

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.354 OF 2015

DISTRICT : THANE

1. Shri Mahesh Sapre,)
Working as Awal Karkun,)
In the office of Deputy Collector,)
(Land Acquisition),)
Metro Center No.3, Panvel,)
Taluka Panvel, Dist. Raigad,)
Residing at : At and Post Thal,)
Taluka Panvel, Dist. Raigad.)
2. Shri Rajendra Devidas Mhatre,)
Working as Awal Karkun,)
Establishment Branch,)
In the office of Collector, Raigad,)
Alibaug, Dist. Raigad.)
Residing at : At Bori Post Vadkhal,)
Taluka Pen, Dist. Raigad.)
3. Shri Santosh Arjun Tawade,)
Working as Awal Karkun,)
In the Tahasil Office, Mhasala,)
Taluka Mhasala, Dist. Raigad,)
Residing at : At and Post Poinad,)
Taluka Alibaug, Dist. Raigad)
4. Smt. Suniti Sachin Deshpande,)
Working as Awal Karkun,)
Establishment Branch,)
In the office of Collector, Raigad,)
Alibaug, Dist. Raigad.)

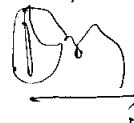


Residing at : C/o. Shri Girish Dhulap,)
 Rajani - Narayan, 2nd floor,)
 Near J.S.M. College, Alibaug,)
 Dist. Raigad.)

5. Shri Krushna Jagannath Palawe,)
 Working as Awal Karkun,)
 Supply Inspector, Karjat,)
 In the Tahasil Office, Karjat,)
 Residing at C/o. Shri A.B. Avhad,)
 Mahalaxmi C.H.S.,)
 Near V.V. Towar, Badalapur,)
 Taluka Ambernath, Dist. Thane.)...Applicants

Versus

1. The State of Maharashtra,)
 Through the Add. Chief Secretary,)
 Revenue and Forest Department,)
 Mantralaya, Mumbai 400 032.)
2. The Collector,)
 Dist. Raigad, Alibaug, Dist : Raigad.)
3. Shri Pravin Mahadu Varande,)
 Working as Godown Keeper, Poynad,)
 Tahasil Office, Alibaug.)
4. Shri Sachin Baban Mhamunkar,)
 Working as Godown Manager,)
 Mangaon, Tahasil Office, Mangaon.)
5. Shri Balkrishna Babaji Rawool,)
 Working as PLA Awal Karkun,)
 Tahasil Office, Roha.)
6. Shri Sachin Baburao Kalghatgi.)
 Working as Clerk,)
 Tahasil Office, Panvel.)
7. Shri Sameer Sharad Mohole.)



- Working as Clerk, Supply Branch,)
Collector Raigad Office, Alibaug.)
8. Shri Nitin Avinash Gharat.)
Working as Clerk,)
Tahasil Office, Panvel.)
9. Shri Nitin Dattaram Nakashe.)
Working as Clerk,)
Tahasil Office, Mangaon.)
10. Shri Sandeep Dharma Salunkhe.)
Working as Awal Karkun,)
Revenue Branch, Collector Office,)
Alibaug.)
11. Smt. Kavita Pravin Varande.)
Working as Clerk, Tahasil Office,)
Alibaug.)
12. Smt. Nila Ganesh Mhatre.)
Working as Clerk, General Branch,)
Collector Raigad Office, Alibaug.)
13. Smt. Pratiksha Pradnesh Patil.)
Working as Clerk-Typist,)
Commissioner Office, Konkan)
Bhavan, Navi Mumbai.)
14. Shri Ravindra L. Mane.)
Working as Clerk, Tahsil Office,)
Mangaon.)
15. Smt. Sunita Pandurang Mane.)
Working as Clerk, Supply Branch,)
Tahasil Office, Roha.)
16. Smt. Reema Sunil Kadam.)
Working as Clerk, S.G.Y. Branch,)
Tahasil Office, Alibaug.)



17. Shri Vinayak L. Sarnekar.)
Working as Clerk, Revenue Branch,)
Collector Raigad Office, Alibaug.)
18. Shri Sachin Mahadev Dhondage.)
Working as Clerk, SDO Office,)
Mangaon.)
19. Smt. Nitin Sadashiv Pawar.)
Working as Clerk, Tahasil Office,)
Mangaon.)
20. Shri Mahesh M. Kadam.)
Working as Clerk, Tahasil Office,)
Murud.)
21. Smt. Savita Santosh Khot.)
Working as Clerk, Tahasil Office,)
Alibaug.)
22. Shri Vilas Mahadev Mundhe.)
Working as Clerk, Tahasil Office,)
Uran.)
23. Shri Sachin Chandrakant Raje.)
Working as Clerk, Tahasil Office,)
Mhasala.)... Respondents

Ms. S.P. Manchekar, Advocate for Applicants.


Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 & 2.

Shri A.V. Bandiwadekar, Advocate for Respondents 3, 5, 9, 11 & 18.

None for Respondents 4, 6, 7, 8, 10, 12 to 17 & 19 to 23.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)



DATE : 08.09.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The seniority list of Clerk-Typist on the establishment of Respondent No.2 – Collector, Raigad as on 1.1.2011 and 1.1.2012, dated 19.3.2015 came to be revised in deference to the order of this Tribunal in **OA 288 of 2013 (Pravin Mahadu Varande & 20 ors. Vs. District Collector, District Raigad & 21 ors., dated 16.12.2014) (Varande's OA)**. The present Applicants were not parties to **Varande's** OA. The private party Respondents 3 to 23 were the Applicants to **Varande's** OA. The present five Applicants are aggrieved by the said revised seniority list and they are up before us in this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985. The 1st Respondent in the State of Maharashtra in the Revenue & Forest Department.

2. We have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicants, Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 & 2 and Shri A.V. Bandiwadekar, Advocate for Respondents 3, 5, 9, 11 & 18.



3. The issues at the heart of the matter are retention or loss of seniority of the Clerks depending upon passing the Sub-service Departmental Examination (SSD Exam.) as per the SSD Examination Rules, 1988 as amended in 1993. This examination is for confirmation in the Clerical cadre. The next promotion for them is of Awal Karkun (A.K) the Recruitment Rules (RR) for which post are dated 27.11.1996. The Clerks who have passed Revenue Qualifying Examination (RQE) or having been exempted would only be eligible for being considered for being promoted as A.K. This is broad statement of facts and effect of Rules. We shall have to examine the niceties of the number of attempts and duration within which to pass the examination and also loss of seniority. For that, we shall have to analyse the relevant Rules and closely read the order in **Varande's** OA as well as the order in **OA 587 of 2008 (Shri Shriram Gurav Vs. The Collector, Dist : Satara and 04 ors., dated 23.6.2009) (copy at Page 194 of the Paper Book (P.B))**. It will be called **Gurav's** OA hereinafter. Mr. A.V. Bandiwadekar for private party Respondents relied upon **Writ Petition No.2521 of 2015 (Narayan Sonune Vs. State of Maharashtra and 3 ors, dated 19.1.2016 (Nagpur Bench of the Hon'ble Bombay High Court)**. It will be called **Narayan Sonune's** case. Rules pertaining to Talathis came up for



consideration of the Hon'ble Bombay High Court in Narayan Sonune's case.

4. It is indisputable that, if Varande's order holds the field as it is, then there is no way the present Applicants can be saved from adversity. That was an order made by this very Bench of co-equal jurisdiction. Let us now, in the above background proceed to the present facts.

5. The personal details of the Applicants are as under. The Applicants Sarvashri M.M. Sapre, R.D. Mhatre, S.A. Tawade, Smt. S.S. Deshpande and Shri K.J. Palwe were born on 22.1.1971, 22.4.1971, 6.11.1970, 21.7.1980 and 1.5.1982 respectively. First three are H.S.C. while the last two are B.Sc. and B.A. respectively. The dates of joining as Clerk-Typists were 12.10.2007, 15.10.2007, 6.11.2007, 17.10.2007 and 18.10.2007 respectively.

6. Be it noted in the above background that in actual fact, the Applicants have since been promoted as Awal Karkun as informed by their learned Advocate Ms. S.P. Manchekar. The fact, however, remains that even as the promotion to the post of Awal Karkun will require consideration of the Rules framed under the proviso of Article 309 of the Constitution of India on 27th November,



1996 (to be hereinafter called "AK Rules"). However, the SSD Rules and RQE Rules will have equal importance and we will have to examine them as well. More particularly because we have to, as indicated above, consider as to whether **Varande's** order must stand or it needs to be re-visited.

7. Let us now examine as to what is a combined yield of the 1988 Rules read with 1993 Rules for SSD. The 1988 Rules as already indicated above are called "Maharashtra Sub-service Departmental Examination Rules, 1988" while the 1993 Rules are called "Maharashtra Sub-service Departmental Examination (Amendment) Rules, 1993". We will indicate as to how far by 1993 amendment 1988 Rules suffered amendments. Rule 3 of the 1988 Rules lays down *inter-alia* that the examination shall be held by the Divisional Commissioner of respective Revenue Division once in a year in the month of September at the Head Quarters of the Districts in that Division. Rule 4(1)(a) lays down that a Clerk recruited in the Revenue Department would be required to pass the SSD Examination *within four years* of his date of recruitment and *within three chances*. The Collector is empowered to grant to any deserving person an additional chance as well



as the extension of the period above prescribed. Rule 4(1)(c) after amendment reads as follows.

“4(1)(c) : Subject to the provisions of Sub-rule 2 of Rule 5 for the purpose of confirmation shall be determined by the date of their appointment as Clerk, if they pass the examination within the period and chances prescribed under sub-rule (a). Otherwise, the seniority shall be determined by the date of their passing the examination or date of exemption from passing the examination, as the case may be.”

Clause (d) provides that no Clerk shall be confirmed unless he has passed or has been exempted from passing the examination. It is, therefore, very clear that confirmation in the clerical cadre is dependent upon passing of the examination or exemption therefrom.

8. Rule 5(1) (post amendment) lays down the consequences of failure to pass the examination. In the first place, a Clerk failing to pass examination within the period and chances prescribed under Rule 4 would not be allowed to draw the increment until he passed the examination or was exempted from passing the same.



There are provisions in the proviso for the course of action to be adopted with regard to held-up increments once he passed the examination. That is not highly relevant for the purposes hereof. 1993 Amendment to the Rule 5 by Rule 4 thereof has incorporated Sub-rule 2 of Rule 5 which reads as follows :

“5(2): If a Clerk does not pass the examination within the period and chances prescribed in clause (a) of rule 4, he shall lose seniority in the cadre of Clerks, that is to say, he will rank below all such clerks who have passed the examination before him and also below all those who are senior to such clerks below whom he is placed and who may pass the examination after him but within the period and chances specified in clause (a) of rule 4.”

9. Rule 6 deals with the aspect of the exemption from passing the examination. The details thereof are not much germane hereto. The Rules 7, 8, 9, 10 and 11 deal with the details of the examinations like syllabus, standard of passing, credit exemption and examinations in A'bad Division, etc. It is not necessary for us to read them in extensor herein. We shall presently to the extent

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necessary read the orders in Varande's OA as well as in Gurav's OA, but taking an over-all view of the Rules above quoted, it seems to us that there was scope for a better and a lucid language which to couch it in. But it does quite clearly appear that a Clerk who passed the examination within the time and attempts prescribed by the said Rules, will count his seniority from the date of his initial appointment as Clerk. Reading the above quoted Rules in *juxtaposition* with each other, in so far as the issue of losing seniority is concerned, a Clerk who did not pass the examination within the period and chances prescribed by the relevant provisions of Rule 4 would lose the seniority in the cadre of Clerk. He would rank below all such Clerks who may have passed the examinations before him and also below all those who were senior to such Clerks below whom he was placed. Now, going by the language of the Rules, it quite clearly appears that the incumbent in order to get confirmed in the cadre of the Clerks has to clear this particular examination and that is the significance of and the moment of the matter.

10. On facts, the Applicants cleared the said examinations within the prescribed period and attempts, and therefore, as far as they are concerned, the dates of their appointments as Clerks would have to be counted as

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their date of confirmation in the said clerical cadre. It is equally indisputable that the private party Respondents who were the Applicants in Varande's OA could not clear the said SSD examination within the time and chances prescribed by Rule 4 of the SSD Rules and hence became liable to lose seniority. It appears to us that a Clerk who fails to pass the examination within the period and attempts has to suffer. In fact, in Para 4 of Varande's OA, it was mentioned by us that the learned Advocate for the Applicants in that OA had no quarrel with the proposition that if a Clerk failed to pass the RQE which we shall presently deal with, within the three chances and nine years, he would lose his seniority to all Clerk-Typists who passed the examination or were exempted from passing the said examination before him. It was then recorded that the dispute was with regard to the individual Applicants in Varande's OA.

11. The Respondent No.2 prepared the seniority list as on 1.1.2011 and 1.1.2012 on 24.4.2012 and 16.11.2012 respectively. That seniority list is at Exh. 'C' collectively from Pages 149 and 174 of the P.B. In Varande's OA (supra), these seniority lists were struck down. The revised seniority list came to be prepared in deference to the order in Varande's OA which has given rise to this particular

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OA. Mr. Bandiwadekar, the learned Advocate for the private party Respondents told us that the State did not challenge the order in Varande's matter while in fact, private party Respondents to Varande's OA challenged the order in Varande's OA by way of Writ Petition Stamp No.19241 of 2015 (Smt. Rashmi Salunkhe and ors. Vs. The State of Maharashtra and ors.) one of the orders made thereon is placed on record and it was dated 24th June, 2015. A statement came to be made before Their Lordships by the AGP that the State was not challenging the order in Varande's OA but they would like to reply to the Writ Petition filed by Smt. Salunkhe and others who were added as private party Respondents in Varande and were represented before us by Shri M.R. Patil, the learned Advocate. A further statement was made on behalf of the State that the State Government had already prepared the list based upon our order in Varande's OA and objections were also decided. It is clear that thereupon the present Applicants brought this OA because they are aggrieved by the seniority list as already indicated hereinabove.

12. As already mentioned above, in Para 3, it would be only the Clerks who have passed the RQE or have been exempted would be eligible for being considered to be promoted as Awal Karkun. We may now read the Rules



called "Maharashtra Revenue Qualification Examination for Promotion to the Post of Awal Karkun from the Cadre of the Clerk Typists Rules, 1999". As already indicated above, they are also framed under the proviso to Article 309 of the Constitution of India. In the dictionary clause, Rule 2(e) defines the word, "departmental examination" to mean the SSD Examination or Revenue Clerk Departmental Examination and would include any other examination declared by the Government for confirmation in service for Clerks and posts included in the cadre of the Clerk. Clause (g) defines the word "examination" to mean RQE for the promotion to the post of A.K. from the cadre of Clerk-Typists under the Revenue & Forest Department of the Government of Maharashtra.

13. Rule 3 thereof provides *inter-alia* that every Clerk-Typist regardless of the sources he was drawn from and regardless of whether it was before or after the appointed date unless exempted would be required to pass the examination for being eligible for promotion as A.K. Rule 5 deals with the factum of exemption. Rule 6 lays down that a Clerk-Typist would be required to pass the examination within three chances and within nine years of his continuous service. Rule 7 deals with the question of effect of passing the examination on seniority. In fact,

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Rule 8 provides that subject to the provisions of Rules 6 & 7, Clerk-Typist may avail any number of chances for appearing in the examination. With that, we may now reproduce Rule 7 thereof.

“7. Effect of passing Examination on seniority.- A Clerk Typist who has passed the Examination in accordance with the provision of rule 6, shall retain the original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or are exempted from passing of the Examination, before him, as well as those Clerk Typists who are senior to him and who may pass the Examination after him; but within prescribed period and chances specified in these Rules.”

Rules 9 to 14 deal with the details of the examination, etc. which is not highly germane hereto. Rule 15 deals with the issue of determination of seniority which may also be reproduced hereinabove.

“15. Determination of Seniority.- Subject to the provision of rule 7, the seniority of a candidate

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may be fixed on the basis of the date of passing of the Examination for the purpose of qualifying for promotion to the post in the cadre of Awal Karkun. As among the candidates who pass the examination, the date of continuous service in the lower post shall determine the seniority and in case it is the same, the candidate older in age shall be declared as senior.”

14. Now, it is no doubt true that Rule 15 read by itself lays down that the seniority of the candidate may be fixed on the basis of the date of passing of the examination and amongst the candidates who pass the examination, the date of continuous service in lower post would determine the seniority. However, Rule 15 as a whole is subject to the Rule 7 which has been reproduced hereinabove. Rule 7 lays down that if a candidate passed the examination within three chances and within nine years, he would retain his original seniority, but if he were to fail to do so, then he would lose his seniority to all those Clerk Typists who had passed or were exempted from passing their examinations before him as well as to those Clerk Typists who were senior to him. We may repeat that the manner in which the Rules are phrased, the need and necessity to interpret them has arisen for otherwise the

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best rule in such matters is the rule of literal interpretation for which the language has to be clear and unambiguous. It does appear to us now that the Clerk failing to pass the examination within the period and attempts has to lose the seniority and it is not as if those who have passed the said examinations before him would always be in a state of uncertainty. If that was the import of **Varande's** OA, then we are afraid, a case for revisiting the same is constituted. We make it clear that although there is some more discussion to follow, but it does appear that we may have to refer the matter to the Hon'ble Chairman for the purpose of constitution of larger bench to give an authoritative pronouncement on the issues herein involved.

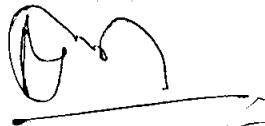
15. Before we return to this OA, it will in our view be necessary and proper to peruse the order in the OA of **Gurav** (supra). It so happens that one particular Paragraph thereof came to be quoted in **Varande's** matter and even Ms. Manchekar, the learned Advocate for the Applicants in this OA also relied upon the said Paragraph No.20 of **Gurav's** OA, but in our opinion, as we now find it, it will be appropriate not just to concentrate on that Paragraph, but to read it in the light of the company that it keeps along with Paras 17 to 19 and 21 and 22 and

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needless to say Para 20 would naturally come in its proper place.

16. In **Gurav's** OA, the Applicant was a Clerk in the Office of the Collector, Satara and here, we are dealing with the case of the Collector, Raigad. The facts are otherwise similar. In **Gurav's** OA, the Applicant came to be appointed on 6.4.2000. He cleared SSD Examination in July, 2000 and RQE in July, 2004. There he was able to maintain the time and the number of attempts. He was also aggrieved by the list of seniority prepared in that particular cadre. The Bench summarized the submissions made before it and then evaluated the material and considered the submissions in Paras 17 to 22. We may now reproduce the said Paragraphs.

“17. Keeping in view the scheme of examination prescribed for the Sub Service Departmental Examination in 1988 as amended in 1993, as also the 1999 rules for the Revenue Qualifying Examination required for promotion to the post of Awal Karkun, we intend to endeavor a harmonious interpretation of the rules as they stand today.

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18. It is clear that the Sub Service Departmental Examination rules require a clerk to pass the examination within the stipulated period and it is only after passing the examination that a clerk gets confirmation. After the 1993 amendment, besides losing increments, he also loses seniority in the cadre of clerks and ranks below all clerks, who have passed the examination before him. Keeping in view this provision, it is clear that the applicant had passed the examination within the prescribed period and his seniority in the clerical cadre needs to be counted from 6.4.2000, the date of his appointment.

19. The Rules of 1999 prescribe the Revenue Qualifying Examination for promotion to the post of Awal Karkun. Rule 3 indicates that every clerk-typist shall be required to pass the examination for being eligible for promotion as Awal Karkun. Rule 7 indicates that a clerk-typist who has passed the examination within the period prescribed by Rule 6 shall retain his original seniority. If he fails to do so, he will lose his seniority to all clerk-typists who have passed

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or are exempted from passing the examination before him.

20. Thus, there are two stages where loss of seniority is envisaged. If the Sub Service Departmental Examination is not passed within time, the clerk loses his seniority after the amendment of 1993 and his name will not figure in the list of confirmed clerks until he passes the examination. The second stage is that of passing the qualifying examination for promotion to the post of Awal Karkun. According to our view, a harmonious interpretation requires that only the confirmed clerks as per their seniority (after loss, if any, for delayed passing of examination,) will be the feeder cadre for the post of Awal Karkun. Amongst them, if a clerk does not pass the examination within the prescribed time limit, then he loses further seniority among the confirmed clerks. This interpretation would necessarily imply that a clerk who had lost his seniority for delayed passing of Sub Service Departmental examination, cannot regain his original seniority only if he passes the qualifying examination in time. Both the requirements are

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essential and lay down prescribed time period at the Sub Service Departmental examination level and the qualifying level.

21. With this view, it is seen that the impugned seniority list has been prepared without considering loss of seniority at the first stage. Hence, to the extent the seniority list under challenge ignores the loss of seniority for delayed passing of Sub Service Departmental examination, it violates the 1988 rules. Hence, we find that there is serious a flaw in the seniority list, as indicated herein.

22. Accordingly, this Original Application is allowed and the seniority list finalized on 22.8.2008 is hereby quashed and set aside. Respondent No.1 is directed to prepare a fresh seniority list keeping in view the above observations. Respondents No.5 is also directed to issue instructions to other Collectors so that the principles laid down herein are followed uniformly in all Districts. There will be no order as to costs. The process of preparing the fresh

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list be completed as early as possible, preferably within four months.

17. Having fully reproduced the said Paragraph, it may now not be necessary for us to add anything of our own nor is it necessary to paraphrase the same. The crux of the matter is that when this Bench decided Varande's OA, it was bound by the order in Gurav's OA and if it did not agree with any aspect of it or at all, then as per the Rule of precedents, it could have taken recourse to submitting the same to the Hon'ble Chairman for constitution of a larger Bench. The issues involved were the same, and therefore, if inadvertently, the principles in Gurav's OA have not been properly applied in Varande's OA, then that by itself would be a sufficient enough reason for referring the matter to the larger Bench. It is in our view quite clear that we cannot either directly or indirectly create a situation where we may have taken a view on material before us which ran into the teeth of the order in Gurav's OA.

18. Turning now to Varande's OA which has already figured hereinabove more than once, that was also a case of Clerk Typist on the establishment of the Respondent No.1. We have already indicated as to what the grievance

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of the Applicants therein was. We noted down the gist of the submissions made at the Bar and then reproduced Rules 6, 7 & 17 of the 1999 Rules. In Para 8, we made observations to the effect that the reading of the said provisions would show that no Clerk can lose the seniority twice, and therefore, a particular Para of the said Rule was superfluous. Now, apart from the fact that the order in **Gurav's** OA held the field in the absence of any authority to the contrary of the Hon'ble High Court and the Hon'ble Supreme Court, the fact is that it did not occur to us that redundancy in any instrument that falls for judicial construction cannot be lightly inferred in the absence of express, near express or implied or something capable of being implied in that behalf in the context or directly in the instrument itself. In our opinion, in good measure, our conclusions having been based on that reasoning, it will be necessary to get the whole thing revisited and this is an additional reason why we think we should adopt the course of action as indicated hereinabove.

19. In **Varande's** OA, in Para 10, we reproduced as indicated above Para 20 of the order in **Gurav's** OA and concluded that the Collector had not correctly prepared the seniority list.

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20. On a plain reading of the earlier orders, the Rules relevant herefor and the submissions at the Bar in this particular OA, we are clearly of the view that it will be necessary that the order in **Varande's** matter should be reconsidered by a larger Bench.

21. As already indicated at the outset, Mr. Bandiwadekar's submission has been that in view of the Judgment of the Hon'ble High Court in **Narayan Sonune** (supra), it is not even open to us to do anything but to confirm our order in **Varande's** OA. Now, we have carefully perused the Judgment in the matter of **Narayan Sonune** (supra). There the facts were pertaining to the Talathis. Here, we are concerned with Clerk Typists. It is not necessary for us to go into the details of the aspect of how the promotions to the two streams takes place and it would only be suffice to mention that ultimately it is at the level of Naib Tahsildars that these two streams taper in and till that point in time, they ran parallel and separate. We have perused the Maharashtra Sub-service Department Examination (for the cadre of Talathis) Rules, 1997. From the dictionary clause, it would appear that the word "examination" has the same meaning as it is in case of Clerical cadre viz. SSD Examination, but it is for the cadre of Talathis and under "these Rules". It appears on a plain

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reading of the said Rules that generally so speaking, the said Rules prescribe that unless a Talathi passes the examination or is exempted from doing so, he would not be allowed to draw his next increment and in the matter of losing the seniority in the cadre of Talathi, the words in Rule 5(1)(b) are as under.

“5(1)(b): shall lose seniority in the cadre of Talathi that is to say that he will be placed below all those who have passed the Examination before him and also below all those who are senior to such Talathis below whom he is placed and who may pass the Examination after him but within the period and chances specified in rule 4.”

22. It is, however, quite clear that in case of Talathis, there is no specific provision that if he passes SSD/RQ Examination within the requisite period, he will retain his original seniority which is clearly laid down in case of the Clerks as already discussed above. May be, when the matter is heard by the larger Bench, this aspect of the matter will be considered in depth, but as of now, we are very clearly of the view that although the Rules regarding Talathis may have the same flavor as that in case of



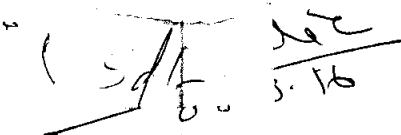
Clerks, but still they are not exactly in pari-materia, and therefore, we cannot avoid making an order of getting this matter placed for consideration by a larger Bench. We must repeat that not only this particular Judgment of the Hon'ble High Court, but all the other Judgments which came to be cited in this OA as well as in **Gurav's** OA and **Varande's** OA could be considered again by the larger Bench. We, at this stage, refrain from giving any definitive opinion thereabout.


23. The upshot, therefore, is that this OA shall be placed before the Hon'ble Chairman for being placed before a larger Bench, broadly so speaking to rule upon the following issues. The larger Bench, however, will be free to either alter these issues or delete some of them or add some others.

- (i) Whether in **Varande's** OA, it was rightly decided that a part of the relevant rule discussed in the said order regarding loss of seniority in the Clerical Cadre was superfluous?



- (ii) Whether the rule of precedents was accurately followed in **Varande's** OA in the context of the earlier order in **Gurav's** OA ?
- (iii) Whether in **Varande's** OA, the issue of loss of seniority was correctly decided ?


(R.B. Malik)
Member-J
08.09.2016


(Rajiv Agarwal)
Vice-Chairman
08.09.2016

Mumbai

Date : 08.09.2016

Dictation taken by :

S.K. Wamanse.

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