniority between the direct recruits and the promotees.

9. Much is argued on the proviso of sub Rule 3 and Rule 5 of the said Rules, which is in respect of assignment of deemed date of appointment. These Rules are not applicable to the case of the Applicant because sub Rule 1 and 2 are pertaining to deciding the inter-se seniority at the time of appointment and not of promotion; so also sub Rule 2 states about deciding the seniority in between the direct recruits who join on the earlier date and who joined thereafter. There is a limit of joining within the period of thirty days for direct recruits from the date of joining or within such further period as may be extended by the competent authority.

Sub Rule 3 of Rule 5 of the said Rules is regarding the promotion to higher post, cadre or service should be as per Select List. Civil servants are promoted, but the actual date of joining the promotional post are not chronologically in conformity with their inter-se seniority, which is pertaining to Clause (b) of sub-rule (2) of Rule (4). The senior person who reports the duty later than his junior shall be assigned the deemed date of appointment, the date on which the junior reports for duty. Thereafter the proviso states as follows :-

“Provided that, in a case where a Government servant himself is deemed responsible for delay in assuming charge of the promotional post, his inter-se seniority shall be fixed with reference to the date [he] actually assumed charge, of such post.”

10. Much was further argued on the point that the Applicant himself is deemed responsible for the delay. At the outset we hold that neither this Rule nor proviso is applicable to the case of the applicant because sub clause (b) of sub Rule (2) of Rule 4 of the said Rules pertains to the inter-se seniority of Government servants promoted from two Select Lists who shall be in the same order in which their names appear in such Select List. Here there is no question of preparation of select list in two parts. Further if

the Government servant falls sick and he does not report about the same he cannot be held personally responsible. After one month which is a reasonable period of recovery of illness, he has reported and got his leave sanctioned; such person cannot be considered that he himself is responsible for the delay in assuming the charge. The order passed by the Respondent-Government refusing to give his place as per the seniority is wrong and illegal.

11. The submissions of learned Senior Counsel Mr. Apte that that the Applicant had committed misconduct in the year 2010 by not joining the post in time when he was promoted but he went on leave, thus it is a history of the applicant, so he has to suffer are baseless. There is no iota of nexus in the incident of 2010 and the present situation. The Applicant admittedly was on leave as he was suffering from Chikungunya. He has produced medical certificate and the authority has sanctioned his leave. Had it been the case of the Respondents that the applicant has given fabricated medical certificate and the reason of Chikungunya was false, then there would have been some substance in the action taken by the Government. However, it is not so. The medical leave is post-sanctioned. Therefore, his case will be under Rule 4 which reads as below :

4. General principles of seniority – (1) *Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein.*

Provided that, for the purpose of computing such service, any period of absence from the post, cadre or service due to leave, deputation for training or otherwise or on foreign service or temporary officiating in any other post shall be taken into account, if the competent authority certifies that the Government service concerned would have continued in the said post cadre or service during such period, has he not proceeded on leave or deputation or been appointed temporarily to such other post.

Thus the case of the Applicant is very clear. There is no conditional order about his post-sanctioned leave and it is to be considered as his continuous service and therefore his seniority cannot be disturbed.

12. The submissions of learned Advocate Mr. Bhosle that the Private Respondents are the sufferers and the statement that they are already promoted is misleading, as the private Respondents are already below him throughout so many years, therefore now they cannot take advantage of his sickness. Assuming that the applicant failed to report that he is taking charge after 30 days, still the private Respondents cannot make a capital of this delay when the leave is legally sanctioned and there is no break in continuous service. The continuity of service is a basic principle in deciding the seniority or disturbing the seniority.

13. In view of the above, the following order is passed :-

- (a) Original Application is allowed.
- (b) Impugned Circular dated 02.07.2021 issued by Respondent No.1 is quashed and set aside.
- (c) Applicant be granted seniority at Sr. No.43, below Mr. A.R. Navle and above Mr. G.B. Patil with all consequential benefits.

**Sd/
(Medha Gadgil)
Member (A)**

**Sd/
(Mridula Bhatkar, J.)
Chairperson**

**Place : Mumbai
Date : 23.11.2021
Dictation taken by : A.K. Nair.**

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20____

I N

Original Application No. _____ of 20____

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center"><u>O.A. No.535 of 2021</u></p> <p>Shri Anudeep S. Dighe ..Applicant Vs. The State of Maharashtra & Ors. ..Respondents</p> <p>Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 and 12.</p> <p>2. Suo motu speaking to minutes of our order dated 23.11.2021 passed in the above OA taken out in the presence of Ld. Advocate for the Applicant as well as Ld. CPO.</p> <p>3. Respondents no.2 to 11 are private persons working as Joint Directors in the State of Maharashtra and whose names are mentioned in the seniority list which is under challenge.</p> <p>4. We intend to carry out the correction in operative part of order dated 23.11.2021 which has occurred due to oversight. Considering the nature of speaking to minutes, we are of the view that no notice is required to be given to private respondents no.2 to 11.</p> <p>5. Today OA No.105 of 2022 filed by Shri Pravin D. Jain is on board. He has earlier filed OA No.771 of 2021 for deemed date which was allowed by order dated 7.10.2021 by this Tribunal.</p> <p>6. In OA No.535 of 2021 applicant Shri A.S. Dighe claimed his seniority in the seniority list dated 2.7.2021 which was published vide circular dated 2.7.2021. The seniority of Shri P.D. Jain was not subject to the challenge in OA No.535 of 2021 filed by Shri A.S. Dighe. In the entire order we have neither dealt with nor questioned the entire seniority list of all the Joint Directors. We restricted the issue only to the seniority of the applicant Shri A.S. Dighe and respondents no.2 to 11. However, due to oversight we missed some words in clause (b) of the operative part. For</p>

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

the purpose of clarity, we reproduce the operative part of order dated 23.11.2021, which reads as under:

"13. In view of the above, the following order is passed:

(a) Original Application is allowed.

(b) Impugned Circular dated 02.07.2021 issued by Respondent No.1 is quashed and set aside.

(c) Applicant be granted seniority at Sr. No.43, below Mr. A.R. Navle and above Mr. G.B. Patil with all consequential benefits."

14. We are informed that because of clause (b) of operative part of the order, the entire seniority list resultantly is quashed and therefore nobody can be promoted. We never intended to give cascading effect to the seniority list due to our order. Thus, we correct it and it is to be read as follows:

"13. In view of the above, the following order is passed:

(a) Original Application is allowed.

(b) Impugned Circular dated 02.07.2021 issued by Respondent No.1 be corrected qua the Applicant and Respondents No.2 to 11.

(c) Applicant be granted seniority at Sr. No.43, below Mr. A.R. Navle and above Mr. G.B. Patil with all consequential benefits."

15. This corrected order is to be read as a part of the original order passed in the above OA and it be uploaded on website forthwith.

Sd/-

(Medha Gadgil)
Member (A)
15.2.2022

Sd/-

(Mridula Bhatkar, J.)
Chairperson
15.2.2022

(sgj)