

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.900 OF 2023

DISTRICT : PUNE

Sub.:- Seniority/Promotion

Smt. Vaishali A. Kolekar.)
Age : 37 Yrs, Working as Talathi,)
Office at Tahasil, Pune Shahar,)
District : Pune and residing at Flat No.711,)
Arunoday Society, Parvati, Pune – 411 009.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. The Divisional Commissioner,)
Pune Division, Council Hall,)
Opp. Poona Club, Camp Area,)
Pune – 411 001.)
3. The Collector,)
Pune District, Sasoon General)
Hospital, Station, Pune – 411 001.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

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

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A**

DATE : 22.12.2023

JUDGMENT

1. The Applicant joined Government Service in cadre of 'Talathi' in Pune District. The Applicant belongs to NT-C Category. The Applicant has been denied promotion to cadre of 'Circle Officer' on the ground that she did not pass SSD Examination in 3 Chances and 4 Years as per Rule 4(1) and Rule 9 of SSD Examination (for Talathi Cadre) Rules, 1997, which are as follows :-

- “४. **परीक्षा उत्तीर्ण होण्याच्या संधी व कालावधी.**- (१) नियत दिनांकानंतर तलाठी पदावर नियुक्त करण्यात आलेल्या प्रत्येक तलाठ्याला त्याच्या नियुक्तीच्या दिनांकपासून चार वर्षे व तीन संधीत परीक्षा पास होणे बंधनकारक राहिल.
९. **परीक्षा न घेण्यात आल्यास त्याचे परिणाम.**- जर एखाद्या वर्षी परीक्षा घेण्यात आली नाही तर या नियमाच्या नियम ४ मध्ये विनिर्दिष्ट केलेल्या एकूण देय संधीमध्ये त्या वर्षाची गणना करण्यात येणार नाही.”

2. The learned Advocate for Applicant relied on the following table (i) showing the Dates of SSD Examination conducted & (ii) Dates of Result/Remarks :-

Sr. No.	Date of SSD Examination Conducted	Date of Result/Remarks
1	18/11/2015 to 21/11/2015	02/03/2016 – 1 st chance
2	2016	Examination not conducted
3	19/12/2017 to 22/12/2017	Examination conducted but as applicant was under suspension from 11/04.2017 and the name of the applicant not included in the list by Tahsildar, Shirur, hence not appeared for examination.
4	2018	Examination not conducted
5	02/03/2019 to 05/03/2019	06/06/2019 – 2 nd chance
6	22/07/2019 to 25/07/2019	31/12/2019 – 3 rd chance. Cleared the examination in 3 chances.

3. The learned Advocate for Applicant stated that Applicant had appeared thrice for SSD Examination. First time was in 2015; Second

time was in 2019 and Third time was again in 2019. Thus, she has taken 3 Chances that were available to her and has passed SSD Examination. Hence, the Applicant is entitled to retain her seniority in the cadre of 'Talathi' and to be made eligible for promotion to cadre of 'Circle Officer'. Learned Advocate for the Applicant stated that District Collector, Pune be therefore directed to conduct Special DPC and if Applicant is found fit, then to promote her to cadre of 'Circle Officer'.

4. The learned Advocate for Applicant submitted that in present OA No.900/2023, appropriate order may be passed which is similar to the order passed in OA No.899/2023 and OA No.681/2023 on 07.11.2023.

5. The learned CPO informed that in respect of OA No.899/2023 and OA No.681/2023 although reasons were dictated in the Open Court, they were not found mentioned in Order dated 07.11.2023. She stated that Respondents thus want to file 'Review Application'.

6. The learned CPO relied on Affidavit-in-Reply dated 12.12.2023 filed by Respondent No.3 who is District Collector, Pune. She stated that case of Applicant is without any foundation and devoid of merits. Learned PO stated on basis of this Affidavit-in-Reply of District Collector, Pune that Applicant cannot be considered for promotion to cadre of 'Circle Officer', as she has not passed SSD Examination within stipulated 3 Chances and in 4 years as per Rule 4(1) and Rule 9 of SSD Examination (for Talathi Cadre) Rules, 1997. Learned CPO further stated that GAD GR dated 31.03.2021 would not be applicable to SSD Examinations conducted earlier and new policy will be applicable prospectively to SSD Examination which have been conducted after 31.03.2021.

7. The learned CPO further submits that with respect to implementation of order dated 07.11.2023 in OA No.899/2023 and OA No.681/2023, the District Collector, Pune has issued promotion orders of Applicant in OA 899/2023 to cadre of 'Circle Officer' on 19.12.2023.

8. The case of Applicant is based on the fine distinction between 'Chance' or 'Opportunity' and 'Attempt'. The word 'संधी' used in Rule 4(1) and Rule 9 of SSD Examination (for Talathi Cadre) Rules, 1997 would mean 'Chance' or 'Opportunity' while for 'Attempt', the word is "प्रयत्न". However, learned Advocate for Applicant has contended emphatically that it is only in case when candidate appears for SSD Examination that it has to be considered as 'Chance' but non-appearance in SSD Examination cannot be termed as 'Chance' because there is no 'Attempt'. The Applicant thus cannot be said to have availed of more than 3 Chances to pass the SSD Examination so as to lose her seniority in cadre of 'Talathi'. In this behalf, the learned Advocate for Applicant heavily relied on the decision of the Hon'ble High Court at Bombay delivered in ***W.P. No.1420/2015 (S.B. Sahasrabudhe V/s Prasad V. Mahajan, State of Maharashtra & Anr.), dated 16.02.2017.***

9. The learned CPO mentioned that judgment of Hon'ble High Court at Bombay in ***S.B. Sahasrabudhe*** (supra) was later challenged in Hon'ble Supreme Court of India, but both 'Special Leave Petition' and 'Review Petition' were dismissed. The fine distinction between 'Chance' or 'Opportunity' and 'Attempt' which came to be decided by Hon'ble High Court at Bombay in ***S.B. Sahasrabudhe*** (supra) would be applicable to the case of Applicant. The Applicant could not appear for SSD Examination in 2017. Further, SSD Examinations were not conducted in 2016 and 2018, so these cannot be construed to be 'Chance' taken by Applicant. She appeared in SSD Examination in 2015 but had failed; so it is to be considered as her 1st 'Chance'. She then appeared for SSD Examination in 2019 but failed again; so it is to be considered as her 2nd 'Chance'. She finally appeared for SSD Examination conducted again in 2019 and was declared passed, so it is to be considered as her 3rd 'Chance'. This being so, in view of the judgment in ***S.B. Sahasrabudhe*** (supra), the Applicant will have to be held as having passed SSD Examination within 3 Chances. Suffice to say, the judgment in ***S.B. Sahasrabudhe*** (supra) clinches the issue in favour of the Applicant.

Thus, in view of Judgment of **S.B. Sahasrabudhe** (supra) we pass the following order.

ORDER

- (i) The OA is Allowed.
- (ii) The District Collector, Pune who is Respondent No.3 to consider the Applicant for promotion to cadre of 'Circle Officer' by conducting Special DPC and if found fit as per her original seniority in cadre of 'Talathi'; then Applicant to be promoted to cadre of 'Circle Officer' within Six Weeks and thereupon granted all consequential Service Benefits.
- (iii) No order as to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 22.12.2023

Dictation taken by :

S.K. Wamanse.

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