

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.171/2022

DISTRICT:- PARBHANI

Madansing Shivsing Gusinge,
Age : 34 years, Occ. Govt. Service,
Awwal Karkoon, Office of Divisional
Commissioner, Aurangabad Division,
Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-400 032.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Parbhani.
4. Datta Rameshrao Raut,
Age : 36 years, Occ : Govt. Service,
Tahsil Office, Manvat,
Tq. Manvat, Dist. Parbhani.

...RESPONDENTS

APPEARANCE : Shri Jiwan J. Patil, Counsel for the
Applicant.
: Shri M.P.Gude, Presenting Officer
for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Reserved on : 06-12-2023

Pronounced on : 12-12-2023

ORDER
[Per : Shri Vinay Kargaonkar]

1. Heard Shri Jiwan J. Patil, learned Counsel for the Applicant and Shri M.P.Gude, learned Presenting Officer for the respondent nos.1 to 3. None appears for respondent no.4.

2. Brief facts of the case :-

(a) After getting appointment order dated 25-02-2009 applicant joined the services in the cadre of Clerk on 26-02-2009. In the merit list the applicant was at Sr.No.2 and respondent no.4 was at Sr.No.3.

(b) Respondent no.3 published a seniority list dated 06-05-2014 and in the said seniority list respondent no.3 has reckoned seniority of the applicant w.e.f. 26-02-2009. In the said seniority list respondent no.4 was shown at Sr.No.118 meaning thereby junior to the applicant as the applicant was shown at Sr.No.116.

(c) Respondent no.3 revised the seniority list of Clerk/Typist cadre and the provisional seniority list was published on 21-10-2021 but the applicant did not receive any communication in that regard.

(d) Final seniority list of Clerk /Typist cadre was published on 24-01-2022 and in the said seniority list the applicant is placed at Sr.No.203 and the respondent no.4 who was shown junior to the applicant in the seniority list published 06-05-2014 is placed at Sr.No.168.

(e) Applicant's seniority is reckoned w.e.f. 15-02-2012 in the seniority list published on 24-01-2022 whereas in the earlier seniority list published on 06-05-2014 it was computed w.e.f. 26-02-2009 i.e. the date of his joining the service. Aggrieved by the change so made, the applicant has preferred this O.A.

3. Submissions of the applicant :-

(a) Applicant submitted that in the final seniority list of Clerk/Typist cadre published on 24-01-2022 the seniority of the applicant is reckoned w.e.f. 15-02-2012 i.e. the date of passing the Sub Services Departmental Examination ("SSDE" for short). Applicant has passed the SSDE in the 4th attempt, and therefore, respondent no.3 has considered the seniority of the applicant from date of his passing the SSDE.

(b) Applicant submitted that vide G.R. dated 24-08-1976 issued by the General Administration Department the Government employees belonging to backward classes as SC, ST, DT and NT are provided one additional chance and one additional year for passing the departmental examination held and conducted by various departments.

(c) Since the applicant belongs to DT(A)/VJ(A) category, he is entitled for one additional chance and one additional year for passing the SSDE. The applicant has passed the SSDE in 4th attempt, he is covered by G.R. dated 16-11-2006. Since he has passed the SSDE within the permissible 4 attempts, as per the G.R. dated 24-08-1976, his date of seniority should be the date of joining. Order of merit in the appointment letter should also determine his seniority.

(d) Learned counsel for the applicant had relied on judgment delivered by the Bench at Principal Seat of Maharashtra Administrative Tribunal in O.A. Nos.480 and 481 of 2021.

4. Submissions of respondent nos.2 and 3 :-

(a) Respondents submitted that the applicant did not pass the departmental examination within prescribed 3 chances and as such his date of seniority is decided as per his date of passing the examination.

(b) The applicant has passed the SSDE by availing 4 chances, therefore, the claim of the applicant that he passed the SSDE within the prescribed chances is not true. Therefore, the seniority of the applicant has been determined on the basis of date of passing and as per Rule 4(c) of SSDE Rules.

(c) Respondents submitted that Sub Service Departmental Examination Rules, 1988 have been issued after the said G.R. dated 24-08-1976. In the said Rules there is no provision with regard to additional chance and an additional year for passing the SSDE to the backward class employees and accordingly in regard to confirmation of the seniority.

5. Submissions of respondent no.4 in affidavit in reply :-

Though none appeared for respondent no.4, he has filed his affidavit in reply opposing the claim of the

applicant. He has quoted a letter of Revenue Department of the State of Maharashtra, which is in Marathi having No. संकीर्ण-२०१८/प्र.क.२४४/ई-७, Dated 30-07-2018. Relevant extract of that letter in Marathi is reproduced hereinbelow:

“सा.प्र.वि.चे परिपत्रक क्रमांक ईएक्स एम-१०७५/१६८१-१७, दिनांक २४.०८.१९७६ व शासन निर्णय क्रमांक परिक्षा - १२०६/प्र.क.७/०६/१७, दिनांक १६.११.२००६ नुसार अनुसुचित जाती, अनुसुचित जमाती भटक्या व विमुक्त जमाती, वि.मा.प्र. या संवर्गातील उमेदवारांना परिक्षा उत्तीर्ण होण्यासाठी देण्यात आलेली एक अतिरिक्त संधी ही पदोन्नतीसाठी घेण्यात येणारी विभागीय परिक्षा उत्तीर्ण होण्याकरिता देण्यात आलेली अतिरिक्त संधी आहे जी संधी सेवेत कायम करण्याकरिता (confirmation) घेण्यात येणा-या विभागीय परिक्षेसाठी लागू नाही. महाराष्ट्र दुय्यम सेवा विभागीय परिक्षा ही पदोन्नतीसाठी घेण्यात येणारी परिक्षा नसून लिपीक वर्गीय कर्मचा-यांना शासन सेवेत कायम करण्याकरिता घेण्यात येणारी परिक्षा असल्यामुळे सा.प्र.वि. परिपत्रक दि.२४.०८.१९७६ व शासन निर्णय दि.१६.११.२००६ मध्ये नमूद एक अतिरिक्त संधीची तरतुद या प्रकरणी लागू होणार नाही.”

6. Analysis of facts and conclusions:-

(a) Main issue in this matter is whether or not G. R. dated 24-08-1976 is applicable for SSDE. Relevant extract of G. R. dated 24.8.1976 is as follows:

“The Government has now decided that in the Departmental examination rules for promotion to the higher posts and Non-Gazetted, in all the Government offices, a provision should be made therein to the effect, that the candidates from (i) Scheduled Castes, (ii) Scheduled Tribes, and (iii) Denotified Tribes and Nomadic Tribes, should be given one more chance and one more year to pass the Departmental examinations, than is permissible under the rules to other candidates.”

(b) Principal Seat of this Tribunal at Mumbai had decided similar issue of seniority in O.A.No.480 & 481 of 2021. Relevant extract of the said judgement is as follows:

“The G.R. dated 24.8.1976 is very clear and thus the applicants who have passed the Departmental examinations in the year 2012 within four years and four chances should not be pushed down in the seniority list published on 29.6.2021. The concerned authority should have understood the spirit of the G.R. dated 24.8.1976 properly and should have treated that the fourth chance is equivalent to the third chance.”

(c) As held by the Principal Seat of this Tribunal in OA No 480 & 481, G. R. dated 24-08-1976 is applicable to SSDE and candidates belonging to backward class should be given one more chance and one more year to pass the Departmental examination.

(d) Since the applicant has passed the SSDE in the 4th chance, he is construed to have passed the examination within prescribed chances, and therefore, he need not be pushed down in seniority list published on 24-01-2022. Since the applicant has passed the departmental examination within the prescribed period and chances, therefore, he is entitled for seniority as per date of joining and the merit list in the appointment order.

7. In view of the above, the Original Application is allowed in the following terms:

[i] The seniority of the applicant is restored back to the date of joining i.e. 26-02-2009 and as per the merit list in the appointment order.

[ii] Necessary corrections be carried out in the seniority list.

[iii] O.A. stands allowed, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 12-12-2023.