

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 46 OF 2014

DISTRICT : THANE

Shri Dinesh Babulal Paithankar,)
Working as Awal Karkun in the office of)
Sub-Divisional Officer, Thane.)
C/o: Shri A.V. Bahndiwadekar,)
Advocates, having office at 9, Ram-Kripa)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016)...**Applicant**

Versus

1. The Divisional Commissioner)
Konkan Division,)
Having office at Konkan Bhavan,)
1st floor, Navi Mumbai 400 614.)

2. The State of Maharashtra,)
Through Principal Secretary,)

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[Revenue],)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Acting-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 11.07.2014

PER : Shri Rajiv Agarwal (Acting-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the inaction of the Respondent no. 1 in not implementing directions issued by the Government, i.e. Respondent no. 2 on 6.12.2013 and 13.12.2013, which is resulting in the Applicant not

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getting promotion in the post of Naib Tahsildar, for which he is eligible

3. Learned Counsel for the Applicant argued that the Applicant joined Government service on 11.5.1999 as a Clerk. He was promoted to the post of Awal Karkun on 22.12.2003. Seniority lists of Clerk and Awal Karkun was prepared by Collector. However, for promotion to the post of Naib Tahsildar, the seniority lists of Awal Karkun from the districts in the Revenue division are merged. This action is to be done by the Divisional Commissioner. For Konkan Division, the divisional Seniority list of Awal Karkun as on 1.1.2011 was prepared by the Respondent no. 1. As the Applicant's seniority was wrongly shown, he made a representation to the Respondent no. 2. By order dated 6.12.2013, the Respondent no. 1 gave directions to the Commissioner, Konkan Division, to prepare the seniority list in accordance with the rules for promotion to the post of Awal Karkun from Clerk-typist notified on 7.7.1999. These rules provide that the seniority of a Clerk after promotion to the post of Awal Karkun will remain undisturbed if he had passed Revenue Qualifying Examination within the given chances and within the stipulated time. The date of passing of Revenue Qualifying Examination will not be relevant in such cases and date of promotion to the post of Awal Karkoon will be the relevant date. The Respondent no. 1 had not yet acted on these instructions dated 6.12.2013 issued by

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the Respondent no.1. These instructions were reiterated by order dated 13.12.2013. Learned counsel for the Applicant argued that the Respondent no. 1 has relied on Government circular dated 6.2.2014 and promoted Awal Karkoons to the post of Naib Tahsildar. However, the letter dated 6.2.2014 issued to the Respondent no. 1 is to permit provisional promotions as per seniority lists already prepared and the person so promoted have to execute a bond that their promotions are subject to revision of seniority list as per Government circular of 31.1.2014. The circular has formalized earlier orders of the Respondent no. 2 dated 6.12.2013 and 13.12.2013. The Respondent no. 1 is, however, not implementing the orders of Government as per Circular dated 31.1.2014. By letter dated 31.5.2014, he has asked all the Collectors to prepare seniority lists as per Circular dated 31.1.2014 for 1.1.2012, 1.1.2013 and 1.1.2014, which means that promotion given on the basis of Government letter dated 6.2.2014 will remain undisturbed as the relevant seniority list was for 1.1.2011. This is not only in violation of Government orders dated 6.12.2013, 13.12.2013 and Government circular dated 31.1.2014, but it violates the letter dated 6.2.2014 also.

4. Learned Presenting Officer (P.O) argued that the Government had permitted the Respondent no. 1 to promote Awal Karkoons as Naib Tahsildars on the basis of already prepared seniority list by letter dated 6.2.2014.

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The circular dated 31.1.2014 is “silent and clearly not mentioned guidelines on the issue of implementation year”. [Para 4.1 of the affidavit in sur-rejoinder by the Respondent no. 1 dated 13.6.2014]. Learned Presenting Officer contended that the Respondent no. 1 has already written to all Collectors in his division on 31.5.2014 to finalize seniority lists of Awal Karkoon as per instructions of the Government dated 6.2.2014, 9.10.2013 and 21.1.2014, as on 1.1.2012, 1.1.2013 and 1.1.2014. After the seniority lists are prepared, they will be merged by the Respondent no. 1. Learned Presenting Officer argued that there is no cause of action for the Applicant to file this Original Application.

5. We have carefully perused the material on record and considered arguments on behalf of the Applicant and the Respondents. The Applicant, who was promoted as Awal Karkoon is claiming that seniority in the cadre of Awal Karkoon should be reckoned on the basis of date of actual promotion, if a Clerk has passed the Revenue Qualifying Examination within stipulated time and given chances. This is as per the Recruitment Rules for the post of Awal Karkoon notified by the Government on 7.7.1999. Only if a Clerk is not able to pass the Revenue Qualifying Examination within stipulated time and given chances, he loses his seniority and if his juniors came to be promoted before he passed the Revenue Qualifying Examination, his seniority would be counted from the

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date of his passing the said examination. In case of failure to pass the said examination, exemption is granted at the age of 45 from passing the examination. In such cases, the date of seniority would be the date of attaining the age of 45 years. It appears that in some Revenue Divisions in the State, including Konkan division, the seniority in the cadre of Awal Karkoon was decided on the basis of the date of passing of the Revenue Qualifying Examination. When the Applicant represented to the Government and on a reference by the Respondent no. 1, the Government issued letter dated 6.12.2013. The letter referring the provision of Recruitment Rules notified on 7.7.1999, states that:-

“ लिपिक संवर्गातील कर्मचा-यांने शासनअधिसूचना दि. ७.७.१९९९ मधील तरतूदीनुसार विहित संधीत महसूल अर्हता परीक्षा उत्तीर्ण केलेली असेल तर संबंधित लिपिकाच्या अबल कारकून व संवर्गातील पदोन्नतीनंतर त्याची अबल कारकून संवर्गातील मूळ ज्येष्ठता अबाधित राहिल, अशी तरतूद आहे. त्यामुळे विहित संधीत महसूल अर्हता परीक्षा उत्तीर्ण झालेल्या कर्मचा-यांच्या ज्येष्ठतेसाठी महसूल अर्हता परीक्षा उत्तीर्ण झालेला दिनांक ग्राह्य न धरता नियमित पदोन्नतीनंतर अबल कारकून संवर्गात हजर झालेला दिनांक ज्येष्ठतेसाठी ग्राह्य धरणे आवश्यक आहे. ”

6. In our opinion instructions contained as above are quite unambiguous and based on relevant legal position. Subsequent instructions dated 13.12.2013 reiterate the earlier instructions dated 6.12.2013 and also specifically

refer to the representation of the Applicant. Despite clear and unambiguous instructions the Respondent no. 1 has not taken action to implement Government orders. Later, on 31.1.2014, Government issued a circular, which is issued 'by order and in the name of Governor of Maharashtra'. It is mentioned in paragraph 2 of the circular that the seniority list of Awal Karkoons and Circle Officers have to be prepared in accordance with Rule 3(c) and 4(1) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Reference is also made to the Recruitment Rules of 1996 for Awal Karkoon notified on 7.7.1999, and the Recruitment Rules of 1996 for Circle Officers. The circular is accordingly applicable for both the Awal Karkoons (promoted from the post of Clerk) and Circle Officers (Promoted from the post of Talathi). Legal provisions have also been quoted. Para 4 has given examples also, as to how the seniority is to be fixed in the cadres of Awal Karkoon/Circle Officers. It is surprising that despite these instructions of the Government, the Respondent no. 1 has not taken any decision to correct the seniority of the Applicant.

7. In the affidavit in sur-rejoinder, the Respondent no. 1 has stated that he cannot decide the representation of the Applicant as Circular dated 31.1.2014 is silent on the issue of implementation year (para 2.2). This contention of the Applicant has to be categorically rejected as the letter dated 6.2.2014 permits the Respondent no. 1 to

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give promotion on the basis of existing seniority list, but such promotions were purely ad hoc and the persons promoted were to give bond that the promotions will be reviewed in the light of circular dated 31.1.2014. As these ad hoc promotions were given on the basis of seniority list as on 1.1.2011, the Respondent no. 1 is required to review such ad hoc promotions after correcting the seniority list as on 1.1.2011.

8. We find that the Respondent no. 1 has totally failed to explain the delay in implementation orders of the Government dated 6.12.2013 and 13.12.2013. He has also not followed the instructions in letter dated 6.2.2014 on the basis of circular dated 13.12.2014. This is adversely affecting the careers of those Awal Karkoons like the Applicant, who are entitled to get seniority corrected, so that they could be considered for promotion as Naib-Tahsildars.

9. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 1 is directed to correct the seniority list on the basis of which ad hoc promotions to the post of Naib Tahsildar from the post of Awal Karkoons were given in pursuance of Government letter dated 6.2.2014, within a period of 8 weeks from the date of this order. A review DPC may then prepare a fresh select list for promotion to the post of Naib Tahsildar on the basis of revised seniority list within

a further period of 8 weeks. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Acting -Chairman

Place : Mumbai

Date : 11.07.2014

Dictation taken by : A.K. Nair.

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