

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 728/2020

Jaypal S/o Nanaji Badre,
Aged 31 years, Occ. Service,
R/o. Govt. Qtr.160th Rooms, Civil
Lines, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Department of Law and Judiciary
Mantralaya, Mumbai-32.
- 2) The State of Maharashtra,
through its Joint Secretary,
Department of Law and Judiciary
Administrative Building No.1,
Civil Lines, Nagpur
- 3) Desk Officer, Department of Law
And Judiciary Administrative
Building No.1, Civil Lines, Nagpur
- 4) The Selection Committee,
Through its President and
Collector, Collectorate Building,
Civil Lines, Nagpur.
- 5) Priyanka Gajanan Ghate,
Aged 27 years, Occ. Service, R/o. Govt.
Pleader Office, High Court, Civil
Lines, Nagpur.

Respondents

Shri S.C.Chande, Ld. counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents 1 to 4.

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

Dated: - 29th March 2022.

PER- Member (J)

JUDGMENT

Judgment is reserved on 23th March, 2022.

Judgment is pronounced on 29th March, 2022.

Heard Shri S.B.Chande, learned counsel for the applicant and Shri A.P.Potnis, Ld. P.O. for the Respondents 1 to 4. None for the respondent no.5.

2. Facts leading to this application are as follows. To fill up the vacancies of Class-2, Class-3 and Class-4 posts respondent no.2 issued advertisement dated 27.12.2015 (Annexure A-1) in response to which the applicant, respondent no.5 and others applied for the post of Peon. Examination was held. The applicant as well as respondent no.5 qualified and they were shortlisted (Annexure A-2). Their names were mentioned in this shortlist against Sr.Nos.6 and 22, respectively. According to the applicant, these Sr. Nos. were based on inter-se merit fixed by the Selection Committee. In the lists of the candidates selected for the post of

Peon (collectively marked Annexure A-3) the first list was of candidates belonging to Open category followed by lists of candidates belonging to Open (Female) category, Open (Ex-Serviceman) category, OBC category, SC category and NT category, respectively. The candidates belonging to these categories were serially numbered. Hence, name of respondent no.5 appeared at Sr.No.3 and name of the applicant appeared that Sr.No.7. The applicant received letter of appointment dated 30.3.2016 (also marked Annexure A-3 at page 23) in which it was mentioned that in the (consolidated) select list based of merit he stood at Sr.No.7. He joined on the post on 11.4.2016 (Annexure A-5). In consolidated Seniority Lists of Class-2, Class-3 and Class-4 employees as on 1.1.2017 and 1.1.2018 (collectively marked Annexure A-6) respondent no.5 was shown to be senior to the applicant. On 18.4.2019 the applicant filed application (Annexure A-7) before respondent no.2 that he had become eligible for being considered for promotion to Class-3 post. With covering letter (Annexure A-8) he received copy of order dated 2.1.2020 whereunder respondent no.2 had promoted respondent no.5 to Class-3 post of Clerk/Typist on Ad-Hoc basis on a vacant promotional post from Open category. The applicant made representations (Annexure A-9 and A-10) to respondent no.2

raising the grievance that fixation of inter-se seniority of candidates belonging to the same batch did not appear to have been based on merit as required under the Rules. He asserted that in the Seniority List as on 1.1.2019 (at pp.71/72) his name ought to have appeared at Sr.no.6 instead of Sr.no.9 as was done. Vide letter dated 25.9.2020 (Annexure A-11) respondent no. 1 communicated to the establishment where the applicant and respondent no.5 both were working that seniority was rightly fixed as per Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. On 9.3.2022 the applicant submitted an application before respondent no.2 under the Right to Information Act and received in compliance thereof the Select List based on merit which showed that he, the applicant, had scored 90 marks and respondent no.5 had scored 86 marks in the examination as a result of which he was placed at Sr. No. 6 and respondent no.5 was placed at Sr.no.22. According to the applicant, aforesaid undisputed facts shall suffice to grant prayers (a) to (e) made in the application which are as follows.

a) quash and set aside the impugned communication dated 25.09.2020 issued by the respondent no.3 – Desk Officer, Law and Judiciary Department, Nagpur;

- b) direct the respondents no.2 & 3 to correct the seniority list as per merit and applicant be placed at Sr. No.1 in the corrected seniority list;***
- c) quash and set aside the promotion order for the post of Clerk –cum-Typist of respondent no.5.***
- d) direct the respondent nos.2 and 3 to issue promotion order for the post of Clerk-cum-Typist in favour of the applicant w.e.f. 02.01.2020 along with all consequential benefits;***
- e) after promoting the same, direct the respondent nos.2 and 3 to grant difference of arrears of salary to the applicant since 02.01.2020 till promotion order to the applicant for the post of Clerk;***

3. Reply of respondent no.2 is at pp.83 to 87. According to him, Seniority Lists as on 1.1.2017, 1.1.2018 and 1.1.2019 had maintained the same inter-se seniority, the applicant challenged it only on 16.7.2020 from which an inference of acquiescence could be drawn, and seniority was rightly fixed as per Rule 4(2)(a) of the Rules.

The applicant has placed on record Select List prepared on the basis of merit. Same sequence was maintained while publishing the list of candidates who had qualified, which is at page 54.

4. Rule 4(2)(a) reads-

4.General principles of seniority.

(1) * * *

(2) **Notwithstanding anything contained in sub-rule (1)-**

(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;

b) * * *

c) * * *

(3) * * *

In a common judgment delivered by the Hon'ble Supreme Court on 8.12.2021 in a batch of 4 Civil Appeals (5966 of 2021 and 3 others) it is held –

“the seniority inter se of direct recruits to one selection has to be one combined list based on the performance and the marks awarded in the examination

prepared either by the Commission or the Committee, as the case may be.”

5. It is apparent that the mistake in fixing inter se seniority was committed because serial numbers in the lists (collectively marked Annexure A-3) were taken to be based on merit. As mentioned earlier, these lists were prepared category wise and not in a sequence of merit. Thus, the application will partly succeed to the extent of issuing direction to respondent no.2 to re fix the inter-se seniority as per Select List prepared by Selection Committee (respondent no.4). In the facts and circumstances of the case failure of the applicant to challenge Consolidated Seniority Lists as on 1.1.2017 and 1.1.2018 cannot be viewed as acquiescence nor will it estop the applicant from challenging the Seniority List as on 1.1.2019. The applicant will not however, be entitled to any other relief because it is settled legal position that right of being considered for promotion according to relevant Rules of Recruitment is a fundamental right but promotion cannot be claimed as a matter of right.

So far as ad-hoc promotion given to respondent no.5 is concerned, necessary direction will have to be issued to respondent no.2. Hence, the order.

ORDER

- (i) Application is allowed in the following terms-
- (ii) Respondent no.2 is directed to re fix the inter se seniority as per Select / Merit list prepared by Selection Committee, within one month from today.
- (iii) Respondent no.2 shall consider afresh the question of promoting eligible Class-4 candidates to Class-3 post of Clerk/Typist in the light of re-fixation of seniority to be made as per this order and take a decision in accordance with Law.
- (iv) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 29/03/2022.

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 : 29/03/2022.
and pronounced on
Uploaded on : 29/03/2022.*