

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.59 OF 2017**

**DISTRICT : THANE**

**Sub.:- Reversion**

Shri Yeshwant Atmaram Desai. )  
Age : 56 Yrs, Reverted as Sr. Clerk )  
from the post of Head Clerk in the Office )  
of Desk No.8, Central Region Division, )  
Near Kalachowki, Mumbai – 18 and )  
R/o. “Jai Shree”, Ambika Darshan, )  
Block No.1/3, Gograswadi, Dombivali (E), )  
District : Thane. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
Mumbai, through Joint Commissioner )  
of Police [Administration], Having )  
Office at Mumbai Police )  
Commissionerate, L.T. Marg, )  
Opp. Crawford Market, Fort, )  
Mumbai – 400 001. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J  
DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 07.08.2023**

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

### **JUDGMENT**

1. The Applicant has challenged order dated 19.11.2016 issued by Respondent No.1 – Commissioner of Police, Mumbai thereby reverting the Applicant amongst other employees to the post of Junior Clerk due to loss of seniority with further clarification that as per revised seniority, promotion orders to the post of Senior Clerk will be issued in due course.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed as Watchman (Class-IV post) by order dated 17.07.1979. Later, by order dated 02.11.1982, he was promoted to the post of Junior Clerk. Later, he was promoted as Senior Clerk in 1993 and Head Clerk in 2007. The Government framed Rules viz. “Post Recruitment Training Examination for Junior Grade Clerks in the Office of Commissioner of Police, Greater Bombay Rules, 1984” (hereinafter referred to as ‘Examination Rules of 1984’ for brevity) and the same were notified in the gazette dated 17.06.1985. As per Rule 3(b) of ‘Examination Rules of 1984’, the candidates appointed before the appointed date were required to pass Post Recruitment Training Examination (PRT in short) within a period of three years from the appointed date and within two chances unless he has already passed or is exempted from passing the examination under the Rules. As per Rule 4, Junior Clerk who failed to pass the examination shall lose his seniority in the cadre of Junior Clerk. The Applicant contends that after coming into force ‘Examination Rules of 1984’, no examination was conducted from 1986 to 1991. The Examination of 1991 was conducted in 1992 of which Applicant claims to be unaware, and therefore, did not appear in the Examination. In the Examination held in 1992, the Applicant appeared, but failed. Thus, according to him, appearance in Examination conducted in 1992 was his first chance. He, further contends that Respondent No.1 by Office Order dated 22.07.1993

granted exemption to the Applicant amongst others, and therefore, he did not appear in the Examination conducted in the year 1993. Next year, he appeared in the Examination of the year 1994 which was conducted in 1995 and cleared the Examination. Thus, according to Applicant, he cleared the Examination in second chance, and therefore, the question of loss of seniority did not survive. However, Respondent No.1 by impugned order dated 19.11.2016 reverted the Applicant to the post of Junior Clerk stating that he lost his seniority because of non-passing Examinations within three years and two chances as provided under the Rules. Accordingly, by impugned order dated 19.11.2016, his promotion to the post of Senior Clerk and Head Clerk gained on the basis of alleged seniority was cancelled with further clarification that as per revised seniority list, the orders of promotions would be issued in due course. It is on this background, the Applicant has challenged the order dated 19.11.2016 in the present O.A.

3. Before dealing with the contentions raised by the Applicant as well as learned P.O, it would be apposite to note some background of the matter, having some bearing over the issue and to understand the controversy. One Manoj R. Ahire had filed O.A.No.259/2013 in the Tribunal seeking retrospective promotion to the post of Senior Clerk w.e.f.1996-1997. That O.A. was clubbed with **O.A.No.1248/2013 (Mrs. Archana Javkar Vs. State of Maharashtra)** and **O.A.No.1260/2013 (Mrs Sadhana Mhatre Vs. State of Maharashtra)**. All these O.As were heard together and decided by order dated 25.06.2015 by giving certain directions and Para Nos.14 and 15 of the Order are as under :-

**“14.** Considering the above facts, the Respondents are directed to consider the representation of the Applicant for deemed date of promotion in the cadre of Senior Clerk and Head Clerk within a period of three months from the date of this order. Original Application no. 1248/2013 is disposed of accordingly with no order as to costs.

15. In O.A no. 1260/2013, the facts and similar to the facts in O.A no. 1248 of 2013. The Applicant joined the establishment of the Respondent no. 2 on the recommendation of M.P.S.C as Clerk/Typist on 8.9.1988. She appeared for P.R.T Examination held in January, 1992 (for 1991) and August /September 1992 (for 1992). As no examination was held between 1988 to January, 1992, these were first two attempts by her. She could not appear for P.R.T Examination in the year 1993 in the circumstances as discussed above in O.A no 1248/2013. She appeared for P.R.T Examination in the year 1994 and passed the same. She has, therefore, passed P.R.T Examination within 3 chances as stipulated in the rules. She could not pass the examination within 4 years of her appointment as the Respondents did not hold P.R.T examination every year. She, therefore, maintained her seniority in the cadre of Junior Clerk. She was promoted as Senior Clerk in August, 2004. She passed the departmental examination necessary for qualifying for promotion to the post of Head Clerk in 2005. In 2012, the Respondent no. 3 decided that she had lost seniority as she passed P.R.T Examination in 1994 in 4<sup>th</sup> attempt. As discussed above this stand of the Respondents is clearly untenable. The Applicant has sought deemed date of promotion to the post of Head Clerk w.e.f 18.5.2013. The Respondents are directed to consider her case for deemed date of promotion in the cadre of Head Clerk in the light of above discussion within a period of three months from the date of this order. The Original Application no. 1260/2013 is disposed of accordingly with no order to costs.”

4. That apart, present Applicant had also filed O.A.906/2013 raising grievance for non-finalizing the seniority list. That O.A. was heard along with **O.A.No.908/2013 (Arvind Kandalkar Vs. Commissioner of Police, Mumbai) decided by order dated 24.08.2015.** The Tribunal disposed of O.A. with certain directions and Para Nos.5 and 6 of the order are as under :-

“5. We find that the Applicants in both the O.As have sought relief that the provisional seniority list for the cadre of Senior Clerks for the period 1.1.1995 to 31.1.2000 published on 28.2.2012 may be finalized by the Respondent expeditiously after considering the objections lodged by the Applicants. We agree with the contention of the Learned Presenting Officer that these Original Applications in that sense are premature as the final seniority list has not yet been published by the Respondent.

6. These Original Applications are disposed of with the direction to the Respondent to publish the final seniority list for the cadre of Senior Clerks for the period from 1.1.1995 to 31.1.2000 within a period of three months from the date of this order. If the Applicants lodge objections to this provisional seniority list as published on 28.2.2012 within 15 days of this order or if they have lodged objections already, the same may be

duly considered before finalizing the said seniority list. There will be no order as to costs.”

5. It is on the above background, Respondent No.1 passed order dated 19.11.2016 in view of directions given by the Tribunal in O.As referred to above and published final seniority list. It was transpired that though some employees have not passed PRT Examination within stipulated period in terms of Rules and lost seniority, still they were given seniority and were promoted to the post of Senior Clerk. Accordingly, on the basis of revised seniority list, Respondent No.1 cancelled the promotions of employees including Applicant and reverted them to the post of Junior Clerk, which is challenged in the present O.A. After filing of O.A, the Applicant stands retired on 31.05.2018.

6. Learned Counsel for the Applicant sought to challenge the order dated 19.11.2016 of reversion on the ground that such order of reversion has been issued without giving notices to the Applicant and there is infringement of principles of natural justice. He has pointed out that Applicant was promoted on the post of Head Clerk on 13.08.2007 and enjoyed promotional post till impugned order dated 19.11.2016. Secondly, the Applicant cannot be said to have availed two chances so as to loose seniority. According to him, it is only in case the candidate appears in the examination and failed then only it has to be construed as a chance and non-appearance in the examination cannot be termed as a chance availed by the candidates. In this behalf, he heavily relied on the decision of the Hon'ble High Court delivered in **W.P. No.1420/2015 (S. B. Sahasrabudhe V/s Prasad V. Mahajan, State of Maharashtra & Anr.)**, dated 16.02.2017.

7. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the impugned communication *inter-alia* contending that Applicant failed to appear in the examination though held and it amounts to chances availed by him.

8. Admittedly, the Applicant joined on 17.07.1979 as Class-IV employee and promoted as a Junior Clerk, Senior Clerk and Head Clerk. In terms of Post Recruitment Training Examination Rule 3(b), he was required to pass examination within a period of three years from the appointed date i.e. 17.07.1985 and within two chances unless he has already passed or exempted from passing examination under the existing rules. As per Rule 4, candidate who failed to comply it, shall loose his seniority to all those who pass examination before him. Admittedly, no examination was held for the year 1986 to 1990. Following is the chart showing year of examination, year of holding examination and position of the Applicant.

अनु. क्रमांक	परिक्षेचे वर्ष	परिक्षेचा कालावधी	निकालाचा दिनांक	Position of the Applicant
१	१९८५	४/१२/१९८५ ते ११/१२/१९८५	६/३/१९८६	Applicant not appeared
२	१९९१	११/१/१९९२ ते १३/१/१९९२	२२/१/१९९२	Applicant not appeared
३	१९९२	२२/८/१९९२ ते २४/८/१९९२	११/११/१९९२	Applicant appeared but failed
४	१९९३	६/१२/१९९३ ते १३/१२/१९९३	२१/३/१९९४	Not appeared
५	१९९४	१७/१/१९९५ ते १९/१/१९९५	२४/३/१९९५	Appeared and passed

9. Notably, the examinations were required to be conducted once in a year, ordinarily in the month of November or December unless for any valid reason, it is not necessary to hold examination for any particular order as clarified in Rule 6 of the Examination Rules. Whereas as per

Rule 3(2), if for any reason, an examination is not held in a particular year that year shall be excluded in computing total period of years mentioned in the rules.

10. In present case, as per the chart produced above for the year 1985, the examination was held in which Applicant did not appear. Thereafter, no examination was held in the year 1986 to 1990. In examination of year of 1991, the Applicant did not appear. In examination held in 1992, he appeared but failed. In examination held in 1993, he did not appear. In examination of 1994, he appeared and passed. Adverting to this situation, learned Counsel for the Applicant submits that appearance of the Applicant in 1992 has to be construed as his first chance and his non-appearance in examination held in 1985, 1991 and 1993 cannot be construed as a chance. Thus, according to him, appearance in the year 1994 was Applicant's second chance wherein he succeeded, therefore, the question of breach of rule does not survive. To substantiate it, he heavily relied on the decision of **S. B. Sahastrabudhe's** case (cited supra). In that case, while dealing with the similar situation and interpreting District Transport Officer's Departmental Examination, Rules 1984, the Hon'ble High Court considered the difference between chance and attempt. The Hon'ble High Court made distinction between attempt and chance.

11. In **S. B. Sahastrabudhe's** case (cited supra) in similar situation, the Hon'ble High Court dealt with District Transport Officers Departmental Examination Rules, 1984 under which every District Transport Officer was required to pass examination within two years from appointed date and within three chances failing to which there will be loss of seniority alike situation in Examination Rules, 1984 in the present matter. The Hon'ble High Court made distinction between chance and attempt. In that case also the petitioner passed examination in third chance. He did not appear in two examinations conducted earlier and non-appearance in the examination conducted earlier was construed not

as a chance. Para Nos.9, 18, 19, 20, 21, 24, 25 and 26 are material which are as under:-

*9) So far as petitioner is concerned, he was appointed on 05.02.1994 before the Rules of 1984 were enforced, there was an examination held in July 1984. The petitioner did not apply and did not appear in the said examination. In January 1985, the examination was held, the petitioner appeared, however, failed. This was the first chance availed of by the petitioner. In July 1985, the departmental examination was held, however, the petitioner did not apply, and did not appear for the examination. In January 1986, the examination was held, petitioner also appeared, but failed. This was the second chance availed of by him, but he was unsuccessful. Thereafter in July 1986, when the examination was held, the petitioner cleared examination and according to the petitioner, it was the third chance availed of by him.*

*18) The examination is required to be held twice in a year in the months of January and July and it is not disputed in the instant matter that the examinations have been held during the period of two years on four occasions. Rule 10 requires that the District Transport Officer, who desires to appear for examination, shall have to apply to the Commissioner in writing in the form in Appendix 'B'. The period for tendering the application is prescribed in rule 10(1). He is also required to state number of chances availed of by him.*

*19) Rule 11 puts an embargo on the candidate from withdrawing the name from the list after inclusion of his name in the list of candidates for the examination, except for valid reason acceptable to the Commissioner.*

*20) Perusal of Rules 10 and 11 make it abundantly clear that the candidate, who is desirous to appear for the examination, shall have to file the application in writing, shall have to state chances availed of by him; and he is not entitled to withdraw his candidature at the examination. Harmonious reading of rules 10 and 11 along with rule 4(3) leads to a conclusion that what is required to be computed is chances availed of by a candidate and not merely to compute number of examinations held during a particular year. Sub-rule (3) of Rule 4 prescribes two conditions - (i) the District Transport Officer shall pass the examination within two years; and (ii) within three chances. Rule 7 mandates conduct of examination twice in a year. Thus, the District Transport Officer, in fact, has opportunity to appear for four examinations during the period of two years and has to pass the examination within three chances. The later part of the rule, refers to "chances" availed of by him and not merely the opportunity provided under rule 7.*

*21) There is a definite intention of the rule makers in prescribing twin conditions (i) the duration of two years; and*

*(ii) number of chances limited to three. In order to avoid the consequences under rule 5, the District Transport Officer has to fulfill both the conditions i.e. passing the departmental examination within two years and in three chances. The breach of any of the condition would automatically invite consequences provided under sub rule(3) of rule 5.*



24) In the instant matter, the word, that appears in the rule, is "chance " and not "attempt". The word "attempt" as defined in the Black's English Dictionary, is the act or instance of making effort to accomplish something especially without success. The "attempt" is something more than a "chance". The judgments in the matter of Harsha Gadekar (supra) and Dr.Rajkumar Gandhi (supra) are not helpful to Respondent No.1 to substantiate his contention.

25) In the instant matter, the petitioner did not appear for July 1985 examination and as such, it cannot be construed as a 'chance' availed of by him. If the petitioner would have forwarded the application form with an intention to appear for the examination and thereafter proceeded to withdraw his candidature, in that circumstances, it would have been plausible to construe it as a 'chance' availed of by him. It is not a matter of controversy that the petitioner did not tender an application for appearing for the examination nor did appear. Thus, the petitioner did not act in terms of rule 10 and as such there was no occasion to attract rule 11. Since the petitioner did not appear for the examination held in July 1985, did not tender an application for the examination with an intention to appear for the examination, the examination held in July 1985 cannot be construed as a 'chance availed of' by him. In this context, a reference can be made to a judgment of Karnataka High Court in the matter of National Board of Examinations and others Vs. Ganpati Bhat , reported in ILR 2008 Karnataka Series 1178, and judgment of the Madras High Court in the matter of S. Rajesh Kumar Vs. State Bank of India , II L.L.N. 1990 342.

26) On consideration of text of rule 4(3) as well as rules 10 and 11 of the Rules of 1984, it has to be construed that what is relevant for consideration in order to attract consequences of rule 5 is that a candidate shall have failed to fulfill the twin conditions, recorded in the rule i.e. (i) to pass the departmental examination within two years from the appointed date; and (ii) in three chances. For computing the three chances, what is required to be considered is three chances availed of by the candidate including any chance or chances availed of by him under the existing rules. The rules are required to be interpreted considering the text of the context. Textual construction that matches the contextual is known to be best interpretation. It would be appropriate to refer to the observations made by the Hon'ble Supreme Court in the matter of RBI Vs. Peerless General Finance and Investment Co.Ltd., reported in (1987) 1 SCC 424. It is observed in paragraph 33 of the judgment, thus:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of

*a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ...."*

12. Learned P.O. fairly concedes that judgments of the Hon'ble High Court in **S. B. Sahastrabudhe's** case was challenged before the Hon'ble Supreme Court but SLP as well as Review were dismissed. As such, interpretation of word 'chance' and 'attempt' as clarified by the Hon'ble High Court holds the field. In present case also, the Applicant did not appear in 1985, 1991 and 1993 but those cannot be construed as a chance. He appeared in 1992 in the examination and failed so it has to be construed as a first chance. Later he appeared in 1994 examination and passed. This being so, in view of the decision in **S. B. Sahastrabudhe's** case, the Applicant will have to be held passed the examination in 2nd chance. Suffice to say, the judgment in **S. B. Sahastrabudhe's** case clinch issue in favour of the Applicant and we are afraid no other interpretation by the Tribunal would be permissible.

13. Notably, in **S. B. Sahastrabudhe's** case, the Hon'ble High Court took a note of departmental examination Rule, 1984 which provides for making an application by the candidate for appearance in examination and in that context held that it is only in a case, candidate makes an application with an intention to appear and thereafter proceeded to withdraw his candidature, in those circumstance only, it would have been possible to construe it as a chance availed by him. Pertinent to note, in case in hand also Rule 12 provides that candidate is required to make an application addressed to Commissioner and he shall inform to the candidate whether he is admitted for examination specified in the application. In present case, admittedly Applicant did not make any application for appearance in the examination in the year 1985, 1991 and 1993. This being so, the ratio laid down by the Hon'ble High Court in **S. B. Sahastrbudhe's** case holds the field.

14. Insofar as exemption by the office order dated 22.07.1993 granted by Respondent No.1 is concerned, admittedly later Government by order dated 30.05.2008 cancelled the office order dated 22.07.1993 issued by Respondent No.1 stating that such blanket exemption is contrary to rules. Indeed, this aspect pales into insignificance since later in the meantime, the Applicant appeared in examination in the year 1994 and succeeded.

15. That apart, admittedly, before reverting the Applicant by impugned order dated 19.11.2016 on the ground of loss of seniority, no opportunity of hearing was given to the Applicant. He enjoyed promotional post of Head Clerk from 2007 upto impugned order for 9 years but abruptly reverted without giving any show cause notice which is in breach of principle of natural justice. In this behalf, Shri A. V. Bandiwadekar, learned Counsel for the Applicant rightly referred to **(2008) 2 SCC 750 (Union of India & Anr. V/s Narendrasingh)** wherein it has been held that where erroneous promotion is required to be cancelled, show cause notice ought to be given to the employee concerned for compliance of principle of natural justice and fair play. Admittedly in present case, before passing impugned order, no such opportunity was given to the Applicant. On this score also impugned order is unsustainable in law.

16. In this view of the matter, we have no hesitation to conclude that impugned order of reverting the applicant is arbitrary and totally unsustainable in law. Hence, the following order :-

**ORDER**

- (A) The Original Application is allowed.
- (B) Impugned order dated 19.11.2016 is quashed and set aside.

- (C) The Respondents are directed to render consequential service benefits to the Applicant within six weeks from today.
- (D) No order as to costs.

Sd/-  
**(DEBASHISH CHAKRABARTY)**  
**Member-A**

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

Place : Mumbai

Date : 07.08.2023

Dictation taken by : VSM

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