

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.719 OF 2015**

**DISTRICT : SANGLI**

Shri Santosh Sadashiv Bute, )  
At Post Visapur, Tal. Tasgaon, District Sangli 416314 )..Applicant

Versus

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

Shri Sandeep Dere – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)  
RESERVED ON : 4<sup>th</sup> February, 2019  
PRONOUNCED ON : 7<sup>th</sup> February, 2019  
PER : Shri P.N. Dixit, Member (A)

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

1. Heard Shri Sandeep Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. During the hearing, the learned Advocate for the Applicant mentioned that he is waiving his prayers at para 10(b) and 10(d). The Applicant has thus restricted this OA to the prayer 10(c), which reads as under:

*“10(c) This Hon’ble Tribunal may be pleased to direct the Respondent to consider the case of Applicant for exemption in the light of Government Resolution dated 24.8.1976.”*

(Quoted from page 14-15 of OA)

3. The Applicant was appointed to the post of Clerk on 17.11.2008 in the office of Respondent no.2 in the Revenue Department. The Applicant passed the Maharashtra Sub Service Departmental Examination on 15.2.2013. In the seniority list published by Respondent no.2 on 28.7.2015, the gradation of the Applicant was shown downgraded as the Applicant did not pass the said examination in the stipulated years. Feeling aggrieved by his downgrading the Applicant has moved this OA on the following grounds:

*“7.3 The Applicant further states that though it appears that the Rule of 1988 in form of GR are applicable for confirmation of a Government servant in service after passing the said Departmental Examination, but in fact the consequences of non passing the said examination resulted in loss of seniority in case of employee who fails in the said examination as per Rule 4(a) of GR dated 18.1.1988. Therefore these Rules are not merely a Rule of confirming Government servant in a service but same violates other consequential service benefits.*

*7.4 That the Respondent has ignored the policy decision taken by the State of Maharashtra vide GR dated 27.8.1976, issued by GAD, which categorically states that granting one additional benefit of exemption, in the sense of additional year and chance. Therefore, if provisions of this GR are read all together it appears that the Applicant is entitled for additional benefit as per the provisions of the GR.*

7.5 *That the Respondent ought to have taken the conscious decision and thereby extending benefits in case of the present Applicant, the consequences of non passing examination does not be restricted to the gradation but it has affect to loss of seniority and other service benefits therefore the provisions of GR are not only applicable without relying on provisions of GR dated 27.8.1976.*

7.6 *That the Respondents are not authorized to take action against the Applicant other than Rule 5 as the said Rule authorizes the Respondent to take action against the Rule 5 and in the said manner Respondent has taken action against the present Applicant as per Rule 5(2) of the said Rules.*

7.7 .....

7.8 *That the impugned Rules are arbitrary and has no authority to alter the date of appointment as it was not provided by the Rules itself. Therefore, the said Rules are required to be declared ultra virus to the extent of Rule 4(d) of Rules 18.1.1988.”*

(Quoted from page 12-13 of OA)

4. During the hearing, the Ld. Advocate for the Applicant claimed that the GR dated 24.8.1976 should be extended to him.

5. The Respondent no.1 and 2 have filed common affidavit and denied the grounds mentioned by the Applicant. The Respondents in their affidavit states as under:

“2. *At the outset I say and submit that rules annexed at Exhibit E at page 88 of the paper book are related to maintain seniority in the cadre of Clerk. Unless the said examination is passed, no Clerk appointed can be confirmed in the services, therefore, it cannot be said that said rules are regarding promotion. So far as promotion is concerned there is another set of rules namely Revenue Qualifying Service Rules. Therefore, Applicant cannot claim promotions on the basis of Rules of 1988 namely, Maharashtra Sub Service Departmental Examination Rules, 1988.*

- 2.1 *I say and submit that Applicant had relied on the GR dated 24.8.1976 and 16.11.2006. These GRs are relating to promotion after passing Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk Typist Rules 1999 and not in respect of maintaining inter se seniority list. Therefore, these GRs at Exhibit F are of no use so far as the Applicant's inter se seniority list in the cadre of clerk is concerned.*
- 2.2 *I say and submit that similar issue regarding inter se seniority of Clerk was under consideration of this Hon'ble Tribunal in OA No.587 of 2008 and this Tribunal by order dated 23.6.2009 passed a detailed judgment and action of the present Respondent is in consonance with the said judgment.*
20. *With reference to para 6.14, I say and submit that the provisions mentioned in rule 5(2) by amended rules is very clear and unambiguous. It is specifically mentioned in the rule itself that clerk who does not pass the examination within a stipulated period and chances, he shall lose the seniority in the cadre of clerk i.e. to say he will rank below of such clerk who have passed the examination before him and also below of those who are senior of such clerk below whom he is placed and who may pass the examination after him but within the period and chances specified in clause (a) of rule 4. Therefore, the contents mentioned in this para are not correct and hereby denied.*
21. *With reference to para 6.15, I say and submit that the contents of this para are not correct and misinterpreted by the Applicant. MCS (Regulation of Seniority) Rules, are made in the year 1982 and the criteria that, no clerk shall be confirmed unless passing of the said examination is there from the inception the said rules was not amended. Therefore, all the contents of this para are hereby denied.*
29. *With reference to para 7.4, I say and submit that the contents of this para are not correct. In GR dated 24.8.1976, it is specifically mentioned that it is applicable to the government servant belonging to backward class in the matter of promotion to the higher posts in Government offices. Therefore, in case of present Applicant the said GR is not applicable. GR dated 24.8.1976 is only applicable for qualifying test. Therefore, Applicant is not entitled for additional benefit as per provisions of said GR.*

30. *With reference to para 7.5 I say and submit that as stated in para 7(4), the provisions of GR dated 24.8.1976 are not applicable to the case of Applicant. Therefore, the Applicant is not entitled for benefit of extension of time.”*

(Quoted from page 95-103 of OA)

6. The Respondents pointed out that the OA is without any foundation and deserves to be dismissed.

7. Issues for consideration:

- (i) *Whether the Respondents have interpreted and implemented the GRs for seniority properly?*
- (ii) *Whether there is any arbitrariness in implementation of the GRs.?*

Discussion and findings:

8. We have examined the rules called the Maharashtra Sub-Service Departmental Examination Rules, 1988. The relevant portion of the same reads as under:

- “4. *Period and number of chances.-(a) A Clerk recruited in the Revenue Department shall be required to pass the Sub Service Departmental Examination within four years of his date of recruitment and in three chances;*
- (b) *The Collector may, at his discretion, grant any deserving person an additional chance and an extension of the period prescribed for passing the examination up to two years;*
- (c) *Seniority among the Clerks for the purpose of confirmation shall be determined by the date of their appointment as Clerk, if they pass the examination within the period and chances prescribed by the date of their passing the otherwise, the seniority shall be determined by the date of their passing the*

*examination or date of exemption from passing the examination as the case may be.*

*(d) No Clerk shall be confirmed, unless he has passed or has been exempted from passing the examination.*

5. *Consequences of failure to pass the examination.- If a Clerk does not pass the examination within the period and chances prescribed under Rule 4, he shall not be allowed to draw the increment until he passes the examination or is exempted from passing the same:*

*Provided that, on passing the examination, in the subsequent attempt or on being exempted, the Clerk shall draw the increment which was withheld and all subsequent increments shall accrue to him, as if no increment was withheld. He shall not, however, be entitled to arrears.”*

*(Quoted from page 89 of OA)*

9. These rules were further amended on 20.7.1993 and the same reads as under:

*“2. After rule 3 of the Maharashtra Sub Service Departmental Examination Rules, 1988 (hereinafter referred to as “the Principal Rules”), the following Rule shall be inserted, namely:-*

*“3A Consequences when examination not held.- If for any reason, the examination is not held in a year, that year shall be excluded in computing the mentioned in rule 4.”*

4. *Rule 5 of the principal rules shall be renumbered as sub-rule (1) thereof and after sub-rule (1) so renumbered, the following sub rule shall be added, namely:-*

*(2) If a Clerk does not pass the examination within the period and chances prescribed in clause (a) of rule 4, he shall loss seniority in the cadre of Clerks, that is to say, he will rank below all such clerks who have passed the examination before him and also below all those who are senior to such clerks below whom he is placed and who may pass the examination*

*after him but within the period and chances specified in clause (a) of rule 4.”*

(Quoted from page 91 of OA)

10. The examination of the above rules makes it clear that a person who is appointed as a Clerk in the Revenue Department has to pass the prescribed examination called Sub Service Departmental Examination within the period and chances as provided in the rules. It further clarifies that he shall lose seniority in the cadre of Clerk and he will rank below all such Clerks who have passed the examination before him. The Applicant was appointed in the year 2008. He did not plead that he did not get the prescribed chances for appearing in the examination. Even after availing all possible chances he could not pass the said examination till the year 2013. Accordingly he was suitably placed below the candidates who had completed the examination successfully.

11. Ld. Advocate for the Applicant contended during hearing that he should have been given relief as per the GR dated 24.8.1976 (Exhibit F page 92 of OA). Though there is no mention in OA that he belongs to BC, even then, perusal of this GR shows that it pertains to Departmental Examination for qualifying for promotion to higher posts – concession to B.C. candidates for passing. It clarifies that:

“.....  
*The Government has now decided that in the Departmental Examination Rules for promotion to the higher posts applicable to the Government Servants, both gazette and non-gazetted, in all the Government Offices, a provision should be made therein to the effect, that the candidates from (i) Scheduled Castes, (ii) Scheduled Tribes and (iii) Denitrified Tribes and Nomadic Tribes, should be given one more chance and one more year, to pass the Departmental Examination, than is permissible under the Rules to other candidates.”*

(Quoted from page 92 of OA)

Thus, it is not applicable to the Applicant in the prayer in this OA, as he did not pass the prescribed examination.

12. We, therefore, feel that no interference is called for in the reasoned and legal order issued by the Respondent No.2.

13. Original Application is devoid of any merit and, therefore, dismissed without costs.

**(P.N. Dixit)**  
**Member (A)**  
**7.2.2019**

**(A.H. Joshi, J.)**  
**Chairman**  
**7.2.2019**

Dictation taken by: S.G. Jawalkar.