

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

**ORIGINAL APPLICATION NO. 326 OF 2013**

**DISTRICT : - AURANGABAD.**

**Nitin S/o Shantaram Mahale,**

Age : 37 years, Occu. Service (as  
Sales Tax Inspector, Vikrikar  
Bhavan, Aurangabad), R/o :  
C/o Shri S.V. Patil, 25,  
Gurukunj Housing Society,  
Tilak Nagar, Aurangabad

.. APPLICANT.

**V E R S U S**

- 1) **The State of Maharashtra**  
Through its Principal Secretary,  
Finance Department, M.S.,  
Mantralaya, Mumbai-32.
- 2) **The Commissioner of Sales Tax,**  
Mazgaon, Mumbai-10.
- 3) **Smt. Monica Ashok Gupte,**  
Sales Tax Officer MUM-PTO-  
C-010, C/o : Sales Tax Office,  
Union Bank of India (Main  
Building), 1<sup>st</sup> Floor,  
Reclamation, Opp. Vidhan Bhavan,  
Mumbai – 23.
4. **Mr. Shailendra Bhaulal Pardeshi,**  
Sales Tax Officer JAG-VAT-C-003,  
C/o : Vikrikar Bhavan,  
Sale Tax Office, Aakashawani  
Chowk, Jalgaon – 425107.

5. **Smt. Deepali Thorat,**  
Sales Tax Officer PUN-VAT-C-018,  
C/o : Vikrikar Bhavan,  
Airport Road, Opp. Golf Maidan,  
Yerwada, Pune – 6.
6. **Smt. Ruby Eknath Darekar,**  
Sales Tax Officer NAS-VAT-C-015,  
C/o : Vikrikar Bhavan,  
Sale Tax Office, Prashant Nagar,  
Pathrdi Phata, Nashik. .. RESPONDENTS.

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APPEARANCE : Shri Avinash S. Deshmukh, learned  
Advocate for the applicant.

: Shri N.U. Yadav – learned Presenting  
Officer for respondent Nos. 1 & 2.

: None appears for respondent Nos. 3  
to 6.

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**CORAM** : **HON'BLE SHRI RAJIV AGARWAL,**  
**VICE CHAIRMAN (A).**  
**AND**  
: **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (J)**

**DATE** : **18.04.2017**

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**ORAL ORDER**

**[ Per : Hon'ble Shri B.P. Patil, Member (J)]**

1. By filing the present Original Application the applicant sought direction to the respondents to modify

the final select list of Sales Tax Inspector as on 01.01.2008 published on 05.07.2012 and to place him (at Sr. No. 950) below Mr. Bhausahab Kaluram Daundkar, who is at Sr. No. 949 and above the respondent No. 3 viz. Smt. Monica Ashok Gupte, who is at Sr. No. 950 and to extend all consequential benefits to him.

3. The applicant has passed B.E. (Chemical) examination in the year 1997. He is belonging to OBC category. On 14.07.1999 Maharashtra Public Service Commission (for short 'the Commission') published an advertisement calling applications for PSI/STI/Assistant Examination-1999 for 72 posts of STIs, 432 pots of PSIs and 39 posts of Assistant. In response to the said advertisement the applicant submitted his application to the Commission under OBC category giving his first preference for the post of Sales Tax Inspector (In short STI) and second & third preference for the post of Assistant and PSI respectively. The Commission conducted preliminary examination on 18.6.2000. The applicant had duly appeared and qualified in it. Thereafter, on

18.3.2001, Main Examination was conducted by the Commission. The applicant had duly appeared for Main Examination. Thereafter, in the month of November & December, 2001 interviews/viva voce were conducted by the Commission and applicant had appeared for interview/Viva Voce. The Commission declared final results of the examination partially on 31<sup>st</sup> May, 2002, as allegations of malpractices came to be leveled against the certain candidates, who were included in the select list on the basis of their respective marks. On the said backdrop the Commission has prepared and published list of selected candidates out of 72 posts of STI, 282 posts out of 432 posts of PSI and 25 candidates out of 39 posts of Assistants. The applicant's name was included at Sr. No. 9 in the list of candidates selected and recommended for the post of Assistant. Out of the 51 candidates whose names have been published by the Commission for the post of STI, 24 candidates came to be appointed as STIs by the Government in the month of July-August, 2002 to September-October, 2002.

4. One Shri Ramesh Pandhare approached the Hon'ble High Court of Judicature of Bombay by filing Writ Petition No. 2096/2002 challenging the selection process conducted by the Commission in pursuance of the said advertisement dated 14.7.1999. The Hon'ble High Court was pleased to direct the authorities to discontinue the services of the 24 STIs who have been already appointed, by its order dated 22.10.2002 and accordingly the services of those 24 STIs were terminated from 14.11.2002. Not only that, but remaining 27 candidates out of 51 candidates were also not given appointments by the Government on the post of STI in view of the interim order passed by the Hon'ble High Court. Being aggrieved by the order of Hon'ble High Court some of those persons, who were not given appointments in view of interim order of the Hon'ble High Court, had approached the Hon'ble Supreme Court seeking exception to the said order dated 22.10.2002. The Hon'ble Supreme Court by its order dated 22.12.2002 pleased to grant permission to those candidates to take out appropriate proceedings in the pending Writ Petition No. 2096/2002 before the Hon'ble

High Court. Accordingly, they had taken out a Notice of Motion in the pending proceeding. After hearing them, the Hon'ble High Court by its order dated 17.4.2003 pleased to direct reinstatement in service of 24 STIs whose services have been terminated in view of the order of the Hon'ble High Court dated 22.10.2002. Consequently, those 24 STIs were taken back in service. The Writ Petition No. 2096/2002 came to be withdrawn with the permission of the Hon'ble High Court on 22.09.2004 and consequently the interim order came to be vacated. In pursuance of that, 27 remaining candidates out of 51 candidates were given appointments. However, so far as remaining 21 posts, out of 72 posts of STIs advertised, no steps were taken by the Commission for their selection.

5. Meanwhile in the year 2005, on 7.7.2005 the State Government was pleased to issue an order of appointment of the applicant on the post of Assistant w.e.f. 04/07/2005 on the basis of recommendation made by the Commission.

6. During the selection process, the Commission noticed that large scale malpractices were committed by some of the candidates whose complaints were received and, therefore, investigation was made and it was found that answer-sheets of some candidates were having the marks which were far more inflated as compared to the marks which were otherwise recorded and it was also noticed by the Commission that answer-books which were with the Commission were on different type of paper than what were supplied to the candidates. Those instances had led to a prosecution as well as black-listing of some candidates and de-barring of them from all future examinations. The said action of the Commission came to be challenged by the aggrieved candidates before the Hon'ble Tribunal by filing Original Application No. 921/2002. The Hon'ble Tribunal had come to the conclusion that the action of the Commission of back-listing of some candidates was not justified and, therefore, it required to be set aside.

7. Being aggrieved by the said order of the Tribunal, the Commission had approached the Hon'ble Bombay High Court by filing Writ Petition No. 10854/2004, in respect of selection process initiated by the Commission vide its advertisement dated 14.07.1999. Two orders came to be passed by the Hon'ble High Court on 14.7.2005 and 14.7.2006 in Writ Petition No. 10854/2004 and Civil Application No. 1645/2006 filed in the said Writ Petition respectively.

8. In the Writ Petition No. 10854/2004, the Hon'ble High Court has passed the order staying particular portion of the order passed by this Tribunal on 14.7.2005. Thereafter, Commission has filed Civil Application No. 1645/2006 in the said Writ Petition requesting that it should be permitted to declare the result of all these candidates other than 424 blacklisted candidates. The Hon'ble High Court permitted the Commission accordingly. The Commission has published a revised list of 72 candidates recommended for the post of STIs on 22.09.2006. The applicant's name was included therein



at Sr. No. 24 below the name of Mr. Bhausahab Kaluram Daundkar, who had secured total marks of 349 as like of the applicant. Out of the said list of 72 candidates, 51 candidates had received appointment in the year 2002 and 2005. The Commission has forwarded the final select list published on 22.09.2006 to the Government on 13.10.2006 for being appointed as Sales Tax Inspector. On 7.2.2007 the respondent No. 2 was pleased to issue an appointment order in favour of the applicant to the post of STI. Respondent No. 2 issued another order dated 8.2.2007, thereby giving posting to the applicant as STI at Mumbai. It is the contention of the applicant that in the order dated 7.2.2007, it has been specifically mentioned that the seniority of the applicant in the cadre of STIs would be fixed in terms of the provisions contained in Maharashtra Civil Services (Regulation of seniority) Rules, 1982. Appointees of the 2002 and 2005 had approached this Tribunal by filing O.A. Nos. 192 & 538 of 2009 for issuing direction to the respondents to count their seniority in the cadre of STIs w.e.f. October 2002. The said Original Applications had been allowed by common

order dated 23.03.2010 and seniority to the applicants in those OAs had been given w.e.f. September-October, 2002 as per the rules. It is the contention of the applicant that the same rule has to be applied to the persons like the applicant for fixing his seniority, but the respondents have failed to apply the said Rule. Therefore, the applicant filed representation to the respondent No. 2 on 18.10.2010 for counting his seniority from the year 2002 on the basis of merit list of the Commission, but no response has been received from the respondent No. 2. On the contrary, on 14.7.2011, respondent No. 1 issued order of promotion from the cadre of STIs to the cadre of STOs in favour of applicant's batch-mates including respondent Nos. 3 to 6, who were below in final select list prepared by the Commission and thereby denying him the promotion as STO. Therefore, he submitted representation on 18.10.2010 for granting promotion as STO by counting his seniority in STI w.e.f. September-October, 2002. The said representation was forwarded to the respondent No. 2 for its necessary action by the Joint Commissioner of Sales Tax at Aurangabad on 22.11.2011. Respondent No. 2

published seniority list of STIs cadre as on 1.1.2008 and 1.1.2009 on 22.7.2011 and 28.7.2011 respectively and placed the applicant on the basis of actual date of entry in STI's cadre and not from September-October, 2002. Therefore, the applicant submitted representation dated 30.8.2011 to the respondent No. 2. Without considering his representation the respondent No. 2 published final seniority list on 5.7.2012 of STI's cadre as on 1.1.2008, wherein applicant's name stands at Sr. No. 1697, while the name of the respondent No. 3 to 6 stand at Sr. Nos. 949, 950, 951, 952 and 953 respectively, though they are below to him in the final seniority list published by the Commission. As respondent No. 2 has not considered his representation and published final seniority list as STI on 1.1.2001 and 5.7.2012, the applicant has filed O.A. and challenged the said seniority list and prayed to direct the respondent No. 2 to assign placement to him immediately below Mr. Bhausahab Kaluram Daundkar, who is at Sr. No. 949 and above the respondent No. 3, who is at Sr. No. 950 in the final seniority list of the cadre of Sales Tax

Inspectors as on 01.01.2008 published on 05.07.2012 and also prayed to extend all consequential benefits to him.

9. Respondent No. 1 filed affidavit in reply and resisted the claim of the applicant. It is contended by it that as per the impugned letter dated 6.7.2002 out of 72 candidates advertised, list of 50 candidates selected for recommendation for the post of STI received through Dy. Secretary, Government of Maharashtra's letter dated 29.7.2002 with instructions to give appointments to the selected candidates according to their rank in the order of preference arranged by the MPSC. The name of the applicant was not included in the said list. Accordingly, letters were sent to the concerned police stations for police verification of all the candidates. Out of those candidates, police verification reports of 28 candidates were received. Therefore, appointment orders were given to the 28 candidates. Out of those 28 candidates, 24 candidates joined as STI during 25.9.2002 to 21.10.2002. One Shri Ramesh Pandhare filed Writ Petition No. 2096/2002 in the Hon'ble High Court challenging the selection process

conducted by the Commission. The Hon'ble High Court has passed the interim order on 22.10.2002 restraining the respondent from filling up the post from select list prepared by the Commission and further order was passed to the effect that "Any appointment made under the impugned selection process shall not be given effect to and if any appointment has been made, such appointment shall be cancelled forthwith". Therefore, the appointment of 24 STI's were cancelled w.e.f. 14.11.2002, and in respect of remaining 26 candidates respondent was further restrained to give effect to any appointment order made under the impugned selection process. Shri Shelke S.S. and others then approached the Hon'ble Supreme Court seeking exception to the interim order dated 22.10.2002 passed by the Hon'ble High Court. Hon'ble Supreme Court by its order dated 22.10.2002 granted permission to take out appropriate proceedings in the pending Writ Petition before the Hon'ble High Court. Thereafter, the petitioners took out the notice of motion (584/2002) in the pending proceedings before the Hon'ble High Court. The Hon'ble High Court passed the order on

17.04.2003 and allowed to reinstate those 24 candidates, whose services had been terminated in view of the order of the Hon'ble High Court dated 22.10.2002. The Hon'ble High Court observed that those applicants will not claim any monetary benefits for the intervening period provided they are allowed to be joined at the earliest. Accordingly, those 24 candidates were reappointed vide order dated 30.4.2003. Thereafter, on 22.9.2004 Shri Pandhare withdrew the said Writ Petition with the leave of the Hon'ble High Court. The Hon'ble High Court was pleased to vacate the interim orders. Thereafter, remaining candidates along with 9 Ex-servicemen were appointed on the post of STI in the year 2005. In that list also name of the applicant was not included. C.A. No. 1645/2006 in Writ Petition No. 10854/2004 filed by the Commission was decided by the Hon'ble High Court on 14.07.2006 and Commission was permitted to declare results of all candidates excluding 424 blacklisted candidates. Accordingly, Commission forwarded the list of 72 candidates recommended for the post of STI according to their rank in the order of preference vide letter dated

13.10.2006 through FD's letter dated 13.11.2006. Name of the applicant appeared at Sr. No. 24 in the said list.

10. It is further contended that the applicant was one of the candidates for main exam conducted by the Commission in the year 1999 for the post of Assistant, STI and PSI. The applicant was recommended for the post of Assistant by the Commission vide list dated 31.5.2002. Accordingly, the applicant joined as Assistant in view of Law and Judiciary Department's order dated 4.7.2005. The respondent Nos. 3 to 6 were amongst the candidates initially recommended for the post of STI vide list dated 31.5.2002 declared by the Commission. In view of the decision given by Hon'ble Tribunal in O.A. No. 192/2009 and 538/2009 their seniority was fixed from the year 2002. The present applicant was neither applicant nor intervener in O.A. No. 192/2009 and O.A. No. 538/2009. Therefore, the seniority of the applicant has been fixed from the date of his joining Sales Tax department on 7.2.2002 which is in accordance with the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules,

1982. It is contended by the respondents that seniority list is prepared and published as per the principles set out by Hon'ble Supreme Court, High Court and MAT in various cases and as per the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The seniority is to be reckoned from the date of appointment. The seniority of direct recruit cannot be ante dated but is to be counted from the date of continuous affiliation save and except as provided in the pertinent Rules as held by the Tribunal in O.A. No. 199/2001 decided on 28.9.2001. The applicant has joined the Sales Tax Department on 7.2.2007 and accordingly his seniority has been fixed in view of the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Therefore, the contention of the applicant that his seniority should be considered from October, 2002 is baseless. On this count they urged that the present Original Application may be dismissed.

11. We have heard the arguments advanced by Shri Avinash S. Deshmukh – learned Advocate for the



applicant and Shri N.U. Yadav – learned Presenting Officer for respondent Nos. 1 & 2. None appears for the respondent Nos. 3 to 6. We have perused the application, affidavit, affidavit in reply filed by the respondents. We have also perused the documents placed on record by both the parties.

12. Learned Advocate for the applicant has submitted that the applicant had applied for the post of Assistant, STI and PSI in view of the advertisement published by the Commission in the year 1999. By the said advertisement 432 posts of PSI and 39 posts of Assistants and 72 posts of STIs were advertised. He has submitted that the applicant had appeared for the preliminary examination conducted on 18.6.2000. The applicant had duly appeared and qualified in it. Thereafter, on 18.3.2001, Main Examination was conducted by the Commission. The applicant had also duly appeared for Main Examination. Thereafter, in the month of November & December, 2001 interviews/viva voce were conducted by the Commission and applicant had appeared for

interview/Viva Voce. He has submitted that the Commission declared final results of the examination partially on 31<sup>st</sup> May, 2002, as there were allegations of malpractices against the certain candidates, who were included in the select list on the basis of their respective marks and the Commission published list of 51 candidates for the post of STI, list of 282 candidates was published for the posts of PSI and list of 25 candidates was published for posts of Assistants. Out of the 51 candidates whose names have been published by the Commission for the post of STI, 24 candidates were recommended for the post of STIs, who were appointed in the year 2002. He has argued that in the meanwhile selection process has been challenged before the Hon'ble High Court in Writ Petition No. 2096/2002 and the Hon'ble High Court passed interim order on 22.10.2002 and directed the authorities to discontinue the services of the 24 STIs who have been already appointed and also passed interim order to the effect that "Any appointment made under the impugned selection process shall not be given effect to and if any appointment has been made,

such appointment shall be cancelled forthwith". In view of the said order the services of the 24 STIs were terminated w.e.f. 14.11.2002 and no appointments have been given to remaining 27 candidates out of 51 candidates recommended by the Commission. The said order was challenged before the Hon'ble Supreme Court. Hon'ble Supreme Court has pleased to grant permission to the applicants to take appropriate proceeding in the Writ Petition No. 2096/2002 filed before the Hon'ble High Court. He has taken the notice of motion in the proceeding has been taken and the Hon'ble High Court by its order dated 17.4.2003 was pleased to direct reinstatement in service of 24 STIs whose services were terminated in view of the order of the Hon'ble High Court dated 22.10.2002. Accordingly, those 24 STIs were reappointed w.e.f. 30.4.2003. The Writ Petition No. 2096/2002 had been withdrawn with the leave of the Hon'ble High Court. The Hon'ble High Court was pleased to vacate the interim order and, therefore, the remaining 27 candidates out of 51 candidates were given appointments as STI in the year 2005.

13. Learned Advocate for the applicant has submitted that the Commission has blacklisted some of the candidates and debarred them for all future examination on the ground of allegation of malpractices in the examination. The said order was challenged by the aggrieved candidates before the Tribunal in O.A. No. 921/2002 in which this Tribunal was pleased to pass an order on 23.2.2004 and came to the conclusion that action of the Commission of blacklisting to some candidates was not justified and, therefore, it was set aside. The Commission has challenged the said order before the Hon'ble High Court by filing Writ Petition No. 10854/2004, in which the Hon'ble High Court stayed the particular portion of the order passed by this Tribunal on 14.7.2005. Thereafter, Commission has filed Civil Application No. 1645/2006 in the said Writ Petition requesting that it should be permitted to declare the result of all these candidates other than 424 blacklisted candidates about whom there was a grievance about malpractice. In pursuance of the order of this Hon'ble

High Court the Commission has published a revised list of 72 candidates recommended for the post of STIs on 22.09.2006. In the said list the applicant's name was included therein at Sr. No. 24. The Commission forwarded the same list to the respondents for giving appointment to the candidates on 13.10.2006 and accordingly on 7.2.2007 the respondent No. 2 has issued the appointment order in favour of the applicant. Thereafter, the applicant came to be appointed in Mumbai by order dated 8.2.2007 and accordingly he joined on the post of STI. Learned Advocate for the applicant has submitted that the seniority of the candidates appointed in the year 2005 has not been fixed properly and, therefore, they approached this Tribunal by filing O.A. Nos. 192 & 538 of 2009, which were allowed and their seniority were fixed w.e.f. September-October, 2002.

14. Learned Advocate for the applicant has submitted that the final list prepared by the Commission remained to be published till the year 2007 because of the litigation pending before the Court and, therefore, the name of the

applicant remained to be added till the year 2007. He has submitted that in fact, his selection ought to have been made in the year 2002 when the earlier list had been sent by the Commission to the Government. He has submitted that seniority of the candidates, who have been recommended by the Commission in the year 2002 and who had been appointed in the year 2002 and 2005 has been counted from September-October, 2009, in view of the decision of the Hon'ble Tribunal. He has submitted that the applicant is at Sr. No. 24 of the final select list. Therefore, the candidates, who have below his name in the final select list, but received appointment order in the year 2002 and 2003 had shown above him in the seniority list prepared by the respondents, which is under challenge. He has submitted that in fact, the seniority of the applicant has to be fixed as per his rank in the final merit list prepared by the Commission and, therefore, effect has to be given from September-October, 2002 and accordingly his name should have been mentioned below the name of Mr. Bhausahab Kaluram Daundkar and above the name of respondent Nos. 3 to 6. He has

submitted that the respondent has not considered the said aspect. They have not considered the provisions contained in Maharashtra Civil Services (Regulation of seniority) Rules, 1982 and, therefore, the seniority list under challenge requires to be modified accordingly. He has submitted that the applicant is not at fault and his appointment has been postponed because of the various litigations pending before the Hon'ble High Court and Hon'ble Supreme Court in respect of the selection process conducted by the Commission in the year 1999. He has submitted that because of the act of Court, the rights of the applicant cannot be affected and no prejudice will be caused to him and, therefore, it would be just to consider the contention of the applicant in view of the said facts and circumstances.

15. Learned Presenting Officer has submitted that seniority of the applicant has been fixed on the basis of his date of joining. He has submitted that in view of the provision contained in Maharashtra Civil Services (Regulation of seniority) Rules, 1982, his seniority has to

be fixed from the date of appointment. He has further argued that the applicant has appointed as Assistant and he was joined as Assistant w.e.f. 4.7.2005. His name was not recommended as candidates to be appointed for the post of STI in the list of 51 candidates and it was not in the list of candidates recommended for the appointment of STI in the year 2002-2005. He has argued that the present applicant was neither applicant nor intervener in O.A. Nos. 192/2009 and O.A. No. 538/2009 and, therefore, his seniority cannot be fixed w.e.f. 2002. He has argued that in view of the provisions of the Maharashtra Civil Services (Regulation of seniority) Rules, 1982, his seniority is to be reckoned from the date of appointment and, therefore, the concerned authority has correctly fixed the seniority of the applicant from the date of his joining and, therefore, the impugned seniority list cannot be modified as prayed by the applicant. He has submitted that as the applicant was not in service in the year 2002, his seniority cannot be counted from that date. Learned Presenting Officer has further argued that the applicant was in service in other department as Assistant



prior to his appointment as STI and, therefore, he is not eligible to claim seniority during that period when he was in another Government establishment and, therefore, he prayed to reject the present Original Application.

16. On going through the submissions advanced by the Advocates on both the parties, it is crystal clear that out of 72 posts of STIs after conducting preliminary examination main examination and viva voce, list of 51 selected candidates for the post of STI was prepared and forwarded to the Government for giving appointment to them. The concerned department called for the Police verification report of the said candidates. Initially they received Police verification report of the 28 candidates and, therefore, appointment orders were given to the 28 candidates. Out of those 28 candidates, 24 candidates joined as STI during 25.9.2002 to 21.10.2002 and accordingly those candidates joined duties. One Shri Ramesh Pandhare challenged the selection process by filing Writ Petition No. 2096/2002 in the Hon'ble High Court and in view of the interim order, the Hon'ble High Court cancelled the

selection of 24 STI's and accordingly their services have been terminated. In view of the leave of the Hon'ble Supreme Court the concerned persons approached the Hon'ble High Court in the said Writ Petition No. 2096/2002 by taking notice of motion and the Hon'ble High Court by its order dated 17.4.2003 pleased to direct reinstatement in service of 24 STIs, whose services have been terminated in view of the order of the Hon'ble High Court dated 22.10.2002. Accordingly, those 24 STIs were taken back in service. The Writ Petition No. 2096/2002 came to be withdrawn with the permission of the Hon'ble High Court on 22.09.2004 and consequently the interim order came to be vacated. Therefore, the remaining 27 candidates out of 51 candidates referred by the Commission, received the appointment as STI in the year 2005.

17. It is a matter of record that as there were allegations of malpractices against some of the candidates, the Commission blacklisted and debarred some of the candidates for all future examinations. The action of the

Commission came to be challenged before this Tribunal by filing O.A. No. 921/2002. This Tribunal set aside the order of the Commission and, therefore, the Commission had approached the Hon'ble Bombay High Court by filing Writ Petition No. 10854/2004 and challenged the said order of the Tribunal. The Hon'ble High Court stayed the particular portion of the order of this Tribunal. Thereafter Commission filed Civil Application No. 1645/2006 in Writ Petition No. 10854/2004 and prayed to allow it to declare the result of all these candidates other than 424 blacklisted candidates. Accordingly, the Hon'ble High Court permitted the Commission to declare the result of all these candidates except 424 candidates. In pursuance of the said order, Commission published a revised list of 72 candidates recommended for the post of STI on 22.9.2006 in which the name of the applicant has been shown at Sr. No. 24. The list was forwarded to the respondents on 13.6.2006. Consequence of it respondent No. 2 was pleased to issue appointment order to the applicant on 7.2.2007 and thereafter on 8.2.2007 another order giving him posting at Mumbai has been issued. The

applicant has joined the post at Mumbai accordingly. In the meanwhile the applicant made representation to the respondents to fix his seniority as per the merit list prepared by the Commission. In the meanwhile O.A. Nos. 192 and 538 of 2009 came to be filed by the candidates appointed on the post of STI in the year 2002-2005 and both these OAs were decided by this Tribunal by its order dated 23.3.2010 and the respondents were directed to fix the seniority of the applicants in that OAs w.e.f. September-October, 2002 deeming that they have continuously officiated from that date. Thereafter, the seniority list of STIs as on 1.1.2008 and 1.1.2009 had been published by the Commission on 22.7.2011 and 28.7.2011 and final seniority list of STI as on 1.1.2008 had been published on 5.1.2012. The name of the applicant has been shown at Sr. No. 1697 on the basis of his date of appointment. Admittedly, the applicant was not party to the O.A. Nos. 192 & 538 of 2009. The applicant was appointed for the first time in the year 2007. There was break in their service due to the order of the Hon'ble High Court. Therefore, this Tribunal has

deemed their service officiating continuously since their appointment in the year 2002. The case of the applicant is not similar to the case of the applicants in the O.A. Nos. 192 & 538 of 2009. Therefore, ratio applied in the decision is not attracted in this case.

18. The applicant has joined the service in other department as Assistant w.e.f. 4.7.2005. He joined on the post of STI in view of the order dated 8.2.2007. In view of the provisions contained in the Maharashtra Civil Services (Regulation of seniority) Rules, 1982 seniority is to be counted from the date of continuous officiating. His name has been recommended by the Commission in the year 2007 for appointment on the post of STI and, therefore, he is not entitled to the seniority from the date of appointment of STI, who are applicants in the O.A. Nos. 192 & 538 both of 2009 i.e. w.e.f. September-October, 2002. Therefore, it cannot be said that his appointment is affected because of the act of a Court. Therefore, he should not be granted seniority w.e.f. September-October, 2002 as granted to the applicants in O.A. Nos. 192 & 538

both of 2009. The respondents have fixed the seniority of the applicant correctly on the basis of his date of appointment on the post of STI i.e. from the year 2007. There is no illegality in the select list prepared by the respondents. Therefore, no interference is required in it. There is no merit in the present Original Application. Consequently, it deserves to be dismissed. Hence, the present Original Application stands dismissed with no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN (A)**

O.A.NO.326-2013(hdd)-2017(DB)