IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATIONS NO 327, 328 & 329/2015

DISTRICT : NASIK

1) ORIGINAL APPLICATION NO 327 OF 2015

1. Shri Vijay Balwant Bhalerao)
2. Shri Ashok Ganpat Kolhe)
3. Shri Ramesh Laxman Rajguru)
4. Shri Dnyandeo Bhimraj Dhadage)
5. Shri Harishchandra B. Dalvi)
6. Shri Govind Ratan Wagh)

Add for service of notice:)
Shri A.V Bandiwadekar, Advocate)
Having office at 9, "Ram Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicants**

Versus

1. The Divisional Commissioner)

Nasik Division, having office at)
Nasik.)

2. The State of Maharashtra,)
Through Principal Secretary,)
[Revenue], Revenue & Forest Dept,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

2) ORIGINAL APPLICATION NO 328 OF 2015

1. Shri Nitin Bhaskar Mulay)
2. Shri Santosh Prabhakar Zade)
3. Shri Sandip Karbhari Borge)
4. Shri Santosh Tarachand Gavhane)
5. Shri Machchindra Damu Bagul)
6. Smt Manjusha V. Bagade)
6A. Smt Suvarna Suresh Warkad)
7. Smt Vaishali Arjun Datrange)
8. Smt Vijaya Sudarshan Samleti)
9. Shri Pankaj Bhikaji Jagdale)
10. Smt Sonali B. Kulkarni [Phadnis])
Add for service of notice:)
Shri A.V Bandiwadekar, Advocate)
Having office at 9, "Ram Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicants**

Versus

1. The Divisional Commissioner)

Nasik Division, having office at)
Nasik.)

2. The State of Maharashtra,)
Through Principal Secretary,)
[Revenue], Revenue & Forest Dept,)
Having office at Mantralaya,)
Mumbai 400 032.)

3. The District Collector,)
Ahmednagar, having office at)
Ahmednagar.)...**Respondents**

3) ORIGINAL APPLICATION NO 329 OF 2015

1. Shri Bapusaheb S. Aher)
2. Shri Nandkumar Laxman Borhade)
3. Shri Hiraman Sukdeo Gangurde)
4. Shri Somnath J. Khaire)
5. Shri Ashok Malhari Randhe)
Add for service of notice:)
Shri A.V Bandiwadekar, Advocate)
Having office at 9, "Ram Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicants**

Versus

1. The Divisional Commissioner)
Nasik Division, having office at)
Nasik.)

2. The State of Maharashtra,)
Through Principal Secretary,)
[Revenue], Revenue & Forest Dept,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 28.03.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

O R D E R

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants and Shri K.B. Bhise, 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. These Original Applications are filed by the Applicants who were working as Naib Tahsildars, Awal Karkoons and Tahsildars respectively in Nasik Division. The Applicants in O.A no 327/2015 were promoted as Naib Tahsildars on various dates in 2014 on the basis of their seniority in the cadre of Awal Karkoon (A.K). They were reverted to the post of Awal Karkoon by order dated 7.5.2015 which is impugned in the present Original Application.

4. The Applicants in O.A no 328/2015 were promoted by the Respondent no. 3 by order dated 19.8.2014 as Awal Karkoon. By impugned order dated 8.5.2015, the Applicants were reverted to the post of Clerk-Typists.

5. The Applicants in O.A no 329/2015 were promoted as Naib Tahsildars from the post of Circle Officer on 24.2.2014 and 19.2.2014 on the basis of seniority-cum-fitness. However, by order dated 7.5.2015, the Applicants have been reverted to the posts of Circle Officers.

6. The Applicants in all three Original Applications have sought interim relief of staying the orders dated 7.2.2015, 8.2.2015 and 7.2.2015 respectively in the three Original Applications till the disposal of these Original Applications. This Tribunal by

a common order dated 18.5.2015 rejected the prayer to grant any interim relief. The Applicants in all the three Original Applications had challenged the order dated 18.5.2015 before the Aurangabad Bench of Hon'ble Bombay High Court in W.P no 5937/2015, 5938/2015 and 5939/2015. Hon'ble High Court has passed the following order on 8.12.2015:-

> "Heard. The Petitions are disposed of with direction to the Maharashtra Administrative Tribunal to decide Original Applications filed by the Petitioners within a period of three months from today."

Accordingly, all the three Original Applications were finally heard and the present order is being delivered.

7. Learned Counsel for the Applicants argued that the Applicants were promoted as Naib Tahsildars from the post of Awal Karkoon (O.A no 327/2015) and Circle Officers (O.A no 329/2015) on the basis of combined seniority lists of Awal Karkoons and Circle Officers for Nasik Division. The Applicants in O.A no 328/2015 were promoted as Awal Karkoon from the post of Clerk-Typist. The powers to promote Awal Karkoon to the post of Naib Tahsildar have been delegated to the Divisional Commissioner, who is the Respondent no. 1 in the Original Applications. The orders were issued on different dates in 2014 were, however, issued subject to

revision of seniority lists as per Government circular dated 31.1.2014 to the post of Naib Tahsildars and Awal Karkoon. By orders dated 7.5.2015, 8.5.2015 and 7.5.2015, the Applicants were reverted to the posts of Awal Karkoons, Clerks and Circle Officers respectively in O.A nos 327, 328 & 329 of 2015. Learned Counsel for the Applicants argued that there are vacancies in the cadre of Naib Tahsildar and Awal Karkooon where the present Applicants can be accommodated. The Respondents have finalized revised seniority lists without first publishing provisional seniority lists and inviting objections and suggestions. The impugned orders of reversion have also been passed behind the back of the Applicants thus violating the principles of natural justice. Learned Counsel for the Applicants relied on the judgment of the Hon'ble Supreme Court in the case of **RAM UJAREY Vs. UNION OF INDIA : 1999 SCC (L & S) 374**.

8. Learned Presenting Officer (P.O) argued on behalf of the Respondents that in different revenue divisions in the State, different practices were being followed for promotion to the posts of Awal Karkoon and Circle Officers. In Nasik, Pune and Konkan Divisions, the promotions were given on the basis of date of passing the Revenue Qualifying Examination while in Aurangabad, Amravati and Nagpur Divisions, seniority was fixed on the basis of initial date of appointment as Clerk or

Talathi. The seniority lists for Clerk and Talathi are maintained district wise and later merged at divisional level to prepare combined seniority lists for a division. Government (Respondent no. 2) has issued Circular dated 31.1.2014. However, promotions in February 2014 and thereafter were given as Naib Tahsildar and Awal Karkoons without modifying the seniority lists as per instructions contained in Government Circular dated 31.1.2014. The State Government had permitted Commissioners to give ad hoc promotion on the basis of uncorrected seniority lists and the Commissioners were to finalize revised seniority lists in the light of Government Circular dated 31.1.2014. Learned Presenting Officer argued that the Applicants were given ad hoc promotions, subject to revision of seniority list in view of the ensuing General Elections, as per Government letter dated 6.2.2014. Impugned order dated 7.5.2015 in O.A no 237/2015 makes it clear that revised seniority lists were published on 7.1.2015 and 21.1.2015. This order states that:-

> '' उक्त पदोन्नती ही शासन महसूल व वन विभागाचे परिपत्रक क्र. एस आर व्ही/२०१४/प्र.क्र.०२५/ई-७ दिनांक ३१.१.२०१४ नुसार दिलेल्या सूचनांप्रमाणे सुधारित होणाऱ्या सेवा ज्येष्ठता यादीचे आधीन राहून पूर्णत: तात्पुरत्या स्वरूपात पदोन्नती देण्यात येत आहे. भविष्यात सेवा ज्येष्ठतेत बदल झाल्यास संबंधित कर्मचारी कनिष्ठ ठरत असल्यास त्यास पदावनत करण्यात येईल व सेवा ज्येष्ठतेचा अगर न्यायालयास जाण्याचा हक्क राहणार नाही याची नोंद घ्यावी.''

The Applicants were fully aware that their promotion were fully ad hoc and subject to revision of seniority lists as per Circular dated 31.1.2014. The Applicants have accepted such promotions knowingly. Learned Presenting Officer argued that in such circumstances, the claim of the Applicants that the reversion orders were passed behind their back is not correct. Learned Presenting Officer stated that the Applicants have been reverted as they are not eligible to be promoted as Naib Tahsildar/Awal Karkoon as the case may be.

9. We find that this issue was examined at length for Konkan Division in O.A no 46/2014. In para 8 of our order dated 11.7.2014, it was observed that:-

> "We find that the Respondent no. 1 has totally failed to explain the delay in implementation orders of the Government dated 6.12.2013 and 13.12.2013. He has also not followed the instructions in letter dated 6.2.2014 on the basis of circular dated 13.12.2014. This is adversely affecting the careers of those Awal Karkoons like the Applicant, who are entitled to get seniority corrected, so that they could be considered for promotion as Naib Tahsildars."

10. In fact, we had to appreciate promptitude shown by the Commissioner, Konkan Division in revising the seniority lists in the light of Government circular

dated 3.1.2014. He was also directed to revert ineligible persons who were given ad hoc promotion as per Government letter dated 6.2.2014. We are unable to take a different view in the present case. The Applicants were fully aware that their promotions were fully ad hoc (पूर्णतः तात्पुरत्या) and they were liable to be reverted when revised final seniority lists were published as per Government Circular dated 3.1.2014. The Respondent no. 1 in the affidavit in reply in O.A no 327/2015 dated 22.7.2015 has given dates of publication of draft seniority list and the final seniority lists in each of the districts. In Ahmednagar district, draft list was published on 18.12.2014 and final list on 29.12.2014. The claim of the Applicants that final seniority list was published behind their back is thus incorrect. At Divisional level, the district wise lists were merged and there is no provision to invite suggestions/objections at that level. This is stated in paragraph 6 of the aforesaid affidavit, to which no rejoinder has been filed. The Applicants had given bonds that they were aware that their promotions were ad hoc and they were liable to be reverted once revised final seniority lists were published. The contention of the Applicants that impugned orders have been issued in violation of provisions of natural justice has no basis. Judgment of Hon'ble Supreme Court in the case of RAM UJAREY (supra) is clearly distinguishable.

11. The Applicants have prayed that they may be accommodated in the available vacancies on the basis of their seniority as revised. We see no reason as to why the process of filling existing vacancies will not be undertaken by the Respondent no. 1 on the basis of revised seniority lists. The work of preparation of revised seniority lists from 1982 is in progress in the State as per Government Circular dated 31.1.2014. It has been completed in Konkan Division, in February, 2016. The Respondent no. 1 is directed to complete the revision of seniority lists as per Government Circular dated 31.1.2014 within a period of four months from the date of this order and then consider the case of the Applicants for promotion in the light of revised seniority lists. These Original Applications are disposed of accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 28.03.2016
Dictation taken by : A.K. Nair.