

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 622 OF 2017

DISTRICT: - DHULE.

Sagar Chandrakant Nemane,
Age : - 36 years, Occu: Service as
Circle Officer, Dhule City,
Tq. and Dist. Dhule.
R/o. Raulwadi, Chitod Road,
Dhule District Dhule.

.. APPLICANT.

V E R S U S

- 1. The State of Maharashtra,**
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2. The District Collector, Dhule,**
District Dhule.
- 3. Govind S/o. Jalbaji Dhole,**
Age: 50 years, Occu.: Service,
Presently working as Talathi,
Borvahir, Tq. and Dist. Dhule.

.. RESPONDENTS

APPEARANCE : Shri V.B. Wagh – learned Advocate for
the applicant.

: Smt. Priya R. Bharaswadkar – learned
Presenting Officer for the respondents.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**
AND
: **SHRI ATUL RAJ CHADHA, MEMBER (A)**

DATE : **24th October, 2018**

ORDER**[Per : Justice M.T. Joshi, V.C.]**

1. By the present Original Application the applicant is claiming the following reliefs: -

“(B) To hold and declare the applicant is entitled for the promotion to the cadre of Circle Officer with effect from 29.12.2016 in view of the Maharashtra Revenue Qualifying Examination for promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998.

“(C) To quash and set aside the order dated 28.8.2017 issued by the respondent no. 2 reverting the applicant from the post of Circle Officer to the post of Talathi and promoting the respondent no. 3 vice-versa.”

2. The present Original Application is a classic example of audacity of the applicant in Government employment of making false statement before this Tribunal and even the attempt to hide the decisions already rendered by this Tribunal wherein the concerned issue already decided by the present Tribunal in which the applicant was already a party respondent.

3. The case of the present applicant in short is as under: -

That he was initially appointed as a Talathi vide order dated 23.6.2008. As per the Maharashtra Sub-Service Departmental Examination Rules, 1988, the applicant was required to pass the said examination in 3 chances and within 3 years. The applicant had passed the said examination in a first chance and, therefore, he was confirmed in the service. He was accordingly placed in the seniority list. In the seniority list dated 1.1.2016 he was placed at Sr. No. 106 while respondent No. 3 shown at Sr. No. 136. The copy of the seniority list is at Annexure "A-2", page-25. However, in the Departmental Promotion Committee meeting held on 20.10.2016 the name of the present applicant was not considered for promotion to the cadre of Circle Officer. On the other hand, respondent No. 3 was considered on the basis that he has passed his second Revenue Qualifying Examination on 6.5.2015. The minutes of the meeting are at Annexure "A-3", page-35.

4. According to the applicant, he, therefore, submitted a representation on 18.12.2016 thereby informing the respondents that he had passed Revenue Qualifying Examination as per the requirement of the rules within 3 chances and within 9 years. Therefore, Departmental

Promotion Committee meeting was called by respondent No. 2 to rectify the mistake as the applicant had passed the examination in the month of November, 2013, the D.P.C. realized the mistake and the order of reversion of respondent No. 3 was passed on 14.12.2016, while promotion order was issued to the applicant dated 29.12.2016. These orders are at Annexure "A-4" Collectively, page-54.

5. In view of the above orders, according to the applicant, he discharged his duties as a Circle Officer. However, on 28.08.2017, the respondent authorities again reverted the applicant from the post of Circle Officer to the post of Talathi and again promoted the respondent No. 3 from the post of Talathi to the post of Circle Officer. The copy of the said order is placed on record at Annexure "A-5", page-56. In issuing these orders, respondent No. 2, reference was given of the Recruitment Rules, Divisional Commissioner's letter, office order, and the order of this Tribunal dated 3.8.2017 passed in O.A. No. 928/2016. This act was carried by the concerned respondent on the basis of the letter of the Divisional Commissioner dated 18.4.2017, wherein it was communicated that in case Clerk, Talathi had already attained the age of 45 years on the date of joining of his service, then exemption from

appearing for the second examination is to be given from the date he enters the service. In O.A. No. 928/2016, the respondent No. 3 had challenged his reversion and in view of the directions of this Tribunal, the respondent No. 3 was to be considered for promotion on the basis of this exemption. Accordingly, the respondent authorities had exempted the respondent No. 3 from appearing for both the examinations from the date of entry in service.

6. It was further submitted that the Maharashtra Revenue Qualifying Examination for promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998 clearly provides that the Revenue Qualifying Examination is to be passed within a given chance and exemption is to be granted only upon attaining the age of 45 years. Merely the Circular regarding exemption for the employee one who has already attained the age of 45 years before entering the service cannot override this provision and hence it was submitted that the O.A. be allowed and the impugned order dated 28th August, 2017 reverting the applicant from the post of Circle Officer be quashed and set aside.

7. When the application was taken for hearing for issuing notices, it was found that the copies of the previous orders

passed by the Tribunal in O.A. No. 928/2016, M.A. No. 6/2016 in C.P. St. 06/2017 were not filed on record by the applicant. Therefore, vide order dated 06.09.2017 this Tribunal directed the applicant to file the copies of these orders on record and with these directions it was directed that notices be issued.

8. On behalf of respondent Nos. 1 & 2 affidavit in reply was filed by the Tahsildar (Revenue). In short his submissions are that in one earlier O.A. No. 354/2015 the Maharashtra Administrative Tribunal at Mumbai has directed that the employee who had already attained the age of 45 years before entering the Government service, he need not pass any of the examinations and he should be granted exemption from the date of joining the service. Therefore, as Mr. Govind J. Dhole i.e. respondent No. 3, was appointed after he attained 45 years of age, (he being from Anshakalin / part time earlier Government servant), he was granted exemption from the date of joining the service and, as such, he become senior to the present applicant.

9. As in the said affidavit in reply no averment was made regarding the averment made by the applicant in paragraph No. 6 of the original application that he had passed his

Revenue Qualifying Examination as per the requirement within 3 chances and 9 years and as the rules would show that the employee who passed the said Revenue Qualifying Examination within 3 chances and 9 years, the applicant would not have lost his seniority. In the circumstances vide order dated 8.2.2018 the respondents were directed to reconsider the issue and take corrective steps in the light of the above facts. It was further directed that in case respondents come to the conclusion that according to the rules no corrective steps can be taken then a short affidavit explaining the reasons be filed on record.

10. The respondents did not take any corrective steps and filed affidavit in explanation on 9th March, 2018. Now in this fresh affidavit respondents had explained that the applicant had passed the Maharashtra Revenue Qualifying Examination in his 5th attempt and, therefore, he has lost his seniority.

11. On 12th March, 2018 the learned Advocate for the applicant was directed to take instructions in view of the statement made on oath by the respondents that the statement made in paragraph 6 of the application as quoted above are wrong / false.

12. Accordingly, on 9th April, 2018, the learned Advocate Shri V.B. Wagh, on the instructions of the applicant, made a statement before the Tribunal that the applicant had in fact passed the qualifying examination within 3 chances, as against the claim of the respondents that the applicant passed the qualifying examination within 5 chances.

13. As two different contradictory statements about the said facts were made by the parties, the applicant was directed to again file affidavit vide order dated 9th April, 2018. Learned Advocate for the applicant showed readiness to file affidavit to give details of his appearance in the concerned examinations. It was directed that only after the applicant would give details, the respondents would be asked to place year-wise details regarding 5 chances allegedly availed by the applicant. Accordingly, the present case was posted to 5th June, 2018. The case was thereafter adjourned once and ultimately on 11.6.2018 a short affidavit was filed by the applicant. In this short affidavit he has now come with a different case. In paragraph No. 12 he has averred as follows: -

“I was permitted to appear in Nov. 2011 (Ist Chance), May 2012 (IInd chance), in May 2012 (not appeared), May-2013 (IIIrd Chance) and Nov-2013 (IVth Chance)”.

14. To recall, as per the rules a Talathi is required to pass Maharashtra Revenue Qualifying Examination within 3 attempts and within 9 years. Upon failure he loses the seniority. He has availed 5 chances out of which in one he did not appear at all and passed the Revenue Qualifying Examination in 4th chance availed by him.

15. What thus appear from the record is that initially the applicant merely referred to orders in O.A. decided by the present Administrative Tribunal regarding the case of the respondent No. 3, Shri Govind J. Dhole. The copies of the said orders were not filed on record by the applicant. Only on the directions of this Tribunal the copies were filed. The decision given by this Tribunal in O.A. No. 928/2016 with M.A. No. 13/2017 dated 3.8.2017 would show that the present applicant was respondent No. 3 in the said application. The decision would show that this Tribunal had accepted the case of the applicant therein i.e. the present respondent No. 3, Shri Govind J. Dhole, that he stood exempted from passing of the Revenue Qualifying Examination from the date he entered in the service. In the circumstances, in paragraph No. 3, the following order was passed : -

3. In our view it will not be necessary to keep this Original Application pending. Respondent

No. 2 is directed to act as per his order dated 12.5.2017 granting exemption to the applicant from passing the Revenue Qualifying Examination from 6.7.2012, the date on which he attained the age of 45 years. The Applicant's representation for promotion to the post of Awwak Karkoon on the basis of date he was exempted from passing the Revenue Qualifying Examination should be decided within a period of four weeks' from the date of this order and decision thereon should be communicated to the applicant in writing within a period of 2 weeks thereafter.

4. With the above observations and directions, the present Original Application stands disposed of."

16. From reading of the entire judgment, as well as, above paragraph, it is crystal clear that this Tribunal had accepted the case that the present respondent No. 3, Shri Govind J. Dhole (applicant in O.A. No. 928/2016) was required to be exempted from passing of the Revenue Qualifying Examination from the date he entered the service and, therefore, the respondent No. 2 was directed to decide the representation of the promotion of the present respondent No. 3 on this basis. Accordingly, the other issues regarding suitability etc. of the

present respondent No. 3 was considered by the concerned respondents and the impugned decision came to be passed.

17. Thus, the issue as to the date of exemption from passing of the Revenue Qualifying Examination by respondent No. 3 is already heard and decided by this Tribunal in which the present applicant was party respondent. He however, did not file the copies of the said order on record and tried to conceal the fact that he was party in those proceedings.

18. However, the applicant not only in the application made on oath, but also at the time of hearing gave instructions to Shri V.B. Wagh, learned Advocate to make a statement at bar that the applicant has passed the said Revenue Qualifying Examination within 3 chances and within 9 years. Only when he was again directed to file fresh affidavit, he came with the details as given supra.

19. It is trite to say that the party cannot be allowed to raise the same issue before competent Tribunal twice once, it is heard and finally decided, between the parties.

20. The present applicant thus did not come with the clean hands as detailed above. It is regretted that the responsible Government employee like Talathi i.e. the present applicant

has not only made false statement twice before this Tribunal, but even attempted to conceal the fact of earlier decision between him and rest of the respondents. In the circumstances, not only the present O.A. deserves to be dismissed with costs, but the same is required to be dismissed with exemplary costs, as this Tribunal does not find it expedient to prosecute the present applicant for the offences committed by the present applicant of making false statements of fact on oath. In the result the following order: -

ORDER

(i) The present Original Application is hereby dismissed with exemplary costs of Rs. 50,000/-, payable to the respondent No. 1, the State of Maharashtra. The amount of costs be deposited within a period of 8 weeks from the date of this order. Interim relief granted by this Tribunal by an order dated 6.9.2017 stands vacated.

(ii) After pronouncement of the present order, learned advocate for the applicant made an oral request for extension of interim relief for some period.

(iii) For the reasons already forwarded hereinabove, we are of the opinion that there is no merit at all in the O.A.

and, therefore, oral prayer of the learned Advocate for the applicant regarding extension of interim relief for some period is hereby rejected.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 24th October, 2018

O.A.NO.622-2017(SB)-HDD-2018-Reversion