

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.553 OF 2014

DISTRICT : KOLHAPUR

1. Smt. Rasika Ravindra Kodolikor.)
Age : 45 Yrs., Occu. : Service.)
 2. Smt. Kavita Appasaheb Jadhav.)
Age : 45 Yrs., Occu. : Service.)
 3. Shri Anil Balaso Shinde.)
Age : 43 Yrs., Occu. : Service.)
 4. Shri Suresh Yashwant Tipugade.)
Age : 38 Yrs., Occu. : Service.)
 5. Shri Amit Jayavant Lad.)
Age : 36 Yrs., Occu.: Service.)
- All R/o. C/o. Shri Amit Lad, Plot No.2,)
Chaya Colony, Sagar Mal Road, Kolhapur.)...Applicants

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. The Collector, Kolhapur, Nagala park,)
Kolhapur.)
3. Shri Arun B. Malage.)
Working in the cadre of Awal Karkoon)
in Tahasil Office, Panhala,)
Dist : Kolhapur.)
4. Shri Sanjay K. Gite.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)

5. Smt. Vaishali Shirsath.)
Working in the cadre of Awal Karkoon)
in Tahasildar Office, Panhala,)
Tal.: Panhala.)
6. Smt. Preeti S. Gavari.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
7. Smt. Manasi R. Shende.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
8. Shri Nilesh A. Divase.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
9. Shri Pravin A. Kadam.)
Working in the cadre of Awal Karkoon)
in SDO Office, Gadhinglaj, Tal. Gadhinglaj.)
10. Shri Vinayak S. Lugade.)
Working in the cadre of Awal Karkoon)
in FDO Office, Central Building, Kasaba)
Bawada, Kolhapur.)
11. Shri Ganesh P. Barage.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
12. Shri Vinod P. Patil.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
13. Shri Santosh S. Walake.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)
14. Smt. Latika V. Aarwade.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)

- Kolhapur.)
15. Smt. Varsha S. Patole.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
16. Shri Avinash A. Suryawanshi.)
Working in the cadre of Clerk)
in Tahasildar Office Kagal, Tal. kagal,)
Dist : Kolhapur.)
17. Smt. Ujwala B. Khot.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
18. Smt. Anuradha B. Sonavane.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
19. Shri Rajaram M. Aarage.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
20. Shri Vishnu C. Kumbhar.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
21. Shri Baban M. Shinde.)
Working in the cadre of Clerk)
in SDO Office, Gadhinglaj, Tal. Gadhinglaj,)
District : Kolhapur.)
22. Shri Sandip V. Patil.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
23. Shri Rahul R. Koli.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)

24. Shri Sanjay B. Lambore.)
Working in the cadre of Clerk)
in Tahsildar Office, Karveer, Tal.: Karveer,)
District : Kolhapur.)
25. Smt. Reema R. Ganpatye.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
26. Smt. Pradnya M. Thorat.)
Working in the cadre of Clerk)
in Collector Office, Nagala Park,)
Kolhapur.)
27. Smt. Mohini M. Mundhe.)
Working in the cadre of Awal Karkoon)
in Collector Office, Nagala Park,)
Kolhapur.)...Respondents

Mr. C.T. Chandratre, Advocate for Applicant.

Mr. K.B. Bhise, Presenting Officer for Respondents 1 & 2.

Mr. P.S. Bhavake, Advocate for Respondents 3 to 6, 13, 15 to 19,21,24,27,30 and 32 is absent.

None for Respondents 7 to 12,14,20,22,23,25,26,28,29 and 31.

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

Reserved on : 25.09.2018

Pronounced on : 04.10.2018

PER : SHRI JUSTICE A.H. JOSHI, CHAIRMAN

JUDGMENT

1. Summary of Applicant's version is as follows :

Sr.No.	Particulars	Dates
1.	Applicant have been appointed in service of the as clerk cum typist in the Collector Office, Kolhapur.	25/03/2008
2.	Applicant passed Maharashtra Revenue Qualifying Examination for	October,

	promotion to the post of Awal Karkun from the cadre of Clerk Typist.	2012
3.	Provisional Seniority list of Clerks who had passed Revenue Qualifying Examination was published by the Respondent No.2.	30/12/2013
4.	Representation was given by the Applicant objecting placement in seniority list of Clerks who have qualified by passing Revenue Qualifying Examination.	January, 2014
5.	The Respondent has rejected the objections raised by the Applicant and thereby finalized the provisional seniority list of clerical cadre for the promotion from the cadre of clerk cum typist to the cadre of Awwal Karkoon.	03/02/2014

(Quoted from Synopsis)

2. Applicant has prayed the relief as follows :

“(b) By suitable order/direction, this Honorable Tribunal may be pleased to direct the Respondents to refix the seniority list dt. 03/02/2014 by showing the Applicant to be senior than employees at Sr.Nos.12 to 41 in the final seniority list.

(bb) By suitable order/directions, this Hon’ble Tribunal may be pleased to quash and set aside the promotions granted to Respondents Nos. 3 to 18, 28 and 32 and to grant promotions to the present Applicant/s in the cadre of Awal Karkoon by granting relevant deemed date i.e. 09/07/2014 i.e. first order of Promotion granted to the Respondent who is junior than the Applicant/s.”

(Quoted from Page 12 of the Paper-book)

3. Applicant’s pleadings as regards his claim are :-

“(a) 7(P) of O.A, which reads as follows :

“**7(P)** The Applicant states and submits that they are not challenging the seniority of other clerk typist who are shown senior to the Applicant by virtue of their passing of RQT in earlier point of time than the Applicant, but the Applicant is challenging the placement of employees at Sr. Nos. 12 to 41 who have passed the RQT on the same date along with Applicant, but shown to be senior than the Applicant though they either entered into the service later than the Applicant or they are junior in age than the Applicant. Hence it is clear that the seniority list prepared by the Respondent is illegal and bad in law qua the Applicant. Hence the respective placement of the Applicant is required to be changed as the same is shown in the draft-seniority list prepared by the Applicant.”

(Quoted from Page 10 of Paper-book)

(b) Para 7.R is reads as follows :

“**7.R)** The Applicant states and submits that all the Respondents Nos. 3 to 32 are junior than the Applicant. However the Respondent shown them to be senior in the seniority list without considering his objection objectively. It is pertinent to note that the applicant has passed the S.S.D. examination in 3 chances. Hence the Applicant does not lose his seniority to any of the Respondents Nos.3 to 32. As per rule 4(c) of the Maharashtra Sub-service Departmental Examination Rules 1988, the seniority of a clerk is fixed from the date of his appointment if he passes S.S.D. examination within 3 chances and 4 years. The Respondents Nos. 3 to 32 are either appointed later than the Applicant or they are less in age than the Applicant. Hence even by applying provisions

of rule 15 the Applicant ought to have been shown as senior to the Respondents Nos. 3 to 32. The Respondents Nos. 3 to 18, 28 and 32 were granted promotion by ignoring the claim of the Applicant and by ignoring that the matter has been already sub-judice. Hence the said promotions are illegal and bad in law. Hereto annexed and marked as **Exh.6** is the copy of the order of promotion of some of the Respondents dt. 09/07/2014. Hereto annexed and marked as **Exh.7** is the copy of the order of promotion of other Respondents dt. 18/02/2015. Hereto annexed and marked as **Exh.8** is the copy of the order of promotion of other Respondents dt. 17/06/2015. Hence the said promotions also deserves to be quashed and the Applicant deserves to be granted promotion with relevant deemed date and the Applicants are required to be shown at adequate place in seniority list prior to the Respondents No.3 to 32.”

(Quoted from Page 10a of Paper-book)

4. Applicant’s averments contained in Para 7(P) is replied in the Affidavit-in-reply of Respondents Nos. 1 and 2 as follows :-

“**14.** With reference to Para 7(P), I say that the contents of the para no. P are imaginary. It is also specifically denied the same. The Present Applicant has not passed within given attempts and present seniority list employee’s sr. no. 12 to 41 is passed within specified attempts.”

(Quoted from Page 67 of Paper-book)

5. The Applicant herein has filed a Rejoinder in which Applicant has pleaded as follows :

“**14.** With reference to contents in para 14 of the affidavit-in-sur-rejoinder, I say and submit that the final seniority list prepared by the Respondent No.2 is illegal and violative of Rules.”

(Quoted from Page 80 of Paper-book)

6. In his Sur-rejoinder, Applicant has admitted that Applicant has passed the Revenue Qualifying Examination in 4th attempt which averment is seen in Para No.9 of the Sur-rejoinder which is quoted as follows :

“**9.** With reference to contents in para 9 of the affidavit-in-sur-rejoinder, I say and submit that the Respondent has not considered the next part of rule 6 which provides that the candidate should be required to pass the examination in 9 years. Though I passed the examination in 4th attempt but still I cannot be declared as junior to the candidate who passed the examination alongwith me. I submit that I may loose the seniority to the candidate who passes the RQT prior to me. However the candidate who passes examination alongwith me cannot be shown to be senior to me just by interpreting that he passed the examination in 3 attempts.”

(Quoted from Page 79 of Paper-book)

7. Applicant has fervently argued that his seniority of Clerks needs to be determined on the basis of inter-se seniority of Clerks in the cadre of Clerk by observing

the dictate of Revenue Qualifying Examination Rules, which is admitted by Respondents with a rider that it is for preparation of selection list for the post of Awal Karkuns.

8. Applicant as well as Respondents relied on the Judgment of Full Bench of this Tribunal in O.A.No.354 of 2015 (Shri Mahesh M. Sapre & Ors. V/s. The State of Maharashtra & Ors., dated 02.02.2017). The Judgment and Order passed in the above matter, which is a three Bench Judgment reads as follows :

“45. The upshot is that, from the above discussion, the following principles emerge and while preparing the seniority list, the observations herein made may be followed and the course of action as hereinbelow be adopted.

- “(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 by (a) to (d) above.”

9. The questions which arise are :-

- (a) What is the role played by and function of ‘Maharashtra Sub-Service Departmental Examination Rules, 1988’ as amended in 1993 (hereinafter referred to as “SSD Clerks’ Rules”). Answer to this question is :-

“Function of S.S.D. Rules is barely to fix and settle inter-se seniority of Clerks upon their confirmation, which occurs only upon passing of S.S.D. Examination.”

(b) What is the role of 'Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk Typist Rules, 1999 (hereinafter referred to as "RQE Rules"). Unquestionable function of RQE Rules as pronounced Rule 15 of RQE Rules is to have a list, which will operate as a feeder cadre for promotion to the post of Awal Karkun.

10. For ready reference, Rules 6, 7 and 8 are quoted below :

6. Period and number of chances for passing Examination.- A Clerk Typist shall be required to pass the Examination within three chances and within nine years of his continuous service.

7. Effect of passing Examination on seniority.- A Clerk Typist who has passed the Examination in accordance with the provision of Rule 6, shall retain his original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or are exempted from passing of the Examination, before him, as well as to those Clerk Typists who are senior to him and who may pass the Examination after him; but within prescribed period and chances specified in these rules.

8. Chances for appearing Examination.- Subject to the provisions of rules 6 and 7, a Clerk Typist may avail any number of chances for appearing the Examination."

(Quoted from Page 43 of Paper-book)

11. Advertence to Rules 6, 7 and 8 of SSD Clerks' Rules shall reveal that these Rules lay down that "a Clerk Typist who passes examination in accordance with provisions of Rule 6, shall retain his original seniority.

12. Thus the conclusion emerging from Rules 6, 7, 8 and 15 is that, if the candidate fails to pass the examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or exempted from passing examination before him.

13. It is seen from the text of Applicant's pleadings which are quoted in foregoing Para No.3 is that the Applicant had admitted that, inter-se seniority of the candidates aspiring for promotion to the post of Awal Karkun will be decided by RQE Rules.

14. In the result, on the basis of whatever is admitted and what is shown by the Applicant and effect of Rules 6,7 and 8 of SSD Clerks' Rules and also RQE Rules, the conclusions which emerge and answer to questions framed in Para No.9 are :-

- (a) Bare inter-se seniority of Clerk Typists is governed by S.S.D. Examination and that is the function of SSD Clerk' Rules.
- (b) The inter-se seniority of Clerks in the list of candidates to be considered for promotion for the post of Awal Karkun is decided by procedure and conditions as laid down in Revenue Qualifying Examination and that is the function of RQE Rules.
- (c) On facts, Applicant has not passed RQ Examination within three chances before the Respondents, rather has admittedly passed it in fourth chance along with applicants who passed the examination in 3 chances.

15. On admitted facts, Applicant has lost seniority over the candidates, who have passed the Revenue Qualifying Examination before Applicant, or even with him only in three chances.

16. In the result, Applicant is rightly placed in the seniority of Clerks' candidates to be considered for the post of Awal Karkuns. Claim contained in O.A. is found to be based on expectations, which has totally erroneous foundation.

17. Original Application has no merit and the same is dismissed with costs.

Sd/-

(P.N. Dixit)
Member-A

Sd/-

(A.H. Joshi, J.)
Chairman

Mumbai

Date : 04.10.2018

Dictation taken by :

S.K. Wamanse.

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