

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 967 of 2018 (DB)

- 1) Dheerajkumar Gajanan Jumna,
Aged about 37 years, Occ. Service in the office
of Collector, Gadchiroli, R/o ward no.16, Gokulnagar,
(Behind Adiwasi Samaj Mandir), Gadchiroli,
Tq. & Dist. Gadchiroli.
- 2) Vivek Narayan Naitam,
Aged about 42 years, Occ. Junior Clerk at
Tahsil Office, Chamorshi,
R/o Omnagar Chamorshi Road,
Tah. & Dist. Gadchiroli.

Applicants.

Versus

- 1) The Collector, Gadchiroli,
District Gadchiroli.
- 2) Divisional Commissioner,
Nagpur Division, Nagpur.
- 3) Shri S.A. Patil,
Junior Clerk, Tahsil Office, Aheri, Dist. Gadchiroli.
- 4) Shri Pravin Ramaji Ade,
Junior Clerk, Tahsil Office, Attapalli, Dist. Gadchiroli.
- 5) Ku. Dipika Rushiji Lonare,
Junior Clerk, Tahsil Office, Mulchera, Dist. Gadchiroli.
- 6) Shri Mahendra Atmara Barsinge,
Junior Clerk, Tahsil Office, Kurkheda, Dist. Gadchiroli.
- 7) Shri Nitesh Gajanan Chitade,
Junior Clerk, Tahsil Office, Dist. Gadchiroli.
- 8) Shri Subhash Bharat Deharkar,
Junior Clerk, Tahsil Office, Dhanora, Dist. Gadchiroli.
- 9) Shri Angad Namdev Dudhate,
Junior Clerk, Tahsil Office, Chamorshi, Dist. Gadchiroli.

- 10) Shri Vishal Madhukar Khartade,
Junior Clerk, Tahsil Office, Armori, Dist. Gadchiroli.
- 11) Shri Yogesh Prabhakar Sorte,
Junior Clerk, Tahsil Office, Korchi, Dist. Gadchiroli.
- 12) Shri Viky Ratan Karnake,
Junior Clerk, Tahsil Office, Bhamragad, Dist. Gadchiroli.
- 13) Shri Sachin Chindhu Chandekar,
Junior Clerk, Tahsil Office, Chamorshi, Dist. Gadchiroli.
- 14) Shri Vijay Rohidas Alone,
Junior Clerk, Tahsil Office, Desaiganj, Dist. Gadchiroli.
- 15) State of Maharashtra,
Secretary, Revenue, Mantralaya, Mumbai.

Respondents.

Shri W.G. Paunikar, Advocate for the applicants.

Shri M.I. Khan, P.O. for respondent nos. 1,2&15.

None for respondent nos. 3 to 14.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 10th July, 2019.

Date of Pronouncement of Judgment : 10th July, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 10th day of July,2019)

Heard Shri W.G. Paunikar, learned counsel for the applicants and Shri M.I. Khan, learned P.O. for respondent nos. 1,2&15. None for respondent nos. 3 to 14.

2. Both the applicants are serving as Clerk-cum-Typist on the establishment of Collector, Gadchiroli. This joint application is filed by the applicants to quash and set aside the promotion orders issued on 01/12/2018 thereby promoting the respondent nos. 3 to 14 and for issuing direction to the respondent nos. 1&2 to promote the applicants on the post of Senior Clerk.

3. It appears from the record that the applicant no.1 joined the service as Clerk-cum-Typist on 6/12/2003, the applicant no.1 passed SSD examination on 27/2/2009 in the 4th chance and he passed RQE examination on 6/12/2012 in the 5th chance.

4. The applicant no.2 joined the service as Clerk-cum-Typist on 3/10/2003, he passed SSD examination on 7/11/2009 in 4th chance and RQE examination on 6/12/2012 in the 6th chance. It is contention of the applicant that the respondent nos. 3 to 14 were junior to them in the cadre of Clerk-cum-Typist, they were not eligible for promotion, but the respondent nos.1&2 illegally fixed the seniority and promoted the respondent 3 to 14 on the post of Senior Clerk, therefore, it is in violation of the Rules, therefore, the application be allowed.

5. The respondent no.1&2 have justified the action promoting the respondent nos. 3 to 14. It is submitted that admittedly the respondent no.3, Shri S.A. Patil joined service on 5/12/2000, he passed SSD examination on 31/1/2002 and RQE examination on 27/11/2009. It is further submitted that the respondent no.3 passed SSD examination in 1st chance and RQE examination in 3rd chance. On the basis of it, it is submitted that he was rightly held senior to the applicants.

6. So far as the respondent nos. 4 to 14 are concerned, it is submitted that though these respondents joined the service in the year 2012, but they have cleared SSD examination in the year 2014,2015, but all of them cleared the examination within three chances and the time period fixed by the rules. Secondly it is submitted that these respondents cleared RQE examinations in the year 2015,2016 & 2017 within permissible period and within three chances, therefore, their seniority relates back to the date of their initial appointment which was prior to date on which the applicants passed the RQE examination and therefore all these respondents were senior to the applicants. It is submitted that there was no illegality committed while fixing of the seniority and promoting these respondents, consequently, there is no merit in this application.

7. During course of the argument, both sides have placed reliance on Rule-7 of the Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk-Typist, Rules, 1999. The Rule-7 is as under –

*“(7) **Effect of passing examination on seniority:-** A Clerk Typist who has passed the Examination in accordance with the provision of rule 6, shall retain his original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or are exempted from passing of the Examination, before him, as well as to those Clerk Typists who are senior to him and who may pass the Examination after him; but within prescribed period and chances specified in these rules”.*

8. On the basis of this Rule-7, it is submission of the applicants that as they were senior to the respondent nos. 4 to 14 on passing the RQE examination.

9. In the reply it is submission of the learned P.O. that as there were two contradictory Judgments delivered by the Division Bench of MAT, therefore, reference was made to the Full Bench of MAT, Mumbai. In the O.A.No. 354/2015, decided on 2/2/2017 the Full Bench laid down the following propositions which are as under –

“(a) The seniority in the Clerical cadre shall be fixed as per the date of passing the SSD Examination;

(b) In Clerical cadre if the SSD Examination was passed within the time and number of chances, the seniority shall be counted from the date of

initial appointment as Clerks and that date in that cadre shall remain forever;

(c) The Clerks who fail to pass SSD Examination within the time and number of chances will lose their seniority as hereinabove discussed. Their seniority shall be counted from the date of passing SSD Examination or from the date, they would get exemption;

(d) But they will not disturb those Clerks who were already confirmed after passing SSD within the time and chances or were senior to them.

a-i) Now, only those Clerk Typists who have passed SSD Examination after completing three years as such Clerks, would be eligible to appear for RQE.

a-ii) A Clerk Typist confirmed in that cadre in order to pass RQE will have to do so within three chances and within nine years of his continuous service as such Clerk Typist to be able to retain his original seniority.

a-iii) In the event, he were to fail to do so, then there will be a loss of seniority in exactly the same way as in case of Clerk Typist discussed above and he will then become entitled for consideration for seniority only after clearing the said Examination and he will be governed in all respects by substitution is made as per the order passed on Speaking to Minutes on 03/02/2017 (a) to (d) above.”

10. We have gone through the above propositions which are laid down by the Full Bench of MAT. As per first proposition the seniority in the Clerical cadre shall be fixed as per the date of passing of SSD examination. It appears that seniority of the applicants in the cadre of Clerk was rightly fixed from the date they passed the SSD examination in 2009. The fact is that both the applicants passed the RQE examination on 6/12/2012 and they passed the examination in 5th attempt and 6th attempt respectively. As the applicants were

unable to pass the RQE examination within period of 9 years from the date of entry in the service and within three chances, therefore, they loosed their seniority. It appears that the respondent no.3 S.A. Patil joined the service in the year 2000, he passed SSD examination in the 1st chance in year 2002 and he passed the RQE examination in the year 2009 in the 3rd chance, therefore, he was rightly placed above the applicants in the seniority.

11. So far as the respondent nos. 4 to 14 are concerned, they joined the service in the year 2012, but all of them have passed the examinations SSD & RQE within a period limited by Rule-7 and within three chances, therefore, their seniorities were fixed w.e.f. from the date of their entry in the service.

12. It seems that all these respondents entered in the service before the date on which the applicants passed the RQE examination and as the seniority of the respondent nos. 4 to 14 was to be fixed since the date of their entry in the service, therefore, they became senior to the applicants.

13. After reading the propositions laid down by the Full Bench, we have no hesitation in holding that the seniority of the concerned respondents was rightly fixed and they were seniors to the applicants. In view of this, we do not see any merit in the contention

that error was committed by the respondent nos. 1&2 while fixing the seniority of the respondent nos. 3 to 14.

14. Once it is accepted that the respondent nos. 3 to 14 were senior to the applicants, then there remains no substance in the contention that they were wrongly promoted. Hence, we hold that there is no merit in this application. In the result, the following order –

ORDER

The O.A. stands dismissed with no order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 10/07/2019.

*dnk

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 10/07/2019.
and pronounced on

Uploaded on : 11/07/2019.