

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.422 OF 2016**

**DISTRICT : JALNA**

Shri Sunder M. Jadhav. )  
Joint District Registrar, Jalna, and R/o. )  
Om Sai Apartments, Block No.1, )  
Prayag Nagar, Jalna. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through its Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai – 400 032. )

2. The Inspector General of Registration )  
& Controller of Stamps, M.S, Pune. )

3. Mr. S.B. Nakod. )  
Assistant Inspector General of )  
Registration, C/o. O/o. Inspector )  
General of Registration, M.S, Pune. )

4. Mr. U.K. Chavan. )  
Joint District Registrar, Sindhudurg.)

5. Mr. V.P. Boralkar. ) (Deleted)  
Joint District Registrar, Class-I )  
[Junior Grade], Latur, Collector )  
Office Campus, Latur. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents 1 & 2.**

**Mr. S.S. Dere, Advocate for Respondent Nos.3 & 4.**

**CORAM : P.N. DIXIT, VICE CHAIRMAN  
A.P. KURHEKAR, MEMBER-J**

**DATE** : **27.08.2019**  
**PER** : **A.P. KURHEKAR, MEMBER-J**

### **JUDGMENT**

1. The Applicant has challenged the placement of seniority given to Respondent Nos.3 & 4 above him in seniority list dated 06.01.2015 for the post of Joint Registrar, Class-I (Lower Grade) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In nut-shell, the facts giving rise to this application are as under :-

The Applicant was appointed on the post of Sub-Registrar in Class III (Group 'C') in the year 19934 and later he was promoted to the post of Joint District Registrar, Class-II (Group 'B') in 2004. He along with Respondent Nos.3 & 4 were promoted to the post of Joint District Registrar, Class-I (Lower Grade) by promotion order issued by Respondent No.1 (State of Maharashtra) on 06.09.2011 wherein the Applicant was placed at Serial No.12, whereas Respondent Nos.3 & 4 were placed at Serial Nos.2 and 6 respectively being senior to him. Accordingly, the Applicant was relieved by order dated 07.09.2011 and he joined promotional post of Joint Registrar, Class-I (Lower Grade) at Jalna on 12.09.2011. The Respondent Nos.3 and 4 were also relieved by their respective Offices on 07.09.2011. However, the Respondent Nos.3 & 4 did not join the promotional post at Sindhudurg and Pune respectively. Later, the Respondent No.1 by order dated 01.10.2011 revised posting of Respondent Nos.3 & 4 and inter-changed their posting. By revised posting order dated 01.10.2011, the Respondent No.3 was posted at Pune, whereas Respondent No.4 was posted at Sindhudurg and accordingly, they joined respective promotional post on 03.10.2011 and 04.10.2011

respectively. Later, the Respondent No.2 (Inspector General of Registration and Controller of Stamps) published provisional seniority list as on 01.01.2012 by its letter dated 21.01.2013 wherein the Applicant was shown at Serial No.24 whereas the placement of Respondent Nos.3 & 4 were shown at Serial Nos.27 and 28 respectively. The Respondent No.2 then published final seniority list as on 01.01.2012 by its letter dated 26.11.2013 thereby confirming the placement of the Applicant at Serial No.24 and the placement of Respondent Nos.3 & 4 at Serial Nos.27 & 28 respectively. The seniority of Respondent Nos.3 & 4 was counted from the date of resuming the charge of the promotional post by virtue of proviso to Rule 5(3) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as 'Seniority Rules 1982' for brevity) and the Applicant was shown above Respondent Nos.3 & 4 by giving him placement at Serial No.24. Later, the Respondent No.2 published provisional seniority list as on 01.01.2013 wherein the Applicant was shown at Serial No.20 and Respondent Nos.3 & 4 were shown at Serial Nos.23 & 24 respectively.

3. Being aggrieved by loss of seniority, the Respondent Nos.3 & 4 challenged the seniority list dated 21.01.2013 wherein they were shown below the Applicant by filing O.A.No.955/2014 and O.A.954/2014 in this Tribunal. In the meantime, the Respondent No.1 considered the representation made by Respondent Nos.3 & 4 dated 31.01.2013 and corrected the seniority list. Accordingly, the said O.As were disposed of, as the Respondent Nos.3 & 4 were satisfied with the corrected seniority list dated 06.01.2015. In the said corrected list, the Applicant was shown at Serial No.22 whereas, the Respondent Nos.3 & 4 were shown at Serial Nos.12 and 16 respectively. The Applicant made a representation on 30.01.2015 raising grievance that in seniority list dated 01.01.2012, he was shown at Serial No.20 but in final seniority list dated 06.01.2015, he was shown at Serial No.22 and requested for correction. However,

the Respondent No.1 rejected the same by communication dated 31.03.2015 stating that in promotion order dated 06.09.2011, no time limit was given for joining the promotional post and secondly, the Respondent Nos.3 & 4 have joined the promotional post within 30 days from the date of promotion order, and therefore, they were rightly placed above the Applicant by correcting seniority list.

4. Now, in this O.A, the Applicant has challenged the seniority list dated 06.01.2015 wherein the seniority of Respondent Nos.3 & 4 is fixed above him at Serial Nos.12 and 16 respectively. Whereas, the Applicant's seniority is at Serial No.22. The foremost contention of the Applicant is that the Respondent Nos.3 & 4 themselves were responsible for delay in assuming charge of promotional post, and therefore, they have lost the seniority earlier given to them in promotional post dated 06.09.2011 by virtue of proviso to Rule 5(3) of 'Rules 1982' and earlier they were rightly shown below the Applicant in seniority list dated 26.11.2013. However, later, on representation made by Respondent Nos.3 & 4, the same was changed by giving them placement above the Applicant. With this pleading, the Applicant prayed to set aside the seniority list dated 06.01.2015 and reassigned the seniority as shown in seniority list dated 01.01.2012 and 01.01.2013.

5. The Respondent Nos.1 & 2 opposed the application by filing Affidavit-in-reply (Page Nos.79 to 86 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The factual aspects of publication of seniority list and its correction as adverted above while narrating the Applicant's case is not in dispute. Admittedly, in promotion order dated 06.09.2011, the placement of seniority of the Applicant was at Serial No.12 whereas, the placement of Respondent Nos.3 & 4 were at Serial Nos.2 and 6 respectively. However, the Respondent Nos.3 & 4 made representation to the Government to inter-change their posting, and therefore, they could not join immediately. Later, their representation was accepted and

revised posting order was issued on 01.10.2011 accepting their representations and they were posted at Pune and Sindhudurg and joined on 03.10.2011 and 04.10.2011 respectively. However, due to misunderstanding in the staff of the Office of Respondent No.2, mistakenly in provisional seniority list dated 21.01.2013 as well as final seniority list dated 26.11.2013, the Respondent Nos.3 & 4 were shown at Serial Nos.27 and 28 and the Applicant was shown at Serial No.24. Later, on representations made by Respondent Nos.3 & 4, the same was corrected and in final seniority list, the Applicant is shown at Serial No.22 whereas, the Respondent Nos.3 & 4 were shown at Serial Nos. 12 and 16 respectively. The Respondents 1 & 2 contend that in promotion order dated 06.09.2011, no time limit was given for joining promotional post and secondly, the Respondent Nos.3 & 4 joined the promotional post in view of revised posting order within 30 days from the date of promotion order, and therefore, they have not incurred any disqualification, so as to lose seniority in terms of proviso to Rule 5(3) of 'Seniority Rules 1982'. The Respondents 1 & 2 contend that the seniority list was accordingly rightly corrected in consultation with General Administration Department and no prejudice is caused to the Applicant as admittedly in original seniority reflected in promotion order dated 06.09.2011, the Respondent Nos.3 & 4 were senior to the Applicant.

6. The Respondent Nos.3 & 4 resisted the application by filing Affidavit-in-reply (Page Nos.97 to 110 of P.B.) thereby supporting and adopting the contentions raised by Respondents 1 & 2 adverted to above. They contend that in promotion order dated 06.09.2011, there was no stipulation for joining promotional post within specific period, and therefore, they were entitled to avail 30 days joining time as contemplated under Rule 15 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules 1981' for brevity). On receipt of promotion order dated

06.09.2011, they made representation to the Government and requested to inter-change the posting and accordingly, the Government accepted their request by issuing revised posting on 01.10.2011 and in pursuance of it, they joined at Pune and Sindhudurg on 03.10.2011 and 04.10.2011 respectively. This being the position, they cannot be said to have neglected or avoided to join the promotional post, and therefore, proviso to Rule 5(3) of 'Seniority Rules 1982' is not attracted to the present case. However, mistakenly, by the Office of Respondent No.2, they were shown at Serial Nos. 27 & 28 respectively in seniority list dated 01.01.2012 and 26.01.2013 by wrong interpretation of proviso to Rule 5(3) of 'Seniority Rules 1982'. Therefore, they made representation on 31.01.2013 and filed O.A.No.955/2014 and O.A.No.954/2014 for correction in seniority list. During the pendency of O.A, the Respondents 1 & 2 realizing their mistake corrected the seniority list by giving placement to the Applicant at Serial No.22, Respondent No.3 at Serial No.12 and Respondent No.4 at Serial No.16. The Respondents, therefore, contend that the challenge to the seniority is devoid of merit.

7. Shri M.D. Lonkar, learned Advocate for the Applicant submits that because of non-joining of Respondent Nos.3 & 4 immediately after issuance of promotion order, they have lost their seniority by virtue of proviso to Rule 5(3) of 'Seniority Rules 1982' and it was accordingly correctly adhered to by considering their seniority from the date of actual assumption of charge of the promotional post and accordingly, they were placed at Serial Nos.27 and 28 i.e. below the Applicant in provisional seniority list dated 01.01.2012 and final seniority list dated 26.11.2013. He, therefore, urged that subsequent correction in seniority list on the representation of Respondent Nos.3 & 4 is not sustainable in law by operation of proviso to Rule 5(3) of 'Seniority Rules 1982'.

8. Per contra, Shri A.J. Chougule, learned Presenting Officer for Respondent Nos.1 & 2 as well as Shri S.S. Dere, learned Advocate for Respondent Nos.3 & 4 submits that in absence of any stipulation in promotion order dated 06.09.2011, the Respondent Nos.3 & 4 were entitled to 30 days period in joining promotional post in terms of Rule 15 of 'Joining Time Rules 1981' and accordingly, having succeeded in getting posting inter-changed, they joined on 03.10.2011 and 04.10.2011 respectively within 30 days from the date of promotion order, and therefore, the question of loss of seniority does not survive. As such, their representations dated 31.01.2013 was rightly considered by the Government by showing them at Serial Nos.12 and 16 respectively in final seniority list dated 06.01.2015. They further state that admittedly, in select list for the post of Joint Registrar, Class-I (Lower Grade), the Applicant was admittedly, junior to them having at Serial No.12 and Respondent Nos.3 & 4 were senior having placed at Serial Nos.2 & 6 respectively. As such, the final seniority list is in conformity with the select list dated 06.09.2011 and no prejudice is caused to the Applicant.

9. In view of pleadings and submissions advanced at the Bar, the question posed for consideration is whether the Respondent Nos.3 & 4 lost their seniority in terms of proviso to Rule 5(3) of 'Seniority Rules 1982' and in our considered opinion, the answer is in the facts and circumstances of the case is in affirmative for the reasons to follow.

10. At this juncture, it would be appropriate to reproduce relevant Rules of 'Seniority Rules 1982' which are as follows :-

**“4. General principles of seniority.- (1) .....**

- (2) Notwithstanding anything contained in sub-rule (1),-
- (a) the inter-se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination

directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow ;

- (b) the inter se seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the first part containing the names of those selected unconditionally and the second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in the second part.”

**5. Assignment of deemed date of appointment-**

(1) .....

(2) .....

(3) Where two or more Government servants who are eligible for promotion to any higher post, cadre or service according to any Select List are promoted to such higher posts, cadre or service and the actual dates on which such Government servants report for duty in such higher posts, cadre or service are not chronologically in conformity with their *inter se* seniority as provided in Clause (b) of sub-rule (2) of Rule (4), the senior person, who reports for duty later than his junior, shall be assigned as deemed date of appointment, the date on which the junior reports for duty.

[Provided that, in a case where a Government servant himself is deemed responsible for delay in assuming charge of the promotional post, his *inter se* seniority shall be fixed with reference to the date [he] actually assumes charge of such post.]”

11. Material to note that, earlier the Respondent No.2 in provisional seniority list dated 01.01.2012 and final seniority list dated 26.11.2013 changed the seniority of Respondent Nos.3 & 4 as they assumed charge of promotional post belatedly and applied proviso to Rule 5(3) of ‘Seniority Rules 1982’. However, later, the Respondent Nos.3 & 4 made representation and filed O.A.No.955/2014 and 954/2014 and during the pendency of O.A, the Respondent No.1



rectified the seniority list and Applicant was shown at Serial No.22 and Respondent Nos.3 & 4 were shown at Serial Nos. 12 and 16 respectively in final seniority list dated 06.01.2015. The Respondent No.1 contends that, in promotion order dated 06.09.2011, no time limit was given for joining of promotional post inadvertently as required under Rule 15 of 'Joining Time Rules 1981', and therefore, realizing the mistake, the seniority of Respondent Nos.3 & 4 was corrected. True, in promotion order dated 06.09.2011, there was no such stipulation as to in which time limit, the promoted Officers were required to join the promotional post. There is no denying that the Respondent Nos.3 & 4 made representation to the Government to inter-change their posting and their request was accepted by issuing revised posting order on 01.10.2011. In consequence to it, the Respondent Nos. 3 & 4 joined on 03.10.2011 and 04.10.2011.

12. In so far as proviso to Rule 5(3) of 'Seniority Rules 1982' is concerned, it is attracted where the Government servant is responsible for delay in assuming charge of the promotional post. In the present case, the Respondent Nos.3 & 4 did not get the promotional posting as per the preference given by them, and therefore, they made representations to inter-change their posting and were waiting for orders. Material to note that admittedly, after issuance of promotion order dated 06.09.2011, the Respondent Nos.3 & 3 were relieved from their respective posts as Joint Registrar, Class-II, Thane and Joint Registrar, Class II, Kurla on 07.09.2011, so as to resume the promotional the post at Sindhudurg and Pune respectively. However, they did not join the promotional post. Admittedly, there was no order of the Government for extension of joining time. Once the Respondent Nos.3 & 4 were relieved from their respective Offices on 07.09.2011, there were required to join within seven days which is normal regular joining time as contemplated in Rule 15 of 'Joining Time Rules 1981'. It is in this context, the

question is whether the proviso to Rule 5(3) of 'Seniority Rules 1982' is attracted.

13. Shri S.S. Dere, learned Advocate for Respondent Nos.3 & 4 sought to contend that the said proviso is not applicable to the present situation contending that it is attracted only where the placement in seniority list is not chronologically inconformity with the original inter-se seniority. In our considered opinion, the submission is fallacious and misplaced.

14. The perusal of Rules 4 & 5 of 'Seniority Rules 1982' if harmoniously considered, it is crystal clear that the object is to protect *inter se* seniority subject to rider that where the Government the Government servant himself is found responsible for delay in assuming the charge of the promotional post, then the *inter se* seniority shall be fixed from the date he actually takes charge of the said post. This being the position, it was rightly considered in seniority list date 01.01.2013 and 26.01.2013 as well as provisional seniority list as on 01.01.2013 showing the Respondent Nos.3 & 4 below the Applicant because they assume the charge of promotional post late. The Applicant joined the promotional post on 12.09.2011, whereas the Respondent Nos.3 & 4 joined the promotional post on 03.10.2011 and 04.10.2011 respectively after getting their posting on promotion inter-changed. As stated above, there is nothing to show that the Respondent Nos.3 & 4 have made an application for extension of time to join the promotional post and the same was granted by the Applicant. When the Respondent Nos.3 & 4 were promoted and posted at Sindhudurg and Pune respectively, they ought to have joined the promotional post within seven days. If they were intending to get it inter-changed that they ought to have joined within seven days and then should have moved the application for inter-change posting. However, instead of joining the promotional post within seven days, as contemplated in Rule 15 of 'Joining Time Rules 1982'. They did not join the promotional post despite being

relieved on the very next day of the order of promotion. In such scenario, it will have to be held that the Respondent Nos.3 & 4 were responsible for delay in assuming the charge of promotional post, and therefore, their seniority was rightly changed placing them below the Applicant.

15. The intention of the legislature is explicit in view of proviso to Rule 5(3) of 'Seniority Rules 1982'. Needless to mention that the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of enactment. In the words of LORD MACMILLAN "the proper function of a proviso is to except or to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case." In so far as the facts of present case are concerned, the date of assuming charge of the promotional post of the Applicant and Respondent Nos.3 & 4 are not chronologically in conformity with their *inter se* seniority. Therefore, the Respondent Nos.3 & 4 would have been entitled to deemed date of appointment on the date on which junior reports for duty as provided in Rule 5(3) of 'Seniority Rules 1982'. However here, the proviso would come in picture with full force as the Respondent Nos. 3 & 4 themselves were responsible for delay in assuming charge of the promotional post, and therefore, their seniority has to be from the dates on which they actually assumed the charge of the promotional post.

16. The submission advanced by Shri S.S. Dere, learned Advocate for Respondent Nos.3 & 4 that his clients were entitled for 30 days joining time, and therefore, there is no fault on their part is unsustainable. The period of 30 days is maximum period of joining. The Government servant as of right cannot claim 30 days period for joining. This is settled position in service law. The perusal of file noting reveals that the Respondent No.2 revised the seniority position placing the Respondent Nos.3 & 4 above the Applicant on the ground

that in promotion order, the time for joining was not mentioned. In our considered opinion, this can be hardly excuse in view of express provision, particularly proviso to Rule 5(3) of 'Seniority Rules 1982'. Irrespective of non-mention of joining period in promotion order, one needs to apply the existing Rules which require joining within seven days plus travelling time. Indeed, it is only in certain situation, the Government can extend the period within prescribed period of maximum 30 days in certain circumstances, as contemplated in Rule 27 of 'Joining Time Rules, 1981', which is as follows :-

**“27. Circumstances in which joining time can be extended by a competent authority.-** Within the prescribed maximum of 30 days, a competent authority may, on such conditions as it thinks fit, grant to a Government servant a longer period of joining time than is admissible under the rule in the following circumstances :-

- (a) when the Government servant has been unable to use the ordinary mode of travelling or, notwithstanding due diligence or his part, has spent more time on the journey than is allowed by the rules; or
- (b) when such extension is considered necessary for the public convenience or for the saving of such public expenditure as is caused by unnecessary or purely formal transfer; or
- (c) when the rules have in any particular case operated harshly, as for example when a Government servant has, through no fault on his part, missed a steamer or has fallen sick while on the journey.”

17. Needless to mention that the case of Respondent Nos.3 & 4 does not fall within the aforesaid circumstances as contemplated in Rule 27 of 'Joining Time Rules 1981'. It is rather surprising that the Government instead of upholding the Rules trying to twist it. This being the position, the stand taken by the Government is clearly unsustainable.

18. We have, therefore, no hesitation to conclude that the Respondent Nos.3 & 4 themselves were responsible for delaying to

assume the charge of the promotional post and thereby lost seniority as contemplated in proviso to Rule 5(3) of 'Seniority Rules 1982'.

19. The totality of aforesaid discussion leads us to conclude that the Applicant is entitled to the relief claimed and O.A. deserves to be allowed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned action of Respondent Nos.1 & 2 assigning lower placement to the Applicant vis-à-vis Respondent Nos.3 & 4 in the final seniority list as on 01.01.2012, 01.01.2013 in the cadre of Joint District Registrar, Class-I (Lower Grade) and final seniority list published on 06.01.2015 is bad and unsustainable in law.
- (C) The Respondent Nos.1 & 2 are directed to re-assign the place of Respondent Nos.3 & 4 in seniority list of the cadre of Joint District Registrar, Class-I (Lower Grade) as 01.01.2012 and 01.01.2013 considering their dates of joining on the post of Joint District Registrar, Class-I (Lower Grade) in terms of proviso to Rule 5(3) of 'Seniority Rules 1982'. This exercise should be done within a month from today.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Sd/-

**(P.N. DIXIT)**  
**VICE-CHAIRMAN**

Mumbai  
Date : 27.08.2019  
Dictation taken by :  
S.K. Wamanse.