

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.568/2013.

(S.B.)

Narendra Narayanrao Kuralkar,
Aged about 41 years,
Occ-Service,
R/o Plot No.11-B, Arjun Nagar,
Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Commissioner Officer, Camp, Amravati.
3. The Collector,
Camp Area, Amravati..
4. Ku. V.J. Khandokar,
Aged about 40 years,
Occ-Service,
R/o Tehsil Office, Chandur Bazar,
Distt. Amravati.

Respondents.

Shri N.B. Bargat, the learned counsel for the applicant.
Shri V.A. Kulkarni, the Ld. P.O. for respondents 1 to 3.
None appeared for respondent No.4.

**Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 18th day of January 2018).

Heard Shri N.B. Bargat, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for respondent Nos. 1 to 3. None appeared for respondent No.4.

2. The applicant has claimed that the order passed by respondent No.2 in Appeal No. APT-5/16/2011-2012 rejecting his appeal, be quashed and set aside. Similarly, he has claimed that the order dated 14.1.2009 (Annexure A-9) and the promotion order dated 30.5.2009 whereby the respondent No.2 promoted respondent No.4, be quashed and set aside. He is also claiming deemed date of promotion to the post of Aval Karkun w.e.f. 14.1.2009 alongwith all consequential benefits.

3. The applicant came to be appointed as Clerk-cum-Typist on 17.8.1998 and was confirmed in the said post on 18.7.2002. On his request, he was transferred from Mumbai to Amravati and was posted in the office of Collector, Amravati on 23.6.2003. The applicant has passed Sub-Service Departmental Examination and Revenue Qualifying Examination by securing highest marks in 2005. In the seniority list published in 25.5.2007, the applicant appeared at Sr. No.249. He passed Revenue Qualifying Examination in April 2005 and Sub-Service Departmental Examination in January 2005. Though respondent No.4 was junior to the applicant, respondent No.4 has been

promoted to the post of Aval Karkun prior to the applicant and, therefore, the said order of respondent No.4 is not legal and proper.

4. According to the applicant, respondent No.3 published a seniority list of the employees on 25.5.2007 in which the name of the applicant was at Sr. No.249. But in the next seniority list published on 30.5.2009, name of the applicant did not appear, whereas the name of respondent No.4 Ku. V.J. Khandokar who was too junior to the applicant, appeared in the seniority list. The applicant is, therefore, claiming deemed date of promotion to the post of Aval Karkun and further claimed that the promotion order in favour of respondent No.4, be quashed and set aside.

5. Respondent No.4 was promoted vide order dated 30.5.2009 whereas the applicant has been promoted to the post of Aval Karkun on 18.12.2011.

6. Respondent No.2 has filed reply affidavit. According to the respondents, the applicant has passed Maharashtra Sub-Service Revenue Qualifying Examination in April 2005. Respondent No.2 published a list of Revenue Qualified Clerks and the name of the applicant was placed at Sr. No.41. It is stated that respondent No.4 is senior to the applicant, as she has passed both the examinations within a stipulated period and chances. As per Rule 7 of the Maharashtra Revenue Qualifying Examination for promotion to the post

of Aval Karkun from the cadre of Clerk-cum-Typist Rules, 1979, the Clerk-cum-Typist who has passed the examination in accordance with the provisions of Rule 6 (i.e. passed the examination within three chances and within nine years of his continuous service), shall retain his seniority. Respondent No.4 has passed the examination in October 2005, whereas the applicant has passed the examination in April 2005.

7. The learned P.O. submits that respondent No.4 Ku. V.J. Khandokar was senior to the applicant in the seniority list right from the beginning. She has passed the examination within given chances and within stipulated period and, therefore, she is entitled to be promoted first in time than the applicant. Against her promotion, the applicant has filed an appeal before the Divisional Commissioner, Amravati and the Divisional Commissioner, Amravati in the said appeal, vide order dated 20.4.2013 rejected the claim of the applicant. It was the contention of the applicant that, respondent No.4 Ku. V.J. Khandokar did not pass the qualifying examination within nine years and three chances and the said objection was rejected by the Divisional Commissioner, Amravati. The Divisional Commissioner, Amravati has made following observations while rejecting the appeal:-

अमरावती महसूल विभागात माणु दुयम सेवा पराणा सन २००५ पासून आण महसूल अहत्ता पराणा एल २००१ पासुन घेयात

आप्या आहेत, हे वस्तुस्थिती आहे. शासन अधिसूचना महसूल व वन विभाग . पत्रा-१२८५/२७७५/०.० . ३३९/(भाग-२) ई-७ द. ७.७.१९९९ मधील नियम ७ नुसार त्रिपक टंकलेखास पदोन्नतीकरता ९ वर्षांत ३ संधीमध्ये पत्रा उपांगोणे आवश्यक आहे. अमरावती विभागात दुय्यम सेवा पत्रा सन २००५ पासून आपण महसूल अहता परा एतल २००९ पासून घेयात आप्या आहेत, यामुळे कु. खांडोकर यांनी ९ वर्षांत पत्रा उपांगोकरणे शक्य नव्हते. यांनी ९ वर्षांमहसूल अहता परा उपांगोक्ल नव्हत यामध्ये कमळायाचा दोष नवता यामुळे अपलाथया युक्तिवादामध्ये तय असयाचे आढळून येत नाह

8. Perusal of the record shows that, in the seniority list of Junior Clerks, respondent No.4 Ku. V.J. Khandokar was senior to the applicant and, though she has passed the qualifying examination after the applicant, she has passed the said examination within given chances and within stipulated time limit and, therefore, her seniority cannot be disturbed and accordingly she was promoted earlier to the applicant. I, therefore, do not find any illegality in the promotion given to respondent No.4, as her seniority has been maintained as per service rules. In such circumstances, even though respondent No.4 passed the qualifying examination on 1.10.2005 and the applicant passed the said examination in April 2005, the respondent No.4 has cleared the examination within stipulated period and within given chances as per the Recruitment Rules. It seems that earlier respondent No.4 Ku. V.J. Khandokar was not considered for seniority.

But on her representation, her name was included in the list of seniority. Her representation was accepted. Rules 6, 7 and 8 of the Maharashtra Revenue Qualifying Examination for promotion to the post of Aval Karkun from the cadre of Clerk-cum-Typist Rules is self speaking and it reads as under:-

6. Period and number of chances for passing examination.—

A Clerk-Typist shall be required to pass the examination within three chances and within nine years of his continuous service.

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 his 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 to 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.

8. Chances for appearing Examination.-

Subject to the provisions of rules 6 and 7, a Clerk-Typist may avail any number of chances for appearing the Examination.+

9. As per Rule 7 as above, a Clerk-Typist who passed the examination within prescribed period and chances are to be entitled

to restore their seniority. Respondent No.4 has passed the examination within stipulated period and chances and, therefore, her seniority has been rightly maintained and she is promoted earlier to the applicant. I, therefore, do not find any merit in the O.A. Hence, I proceed to pass the following order:-

ORDER

The O.As stand dismissed with no order as to costs.

Dt. 18.1.2018.

(J.D.Kulkarni)
Vice-Chairman(J)