

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.740 OF 2016

(Subject :- Promotion)

DISTRICT : LATUR

Shankar S/o Haridash Jadhav,)
Age 60 years, Occu: Service,)
R/o: Hanuman Tekadi, Ahmadpur,)
Dist. Latur. .)...**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary, Revenue and)
Forest Department, Mantralaya,)
Mumbai – 32.)
(Through Chief Presenting Officer,)
M.A.T., Aurangabad).)
2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
3. **The Collector,**)
Collector Office at Latur,)
Tq. & Dist. Latur.)
4. **T.D. Chavhan**)
Age 40 years, Occu: Service,)
R/o Gategaon)
Tq. and Dist. Latur.)
5. **D.M. Devkate**)
Age 36 years, Occu: Service)
R/o Renapur, Tq. Renapur,)
Dist. Latur.)...**Respondents**

APPEARANCE :- **Shri R.K. Ashtekar, learned Advocate for the Applicant.**
Smt. M.S. Patni, the learned Presenting Officer for the Respondent Nos. 1 to 3.
Shri Swapnil Tawshikar, learned Advocate for the Respondent Nos.4 & 5 is absent.

CORAM :- **JUSTICE A.H. JOSHI, CHAIRMAN**
AND
ATUL RAJ CHADHA, MEMBER (A)

RESERVED ON :- **21.02.2019.**

PRONOUNCED ON :- **28.02.2019.**

O R D E R

[Per : Justice A.H. Joshi, Chairman]

1. Heard Shri R.K. Ashtekar, learned Advocate for the Applicant and Smt. M.S. Patni, learned Presenting Officer for the Respondent Nos.1 to 3. Shri Swapnil Tawshikar, learned Advocate for the Respondent Nos.4 & 5 is absent.
2. Perused the record annexed to Original Application and to the affidavit-in-reply.
3. Applicant's claim is very simple. His claims and record reveal the following:-
 - Point-I:-** He is senior to Respondent Nos.4 and 5.
 - Facts:-** Factually correct.
 - Point-II:-** Applicant has passed Revenue Qualifying Examination.
 - Facts:-** Factually correct.

Point-III:- Applicant being senior is entitled for promotion instead of Respondent Nos.4 and 5.

- Facts:-**
- (a) Applicant has passed Revenue Qualifying Examination (R.Q.E for short) on 5.2.2011 (as seen from page no.21 whereof the Applicant is shown at Sr.No.64).
 - (b) Respondent Nos.4 and 5 have passed the Revenue Qualifying Examination on 19.01.2014 which is evident from page no.16 and names of those persons are seen at Sr.No.4 and 6 in the record at page no.16.

Point-IV:- Applicant claims preferential right under Rules 3 to 6 of the Maharashtra Revenue Qualifying Examination for promotion from the cadre of Talathi to the post of Circle Officer Rules, 1998 (RQE Rules, 1998 for short) and has also placed reliance on the judgment of Hon'ble High Court in Writ Petition No.2521/2015 (copy whereof is at page no.31).

- Facts & Law:-**
- (a) It is not in dispute that Rules 3 to 6 lays down that passing of RQE for promotion is compulsory/mandatory.
 - (b) Effect of failure to pass the examination within time and within prescribed choice is to lose seniority over those who have passed the examination within time and within choice.
 - (c) Respondent Nos.4 & 5 turnout to be junior to Applicant in view of Rule 3 to 6 of RQE Rules, 1998 and judgment in Writ Petition No.2521 of 2015 supra.

4. Passing of sub-service examination is a qualification for confirmation or permanency as Clerk/Talathi. However, for qualifying or for getting exemption in passing the said sub-service examination does not entitle the candidate for having benefit for promotion. However, passing of RQE is

mandatory and passing of examination for getting exemption in sub-service examination is not relevant for getting promotion.

5. From the foresaid discussion, it is evident that though in the provisional list, Respondent Nos.4 and 5 were rightly shown junior to the Applicant, in the final list of promotion, Respondent Nos.4 and 5 have been ranked above the Applicant though the date of passing RQE of Respondent Nos.4 and 5 is shows later in date to that of passing of RQE by Applicant.

6. Hence, Applicant's claim of promotion of Respondent Nos.4 and 5 is contrary to Rule 6 is duly established. Moreover, Applicant's claim is stronger and superior in facts and in law as per the order passed by the Hon'ble High Court in Writ Petition No.2521/2015.

7. In the result, the Original Application succeeds.

8. Promotion order of Respondent No.5 dated 8.8.2016 is quashed and set aside with direction to respondents to promote the Applicant. The Applicant shall be entitled to benefit of deemed date of promotion of the date on which the res. No. 5 Shri D.M. Devkate is promoted.

9. In the facts and circumstances, parties are directed to bear their own costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place:- Aurangabad

Date :- 28.02.2019

SAS. O.A.No.740/2016.Promotion