

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 143 /2020 (D.B.)

Mahendra S/o Sharadrao Kadam,

Aged about 42 years, Occ. Service,

R/o Renuka Nagar, Dabki Road,

Akola, Tah. and District Akola.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
- 2) Divisional Commissioner,
Amravati Division, Amravati.
- 3) Collector,
Collector Office, Akola,
Tah. and District Akola.

- 4) Sub Divisional Officer,
Akola, Tah. and District Akola.
- 5) Tahsildar,
Tahsil office Akola,
Tah. and District Akola.
- 6) Assistant Commissioner (Revenue)
Amravati, Tah. and Dist. Amravati.

Respondents

Shri R.D.Karode, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &

Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 06th Dec., 2022.

Judgment is pronounced on 21st Dec., 2022.

(Per:-Vice Chairman)

Heard Shri R.D.Karode, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

2. The applicant was appointed as Talathi on 08.11.1996 i.e. prior to the Government notification dated 29.10.1997, therefore, as per Rule 4 (2) of the Government notification dated 29.10.1997 issued by Revenue Department, Mumbai, the applicant was required to pass Revenue Qualifying Examination within time limit prescribed by this notification dated 29.10.1997. Relevant portion of the Rule is as under:-

“(4) Period and number of chances for passing examination-

(1) Every Talathi appointed to the post after the appointed date shall be required to pass the examination within a period of four years from the date of his appointment and within three chances.

(2) Every Talathi appointed before the appointed date, shall be required to pass the Examination within three years from the appointed date and within two chances, unless he is exempted from passing the examination under Rule 7.”

3. Ld. Counsel for the applicant has relied on the judgment in O.A. Nos. 947/2018 and 967/2018 of this Bench.

4. The main grievance of the applicant is that as per record applicant was appointed before notification dated 29.10.1997. During arguments Rule 7 of the Maharashtra Revenue Qualifying Examination Rules was mentioned. In para 9 of Judgment in O.A. No. 967/2018 it is held:-

"9. In the reply it is submission of the learned P.O. that as there were two contradictory Judgments delivered by the Division Bench of MAT, therefore, reference was made to the Full Bench of MAT, Mumbai. In the O.A. No. 354/2015, decided on 2/2/2017 the Full Bench laid down the following propositions which are as under –

"(a) The seniority in the Clerical cadre shall be fixed as per the date of passing the SSD Examination;

(b) In Clerical cadre if the SSD Examination was passed within the time and number of chances, the seniority shall be counted from the date of initial appointment as Clerks and that date in that cadre shall remain forever;

(c) The Clerks who fail to pass SSD Examination within the time and number of chances will lose their seniority as hereinabove discussed. Their seniority shall be counted from the date of passing SSD Examination or from the date, they would get exemption;

(d) But they will not disturb those Clerks who were already confirmed after passing SSD within the time and chances or were senior to them.

a-i) Now, only those Clerk Typists who have passed SSD Examination after completing three years as such Clerks, would be eligible to appear for RQE.

a-ii) A Clerk Typist confirmed in that cadre in order to pass RQE will have to do so within three chances and within nine years of his continuous service as such Clerk Typist to be able to retain his original seniority.

a-iii) In the event, he were to fail to do so, then there will be a loss of seniority in exactly the same way as in case of Clerk Typist discussed above and he will then become entitled for consideration for seniority only after clearing the said Examination and he will be governed in all respects."

5. The applicant is mainly claiming that schedule of Revenue Qualifying Examination conducted during September, 2000 was not communicated by Tahsildar to him so he did not appear and so it should not be counted against the number of chances for him for passing the Revenue Qualifying Examination. The applicant had appealed before the Collector, Akola and Collector, Akola had rejected the appeal on the ground that appeal has been filed very late and as per Government G.R. dated 2011 final seniority list cannot be changed at this stage. The Collector had communicated to the applicant by order dated 08.06.2017 (P. 108). The applicant again appealed before Collector and Collector, Akola passed the order dated 01.12.2018 (P. 109). The applicant appealed before the Divisional Commissioner, Amravati against the order of the Collector and Commissioner passed the order on 09.12.2019 (PP. 111 to 117) and confirmed the order dated 01.12.2018. This order was communicated by Assistant Commissioner by letter dated 23.01.2020 to the applicant (A-14, P. 58). This order was further challenged by the applicant before Commissioner, Amravati. The grievance of the applicant is that since legally Appellate Authority was respondent no. 2 hence the order should have been dictated by respondent no.2. Undoubtedly appeal against the order of Collector, Akola was to be filed before Commissioner, Amravati.

6. Ld. Counsel for the applicant has relied on office note page of Divisional Commissioner, Amravati i.e. R-2, Appellate Authority which is at PP. 57 the relevant portion is reproduced below:-

विषय - महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे कलम १७ प्रमाणे
जिल्हाधिकारी अकोला - वि - श्री.महेंद्र शरदराव कदम,

संदर्भ - श्री महेंद्र शरदराव कदम, तलाठी उप विभाग, अकोला यांचा अपिल अर्ज
दिनांक ०५.०७.२०१९

कृपया, उपरोक्त संदर्भाचे अवलोकन व्हावे.

उपरोक्त संदर्भान्वये अपिलार्थी श्री. महेंद्र शरदराव कदम, तलाठी, उप विभाग, अकोला यांनी जिल्हाधिकारी, अकोला यांनी दि. ०१.१२.२०१८ रोजी पारीत केलेल्या आदेशाने व्यथित होऊन महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे कलम १७ प्रमाणे अपील दाखल केले आहे.

त्यानुसार प्रकरणात सुनावणी घेउन प्रकरण आदेशाकरीता बंद करण्यात आले आहे.
प्रस्तुत प्रकरणात प्रारूप आदेश तयार करण्यात आला असून आदेश अवलोकनार्थ तथा मंजूरीस्तव सादर.

अ.का. १

सहा आयुक्त (भूसु)

म. विभागीय आयुक्त

On perusal of this notesheet it appears that the Appellate Authority had not applied his mind while passing the order. The draft order prepared by office was put up before him and he only made a

remark to print it on both the sides. In this situation, matter is required to be remanded to respondent no. 2 for passing the order as per law.

O R D E R

The matter is remanded to respondent no. 2 for hearing it afresh on its own merits as per law. The decision shall be communicated to the applicant promptly. With these directions, **Original Application is disposed of with no order as to costs.**

(M.A.Lovekar)
Member(J)

aps

Dated - 21/12/2022

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 21/12/2022.
on and pronounced on

Uploaded on : 22/12/2022.