

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 947/2018

Shri. Promod Dagduji Solanke,
aged about 44 years, Occupation: Service,
R/o Govind Vihar, Nagpur Road, Warud,
Tah.Warud, Dist.Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department
Revenue & Forest, Mantralaya,
Mumbai-32
- 2) The Divisional Commissioner,
Amravati, Camp Amravati, Tah &
Dist.Amravati.
- 3) The District Collector, Amravati,
Tah. & Dist.Amravati.
- 4) Shri. A.M. Pawar, Aged about
Adult, Occ.: Service, R/o ward no.2,
Warud, Tah.Warud, Dist.Amravati.
- 5) The Sub-Divisional Officer, Morshi,
Tah. Morshi, Dist. Amravati

Respondents

Shri H.D.Futane, Ld. counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 10th June 2022

JUDGMENT

Judgment is reserved on 7th June, 2022.

Judgment is pronounced on 10 June, 2022.

Heard Shri H.D.Futane, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the Respondents.

2. In this O.A. order dated 24.01.2018 passed by respondent no.3 rejecting objection of the applicant to properly fix his seniority is impugned.

3. Case of the applicant is as follows.

The applicant joined as Talathi on 22.11.1999. His services were confirmed. He passed Sub-Service Departmental Examination on 31.10.2008. He passed Revenue Qualifying Examination on 30.04.2009. He thus, became eligible for being considered for promotional post of Circle Officer / Revenue Inspector. In seniority list of 2013 he was placed at sr.no.166. Though respondent no.4 was junior to him, he was placed at sr.no.116 in the seniority list of 2013. The applicant raised objection to such fixation of seniority before respondent no.3. Instead of correcting the seniority list, respondent no.3, by relying on the uncorrected seniority list, by order dated 28.09.2015, promoted respondent no.4 to the post Circle Officer. Being aggrieved thereby the applicant filed review application (Annexure-1) before respondent no.2.

Respondent no.3 resisted it by filing a reply (Annexure-2). After hearing the parties respondent no.2 allowed the review application by order dated 25.05.2017 (Annexure-3) by granting deemed date of promotion to the applicant i.e. 28.09.2015, that being the date on which respondent no.4 was promoted to the post of Circle Officer. Respondent no.2 further directed respondent no.3 to give benefits of deemed date of promotion, and take necessary steps to correct seniority list to confer benefits of seniority and promotion on the applicant in accordance with Rules. On 03.10.2017 the applicant made a representation (Annexure-4) to respondent no.3 to implement the order of respondent 2 passed in review application. Pursuant thereto respondent no.5 corrected seniority list of 2016 (Annexure-5). However, respondent no.3 did not take other steps directed to be taken by respondent no.2 by the order passed in review application. While preparing a common seniority list for the years 2014, 2015, 2016 & 2017 (Annexure-6) objections raised by the applicant with regard to fixation of his seniority were not considered properly. This resulted in the passing of the impugned order (Annexure-7). Hence, this application.

4. Reply of respondent no.3 is at p.p.38 to 42. According to respondent no.3 seniority list in question was prepared as per the Maharashtra Civil Services (Regulations of Seniority) Rules, 1982, G.R. dated 21.10.2011, Sub-Service Departmental Examination Rules dated

29.10.1997 and Maharashtra Revenue Qualifying Examination for the promotion to the post of Circle Officer (from the cadre of Talathi) Rules dated 04.06.1998.

5. For deciding the issue involved in the matter following details (which are given below in a tabular form) are relevant.

Sr.No.	Relevant Dates	Applicant	Respondent no.4
1.	Date of commencement of service as Talathi	22.11.1999	R-4 02.11.2007
2.	Date of passing Sub-Service Departmental Examination	31.10.2008	31.12.2009
3.	Date of passing Revenue Qualifying Examination	30.04.2009	14.10.2011

6. The respondents have relied on Rule 5 of SSD Rules of 29.10.1997. It reads as under.

५. परीक्षा उत्तीर्ण न झाल्यास होणारे परिणाम - नियम ४ मध्ये विहित केलेल्या कालावधी व संधीमध्ये तलाठी परीक्षा उत्तीर्ण न झाल्यास.

अ) परीक्षा उत्तीर्ण होईपर्यंत किंवा नियम ७ च्या तरतुदीप्रमाणे परीक्षा उत्तीर्ण होण्यास सुट मिळेपर्यंत त्याला तलाठ्याच्या पदावर कायम करण्यात येणार नाही. तलाठ्याच्या वेतनश्रेणीतील पुढील वेतनवाढ काढण्यास परवानगी देण्यात येणार नाही. अशा रितीने रोखून ठेवलेली वेतनवाढ ही तो परीक्षा उत्तीर्ण झाल्याच्या दिनांकापासून किंवा त्याला परीक्षा उत्तीर्ण होण्यापासून नियम ७ अन्वये सुट देण्यात आल्याच्या दिनांकापासून देय

होईल आणि कोणतीही वेतन वाढ रोखून न धरल्याचे समजून पुढील सर्व वेतनवाढी त्याला देण्यात येतील. पुर्वीच्या काळातील थकबाकी त्याला अनुज्ञेय नसेल.

ब) त्याला तलाठी संवर्गातील ज्येष्ठता गमवावी लागेल. म्हणजेच जे तलाठी त्याच्या अगोदर परीक्षा उत्तीर्ण झाले असतील त्या सर्व तलाठ्यांसाठी त्याचा ज्येष्ठताक्रम लागेल. त्या तलाठ्यांना ज्येष्ठ असणा-या आणि त्याच्यानंतर परंतू नियम ४ मध्ये विनिर्दिष्ट केलेल्या कालावधीत आणि संधीमध्ये परीक्षा उत्तीर्ण होणा-या तलाठ्यांच्या खालचा ज्येष्ठताक्रम त्याला देण्यात येईल.

7. The applicant, on the other hand, has relied on Rule 6 of RQE Rules of 04.06.1998. It reads as under.

६. परीक्षा उत्तीर्ण न झाल्यास होणारे परिणाम - १) एखाद्या तलाठी या नियमांमक विनिर्दिष्ट केलेल्या कालावधीत व संधीमध्ये परीक्षा उत्तीर्ण न झाल्यास मंडल अधिकारी या पदावर पदोन्नती देण्याच्या प्रयोजनासाठी जे त्याच्या अगोदर परीक्षा उत्तीर्ण झालेले असतील किंवा ज्यांना परीक्षा उत्तीर्ण होण्यापासून सूट मिळालेली असेल अशा सर्व तलाठ्यांच्या खाली त्याची ज्येष्ठता लागेल. तसेच ज्येष्ठता सुचीत अशा सर्व तलाठ्यास जे तलाठी त्यास वरिष्ठ असतील व जे त्याच्या नंतर परंतू या नियमामध्ये विहित केलेल्या कालावधीत आणि संधीमध्ये परीक्षा उत्तीर्ण होतील किंवा ज्यांना परीक्षा उत्तीर्ण होण्यापासून सूट देण्यात येईल अशा सर्व तलाठ्यांच्या खाली त्यांचा ज्येष्ठता क्रम लागेल.

२) राजपत्राच्या दिनांकापूर्वी मंडळ अधिकारी पदावर ९ पदोन्नती देण्यात आलेले जे तलाठी नियम ५(२) मध्ये प्रस्तावित केल्यानुसार दिनांक ३१ डिसेंबर १९९९ रोजी अथवा त्यापूर्वी उत्तीर्ण होणार नाहीत ते सदर परीक्षा उत्तीर्ण होईपर्यंत अथवा त्यांना सदर परीक्षा उत्तीर्ण होण्यापासून सूट मिळेपर्यंत कोणतीही वार्षिक वेतनवाढ मिळण्यास हक्कदार राहणार नाहीत.

8. It is not in dispute that the applicant did not clear either of the Departmental Examinations in permissible number of chances whereas respondent no.4 cleared both these examinations in permissible number of chances. Question is whether this circumstance would adversely

affect seniority of the applicant vis-à-vis respondent no.4 while considering his case for promotion to the post of Circle Officer.

9. According to learned advocate for the applicant the question involved in the matter (which is framed as above) will have to be answered in the negative in view of judgment dated 19.01.2016 passed by the Bombay High Court (Nagpur Bench) in W.P.No.2521/2015 (Narayan S/o Haribhau Sonune versus State of Maharashtra and 3 others). In this case it is held (In para 6) –

6. It appears that the seniority of a Talathi who fails to pass the Revenue Qualifying Examination within the permissible attempts could be affected in the following three contingencies in view of Rule 6 of the Rules.

1) When a Talathi junior to the Talathi who fails to qualify the examination within the permissible attempts has passed the Revenue Qualifying Examination within the permissible attempts before such a Talathi;

2) When a Talathi junior to the Talathi who has failed to pass the Revenue Qualifying Examination within the permissible attempts has been granted exemption from appearing at the Revenue Qualifying Examination in more than the permissible attempts; and

3) Where a Talathi senior to such Talathi has passed the Revenue Qualifying Examination in permissible attempts after the Talathi who has failed to pass the Revenue Qualifying Examination within the permissible attempts.

10. In the instant case respondent no.4 neither entered the service as Talathi before the applicant nor did he clear either of the Departmental Examinations before the applicant cleared them as would become apparent from the aforementioned table.

In the case of Narayan (Supra) it is further held.

A junior Talathi would be entitled to gain seniority over a senior Talathi only when the Senior Talathi fails to pass the Revenue Qualifying Examination within the permissible attempts and the junior Talathi passes the Revenue Qualifying Examination or is exempted from passing the Revenue Qualifying Examination before the Senior Talathi has passed the qualifying examination in more than the permissible attempts.

In this rulings it is also held-

Since the question of applicability of the third contingency would arise only in case of a Talathi, who is senior to the petitioner, the applicability of the third contingency to the case of the respondent no.4 would not arise as the respondent no.4 was admittedly junior to the petitioner, having been appointed on 12.11.1999 as against the appointment of the petitioner on 15.02.1991.

Aforequoted observations squarely apply to the facts of the case in hand. This application, therefore, deserves to be allowed. Hence, the order.

ORDER

- (i) The impugned order/communication dated 24.01.2018 (Annexure-7) issued by respondent no.3 is quashed and set aside.
- (ii) The applicant is granted deemed date of promotion i.e.28.09.2015 that being the date of which respondent no.4 was promoted to the post of Circle Officer.
- (iii) Seniority list shall be corrected in accordance with this determination, and all benefits flowing therefrom shall be given to the applicant **within 90 days** from the date of this order.
- (iv) No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 10/06/2022.

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 Member (J) .
Judgment signed on : 10/06/2022.
and pronounced on
Uploaded on : 10/06/2022.*