

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 917 OF 2012

DISTRICT: - AHMEDNAGAR.

Babasaheb S/o Nivrutti Tagad,

Age:48 years, Occ: Service,
Working as Child Development
Officer, Panchayat Samiti,
Kopargaon,
Dist. Ahmednagar.

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantrayala, Mumbai-32.
(Copy to be served on Presenting
Officer, Mah. Administrative
Tribunal, Bench at Aurangabad... RESPONDENT.

APPEARANCE : Shri Vijay R. Autade – learned Advocate
for the applicant.

: Shri S.K. Shirase – learned Presenting
Officer for the respondents.

**CORAM : HON'BLE SHRI RAJIV AGARWAR,
VICE CHAIRMAN (A).**

AND

**: HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

PER : Hon'ble Shri Rajiv Agarwal, V.C. (A)

J U D G M E N T

[Delivered on this 16th day of December, 2016]

1. Heard Shri Vijay R. Autade, learned Advocate for the Applicant and Shri S.K. Shirase, learned Presenting Officer (P.O.) for the respondent.
2. This Original Application has been filed by the Applicant challenging the seniority list of the Maharashtra Development Service, Group 'B' published on 30.11.2012 for the period from 1.1.2001 to 31.12.2009. The Applicant is also challenging action of the Respondents in making the Applicant to lose his seniority for his failure to pass the requisite departmental examination.
3. Learned Advocate for the Applicant argued that the Respondent No. 1 has published the final seniority list of officers in Maharashtra Development Service (M.D.S.) Group 'B' for the period from 1.1.2001 to 31.12.2009 by Circular

dated 30.11.2012. In this list, the Applicant is placed at Sr. No. 175 and in the remarks column it is mentioned that the Applicant lost seniority as he did not pass the departmental examination within given time and chances. Learned Advocate for the Applicant argued that the rules viz. Maharashtra Development Service, Class-I and Class-II (Departmental Examinations) Rules, 1991 do not provide for loss of seniority due to failure of passing the departmental examination within prescribed time and chances. As such, the Respondent No. 1 has not fixed seniority of the Applicant correctly. He should be placed in the seniority list based on length of continuation in the post. Learned Advocate for the Applicant relied on the judgment dated 30.1.2008 of Hon'ble Bombay High Court (Aurangabad Bench) in Writ Petition Nos. 4197 of 2007 and 6461 of 2007.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that Rule 7 of the Departmental Examination Rules requires termination of an appointee and reversion of a promotee, in case of their failure to pass the Departmental Examination as mandated by Rule 3. Rule 5

provides for exemption from passing Departmental Examination on attaining the age of 45 years. Rule 3 provides that the officers, who are direct recruits/promotes to M.D.S. Group 'A' or Group 'B' should pass departmental examination within 4 chances and 2 years from their date of recruitment/promotion. The Applicant was promoted to M.D.S. Group 'B' on 4.3.2000. He was required to pass the departmental examination within 2 years. He was not reverted to Class-III post and has since attained the age of 45 years on 31.5.2009. His eligibility for promotion will be decided from the date on which he was exempted from passing the departmental examination. Learned Presenting Officer argued that the impugned seniority list has been decided on the basis of the dates on which an officer becomes eligible for promotion, insofar as, passing the departmental examination is concerned. Learned Presenting Officer (P.O.) contended that the Applicant has not been able to show any flaw in the seniority list, and in fact, and isclaiming that without passing departmental examination, he should be held eligible for promotion, which is against the ratio laid down by Hon'ble High Court in Writ Petition No. 4197 of

2007 and 6461 of 2007.

5. We find that the Applicant claims that the Departmental Examination Rules do not provide for loss of seniority, if an officer in M.D.S. Group 'A' or 'B' fails to pass the departmental examination in prescribed time and chances. Off course, in such an eventuality, a person may be discharged/reverted, but he cannot lose seniority. He has relied on the judgment of Hon'ble High Court in Writ Petitions 4197 of 2007 and 6461 of 2007. Hon'ble High Court has held that :

“We are, therefore, unable to accede to the submission of Learned Advocate ShriDeshpande that by failure of passing the Departmental Examination in spite of enjoying permissible chances, the employee could continue in the cadre, but by losing the seniority to those who had passed the Examination.”

In our view, this observation of Hon'ble High Court has to be read in the context of the whole judgment. The Applicant was admittedly promoted to M.D.S. Group 'B' on 4.3.2000. As per Departmental Examination rules, he was required to pass the Departmental Examination by

4.3.2002. On his failure, he should have been reverted to Class-III in 2002 itself. However, the Respondent did not apply the rules, which were notified in 1991, at least till 14.3.2007, when a Circular was issued to enforce the aforesaid rules. The claim of the Petitioners in W.P. Nos. 4197 and 6461 both of 2007 to be promoted ignoring their failure to pass the Departmental Examination as per 1991 rules was rejected by Hon'ble High Court. It was directed by Hon'ble High Court that :

“The Department should operate the pending select list for promotion only in the light of interpretation of Examination Rules as indicated hereinabove.”

6. The Applicant, obviously, cannot claim deemed date of promotion, ignoring the fact that he failed to pass the departmental examination within prescribed time and chances. As the rules were not followed by the Government, the Applicant was not reverted to Class-III post in 2002. He could not be reverted to Class-III, after he attained the age of 45 years. In such circumstances, his seniority in M.D.S., Group 'B' has been rightly fixed by the Respondent No. 1 on

the basis of the date on which he was exempted from passing the Departmental Examination. If in the process, he lost seniority, that is the necessary result. The purpose of seniority list is to decide the eligibility of a Government Servant, for promotion. In the peculiar facts and circumstances of this case, where those who failed to pass the Departmental Examination as per rules, were not discharged/reverted, the only way, the promotion are given based on the date of eligibility, could be to place these who failed to pass the Departmental Examination as per rules, below those who had passed the said examination within requisite time and chances. The impugned seniority list does not violate the judgment of Hon'ble High Court or otherwise suffers from any flaws. We see no reason to interfere with the same.

7. Having regard to the facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)