

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 168 of 2021 (D.B.)

Rajendra Vitthalrao Devikar,
aged about 52 years,
Occ. Service (Talathi), R/o Santaji Nagar, Akola,
Tah. & Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Chief Secretary, Revenue and Forest
Department, Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The District Collector, Akola,
Tah. and Dist. Akola.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 169 of 2021 (D.B.)

Ravindra Dayaram Sonone,
Aged about 56 years,
Occ. Service (Talathi), R/o Sudharshan Park Apts,
Tukaram Chowk, Ring Road, Akola, Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Chief Secretary, Revenue and Forest
Department, Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The District Collector, Akola,
Tah. and Dist. Akola.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 170 of 2021 (D.B.)

Omprakash Namdeo Werulkar,
Aged about 52 years, Occ. Service (Talathi),
R/o Sant Sawta Colony, Telhara, Tah. Telhara,
Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Chief Secretary, Revenue and Forest
Department, Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The District Collector, Akola,
Tah. and Dist. Akola.

Respondents.

**Shri S.N. Gaikwad, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for the respondents.**

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 10th February, 2023.

Date of Pronouncement of Judgment : 2nd March, 2023.

COMMON JUDGMENT

(Delivered on this 2nd day of March,2023)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri S.N. Gaikwad, learned counsel for the
applicants and Shri S.A. Sainis, learned P.O. for the respondents.

2. All the applicants are similarly situated and they are seeking the similar relief. Therefore, all these Original Applications are decided by this common Judgment. Grievance of the applicants can be summarized as under –

3. In O.A. No.168/2021, the applicant Rajendra V. Devikar was appointed as a Talathi on 18/05/1994. The applicant joined his service on 20/05/1994. There are two examinations which the Talathi needs to be passed (i) Sub Services Departmental Examination (in short “SSD”) and (ii) Revenue Qualifying Examination (in short “RQE”).

4. The first examination is in relation with the confirmation of the services and second examination is for qualifying for promotion on the post of Circle Officer. The applicant has qualified both the examinations well within the stipulated period and chances, therefore, his seniority has to be counted from his initial date of appointment. The applicant has cleared the SSD Examination on 30/09/1998 and RQE on 31/10/2003. In the seniority list prepared for the year 2014, the applicant was shown in the right position. The name of the applicant appeared in the said seniority list at Sr.No.53 (Annex-A-1).

5. The Government of the Maharashtra framed the rules called as “Maharashtra Revenue Qualifying Examination Rules” (in

short “Rules,1998”). As per these rules, promotion on the post of Circle Officer will be granted only to the Talathis (employees) who have passed this examination well within stipulated period and chances. Rules 6 and 7 of the Rules,1998 prescribed for regulation regarding consequences of examination. At last, submitted that the applicant had passed RQE on 30/10/2003. But, his seniority is counted from the date of 30/10/2003, i.e., from the date of passing RQE. Persons who are exempted from qualifying examination, their seniorities are shown from the date of their initial appointments. Their seniorities ought to have been shown from the date of exemption.

6. The respondents have wrongly published the seniority list of the year 2016. Considering the seniority list of the year 2016, the respondent no.3 has completed the promotion process and the DPC meeting was also conducted on 12/08/2016. The respondents have granted promotion to 26 employees. The applicant made representation to the respondent no.3 for considering him for promotion. The respondent no.3 has rejected the representation. Thereafter an appeal was filed. As per order dated 28/09/2017, the respondent no.2, remanded the matter back for fresh consideration. The respondent no.3 has granted hearing and maintained his earlier decision passed on 17/07/2019. The said order dated 17/07/2019 was challenged before respondent no.2. The applicant has

specifically objected the persons who had got exemption in passing of RQE and who were placed above him in the seniority list. They got exemption in the year 2007 and onwards. But instead of considering their seniorities from 2007, the respondents have considered their initial date of appointment for seniority. These persons who got promotions, though they never passed any examination within the stipulated period and chances. The respondent no.2 has rejected an appeal filed by the applicant by impugned order dated 09/11/2020. The respondent no.2 has not considered the contention of the applicant and only emphasis the fact that the seniority of applicant is proper. The respondent nos.2 and 3 have not decided as to whether employees who got exemptions, after attaining the age of 45 years as to whether their seniority is to be granted from the date of exemption or from the date of initial appointment. It is submitted that the respondents have not considered the grievances of the applicant as per the rules. Therefore, the applicant has approached to this Tribunal.

7. In O.A. No.169/2021, the applicant Shri Ravindra Dayaram Sonone was appointed on the post of Talathi on 21/03/1995. He has passed SSD Examination on 30/09/1998. He has passed RQE on 31/10/2003. Other contentions of the applicant Shri Ravindra Dayaram

Sonone in this O.A., is the same as like contentions in O.A. No. 168/2021.

8. In O.A. No. 170/2021, the applicant Shri Omprakash Namdeo Werulkar was appointed on the post of Talathi on 18/05/1994. He has joined his service on 24/05/1994. The applicant has passed SSD Examination on 30/09/1998 and RQE on 31/10/2003. Other contentions of the applicant Shri Omprakash Namdeo Werulkar in this O.A., is the same as like contentions in O.A. No.168/2021.

9. In all these O.As., the applicants have challenged the promotion and seniority before respondent nos.2 and 3, but their grievances were not considered properly, as per the rules framed by the Government of Maharashtra, dated 04/06/1998. Hence, they approached before this Tribunal for the following reliefs (reliefs are common) –

“ (i) allow the instant O.As. with costs;

(ii) be pleased to quash and set aside the impugned communication dated 17/07/2019 (Annexure-A-5) passed by the respondent no.3,i.e., the District Collector, Akola and also quash and set aside the impugned order dated 09/11/2020 (Annexure-A-8) passed by the Divisional Commissioner, Amravati ;

(iii) further be pleased to direct the respondent no.3 i.e. the District Collector, Akola to correct the seniority list dated 01/01/2016 (Annexure-A-3) and place the applicant above the person who got exemption of 45 years and also direct the respondent nos.2 and 3 to promote the applicant on the post of Circle Officer and also grant him deemed date considering his seniority in correct position;”

10. Heard Shri S.N. Gaikwad, learned counsel for the applicants. He has pointed out the seniority list of the year 2014. He has submitted that all the applicants were correctly shown in the seniority list of the year 2014. He has pointed out the Chart filed by the applicant at Exh-X in O.A. No.168/2021.

11. The learned counsel for the applicants has submitted that Shri S.W. Oimbey, R.N. Bodkhe, R.S.Jadhao etc. have passed RQE in the year 2009, but their seniorities are shown from the date of their initial appointments. One B.S. Thite was given exemption from passing RQE, but his seniority is shown from the date of his initial appointment. He has pointed out the Minutes of meeting dated 12/08/2016 along with Chart Exh-X. Shri P.R. Zadokar had passed RQE on 31/10/2003. The applicants have also passed RQE on 31/10/2003, but their seniorities are shown from 31/10/2003, whereas, the seniority of Shri P.R. Zadokar was shown from the date of his initial appointment. Shri S.W. Oimbey, R.N. Bodkhe, R.S.Jadhao are promoted on the posts of Circle Officer. Shri R.N. Bodkhe and Shri

S.W. Oimbey have passed RQE in the year 2009. The learned counsel for applicants has pointed out the Maharashtra Revenue Qualifying Examination Rules, dated 04/06/1998. He has pointed out the Rules 5 and 6 of Rules, 1998.

12. The learned Counsel for the applicants has pointed out the Judgment of Full Bench of the Maharashtra Administrative Tribunal, Principal Bench at Mumbai in O.A.No.354/2015. He has also pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No. 2521/2015 in the case of **Narayan S/o Haribhau Sonune Vs. State of Maharashtra and others**. The learned Counsel for applicants has submitted that the Talathis who are juniors to the applicants are promoted. Shri P.M. Manjre, Shri M.P. Sarap and Shri B.S. Thite were given exemption after completion of 45 years age, but their seniorities are maintained from the date of their initial date of appointments.

13. Heard Shri S.A. Sainis, learned P.O. for the respondents. He has strongly objected the O.As. He has submitted that appeals are rightly decided by respondent nos.2 and 3. The applicants have lost their seniorities, because, they have not passed RQE examination within four years and three chances. Therefore, seniorities are rightly decided from the date of passing of RQE as per the Rules 5 and 6 of the Rules, 1998. Hence, O.As. are liable to be dismissed.

14. The Chart filed by the learned counsel for the applicants at Exh-X (in O.A.No.168/2021) shows that the applicant Shri Rajendra V. Devikar has joined his service on the post of Talathi on 20/05/1994. He has passed SSD Examination on 30/09/1998. He has passed RQE on 31/10/2003. He is not promoted on the post of Circle Officer, whereas, Shri P.R. Zadokar has joined his service on 26/05/1994. He has passed SSD Examination on 28/02/2001. He has passed RQE on 31/10/2003. He is promoted on the post of Circle Officer on 01/01/2016. Shri S.W. Oimbey was appointed on the post of Talathi on 06/06/1994. He has passed SSD Examination on 31/08/2008. He has passed RQE on 30/04/2009. He is promoted on 01/01/2016 on the post of Circle Officer. Shri R.N. Bodkhe joined his service on the post of Talathi on 29/08/1994. He has passed SSD Examination on 31/08/2008. He has passed RQE on 30/04/2009, but their seniorities are shown from the date of their initial date of joining.

15. Shri P.R. Zadokar, Shri S.W. Oimbey and Shri R.N. Bodkhe are promoted on the post of Circle Officer along with others. The Clause nos. 4 to 8 of the Maharashtra Revenue Qualifying Examination Rules, dated 04/06/1998 are reproduced as under –

“४. परीक्षा उत्तीर्ण होण्याची आवश्यकता - या नियमांच्या तरतुदींच्या अधीन राहून राजपत्राच्या दिनांकाच्या आधी किंवा नंतर नियुक्ती करण्यात आलेल्या तलाठयाला नियम 8

अन्वये परीक्षा उत्तीर्ण होण्यापासून सूट मिळाली नसेल तर मंडल अधिकारी पदावर पदोन्नती मिळण्यास पात्र होण्यासाठी या नियमांच्या तरतुदीनुसार परीक्षा उत्तीर्ण होणे आवश्यक आहे.

५. परीक्षा उत्तीर्ण होण्यासाठी कालावधी व संधींची संख्या. - (१) नियम ३ च्या तरतुदीच्या अधीन राहून राजपत्राच्या दिनांकानंतर नियुक्त करण्यात आलेल्या प्रत्येक तलाठ्यास नियम ८ अन्वये परीक्षा उत्तीर्ण होण्यापासून सूट मिळाली नसेल तर तलाठ्यांच्या पदावरील नेमणुकीच्या दिनांकापासून नऊ वर्षांत आणि तीन संधींमध्ये परीक्षा उत्तीर्ण होणे आवश्यक आहे.

(२) राजपत्राच्या दिनांकापूर्वी नियुक्त करण्यात आलेल्या आणि नियम ३ अन्वये पात्र असणा-या तलाठ्याला नियम ८ अन्वये ही परीक्षा उत्तीर्ण होण्यापासून सूट मिळालेली नसल्यास राजपत्राच्या दिनांकापासून चार वर्षांत आणि तीन संधींमध्ये परीक्षा उत्तीर्ण होणे आवश्यक आहे. तसेच "मंडल अधिकारी" पदावर आधीच पदोन्नती देण्यात आलेल्या तलाठ्यांना "महाराष्ट्र महसूल विभाग मंडल अधिकारी (सेवाप्रवेश)" नियम, १९९६ च्या तरतुदीनुसार उक्त परीक्षा उत्तीर्ण होण्यापासून सूट मिळाली नसेल तर त्याच्या --- तारखेपासून तीन वर्षांच्या आत अथवा ३१ डिसेंबर १९९९ यापैकी जी नंतरची तारीख असेल त्या तारखेपर्यंत मंडळ अधिकाऱ्याच्या पदावरील पदोन्नतीसाठी विहित केलेली उत्तीर्ण होणे आवश्यक असेल.

६. परीक्षा उत्तीर्ण न झाल्यास होणारे परिणाम. - (१) एखादा तलाठी या नियमात विनिर्दिष्ट केलेल्या कालावधीत व संधींमध्ये परीक्षा उत्तीर्ण न झाल्यास मंडळ अधिकारी 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 तलाठ्यास, जे तलाठी त्यास वरिष्ठ असतील व जे त्याच्या नंतर परंतु या नियमामध्ये विहित केलेल्या कालावधीत संधींमध्ये 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 पदोन्नती देण्यात आलेले जे तलाठी नियम ५ (२) मध्ये प्रस्तावीत केल्यानुसार दिनांक ३१ डिसेंबर १९९९ रोजी अथवा त्यापूर्वी परीक्षा उत्तीर्ण होणार नाहीत ते सदर परीक्षा उत्तीर्ण होईपर्यंत अथवा त्यांना सदर

परीक्षा उत्तीर्ण होण्यापासून सूट मिळेपर्यंत कोणतीही वार्षिक वृत्तनवाढ मिळण्यास हक्कदार राहणार नाहीत.

७. परीक्षेला बसण्याकरीता संधी -नियम ६ च्या तरतुदीना अधीन राहून एखाद्या तलाठ्याला परीक्षेला बसण्यासाठी कितीही वेळा संधी मिळू शकेल.

८. सूट -- राजपत्राच्या दिनांकापूर्वी वा नंतर जो तलाठी ४५ वर्षे वयाचा झाला असेल त्या तलाठ्यास परीक्षा उत्तीर्ण होण्यापासून सूट देण्यात येईल.

मात्र नियम ६ च्या तरतुदीनुसार त्याने गमावलेली जेष्ठता अशी सूट मिळाल्यामुळे पूर्ववत होणार नाही.”

16. The Full Bench of the Maharashtra Administrative Tribunal, Principal Bench at Mumbai has held the consequences of not passing the examination as per Rules 4 and 5 given in the Rule 6 of the Rules, 1998 in para-45. It is reproduced as under –

“ 45. The upshot is that, from the above discussion, the following principles emerge and while preparing the seniority list, the observations herein made may be followed and the course of action as hereinbelow be adopted.

“(a) The seniority in the Clerical cadre shall be fixed as per the date of passing the SSD Examination;

(b) In Clerical cadre if the SSD Examination was passed within the time and number of chances, the seniority shall be counted from the date of initial appointment as Clerks and that date in that cadre shall remain forever;

(c) The Clerks who fail to pass SSD Examination within the time and number of chances will lose their seniority as hereinabove discussed. Their

seniority shall be counted from the date of passing SSD Examination or from the date, they would get exemption;

(d) But they will not disturb those Clerks who were already confirmed after passing SSD within the time and chances or were senior to them.

a-i) Now, only those Clerk Typists who have passed SSD Examination after completing three years as such Clerks, would be eligible to appear for RQE.

a-ii) A Clerk Typist confirmed in that cadre in order to pass RQE will have to do so within three chances and within nine years of his continuous service as such Clerk Typist to be able to retain his original seniority.

a-iii) In the event, he were to fail to do so, then there will be a loss of seniority in exactly the same way as in case of Clerk Typist discussed above and he will then become entitled for consideration for seniority only after clearing the said Examination and he will be governed in all respects by (a) to (d) above.”

17. The Hon'ble Bombay High Court, Bench at Nagpur in the case of **Narayan S/o Haribhau Sonone Vs. State of Maharashtra & Ors.**, has held in para-6 as under –

“(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 before the date on which such Talathi passes 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.

The petitioner was appointed on 15.02.1991 and the respondent no.4 was appointed on 12.11.1999. The petitioner had passed the Revenue Qualifying Examination in more than the permissible attempts in April-2002, whereas the respondent no.4 had passed the Revenue Qualifying Examination in permissible attempts in April-2005. Considering Rule 6 vis-a-vis the petitioner and the respondent no.4, it appears that the petitioner cannot be placed below the respondent no.4 in the seniority list for promotion to the post of Mandal Adhikari as per Contingency No.1, as the respondent no.4, who is junior to the petitioner has not passed the Revenue Qualifying Examination, before the petitioner passed the same. The respondent no.4 also cannot be held to be senior to the petitioner as per the second contingency as the respondent no.4 is not exempted from passing the Revenue Qualifying Examination before April-2002 when the petitioner passed the Revenue Qualifying Examination in more than the permissible attempts. 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. None of the contingencies mentioned in Rule 6 of the Rules would have the effect of placing the petitioner below the respondent no.4 in the seniority list maintained for the

purpose of promotion to the post of Mandal Adhikari. The respondent no.4 was admittedly appointed after the appointment of the petitioner and admittedly the respondent no.4 has not passed the Revenue Qualifying Examination in permissible attempts before the petitioner passed the said examination in more than the permissible attempts, in the year 2002. Also, the respondent no.4 has not been exempted from passing the Revenue Qualifying Examination before April-2002. 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. Since in the third contingency, we are concerned with a senior Talathi and since the respondent no.4 was not senior to the petitioner, the respondent no.4 could not have been held to be senior to the petitioner in view of the provisions of Rule 6 of the Rules. The Tribunal did not consider the provisions of Rule 6 in the right perspective while dismissing the original application filed by the petitioner.”

18. All the applicants passed RQE in the year 2003. As consequences of not passing RQE within four years, they are to be shown in seniority list from the date of passing the RQE examination. Rule 5 (2) of the Rules,1998 says that “Talathis who are appointed before the rules of 1998 have to pass RQE within four years and within three chances.” The applicants as well as Shri P.R. Zadokar, Shri S.W. Oimbey not passed their examination within four years. Shri B.S. Thite and Shri P.M. Manjre had been given exemption after completion of 45 years age. But when exemption was granted to

them, are not cleared, but as per Rule 8 of the Rules,1998, the said exemption cannot revive his seniority those who have not passed examination as per Rule 5 and as per the consequences given in Rule 6 of the Rules,1998.

19. It is clear from the Chart Exh-X that Shri P.R. Zadokar had passed RQE examination on 31/10/2003. The applicants in all these O.As., also passed RQE on 31/10/2003. The applicants and Shri P.R. Zadokar were appointed in the year 1994. Shri S.W. Oimbey was appointed in the year 1994. He has passed RQE on 30/04/2009. Therefore, it is clear that Shri P.R. Zadokar and Shri S.W. Oimbey have not passed their RQE within four years as per Rule 5 of the Rules,1998 and therefore their seniorities are to be counted from the date of passing of the said examination. But their seniorities are shown from the date of their initial appointments which is clear from the Minutes of DPC meeting and promotion order. In the Chart, their seniorities are shown. The Chart (P-24) is reproduced as under –

अ.क्र.	तलाठी संवर्गातील कर्मचा-याचे नांव	कार्यरत उपविभाग	नि.उ.जि. यांनी अ.क्र.१ ते २९६ तलाठी संवर्गातील जिल्हा जेष्ठता यादी तपासणी अंतीचा जेष्ठता दिनांक
१.	एम.पी.सरप	उ.वि.अ., अकोट	१८/०५/१९९४
२.	पी.आर.झाडोकार	उ.वि.अ., अकोट	१८/०५/१९९४
३.	जी.टी.राजनकर	उ.वि.अ., अकोट	०१/०१/१९९७

४.	यू.एस.उरकडे	उ.वि.अ., अकोट	३०/१२/२००४
५.	पी.डब्ल्यू कोरडे	उ.वि.अ., अकोट	२३/०३/१९९५
६.	व्ही.के.सौदागर	उ.वि.अ., अकोट	१०/०५/१९९४
७.	एस.डब्ल्यू.ओईंबे	उ.वि.अ., अकोट	२७/०५/१९९४
८.	आर.एन.बोडखे	उ.वि.अ., अकोट	१७/०८/१९९४
९.	कु.विदया मावळे	उ.वि.अ., अकोट	२१/०७/२००९
१०.	एन.जी.पवार	उ.वि.अ., मुर्तिजापूर	१०/१०/२००६
११.	एस.एस.सावळे	उ.वि.अ., अकोट	सुधारित जातीचा प्रवर्ग भ.ज.क.

20. In the said Chart, seniority of Shri S.W. Oimbey and Shri R.N. Bodkhe is shown from 27/05/1994 and 17/08/1994 respectively. Shri S.W. Oimbey and Shri R.N. Bodkhe have passed RQE in the year 2009, i.e., more than four years and therefore as per consequences given in Rule 6 of the Rules,1998, they should not have been given seniority from the date of their initial appointments. Some of the Talathis who got exemption after completion of 45 years, were also shown senior to the applicants. As per Rule 8 of the Rules,1998, those Talathis who have not passed departmental examination, cannot retain their seniorities because of the exemption granted to them. Their seniority is to be counted from the date of exemption.

21. Shri P.R. Zadokar was appointed on the post of Talathi on 26/05/1994. He has passed SSD Examination on 28/02/2001. He has passed RQE on 31/10/2003. The applicant, Rajendra V. Devikar (in

O.A. No.168/2021) was appointed as a Talathi on 18/05/1994. He joined his service on 20/05/1994. He has passed SSD Examination on 30/09/1998. He has passed RQE on 31/10/2003. The applicant Shri Ravindra Dayaram Sonone (in O.A. No.169/2021) was appointed on the post of Talathi on 21/03/1995. He has passed SSD Examination on 30/09/1998 and RQE on 31/10/2003. The applicant Shri Omprakash Namdeo Werulkar (in O.A. No. 170/2021) was appointed on the post of Talathi on 18/05/1994. He has joined his service on 24/05/1994. He has passed SSD Examination on 30/09/1998 and RQE on 31/10/2003. Therefore, it is clear that Shri P.R. Zadokar and applicants are similarly situated employees, but Shri Zadokar is shown above the applicants and his seniority is maintained from the date of his initial appointment and considering his seniority, he is promoted on the post of Circle Officer.

22. Shri S.W. Oimbey and Shri R.N. Bodkhe were appointed on the post of Talathi on 06/06/1994 and 29/08/1994 respectively. They have passed SSD Examination on 31/08/2008. They have passed RQE on 30/04/2009. They have not passed RQE within four years as per the Rule 5 of the Rules of 1998. They have passed RQE after the applicants. Therefore, as consequences given in Rule 6 of the Rules,1998, they should have been shown juniors to the applicants. But Shri S.W. Oimbey and Shri R.N. Bodkhe are shown

seniors to the applicants and they were promoted on the post of Circle Officer. Some of the Talathis were given exemption after completion of 45 years age, but their seniorities are also maintained. Consequence of Rule 8 of the Rules,1998 shows that their seniorities are to be counted from the date of exemption because of the consequences given in Rule 6 of the Rules,1998.

23. The applicants have preferred the representations before respondent no.3. Said representations were rejected. Therefore, appeal was filed before respondent no.2. The said appeal was dismissed and matter was remanded back. Again respondent no.3 passed the order relying on Rules 5 and 6 of the Rules,1998 stating that the applicants have not passed the departmental examination within four years and three chances, therefore, as per Rules 5 (2) and 6 of the Rules,1998, their seniorities are to be counted from the date of passing of RQE, i.e., 31/10/2003. Again appeal was filed. The order dated 17/07/2019 is maintained by respondent no.2. It is pertinent to note that Shri P.R. Zadokar was similarly situated as like the applicants, but his seniority is maintained from the date of his initial appointment and he is given promotion. Shri S.W. Oimbey and Shri R.N. Bodkhe have not passed departmental examination within four years. They have passed RQE on 30/04/2009, but they were given promotion on the post of Circle Officer maintaining their original

seniorities. It appears that the respondents have not decided the claim of the applicants as per the Rules and no explanation is given in the reply filed by the respondents as to how Shri P.R. Zadokar, Shri S.W. Oimbey and Shri R.N. Bodkhe are promoted on the post of Circle Officer by maintaining their seniorities. Hence, the following order –

ORDER

- (i) The O.As are allowed.
- (ii) Impugned order / communication dated 17/07/2019 passed by respondent no.3 and order dated 09/11/2020 passed by respondent no.2 are hereby quashed and set aside.
- (iii) The respondent no.3 is directed to hear the applicants personally and after hearing, pass legal and proper order and correct the seniority list, if required by considering the cases of exempted Talathis / Circle Officers and those who have not passed departmental examination within four years and within three chances, as per Rule 5 and consequences given in Rule 6 of the Rules, 1998.
- (iv) The respondents to consider the seniority of exempted Talathis after completion of 45 years, as per the consequences given in Rules 6 and 8 of the Rules, 1998.

(v) The respondents are directed to consider the claim of applicants for promotion, if they are eligible after correction of seniority list.

(vi) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 02/03/2023.

dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 02/03/2023