

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.208 OF 2016

WITH

ORIGINAL APPLICATION NO.209 OF 2016

WITH

ORIGINAL APPLICATION NO.210 OF 2016

(SUBJECT : SENIORITY LIST)

DISTRICT: MUMBAI

**O.A.No.208/2016**

1. Mr. Tanaji Shivaji Patole, )  
R/at. NL 2, Bldg No.12, Room No.C5, Sec 9, )  
Nerul, Navi Mumbai )
2. Mr. Deepak Narayan Jadhav, )  
R/at. D 15, Room No.8, Municipal Colony, )  
Vikroli Park Site, Vikroli (W), Mumbai 79. )
3. Mr. Vijay Mahadeo Shetye, )  
R/at. BDD Chawl, No.5, Room No.15, )  
Ganpat Jadhav Marg, Opp. ESIS Hospital, )  
Worli, Mumbai 18. )
4. Mr. Nagorao Barkaji Lokhande, )  
R/at. Ganesh Apts. Ground Floor, )  
Room No.3, Kolshewadi, Kalyan (E). )
5. Mrs. Archana Chandan Koli, )  
R/at. A Wing, 601, Shree Swami Samarth, )  
Plot No.99/100, Sec 1, Sanpada, )  
New Bombay. ) .. Applicants

**Versus**

- 1) The State of Maharashtra, )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 32. )

- 2) The Commissioner, )  
Konkan Bhavan, CBD Belapur, )  
Navi Mumbai. )
- 3) The District Collector, )  
Mumbai City, Mumbai. )
- 4) The Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai. )
- 5) Smt. V.V. Beloskar, )
- 6) Mr. S.P. Marathe, )
- 7) Mr. R.D. Chandpure, )
- 8) Mr. V.S. Ghugare )
- 9) Mr. V.A. Palankar, )  
O/at. Konkan Bhavan, CBD Belapur, )  
Navi Mumbai )  
(Respondent No.5 to 9 are served through the Respondent No.2) ) **..Respondents**

**O.A.No.209/2016**

1. Mr. Pradeep Sitaram Chavan, )  
R/at. B 103, Om Prathamesh Soc., )  
Tukaram Nagar, Dombivali (E), Dist. Thane. )
2. Mr. Ashok Mahadeo Sanap, )  
R/at. Government Colony, Room No.177/1, )  
Bandra (E), Mumbai 51. )
3. Mr. Prakesh Ganpat Bhosale, )  
R/at. BDD Chawl No.133, Room No.10, )  
SS Amratwar Marg, Worli 18 )
4. Mr. Madhukar Laxman Sankhe, )  
R/at. A/303, Nilgiri Tower, Manwelpada Rd., )  
Virar (E), Dist. Thane. )
5. Mr. Sudam Jagannath Ladkar, )  
R/at. Saroday Garden, Bldg. No.3. )  
Room No.106, Near Sagar Bhanu Cinema, )  
Kalyan (W), Dist. Thane. )

6. Mr. Vijay Shankar Deoghare, )  
 R/at. 191/195, Gora Gandhi Bldg., 1<sup>st</sup> floor, )  
 Room No.23, N.M. Joshi Marg, )  
 Lower Parel (E), Mumbai. )
7. Mr. Suresh Daji Natekar, )  
 R./at. 3/364, Ramdut, Mahadeo Palav Marg, )  
 Curyroad, Mumbai. )

.. Applicants

**Versus**

- 1) The State of Maharashtra, )  
 Through the Secretary, )  
 Revenue & Forest Department, )  
 Mantralaya, Mumbai 32. )
- 2) The Commissioner, )  
 Konkan Bhavan, CBD Belapur, )  
 Navi Mumbai. )
- 3) The District Collector, )  
 Mumbai City, Mumbai. )
- 4) The Secretary, )  
 General Administration Department, )  
 Mantralaya, Mumbai. )
- 5) Mr. A.B. Dabholkar, )  
 6) Mr. Dilip Balaji Hedau )  
 7) Mr. J.M. Sankhe )  
 8) Mr. B.K. Surpur, )  
 9) Mr. H.R. Sawant. )  
 10) Mr. P.K. More, )  
 11) Mr. N.C. Kulkarni, )  
 O/at. Konkan Bhavan, CBD Belapur, )  
 Navi Mumbai )  
 (Respondent No.5 to 11 are served through the Respondent No.2) )

..Respondents

**O.A.No.210/2016**

1. Mr. Jaikumar Ramchandra Gulsundare )  
 R/at. B 304, Shri Sai Pooja HSG Soc., )  
 Dalviwada, Manda, Titwala (E), Tal. Kalyan, )  
 Dist. Thane. )

2. Mr. Pravin Raghunath Vichare, )  
R/at.80A/22, Hari Niwas CHS, Vrindavan, Thane (W) )
3. Mr. Arun Gopal Ghadi, )  
R/at. 1/45, Government Colony, )  
Bandra (E), Mumbai 51. )
4. Mr. Ashok Sonu Gurav )  
R/at. 401, D Wing, Tulsi Pooja Tower, )  
Wayle Nagar, Kalyan (W). )
5. Mr. Jayrao Bramhaji Mayekar, )  
R/at. B-44/4, Government Colony, Bandra (E), )
6. Smt. Sujata Janardhan Kamble, )  
R/at. 7/603, N.G. Vihar, Opp. Laxmi Park, )  
P.N. Deshpande Marg, Thane (W). ) **.. Applicants**

**Versus**

- 1) The State of Maharashtra, )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 32. )
- 2) The Commissioner, )  
Konkan Bhavan, CBD Belapur, )  
Navi Mumbai. )
- 3) The District Collector, )  
Mumbai City, Mumbai. )
- 4) The Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai. )
- 5) Mr. V.T. Sadakal, )
- 6) Mr. Jahuruddin A. Ahmed, )
- 7) Mr. A.N. Komb )
- 8) Mr. Ananda Ishwar Maingade, )
- 9) Smt. V.K. Rane, )
- 10) Mr. S.M. Patil )  
O/at. Konkan Bhavan, CBD Belapur, )  
Navi Mumbai )  
(Respondent No.5 to 11 are served through the Respondent No.2) ) **..Respondents**

Shri K.R. Jagdale, the learned Advocate for the Applicants.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

**CORAM** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**  
**SHRI P.N. DIXIT, MEMBER(A)**

RESERVED ON : 12.02.2019.

PRONOUNCEMENT ON : 05.03.2019.

**PER** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**

### **J U D G M E N T**

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicants and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

2. Original Application No.209 of 2016 is taken as a lead Original Application. Different Applicants have filed present group of Original Applications, however facts and circumstances thereof are common.

3. All the Applicants entered the Government service in Clerical cadre. At relevant time applicants were serving as Naib Tahsildar or had reached superannuation.

4. Applicants have approached this Tribunal by challenging the communication dated 10.02.2016 (copy whereof is at Exhibit-I, page 124 onwards of the paper book of O.A.). This communication is just a forwarding letter and findings which are adverse are recorded in column No.5 in the annexure attached to the forwarding letter dated 10.02.2016.

5. In response to the provisional seniority list all the Applicants had raised objections which are almost concurrent in nature. Specimen of objections is on record at page 177 of the paper book of O.A. No. 209/2016. Upon perusal of contents of objections, it is seen that there are certain variations in the text of objections, in so far those relate to placement of other individuals in the cadre as against each objection. Rest of objections pertain to refusal of seniority / deemed date on account of failure in

passing Revenue Qualifying Examination, and these objections are concurrent and common to all applicants.

6. The objection which is concurrent and common and is seen recorded in column No.3 of the Annexure to the impugned communication contains one statement, text whereof reads as follows :-

“उपरोक्त परिस्थितीत सन १९८८ ते २०११ या कालावधीत विभागीय दुय्यम सेवा परिक्षा उत्तीर्ण होवून महसूल अर्हता परिक्षेस बसण्याची संधी मिळाली नाही अशा कर्मचा-यांचा विचार होवून त्यांचे जेष्ठते बाबत शासन स्तरावर निर्णय होणे आवश्यक आहे.

आपले कार्यालयाकडील संदर्भीय ज्ञापनाचे अवलोकन करता माझी जेष्ठता अनुक्रमांक १७२६ वर दर्शविण्यात आली आहे. सदर जेष्ठता माझे वयास १५.०३.२००८ रोजी ४५ वर्षे पूर्ण झाली हे विचारात घेवून लावण्यात आली आहे. प्रत्यक्षात मी १९९२ मध्येच विभागीय दुय्यम सेवा परिक्षा ऊत्तीर्ण केलेली आहे. जर १९८८ ते २०११ या कालावधीत जिल्हाधिकारी मुंबई शहर कार्यालयातील कर्मचा-यांना महसूल अर्हता परिक्षेस बसण्याची संधी देण्यात आली नाही. विभागीय दुय्यम सेवा परिक्षा ही पदोन्नतीसाठी अंतीम परिक्षा ठेवून कर्मचा-यांना पदोन्नत्याही देण्यात आल्या आहेत तर यामध्ये कर्मचा-यांचा काय दोष आहे.

सन १९८८ ते २०११ या कालावधीत विभागीय दुय्यम सेवा परिक्षा ऊत्तीर्ण केलेल्या परंतु महसूल अर्हता परिक्षेस बसण्याची संधी न दिलेल्या कर्मचा-याबाबत ते विभागीय दुय्यम सेवा परिक्षा ऊत्तीर्ण केल्यापासून पदोन्नतीसाठी पात्र ठरत असल्याने त्याप्रमाणे कार्यवाही होणे आवश्यक आहे. मी सन १९९२ मध्येच विभागीय दुय्यम परिक्षा ऊत्तीर्ण केलेली असल्याने सन १९९२ पासूनच अव्वल कारकून संवर्गातील पदोन्नतीसाठी पात्र आहे. केवळ जिल्हाधिकारी मुंबई शहर कार्यालयात पदोन्नतीसाठी पद रिक्त नव्हते म्हणून मला दि. १.११.२००१ पासून कालबद्ध पदोन्नती देण्यात आले व त्यानुसार वेतन निश्चितीही करण्यात आली आहे. कार्यालयीन आदेश क्र.आस्था/टे-२/पदोन्नती/ना.त./२०१०, दि.२५.०५.२०१० अन्वये अव्वल कारकून संवर्गात पदोन्नती देण्यात आली आहे व तेव्हापासून मी अव्वल कारकून संवर्गात सलग सेवा केलेली आहे. तदनंतर मला कार्यालयीन आदेश क्र. आस्था/टे-२/पदोन्नती/ना. तहसिलदार/२०१४, दि. ३१/०७/२०१४ अन्वये नायब तहसिलदार संवर्गात पदोन्नती देण्यात आली असून मी दि. ०१.०८.२०१४ पासून नायब तहसिलदार संवर्गात सलग कार्यरत आहे.

जर १९८८ ते २०११ या कालावधीत जिल्हाधिकारी मुंबई शहर कार्यालयातील कर्मचा-यांना महसूल अर्हता परिक्षेत बसण्याची परवानगी देण्यात आली नाही व सदर कालावधीत विभागीय दुय्यम सेवा परिक्षा हीच पदोन्नतीसाठी अंतीम परिक्षा होती तर मी १९९२ मध्येच विभागीय दुय्यम सेवा परिक्षा ऊत्तीर्ण झालो असल्याने मी १९९२ पासूनच अव्वल कारकून संवर्गात पदोन्नतीसाठी पात्र ठरत असल्याने विभागीय स्तरावर माझी १९९२ पासूनच अव्वल कारकून संवर्गातील जेष्ठता निश्चित होणे आवश्यक आहे. केवळ जिल्हाधिकारी मुंबई शहर कार्यालयात अव्वल कारकून संवर्गातील पदे रिक्त नसल्याने मला पदोन्नती मिळू शकली नाही. तथापि आपले कार्यालया मार्फत प्रसिद्ध केलेल्या जेष्ठता सूचीमध्ये कर्मचा-यांना सन १९९२ व १९९३ मध्येही अव्वल कारकून संवर्गात पदोन्नत्या देण्यात आल्या असल्याचे दिसून येते. सबब किमान १९९३ पासून तरी माझी विभागीय स्तरावरील अव्वल कारकून संवर्गातील जेष्ठता लावणे आवश्यक आहे.”

(Quoted from page 78 & 79 of the paper book of O.A.)

7. In the remarks furnished by the office of the Collector, Mumbai to the Commissioner Konkan Division, the comments in relation to the objection raised by the Applicants, the Collector, Mumbai, has admitted certain facts which admissions are evident from column No.4. The facts which are admitted by the Collector, Mumbai are summarized as follows:-

(a) The office of the Collector had issued communication that the Clerical Staff working in Collectorate, Mumbai are not allowed to appear for examination (copy whereof is at page 126, column No.4, paragraph 2 of the paper book of O..A).

- (b) The Revenue Qualifying Examinations enabling the clerical staff in the office of Collector, Mumbai were not held.
- (c) All the more it was necessary for the candidates to pass the examination or secure exemption.
- (d) Those who have crossed 45 years of age had been granted exemption and regular promotion.

8. The Divisional Commissioner, Konkan Division, who was the deciding authority has recorded the findings on objections in column No.5 as against each candidate. The Divisional Commissioner, Konkan Division has recorded his finding as regards requirement of passing of examination, at pages 126 to 199 of the paper book of O.A. is to following effect and content, namely :-

*"It was necessary to pass the examination as per Notification dated 07.07.1999".*

(copy of text thereof is at page 131, column No.5 of the paper book of O.A.)"

9. Perusal of the reasons recorded in column No.5, objections, reply and reasons aforesaid, it is evident that ruling given by the Divisional Commissioner on the point of examination is concurrent as regards all applicants.

10. In the background of admission by the Collector, the fact that Clerical Staff working in the office of Collectorate Mumbai were not allowed to appear for examination, it was imperative on the part of Divisional Commissioner to have recorded the findings as to how the fact that candidates were not permitted to appear for examination, can be brought in use to their detriment.

11. The Divisional Commissioner could have deferred his decision for working out a via media or for seeking guidance from the Government or he could have taken a suitable decision after consulting the records, rules and regulations to justly and could have acted fairly to deal with special case and in peculiar facts. Instead the Divisional Commissioner has adopted a slipshod and a shortcut method of repeating by 'copy paste method' as to what Collector has said / remarked in his comments and has skillfully evaded to record the findings as to how he comes out of fact that all throughout the office of Collector, Mumbai took a stand that the Revenue Qualifying Examination was not applicable to those serving in the office of Collectorate of Greater

Mumbai, and the applicants were not afforded an opportunity to undergo that examination.

12. It is seen that at no point of time the authorities have attributed the falsehood to the applicants' plea that the clerical staff of Greater Mumbai were not allowed to appear for the examination.

13. In the result, impugned communication as against the applicants before this Tribunal, is contrary to the settled principle of law and justice, namely that the objections cannot be brushed aside without recording reasons, which in fact is done by the Respondent No.2. Therefore, impugned communication, decision and the findings recorded in column No.5, at page Nos.127 to 199 as against applicants, are quashed and set aside.

14. The Divisional Commissioner, Konkan Division Respondent No.2 is directed to give personal hearing to the Applicants and decide the objections based on facts, records, rules and regulations in vogue. Respondent No. 2 shall be free to seek guidance and seek special order for exemption for passing examination by applicants in the peculiar facts of the case.

15. Original Applications are accordingly allowed in terms of aforesaid paragraph Nos. 13 & 14.

16. Parties are directed to bear their own costs.

Sd/-

**(P.N. Dixit)**  
**Member(A)**  
**05.03.2019**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**05.03.2019**

prk