

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO. 785 OF 2014**

**WITH**

*civil* **APPLICATION NO. 07 OF 2016**

**DISTRICT : NAGPUR**

Harshal s/o Bhaskar Kalikar, )  
Aged 33 years, Occ. Service, )  
R/o. Flat No. 301-A, Plot No.19, )  
Umred Road, Reshimbagh, Nagpur-9. ) **...Applicant**

**VERSUS**

1. State of Maharashtra, )  
Through its Principal Secretary, )  
Co-operative Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Registrar & Commissioner for )  
Co-operation, Central Building, )  
3<sup>rd</sup> Floor, Near Railway Station, Pune-1. )
3. The Divisional Joint Registrar, )  
Cooperative Societies, Nagpur Division )  
Dhanwatey Chambers, Near Bhide Girls )  
High School, Sitabuldi, Nagpur-12. ) **Respondents**

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Shri G.K. Bhusari, learned Advocate for the Applicant.

Shri S.V. Kolhe, learned Presenting Officer for the Respondent.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**Shri J.D. Kulkarni (Member) (J)**

**DATE : 13.02. 2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**J U D G E M E N T**

1. Heard learned Advocate Shri G.K. Bhusari for the Applicant and Shri S.V. Kolhe, learned Presenting Officer for the Respondent.

2. This O.A. has been filed by the Applicant challenging the order dated 18.07.2014 rejecting the representation of the Applicant regarding seniority. The Applicant is also challenging one of the conditions in order of his transfer dated 30.04.2013, by which his seniority has been ordered to be counted from his date of joining service in Nagpur Division.

3. Learned Counsel for the Applicant argued that the Applicant was appointed a Cooperative Officer, Grade II on 14.03.2008 by the Divisional Joint Registrar, Cooperative Societies, Mumbai. The Applicant joined the post and

started working in Mumbai Division. As the Applicant belongs to Yavatmal District, he sought transfer to Nagpur Division. The Respondent No. 2 accepted the request of the Applicant and issued order on 30.04.2013 transferring the Applicant to Nagpur Division. However, the order has the following condition viz.

“विभागीय सह निबंधक, सह संस्था, नागपूर विभागात श्री एच.बी. माळीकर, सहकार अधिकारी श्रेणी २ यांची सेवा जेष्ठता ही त्यांच्या रुजू झालेल्या दिनांका पासून निश्चित केली जाईल.”

4. Learned Counsel for the Applicant argued that he was made to give an undertaking accordingly on 17.07.2013. Learned Counsel for the Applicant argued that the aforesaid condition in the order dated 30.04.2013 is in violation of G.R. dated 21.01.1983 issued by the Respondent No. 4. Learned Counsel for the Applicant contended that this issue has been examined comprehensively by the Principal Bench of the Tribunal. By judgement dated 22.12.2015, it was held in O.A. No. 571/2015 that a Clerk in Cooperation Department, on transfer from Pune Division to Nasik Division would not lose his seniority in Pune Division. He would be placed below Clerks in Nasik Division, who were appointed in that post in the same year in which the Applicant was appointed. This was based on the G.R. dated 21.01.1983 and provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Learned Counsel for the Applicant relied on the judgement of this Tribunal dated 06.01.2017 in O.A. Nos. 545, 761, 802, 805/2015 and 751/2016.

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5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was transferred from Mumbai Division to Nagpur Division by order dated 30.04.2013 on his own request. He has given an undertaking on 17.07.2013 that he will accept his seniority in the cadre of Cooperative Officer, Grade II from the date of his joining in Nagpur Division. Learned P.O. argued that the Applicant cannot be allowed to turn around and claim seniority from his date of appointment by order dated 14.03.2008. The cadre of Cooperative Officer, Grade II is a divisional cadre and any transfer out of division would result in loss of seniority in terms of G.R. dated 03.06.2011.

6. We find that this G.R. dated 03.06.2011 is issued in the context of the Maharashtra Government Servants Regulation of Seniority and Prevention of Delays in Discharge of official Duties Act, 2005 (hereinafter called the Transfer Act). This G.R. has completely ignored the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 4(2)(C) reads as below:-

“(C) the seniority of a transferred Government servant vis-à-vis the Government servants in the post, cadre or service to which he is transferred shall be determined by the competent authority with due regards to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”  
(emphasis provided)

7. It is quite clear that if a Government employee is transferred from one cadre/ post to another, his length of service in earlier post has to be taken into account while fixing his seniority in the new cadre. G.R. dated 03.06.2011 apparently includes transfer from one '**territorial cadre**' to another which means that transfer is from one district or divisional cadre in the same post and in the same department. Another transfer could be on the same post from one department to another. A third type of cadre transfer would be from one post to another in the same or another department. This Tribunal has consistently held that for '**territorial cadres**' i.e. district/ Divisional cadres in the same post and in the same department transfer from one cadre to another would not result in loss of all past service. In such a case, an employee can be placed below all the employees in that post in new cadre who were appointed in the same year as the concerned employee. We are not expressing any opinion about the validity of G.R. dated 03.06.2011 though para 3 (8) appears to be not in consonance of Rule 4(2)(C) of the Regulation of Seniority Rules.

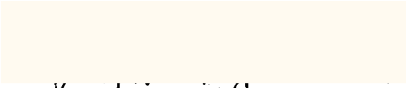
8. The Applicant is, entitled to be given relief as prayed for. He was appointed in the year 2008 as Cooperative Officer, Grade II. In Nagpur Division, he will be placed below all Cooperative Officer, Grade II, who were appointed in the year 2008 and his seniority will be fixed accordingly.

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9. The condition in the order dated 30.04.2013 that the Applicant's seniority in Nagpur Division will be fixed from the date of his joining is quashed and set aside. Consequently, communication of the Respondent No. 3 dated 18.07.2014 is also quashed and set aside.

10. This O.A. is allowed accordingly with no order as to costs.

  
**(J.D. KULKARNI)**  
**MEMBER (J)**  
2017

  
**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**  
2017

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*fh* Date : 13-2-2017

Place : Nagpur

Dictation by : NMN

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