MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 87 of 2013 (S.B.)

Rajesh Narayanrao Deshmukh,
Aged about 42 years, Occ. Service (Talathi),
R/o Kedia Plot, Akola, Tq. & District Akola.

Applicant.

Versus

1) The State of Maharashtra
through Revenue Department,
Mantralaya, Mumbai.

2) The Divisional Commissioner,
Amravati, Tq. & District Amravati.

3) The Collector,
Akola, Tq. & Dist. Akola.

Respondents

Shri P.S. Kshirsagar, Advocate for the applicant.

Shri H.K. Pande, ld. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 113 of 2013 (S.B.)

Sanjay Sahebrao Tayade,
Aged about 44 years, Occ. Talathi,
R/o Troshniwal Layout, Akola.

Applicant.

Versus

1) The State of Maharashtra
through Revenue Department,
Mantralaya, Mumbai.

2) The Divisional Commissioner,
Amravati, Tq. & District Amravati.

3) The Collector,
Akola, Tq. & Dist. Akola.

Respondents

Shri P.S. Kshirsagar, Advocate for the applicant.

Shri A.M. Khadatkar, ld. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 114 of 2013 (S.B.)

Shri Gopal Bhaurao Talokar,
Aged about 42 years, Occ. Service,
R/o Vartaman Nagar, Ring Road,
Kaulkhed, Tq. & District Akola.

Applicant.

Versus

1) The State of Maharashtra
through Revenue Department,
Mantralaya, Mumbai.

2) The Divisional Commissioner,
Amravati, Tq. & District Amravati.

3) The Collector,
Akola, Tq. & Dist. Akola.

Respondents

Shri P.S. Kshirsagar, Advocate for the applicant.

Shri H.K. Pande, ld. P.O. for the respondents.

Coram :- **Hon'ble Shri J.D. Kulkarni,**
Vice-Chairman (J).

COMMON JUDGEMENT

(Delivered on this 5th day of January,2018)

Heard Shri P.S. Kshirsagar, ld. Counsel for the applicants and Shri H.K. Pande, ld. P.O. and other P.O. for the respondents.

2. All these applications are being disposed of by this common Judgment since they involve similar question of law.

3. The applicant Shri Rajesh Narayanrao Deshmukh in O.A.No.87/2013 was appointed as Talathi on 18/5/1990. He passed the Duyyam Seva Examination in 2008 and was granted time bound promotion in 2009. He is claiming deemed date of promotion in the year,2002 on completion of 12 years of continuous service as a Talathi.

4. The applicant Shri Sanjay Sahebrao Tayade in O.A. No. 113/2013 was appointed as Talathi on 24/6/1994. He was granted time bound promotion in the year, 2009 and he is also claiming deemed date of promotion from 2006.

5. The applicant Shri Gopal Bhaurao Talokar in O.A.No.114/2013 was appointed as Talathi on 13/8/1992. He was granted time bound promotion in the year,2009. He is claiming deemed date of promotion from 2004 after completion of 12 years continuous service as a Talathi.

6. The common grievance of the applicants is that as per the G.R. dated 29/10/1997 the Rules “Maharashtra Duyyam Seva Divisional Examination (for Talathi Cadre), Rules, 1997 were published. Since the applicants were already in service as Talathi at that time, Rule-4 (2) of the Rules of 1997 is applicable to the applicants and as per this relevant Rule 4 (2) the Talathis who are appointed prior to the date of notification of the Rules, were to pass Duyyam Seva Examination within three years from the date of Notification and within two chances. As per Rule 5 of the Rules,1997 if the Talathi does not clear the examination within stipulated period and given chances, he cannot be confirmed on the post of Talathi and will not be entitled to further increments unless till he passes the examination or till he is exempted.

7. For purposes of convenience the Rule 4 (2) & (5) is given as under :-

¼4½ ijh{kkmRrh.k gks.;kP;k l/kh o dkyko/kh&

¼2½ fu;r fnukdkioh rykBh inkoj fu;Dr dj.;kr vkyY;k iR;d rykB;kyk fu;e 7 vUo;s ijh{kru ikl gks.;kl lV feGkY;k[kjh t fu;r fnukdkikl u rhu o"kkP;k vkr o nku l/kh r ijh{kk ikl gks.k c/kudkjd jkghy-

¼5½ ijh{kkmRrh.k u >kY;kl gks.kkjh ifj.kke & fu;e 4 e/;s fogh r dyY;k dkyko/kh o l/khe/;s rykBh ijh{kkmRrh.k u >kY;kl-

¼v½ ijh{kk mRrh.k gkbi;r fdok fu;e 7 P;k rjrnhiek.k ijh{kk mRrh.k gk.;kl lV feGi;r R;kyk rykB;kP;k inkoj dk;e dj.;kr ;.kkj ukgh- rykB;kP;k oruJ.khrhy i<hy oruok< dk<.;kl ijokux hn.;kr ;.kkj ukgh- v'kk fjrhu jk[ku Boyyh oruok< gh rk ijh{kk mRrh.k >kY;kP;k fnukdkiklu fdok R;kyk ijh{kk mRrh.k gk.;kiklu fu;e 7 vUo;s lV n.;kr vkY;kP;k fnukdkiklu n; gkby vkf.k dk.krhgh oruok< jk[ku u /kjY;kp letu i<hy lo oruok<h R;kyk n.;kr ;rhy- ioh P;k dkGkrhy Fkdckdh R;kyk vuK; uly-

8. According to the applicants, the respondents are obliged to conduct examination every year. The respondent no.3 however did not conduct the examination regularly from year to year from 2001 to 2008. In fact, the examination was conducted for the first time in 1998 and thereafter in February,2001 after notification of the Rules and it was thereafter conducted in the month of August,2008 and December,2009. The applicants therefore could not pass the examination within three years from the date of notification and they did not get chances to appear for the examination since there was no examination in the year,1999 and 2000 and thereafter from 2001 to 2008 the applicants therefore cannot be held responsible for not clearing the examination within stipulated period and in given chances. They have lost opportunity within a time limit. The applicants are therefore claiming deemed date of time bound promotion on the date of completion of continuous service of 12 years on the post of Talathi.

9. In all the O.As. the respondent no.3, i.e., the Collector, Akola has filed the reply-affidavit. The respondent no.3 admitted that it is a matter of record that the respondents were unable to conduct the examination for the year from 2002-2008. It is admitted that the examination was conducted in the year 1998 for the first time after publication of rules vide G.R. dated 29/10/1997 and thereafter in the year 2001 and then in 2008,2009,2010,2011 and 2012. It is admitted fact that the applicants have passed the examination in the first attempt. It is also admitted that the applicants have completed 12 years of continuous service as Talathi on the dates stated by the respective applicants. It is however stated that the applicants got two chances to appear for the examination but they did not appear.

10. From the record it seems that the applicants have preferred appeal before the Divisional Commissioner, Amravati since the deemed date of promotion was not granted to them and the Divisional Commissioner, Amravati passed separate orders in respect of each applicant on 29/09/2012 and rejected the applicants' claim for deemed date of promotion.

11. As regards the applicant Shri Rajesh N. Deshmukh in O.A.87/2013, it is stated by the Divisional Commissioner as under :-

13- Jh- jkt'k ukjk;.kjko n'ke[k ;kpk lokio'k fnukd 18@5@1990 gk vkg- Jh- n'ke[k ;kuk rykBh loxkr dk;e gk.;kl kBh vko';d vlyyh n;e lokfoHkkxh; ijh{kk gh rhu o"kkr vkf.k nku lkfgr mRrh.k gk.k c/kudkjd vkg- R;kulkj Jh- n'ke[k ;kuh

vkDVkcj]2000 e/; mDr ijh{kk mRrh.k gk.k vko';d gkr- ek= lu 2000 e/; mDr ijh{kk ?k.;kr vkyh ukgh- lnj ijh{kk lu 1998 o 2001 e/; ?k.;kr vkyh- **R;keG Jh-n'ke[k ;kuk n;e lok foHkkxh; ijh{kk lu 2001 e/; mRrh.k gk.k vko';d gkr-** ek= Jh-n'ke[k g lu 2001 e/; ifj{kk l cly ukgh r- R;kurj mDr ifj{kk lu 2008 e/; ?k.;kr vkyh- R;koGh Jh- n'ke[k g mDr ifj{kk mRrh.k >ky- Eg.k tp Jh-n'ke[k ;kuh mDr ifj{kk fofgr dkyko/kh r mRrh.k dyyh ukgh-

12. As regards the applicant Shri Sanjay Sahebrao Tayade in O.A.No.113/2013, it is stated by the Divisional Commissioner as under:-

13- Jh- l t ; lkgcjko rk;M ;kpk lokio'k fnukd 24@6@1994 gk vkg- Jh- rk;M ;kuk **rykBh lox kr dk;e gk.;k lkBh vko';d v lyyh n;e lok foHkkxh; ijh{kk gh rhu o"kkr vkf.k nku l/kh r mRrh.k gk.k c/kudkjd vkg-** R;kus lkj Jh-rk;M ;kuh vkDVkcj]2000 e/; mDr ijh{kk mRrh.k gk.k vko';d gkr- ek= lu 2000 e/; mDr ijh{kk ?k.;kr vkyh ukgh- lnj ijh{kk lu 1998 o 2001 e/; ?k.;kr vkyh- **R;keG Jh-rk;M ;kuk n;e lok foHkkxh; ijh{kk lu 2001 e/; mRrh.k gk.k vko';d gkr-** ek= Jh- rk;M g lu 1998 o 2001 e/; ifj{kk l cly ukgh r- R;kurj mDr ifj{kk lu 2008 e/; ?k.;kr vkyh- R;koGh Jh- rk;M g mDr ifj{kk mRrh.k >ky- Eg.k tp Jh- rk;M ;kuh mDr ifj{kk fofgr dkyko/kh r mRrh.k dyyh ukgh-

13. As regards the applicant Shri Gopal Bhaurao Talokar in O.A.No.114/2013, it is stated by the Divisional Commissioner as under:-

13- Jh- xkiky HkkÅjko rGkdkj ;kpk lokio'k fnukd 13@8@1992 gk vkg- Jh- rGkdkj ;kuk **rykBh lox kr dk;e gk.;k lkBh vko';d v lyyh n;e lok foHkkxh; ijh{kk gh rhu o"kkr vkf.k nku l/kh r mRrh.k gk.k c/kudkjd vkg-** R;kus lkj Jh- rGkdkj ;kuh vkDVkcj]2000 e/; mDr ijh{kk mRrh.k gk.k vko';d gkr- ek= lu 2000 e/; mDr ijh{kk ?k.;kr vkyh ukgh- lnj ijh{kk lu 1998 o 2001 e/; ?k.;kr vkyh- **R;keG Jh-rGkdkj ;kuk n;e lok foHkkxh; ijh{kk lu 2001 e/; mRrh.k gk.k vko';d gkr-** ek= Jh- rGkdkj g lu 2001 e/; ifj{kk l cly ukgh r- R;kurj mDr ifj{kk lu 2008 e/;

?k.;kr vkyh- R;koGh Jh- rGkdkj g mDr ifj{kk mRrh.k >kyh- Eg.k tp Jh- rGkdkj ;kuh mDr ifj{kk fofgr dkyko/kh r mRrh.k dyyh ukgh-

14. From the aforesaid facts, it will be clear that it is not disputed that all the applicants were already serving as Talathi on the date of notification of rules of 1997 and therefore as per rule 4 (2) the applicants were to clear examination within three years from the date of notification of the rules and within two chances. The rules are notified on 29/10/1997. The first examination is admittedly conducted in the year 1998 and the second examination was conducted in the year 2001. Thus prior to completion of three years from the date of notification, the examination was conducted only on two occasions, i.e., in the year 1998 and 2001. So far as the applicant Shri Rajesh N. Deshmukh is concerned, it seems that as per rules he was to pass the examination within three years, i.e., on or before 2000 and within two chances. However he did not get two chances prior to three years, since only one examination was conducted that too in the year 1998 prior to 2000. The second examination was conducted in 2001, i.e., after completion of three years, but the applicant did not appear for that examination and thereafter the examination was conducted in the year 2008. The applicant Shri Deshmukh therefore did not get two chances within three years from the date of notification. In the similar way the applicants Shri Sanjay Sahebrao Tayade and Shri Gopal

Bhaurao Talokar also did not get the requisite chances within three years from the date of notification of the rules.

15. The learned counsel for the applicants has placed reliance on the Judgment delivered by the Hon'ble Apex Court in the case of **State of Maharashtra Vs. Jagannath Achyut Karandikar reported in AIR 1989, SC 1133**. In the said Judgment it has been held as under:-

> *"In the instant case the State Government prescribed departmental examinations as a condition precedent for promotion to the cadre of Superintendents. The examination was required to be conducted every year, and the officials have to pass within the stipulated period. Those who could not pass within the time frame would lose their seniority but they will be promoted as and when they qualify themselves. The Government for some reason or the other could not hold the examinations every year. The Government, however, did not pass any order extending the period prescribed for passing the examinations, nor promoted the seniors subject to their passing the examination. The juniors who qualified themselves were promoted overlooking the case of seniors and seniors were only promoted upon their passing the examination. In the cadre of Superintendents, however, the Government revised the seniority list so as to reflect the rankings in the lower cadre irrespective of the date of promotion.*
>
> *Held, the person who has not exhausted the available chances to appear in the examination could not be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalize a person for the default of the Government to hold the examination every year. If the examination was not held in any year, the person who has not exhausted all the permissible chances has a right to have his case considered for promotion even if he has completed 9 years' service.*

The Government instead of promoting such persons in their turn made them to wait till they passed the examination. They were the persons falling into the category of "Late Passing". To remove the hardship caused to them the Government restored their legitimate seniority in the promotional cadre. Therefore there was nothing improper or illegal in the action of the State Government."

16. The learned counsel for the applicants also placed reliance in the Judgment delivered by this Tribunal at Mumbai Bench in O.A.No. 166/2016 in the case of **Shri Avinash Sitaram Garware Vs. The District Collector, Thane having office at Thane,** delivered on 15/12/2016, wherein similar view has been taken.

17. The learned P.O. however placed reliance on the Judgment of Full Bench of this Tribunal in O.A. No. 354/2015 in the case of **Shri Mahesh Mukund Sapre & Ors. Vs. State of Maharashtra & Ors.**, delivered on 02/02/2017. In the said Judgment the Rules of 1997 so also the consequences of not passing the departmental examination were considered.

18. I have perused all the Judgments on which the learned counsel for the applicants and learned P.O. has placed reliance as stated above.

19. It is material to note in the present cases the only material question is whether the applicant was responsible for not getting requisite chances to clear the examination as required as per the rules

of 1997. Admittedly in these cases the respondent no.3 did not conduct the Duyyam Seva Examination annually. From 1997 to 2007 only two examinations were conducted, i.e., in September,1998 and October,2001. Because of this, the applicants could not get requisite chances within three years and therefore for that reason the applicants cannot be held responsible. Admittedly, the applicants have cleared the examination within the requisite chances on getting opportunity to pass the examination and therefore the applicants cannot be held responsible for clearing the examination as per rules and since they have cleared the examination within stipulated chances, they should have been given deemed date of promotion on completion of 12 years of continuous service. I, therefore, pass the following order :-

ORDER

(i) The O.A.No. 87/2013 is allowed. The impugned order dated 29/09/2012 passed by respondent no.2 stands quashed and set aside. The respondent nos. 2&3 are directed to grant time bound promotion to the applicant from 2002 instead of 2009.

(ii) The O.A.No. 113/2013 is allowed. The impugned order dated 29/09/2012 passed by respondent no.2 stands quashed and set aside. The respondents are directed to grant time bound promotion to the applicant from 2006 instead of 2009.

(iii) The O.A.No. 114/2013 is allowed. The impugned order dated 29/09/2012 passed by respondent no.2 stands quashed and set aside. The respondents are directed to grant time bound promotion to the applicant from 2004 instead of 2009.

(iv) In peculiar circumstances parties to bear their own costs.

Dated :- 5/1/2018. **(J.D. Kulkarni)**
Vice-Chairman (J).

dnk.