

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH AT NAGPUR.**  
**ORIGINAL APPLICATION NO. 277 of 2010**

Shri Munnalal Shama Bhalavi,  
Aged about 41 Yrs.,  
Occ. : Talathi, Bhosa,  
Tah. Samudrapur, Distt. Wardha. -----**APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Department ,  
Mantralaya, Mumbai-32.
2. The Collector, Wardha,  
Civil Lines, Wardha.
3. The Sub-Divisional Officer,  
Hinganghat, Tah. Hinganghat,  
Distt. Wardha.
4. The Tahsildar, Samudrapur,  
Tah. Samudrapur, Distt. Wardha.
5. Shri S.K. Kilnake, Mandal Officer,  
Waigaon ( Gond ), Tah. Samudrapur,  
Distt. Wardha.
6. Assistant Commissioner ( Backward class Cell ),  
O/o Commissioner, Nagpur Division, Nagpur,  
Old Secretariat Building, Nagpur. -----**Respondents.**

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1. Shri P.R. Pudake, Counsel for Applicants
  2. Smt. S.V. Kolhe, Id. P.O. for Respondents no. 1 to 4.
  3. None for R/5 and 6.

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**CORAM:** B. Majumdar: Vice Chairman

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S.S. Hingne : Member ( J )

**DATE** : 11<sup>th</sup> March, 2016

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**ORDER****PER MEMBER ( J )**

The applicant/Talathi has challenged the order dtd. 26/2/2010 ( Annexure-1, page-13 ) of promotion of Respondent No.5 as a Circle Officer, and claimed the promotion on the said post.

2. Heard Shri P.R. Pudke, Id. Counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the Respondents No. 1 to 4. None appeared on behalf of R/5 and 6.

3. The applicant and R/5 joined as a Talathi in the year 1992. R/5 is senior to the applicant. However, according to the applicant, he cleared the Revenue Qualifying Examination as per the Maharashtra Revenue Qualifying Examination for promotion to the post of Circle Officer ( From the cadre of Talathis) Rules 1998 ( hereinafter referred to as the RQE Rules ) within the stipulated attempts whereas, R/5 was given exemption on attaining the age of 45 years of age. In order to appreciate the controversy the details of both, i.e.,

the applicant and R/5 are given in the tabular form as under :-

Sr. No	Name	Date of birth	Date of joining service as Talathi	Date of passing of Sub-Service Departmental Examination	Date of passing of R.Q. Examination/ granting exemption	Date of exemption
40	S.K. Kilnake	20/3/60	11/6/92	Exemption	Exemption	19/3/05
45	M.S. Bhalavi	12/5/69	16/6/92	13/7/98	27/10/99	-----

4. The contention of the applicant is that R/5 was exempted to appear the Examination having crossed 45 years of age, which is clear from the exemption certificate ( Annexure-A-9, page-54 ) dtd. 27/1/2009 w.e.f. 19/3/2005 since his date of birth is 20/3/1980. As against this the applicant has cleared the requisite Examination in April,2000 which is clear from the certificate ( Annexure-A-8, page-53 ). Meaning thereby the applicant has cleared the Examination as per the Rules within the given opportunities. The applicant

has passed the Examination prior to 2000 whereas, the exemption to the R/5 is given in 2005. Taking recourse of the Rule 4 of the RQE Rules 1998, the Id. Counsel for the applicant has vehemently argued that the R/5 has lost the seniority. He proceeded to argue that when the R/5 is promoted that time the claim of the applicant was on better footing and the applicant ought to have been promoted. Undisputedly the applicant has cleared the Examination within the prescribed period whereas, the R/5 has not cleared the Examination but is given the exemption in 2005 on attaining the age of 45 years. The Rule 4 of RQE Rules reads as under :-

**Rule 4 : Consequences of failure to pass Examination :**

***" ( 1 ) A Talathi who fails to pass the Examination within a period and chances specified in these rules shall be placed below all the Talathi, who have passed or who have been exempted from passing the Examination before him for the purpose of promotion to the post of Circle Officer . His seniority shall be***

***fixed below all those who are senior to such Talathi and who may pass or may be exempted from passing the Examination after him but within prescribed period and chances specified in these rules."***

5. From the above legal provision it is manifest that the consequences of not clearing the Examination are that the R/5 has lost his seniority. Thus, the applicant ought to have been considered as a senior to the R/5.

6. However, it reveals from the DPC proceedings ( Page-64 ) held on 22/2/2010, one post of Circle Officer was available to be filled from S.T. candidate as per roster. The DPC held that the R/5 is senior and therefore is given the promotion. When the R/5 had not cleared the Examination the effect was that he had lost his seniority. The applicant was the next candidate from the S.T. category who ought to have been considered but that was not done. Thus, it is crystal clear that the legitimate claim of the

applicant is not considered and the R/5 is given promotion. In the above factual background and in the light of the above legal provisions, the applicant ought to have been considered by the DPC and hence the order of promotion of the R/5 cannot be said to be legal and valid.

7. The applicant's claim is two fold and wants that he should be placed above the R/5 in the seniority list. However, that cannot be done because the applicant is at Sr. No. 45 in the seniority list dtd. 1/1/2009 and the R/5 is at Sr. No. 40. There are four intervening employees senior to the applicant. They are not before us.

8. Secondly the applicant claims the promotion on the basis of seniority as candidate from S.T. category which is available as per roster point to which his case deserves consideration and the applicant can get relief to that extent.

9. Consequently the O.A. is partly allowed. The promotion order dtd. 26/2/2010 of the R/5 is quashed. The respondents to hold the DPC and consider the claim of the

applicant for promotion as Circle Officer from the roster point available to a candidate from S.T. category and to issue the order if found otherwise suitable and eligible for the promotion. The respondents to complete the exercise within 3 months from the date of receipt of this order. No order as to costs.

sd/-

( S.S. Hingne )  
Member ( J )

sd/-

( B. Majumdar )  
Vice-Chairman.

Skt.