IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI, BENCH NAGPUR

ORIGINAL APPLICATION NO 749 OF 2015

DISTRICT : WARDHA

Shri Dnyaneshwar S. Kapkar)
Occ : Service, R/o Sant Tukdoji)
Ward, Nandori Road, Hinganghat,)
Tal-Hinganghat, Dist-Wardha.)...**Applicant**

Versus

1. The State of Maharashtra)
   Through the Secretary,)
   Revenue & Forest Dept,)
   Mantralaya, Mumbai.)
2. The Collector, Wardha,)
   Tah & Dist-Wardha.)...**Respondents**

Shri S.N Gaikwad, learned advocate for the Applicant.

Shri S.A Sainis, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 10.03.2017

PER : Shri Rajiv Agarwal (Vice-Chairman) (A)

O R D E R

1. Heard Shri S.N Gaikwad, learned advocate for the Applicant and Shri S.A Sainis, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant who is working as a Talathi. He has challenged loss of seniority on his request transfer from Wardha Sub Division to Hinganghat Sub Division, both in Wardha District by the order of the Respondent no. 2.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Talathi on 5.9.1994 in the Wardha Sub Division. By order dated 27.6.2001 issued by Respondent no. 2, the Applicant came to be transferred to Samudrapur Sub-Division. The Applicant's seniority remain unchanged from the year 2002 to 2013 in the seniority list published by Respondent no. 2 from time to time. However, in the seniority list of 2014, his seniority was fixed on the basis of date of his transfer to

Samudrapur Sub Division by order dated 27.6.2001. Learned Counsel for the Applicant stated that this change in seniority after 13 years is totally wrong and the Applicant cannot be made to lose seniority on transfer from one Sub Division to another Sub Division. This will be contrary to the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Learned Counsel for the Applicant also relied on the judgment of this Tribunal dated 13.2.2017 in O.A no 804/2015.

4. Learned Presenting Officer argued that the Applicant was posted as Talathi on 5.9.1994 in Wardha Sub-Division. As per his own request by order dated 27.6.2001, he was transferred to Samudrapur Tahsil in Hinganghat Sub Division. This order clearly mentions that the Applicant will be placed below the Talathis who were already working in that office. The Applicant has accepted this condition when he was transferred and now he cannot turn around and say that he should be allowed to retain his original seniority as per the date of his appointment. Learned Presenting Officer stated that Government has issued G.R dated 20.9.1990 which lays down guidelines for transfer of Talathis from one sub-division to another. This G.R also contain a condition that benefits of past service will not be available to a Talathi transferred to another sub-division on his own request while fixing his seniority. By latest G.R dated

3.6.2011 also, an employee loses his past service if he changes his cadre.

5. It is a fact that the Applicant was transferred on his own request from Wardha Sub Division to Hinganghat Sub Division by order of Respondent no. 2 dated 27.6.2001. One of the condition in the said transfer order reads as follows:-

> "बदली नंतरच्या कार्यालयात ज्येष्ठता ठरवितांना मागील सेवेचा फायदा संबंधीत तलाठयांना ज्येष्ठतेसाठी मिळणार नाही आणि संबंधीत तलाठी बदलीच्या कार्यालयात तेथे अगोदर नियुक्त केलेल्या तलाठयांना कनिष्ठ ठरेल."

The Respondents have also placed copy of G.R dated 20.9.1990 where such transfers on request from one sub-division to another sub-division are subject to various conditions including the condition which is reproduced as follows:-

> "बदलीनंतरच्या कार्यालयात ज्येष्ठता ठरवितांना मागील सेवेचा फायदा संबंधित तलाठयाला ज्येष्ठतेसाठी मिळणार नाही. आणि संबंधित तलाठी बदलीच्या कार्यालयात तेथे अगोदर नियुक्त केलेल्या तलाठयांना कनिष्ठ ठरेल."

It is no doubt true that the Applicant was transferred on his own request from Wardha Sub Division to Hinganghat Sub Division and he was aware that he will lose his seniority on transfer to Hinganghat Sub Division. The Applicant's claim is based on the seniority list which

were published from 2002 to 2013 where he claims that his seniority was based on the date of his initial appointment as Talathi. Obviously, we are not considering the issue regarding passing of S.S.D examination and Revenue Qualifying Examination which has also a bearing on seniority of Talathis. Our discussion are limited to the fact of inter sub-divisional transfers only. The Applicant has relied on the judgment dated 13.2.2017 in O.A no 805/2015. That judgment has been delivered in case of Health Workers who were also transferred from one district to another on their request and they were made to lose seniority. This Tribunal has observed as follows:-

> "6. Learned Counsel for the Applicant inter alia relied on the judgment of Bombay Bench of this Tribunal dated 22.12.2015 in O.A no 571 of 2015 and judgment dated 6.1.2017 of this bench in O. A no 545/2015 etc., wherein it has been held that past seniority is a relevant factor for determining seniority in the new cadre/post as per Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The Applicants have to be given seniority in the cadre of Health Workers in Yavatmal district based on their year of appointment as Health Workers. They may be placed below Health Workers appointed in Yavatmal district in the year the Applicants were initially

appointed in other districts. However, clause 3(8) of G.R dated 3.6.2011 is not applicable in their case."

This Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 provides that past service is a relevant factor for determining seniority in the new cadre when a person is transferred from one cadre of post to another cadre or post. Respondents are relying on G.R dated 20.9.1990, and another G.R dated 3.6.2011, which has been issued after the order of transfer of the Applicant was issued, and therefore, may not be relevant in the present Original Application. Obviously, any G.R cannot be issued in contravention of the statutory rules. In the present case, statutory rules clearly provide that if an employee is transferred from one cadre or post to another cadre or post, he does not lose his past service. In fact, his past service is to be considered while determining his seniority in the new cadre/post. Any undertaking given by the Applicant contrary to the rules will not be binding on him. In fact, the Government should seriously give a rethink to the G.Rs dated 20.9.1990 and 3.6.2011 to bring them in consonance with the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

6. In the present case, we are, of the opinion that the Applicant cannot be made to lose his earlier service merely on the ground of transfer from one sub division to

another sub division. To protect the interest of Talathis in Hinganghat sub division the Applicant can be placed the bottom of the list of Talathis in that sub division, who were recruited in the year 1994, the year in which the Applicant was recruited as Talathi in Wardha sub division. He, therefore, loses seniority to those persons who were appointed in the year 1994 or those who were appointed before 1994.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 2 is directed to make necessary correction in the seniority list of 2015 and place the Applicant in the light of the directions contained in the preceding paragraph of this order. This should be done within 3 months from the date of this order. This Original Application is accordingly allowed with no order as to costs

sd/- sd/-

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

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 10.03.2017
Dictation taken by : A.K. Nair.

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