

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 660/2014 (D.B.)**

Chandrashekhar Mahadevrao Dhole,  
Aged about 47 years, Occ. Service,  
R/o 'Karmachari Vasahat', Pandharkawda,  
District Yeotmal.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai 32.
- 2) Additional Commissioner Tribal Development,  
Near Police Ground, Camp,  
Amravati.
- 3) Shri U.S.Chavhan,  
Aged major, R/o Project Officer ITDP,  
Aurangabad.

**Respondents**

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Shri R.V.Shiralkar, Ld. Counsel for the applicant.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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**Coram:-**Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).

**Dated:** - 21<sup>st</sup> March 2023.

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**JUDGMENT****Per :Member (J).****Judgment is reserved on 22<sup>nd</sup> February, 2023.****Judgment is pronounced on 21<sup>st</sup> March, 2023.**

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. By order dated 28.12.1990 (Annexure A-1) the applicant was appointed as Junior Clerk for a period of six months. He joined on 07.01.1991. By orders dated 24.06.1991 (Annexure A-2) and 15.01.1992 (Annexure A-3) his term was extended by further six months. In O.A.No.1232 of 1992 filed by a similarly placed employee order was passed on 29.06.1992 (Annexure A-4) that if the posts were to be continued, status-quo shall be maintained. By order dated 30.07.1992 (Annexure A-5) services of the applicant came to be continued till further orders. By G.R. dated 15.06.1999 (Annexure A-6) services of the applicant and others were regularised w.e.f. 01.04.1999. Seniority list as per 01.01.2012 (Annexure A-7) was prepared on 30.08.2012 in which the applicant stood at Sr.No.84 and respondent no.3 stood at Sr.No.85. The applicant was denied time bound promotion to which he was entitled w.e.f. 07.01.2003 as per G.Rs. dated 08.06.1995 and 03.08.2001. By

order dated 24.02.2014 (Annexure A-8) respondent no.3 was promoted as Senior Clerk though he was junior to the applicant. Aggrieved by denial of promotion the applicant made a representation dated 26.02.2014 (Annexure A-9) which went unheeded. To this representation he annexed letter dated 08.05.2000 which stated-

आपल्या कार्यालयाच्या उपरोक्त संदर्भाधीन पत्राच्या संदर्भात कळविण्यात येते की, सेवा नियमित न झालेल्या कर्मचा-यांना विभागीय परीक्षेला बसण्याची परवानगी देण्याची कृती अयोग्य होती. याची नोंद घेण्याच्या संबंधिताना सुचना देण्यात याव्यात.

२. पत्रात नमूद केलेले कर्मचारी सर्वश्री.पी.पी.सावळकर व आर.जी.टाले हे विभागीय परीक्षा उत्तीर्ण झाले असल्याने त्यांना पुन्हा परीक्षा उत्तीर्ण करण्याची आवश्यकता नाही. तथापी ते सेवा नियमित झाल्याच्या दिनांकानंतर परीक्षा उत्तीर्ण झाले आहेत असे गृहीत धरण्यात यावे. तसेच जे कर्मचारी परीक्षेला बसले होते परंतू उत्तीर्ण झाले नाहीत त्यांची ती संधी विचारात घेण्यात येऊ नये.

Hence, this O.A. for grant of deemed date of promotion i.e. 24.02.2014 to the post of Senior Clerk with all consequential benefits.

3. In his reply respondent no.2 has averred that the applicant failed to clear departmental examination within stipulated time and chances as provided under the Post Recruitment Training Examination [for Lower Division Clerks, Clerk-Cum-Typists in the Directorate of Tribal Development] Rules, 1990 (Annexure R-I) and thereby lost his seniority.

This position regarding loss of seniority was reiterated by the Tribal

Commissioner by issuing a communication dated 25.07.1997 (Annexure R-II). In view of G.Rs. dated 08.06.1995 and 20.07.2001 (Annexure R-IV) for grant of time bound promotion passing departmental examination was a condition precedent and hence the applicant was not entitled to said benefit as asserted by him. Respondent no.3 was rightly promoted by order dated 24.02.2014. The applicant cannot, therefore, claim deemed date of promotion on the basis of promotion given to respondent no.3. Because of loss of seniority, at the material point of time the applicant stood at Sr.No.91 and respondent no.3 stood at SR.No.26 in the list of seniority (Annexure R-III).

Rules 4 and 5 of Rules of 1990 which are relevant, read as under-

**4. Period and number of chances for passing Examination.-**

**(1) Every Clerk appointed to the post after the appointed date shall be required to pass the Examination within a period of four years from the date of his appointment and within three chances.**

**(2) Every Clerk appointed to the post before the appointed date shall be required to pass the Examination within the period of four years from the appointed date**

*and within three chances unless he is already exempted from passing the Examination under rule 6.*

*(3) Notwithstanding anything contained in sub-rules (1) and (2) –*

*(a) any chance availed of by a Clerk in an Examination held under the existing rules shall be counted towards computation of total number of chances laid down in sub-rule (2) ;*

*(b) if for any reason, the Examination is not held in a particular year that year shall be excluded in computing the total period of years mentioned in sub-rules (1) and (2) ;*

*(c) the Head of the Directorate may in exceptional circumstances at his discretion allow one extra chance to a Clerk to appear for the Examination and may, where necessary, correspondingly extend the period of four years mentioned in Sub-rules (1) and (2) upto that of five years ;*

*(d) the Government may, in exceptional circumstances and on merit, either extend the period of years of number of chances laid down in the foregoing provisions of this rule fro passing the Examination by a Clerk or condone his failure.*

*5. Consequences of failure to pass the Examination.-(1) A Clerk who fails to pass the Examination within the time limit and chances specified in rule 4,-*

*(a) shall not, until he passes the Examination, be confirmed in the post of the Clerk or be allowed to draw his next increment in the scale of Lower Division Clerk. Increment so withheld shall become payable to him with effect from the date on which he passes the Examination and all future increments shall accrue as if no increment is withheld. The arrears for past period shall not be admissible;*

*(b) shall lose seniority in the cadre of Clerk, that is to say that he will be placed below all those*

*who have passed the Examination before him and also below all those who are senior to such Clerks below whom he is placed, and who may pass the Examination after him but within the period and chances specified in rule 4.*

4. In his rejoinder (at page 76) the applicant has furnished following details which are relevant-

- 1. May 1998 -Failed (but was not regularized on this date)**
- 2. January 2000 -Failed**
- 3. November 2001 -Failed**
- 4. July 2003 -Failed**
- 5. 2004-2011 - No examination was held.**
- 6. February 2011 - Not permitted to appear.**

Correctness of these details is not disputed by the respondents.

As per the guidelines contained in letter dated 08.05.2000 (at page 41) the attempt made by the applicant in the year 1998 to clear departmental examination could not have been taken into account since he was regularised thereafter i.e. on 01.04.1999.

After regularisation the applicant availed three chances and failed.

Between 2004 and 2011 departmental examination was not held. The

applicant applied for availing fourth chance in February 2011. By communication dated 11.02.2011 (Annexure A-11) this request was declined on the untenable ground that the applicant had already availed four chances. This ground was untenable because the concerned authority ought not to have taken into account the attempt made by the applicant in the year 1998 which was before his regularisation in service. The applicant ought to have challenged this communication dated 11.02.2011. He did not do so. Thereafter, seniority list of Junior Clerks as on 01.01.2013 (Annexure R-III) was published on 15.04.2014. In this list respondent no.3 was at Sr.No.26 and the applicant was at Sr.No.91. It was submitted by Shri Shiralkar, learned Advocate for the applicant that the seniority in list (Annexure R-III) was based on the fact that respondent no.3 was already promoted by the time it was published. This submission cannot be accepted because though the list was published on 15.04.2014 i.e. after respondent no.3 was promoted by order dated 14.02.2014, the list reflected inter-se seniority of Junior Clerks as on 01.01.2013. The applicant lost his seniority because he had not passed departmental examination in three chances and fourth chance was declined. We have observed that the ground on which fourth chance was declined was not tenable. However, the fact remains



that the applicant did not challenge the communication dated 11.02.2011 issued in that behalf. For these reasons prayer for grant of deemed dated of promotion i.e. 14.02.2014 cannot be allowed.

4. In his additional affidavit the applicant has stated as follows (at page 85) –

**2. The applicant submits that during the pendency of the original application the respondent no.2 has issued an order dated 16.01.2016 promoting one Mr.D.B.Aade, junior clerk to the post of senior clerk who belongs to VJ (A) category like the applicant. A Copy of order dated 16.01.2016 issued by the respondent no.2 is annexed herewith and marked as ANNEXURE-A-14. A bare perusal of the seniority list at Annexure-A-7 filed on record will show that name of Shri D.B.Aade appears at serial number 90, whereas name of the applicant is at serial number 84. Admittedly, Shri D.B.Aade is junior to the applicant but claim of the applicant for promotion on the post of senior clerk is not at all considered, which is arbitrary and illegal.**

In seniority list of Junior Clerks as on 01.01.2013 name of the applicant is at Sr.No.91 whereas name of Shri D.B.Ade is at Sr.No.109 who was promoted to the post of Senior Clerk on 16.01.2016. The applicant and Shri Ade belong to the same category. This being the factual position the applicant would be entitled to deemed date of promotion i.e. 16.01.2016 to the post of Senior Clerk. For the reasons discussed hereinabove we pass the following order.

**ORDER**

The O.A. is allowed in the following terms-

The applicant is held entitled to deemed date of promotion i.e. 16.01.2016 to the post of Senior Clerk, and all consequential benefits which shall be paid within three months from today. No order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 21/03/2023  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 21/03/2023.  
and pronounced on