

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.285 OF 2018

WITH

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DISTRICT : WARDHA

Shri Prashant Madhukarrao Ekapure,)
Aged about 50 years, Talathi, Rohna Tahsil Arvi,)
District Wardha)..Applicant

Versus

1. State of Maharashtra,)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. The Collector, Wardha,)
Tahsil and District Wardha)..Respondents

WITH

ORIGINAL APPLICATION NO.286 OF 2018**DISTRICT : WARDHA**

Shri Datta Gangadharrao Tadas,)
Aged about 52 years, Talathi, R/o Vivekanand Nagar,)
Near Yamuna Lawn, Wardha 442001)..Applicant

Versus

1. State of Maharashtra,)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. The Collector, Wardha,)
Tahsil and District Wardha)..Respondents

Shri M.R. Rajgure – Advocate for the Applicants

Shri A.M. Khadatkhar – Presenting Officer for the Respondents

CORAM : Shri Shree Bhagwan, Vice-Chairman
Shri A.D. Karanjkar, Member (J)

RESERVED ON : 8th August, 2019

PRONOUNCED ON : 21st August, 2019

PER : Shri A.D. Karanjkar, Member (J)

J U D G M E N T

1. Heard Shri M.R. Rajgure, learned Advocate for the Applicants and Shri A.K. Khadatkhar, learned Presenting Officer for the Respondents.

2. In both these Original Applications the applicants are challenging fixation of their seniority. The applicants are also claiming other consequential benefits, such as promotion and deemed date.

3. The applicant in OA No.285 of 2018 Shri Prashant Madhukarrao Ekapure was appointed as Talathi in Wardha Revenue Sub Division by the Sub Divisional Officer, Wardha vide order dated 7.9.1996. Shri Ekapure joined service on 11.9.1996. Shri Ekapure requested inter sub divisional transfer and on his own request Shri Ekapure was transferred from Wardha Revenue Sub Division to Arvi Sub Division vide order dated 23.5.2007.

4. It is the case of applicant in OA No.286 of 2018 Shri Datta Gangadharrao Tadas that he joined service on 5.10.1994 as Talathi vide order dated 14.9.1994. Shri Tadas was appointed in Revenue Sub Division, Arvi by the Sub Divisional Officer, Arvi. Shri Tadas thereafter requested for inter sub division transfer and accordingly he was transferred to Revenue Sub Division, Wardha.

5. It is submission of the applicants that the seniority list was published on 1.1.2006. In this seniority list the name of applicant Shri Ekapure was at Sr. No.121 and name of applicant Shri Tadas was at Sr. No.82. It is submitted that the second seniority list was published in the year 2014 and in this list applicant Shri Ekapure was at Sr. No.90 and applicant Shri Tadas was at Sr. No.152. There were complaints regarding fixation of seniority and consequently the seniority list was fixed and the seniority list was published. It is contended that in the seniority list dated 1.1.2015 to 1.1.2017 applicant Shri Ekapure was placed at Sr. No.188 and Shri Tadas was placed at Sr. No.231. It is contention of both the applicants that the respondents have committed error in fixing the

seniority and the Talathis, who joined service after the applicants, were placed above the applicants in the seniority.

6. In addition, it is the contention of applicant Shri Tadas that though he passed the departmental examination in 1998 and Revenue Qualifying Examination on 20.4.2000, in the seniority list it was wrongly mentioned that the applicant first passed the Revenue Qualifying Examination and then he passed the departmental examination. It is also contended that educational qualification of Shri Tadas is wrongly mentioned in the seniority list. It is contended that the respondents have committed error in fixing seniority of both the applicants and rejected representation of the applicants, therefore, directions be given to the respondent no.2 to fix seniority of both the applicants as per law and as per order dated 10.3.2017 passed by this Tribunal at Nagpur Bench in OA No.749 of 2015 Shri Dnyaneshwar S. Kapkar Vs. The State of Maharashtra & Anr.

7. Both the Original Applications are opposed by respondent no.2. Reply of respondent no.2 is at page 73 of the paper book. It is contended by respondent no.2 that as both the applicants requested for inter sub division transfer, therefore, they have lost their seniority and therefore they were placed in the bottom while fixing the seniority of that Sub Division. It is submitted that this action of the respondent no.2 is based on GR dated 20.9.1990. It is submitted that the GR dated 20.9.1990 is very specific. It is mentioned in the GR that after the transfer the concerned Talathi would lose his seniority. It is submitted that even in the transfer order this fact was specifically mentioned, therefore, the applicants are now stopped from claiming seniority, so there is no substance in both the OAs.

8. We have heard oral submissions on behalf of the applicants and on behalf of the respondents. The applicants have placed reliance on the

order dated 10.3.2017 passed by this Tribunal at Nagpur Bench in OA No.749 of 2015 Shri Dnyaneshwar S. Kapkar Vs. The State of Maharashtra & Anr. After going through the judgment in OA No.749 of 2015, it is seems that Shri Kapkar, Talathi, who was appointed in Wardha Sub Division in 1994 requested for inter sub division transfer and he was transferred to Samudrapur Sub Division; his seniority was fixed and it was challenged by Shri Kapkar in OA No.749 of 2015. In that matter the Division Bench of MAT, Nagpur considered the provisions of Rule 4(2)(c) of the MCS (Regulation of Seniority) Rules, 1982 and has observed in para 5 as under:

"This Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 provides that past service is a relevant factor for determining seniority in the new cadre when a person is transferred from one cadre of post to another cadre or post. Respondents are relying on GR dated 20.9.1990, and another GR dated 3.6.2011, which has been issued after the order of transfer of the applicant was issued, and therefore, may not be relevant in the present Original Application. Obviously, any GR cannot be issued in contravention of the statutory rules. In the present case, statutory rules clearly provide that if an employee is transferred from one cadre or post to another cadre or post, he does not lost his past service. In fact, his past service is to be considered while determining his seniority in the new cadre/post. Any undertaking given by the applicant contrary to the rules will not be binding on him. In fact, the Government should seriously give a rethink to the G.Rs. dated 20.9.1990 and 3.6.2011 to bring them in consonance with the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982."

(Quoted from page 71 of OA.285/18)

9. In the previous proceedings the judgment delivered by Principal Bench of MAT, Mumbai on 13.2.2017 in OA No.805 of 2015 was also considered. Thus, in both the matters it is held that transferred

Government servant be given seniority in the cadre in the year of their appointment and at the most they can be placed at the bottom below other Government servants appointed in the same cadre in that year and accordingly in OA No.749 of 2015 the respondent no.2 was directed to make necessary correction in the seniority list published on 1.1.2015 and fix the seniority of Shri Kapkar. In view of this settled position, we are of the firm view that both the applicants are also entitled for the same relief. In the result, we pass the following order.

ORDER

The respondent no.2 is directed to fix seniority of both the applicants considering the respective dates on which they passed the departmental examination and Revenue Qualifying Examination and as per the directions issued in O.A. No.749/2015. The respondent no.2 is directed to comply this order within three months from the date of this order. Hence, OAs are disposed, no order as to costs.

(A.D. Karanjkar)
Member (J)
21.8.2019

(Shree Bhagwan)
Vice-Chairman
21.8.2019

Dictation taken by: S.G. Jawalkar.