

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.330 OF 2020

DISTRICT:- AURANGABAD

1. Dilip S/o Madhukar Tribhuwan,
Age : 38 years, Occu. Service
(as Clerk-Typist in O/o S.D.O.,
Vaijapur), R/o : Swami Samarth
Nagar, Ladgaon Road,
Vaijapur, Dist. Aurangabad.
2. Karansingh Pannalal Jarwal,
Age : 28 years, Occu. Service
(as Clerk-Typist in O/o S.D.O.,
Kannad), R/o : Pradhayapak Clny.,
Kanad, Dist. Aurangabad.
3. Nandkishore Kacharu Ghuge,
Age : 29 years, Occu. Service
(as Clerk-Typist in Tehsil Office,
Sillod), R/o : Shivaji Nagar.,
Sillod, Dist. Aurangabad.
4. Santosh Sambhaji Magare,
Age : 35 years, Occu. Service
(as Clerk-Typist in Tehsil Office,
Gangapur), R/o : Raje Sambhaji Clny.,
T.V. Centre, Dist. Aurangabad.
5. Shashank Chandrapasad Jaiswal,
Age : 29 years, Occu. Service
(as Clerk-Typist Collector Office, A'bad),
R/o : H. No. 444, Besides Metro Sweets,
Chawani, Aurangabad.

.. APPLICANTS

VERSUS

1. The State of Maharashtra,
Through its Addl. Chief Secretary,
[Revenue], Revenue & Forest Dept.,
M.S., Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad.
3. The Collector, Aurangabad.
4. Mr. Pramod Keshavrao Huse,
Clerk-Typist, Tehsil Office,
Gangapur, Dist. Aurangabad.
5. Mr. Vilas Maganrao Patil,
Clerk-Typist,
Tehsil Office Gangapur,
Dist. Aurangabad.
6. Mr. Gulab Rupa Pawar,
Clerk-Typist,
Tehsil Office Gangapur,
Dist. Aurangabad.
7. Mr. Dilipsingh Laxmansingh Pawar,
Clerk-Typist,
Tehsil Office, Aurangabad,
Dist. Aurangabad.
8. Mr. Bharat Motilal Zurawat,
Clerk-Typist,
Tehsil Office, Vaijapur,
Dist. Aurangabad.
9. Mr. Ganraj Sanjay Natha,
Clerk-Typist, Collector Office, Aurangabad,
Dist. Aurangabad.

10. Mr. Rameshwar Dagduji Davhale,
Clerk-Typist,
Tehsil Office, Aurangabad,
Dist. Aurangabad.
11. Mr. Nivrutti Balnath Dawri,
Clerk-Typist,
Tehsil Office, Soygaon,
Dist. Aurangabad.
12. Smt. Shobha Rangnath Tak,
Clerk-Typist,
Collector Office, Aurangabad,
Dist. Aurangabad.
13. Mr. Sitaram Ramdevrao Shikare,
Clerk-Typist, Maratwada Mahasul
Prashikshan Prabodhini, Aurangabad.
14. Mr. Suresh Gangaram Sadavarte,
Clerk-Typist,
Tehsil Office, Phulambri,
Dist. Aurangabad.
15. Mr. Sanjay Baburao Tale,
Clerk-Typist,
Tehsil Office, Soygaon,
Dist. Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

: Shri S.J. Rahate, learned counsel for the respondent Nos. 4, 5, 6, 9, 10, 12, 14 & 15 **(absent)**.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

RESERVED ON : 22.04.2022

PRONOUNCED ON : 05.05.2022

ORDER

[Per : Shri Bijay Kumar, Member (A)]

1. This Original Application has been filed by five co-applicants on 27.08.2020 invoking provisions of s. 19 of the Administrative Tribunals Act, 1985 challenging final seniority list of clerk-typist as on 01.01.2020, published on 17.07.2020. The applicants had also filed a miscellaneous application no. 220/2020 for grant of leave to sue jointly which was granted by this Tribunal vide oral order dated 07.09.2020.

2. **Issue of Availing Alternative Remedy:-** The applicants have enclosed copies of two representations made by the applicants before the respondent authorities before filing of

this original application. However, on examination of the copy of representations dated, 24.02.2020, it appears to have been made only by the Applicant no. 5 along with others who are not applicants in the present O.A. Likewise, another representation dated 06.07.2020 appears to have been signed only by respondent no. 4 along with some other clerk cum typists who are not the applicants in this matter. Therefore, prima facie, it is not established that other three applicants have exhausted alternative remedy available to them. However, the issue under dispute being one and the same even if one or two of the applicants have raised them for adjudication, we had proceeded with hearing of the original application as such.

3. The applicants have alleged that seniority of 12 private respondents has been fixed wrongly, thereby causing injustice to the applicants. Accordingly, they have submitted true copies of such pages of seniority list of clerk-typist as on 01.01.2020 which contain names and particulars of respondent no. 4 to 15. To substantiate their allegations the applicants have claimed that the provisions of the

Maharashtra Sub-Service Departmental Examination Rules, 1988 read with the *Maharashtra Sub-Service Departmental Examination (Amendment) Rules, 1993* have not been followed for determining seniority of clerk-typist upon confirmation in the said post. The applicants have also claimed that the provisions of the *Maharashtra Revenue Qualifying Examination for Promotion to the post of Awal Karkun from the cadre of Clerk-Typist Rules, 1999* have also not been followed while determining seniority of the respondents for promotion to the post in the cadre of Awal Karkun. The applicants have further claimed that the seniority list for clerk-typist as on 01.01.2020 has been prepared against the rules settled by this Tribunal's Principal Bench in O.A. No. 354 of 2015, decided on 02.02.2017 and also in violation of guidelines issued by circular issued by the General Administration Department bearing No. परिक्षा २०१२/प्र.क्र. ३/१७, मंत्रालय, मुंबई-३२३ dated 13.09.2012.

4. **Relief Prayed for by the Applicants**- reliefs prayed for by the applicants in terms of para 13 of the Original Application are reproduced verbatim as follows.

"A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned final Seniority List dated 17/7/2020 (Annex.A-10) of the cadre of Clerk-Typists prepared & published by Resp. No. 3 to the extent it counts seniority of persons like Resps. No. 4 to 15 w.e.f. the date of their respective entry in the cadre of Clerk-Typists instead of counting it from the date of their getting exemption from passing the SSD Examination upon completion of the age of 45 years.

B) This Original Application may kindly be allowed thereby directing the Resp. No. 3 to recast the impugned final Seniority List dated 17/07/2020 (Annex. A-10) of the cadre of Clerk-Typists by assigning proper & appropriate placements to Resps. No. 4 to 15 and persons like them w.e.f. the date of their getting exemption from passing the SSD Examination upon attaining the age of 45 years.

C) This Original Application may kindly be allowed thereby further directing the Resp. No. 3 to effect all further promotions to the cadre of Awwal Karkoons only on the basis of such Seniority List which would be prepared upon grant of Prayer Clause "B" hereinabove.

D) This Original Application may kindly be allowed thereby directing the Respondent Authorities to extend all the consequential service benefits to the applicants to which they would all become entitled in view of grant of Prayer Clauses "A" to "C" in their favour.

E) Costs of this Original Application may kindly be awarded to the applicants.

F) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.

INTERIM RELIEF

G) Pending the admission, hearing and final disposal of this Original Application the Respondent Authorities in general and the Resp. No. 3 in particular may kindly be restrained from effecting any promotions from the cadre of Clerks / Clerk-Typists to the cadre of Awwal Karkoons on the basis of the impugned final Seniority List dated 17/07/2020 (Annex.A-10) of the cadre of Clerks.”

5. **Pleadings and Final Hearing**- Affidavit in reply was filed on behalf of respondent No. 3 on 05.01.2021. Affidavit in reply on behalf of respondent no. 4, 6, 9, 10 and 12 had been filed by Advocate Shri S.J. Rahate on 25.01.2021. The matter was finally heard on 22.04.2022 and the same was reserved for orders.

6. **Crystalizing objections of applicants regarding determination of seniority of respondent no. 4 to 15**:- for this purpose, the extracts of relevant entries in the seniority list showing particulars relating to respondent no. 4 to 15 has been carved out and shown in form of a new table referred to as **Table -1**. Similar details for the applicants have been depicted in **Table-2** so as to examine counter claim by the respondents that the applicants have no reason to be aggrieved.

संविधानसभेच्या कार्यवाहीबाबतची माहिती

अ.क्र.	कर्माचा-चाच नांव	जन्म दिनांक	प्रवर्ग (संयुक्त प्रवर्ग बदलला असल्यास त्यांचा)	लिपिक पदावर / आंतर जिल्हा बदलीने / आंतर विभाग / बदलीने / सरळ सेवा / पदावतीने प्रवेश केल्याचा दिनांक	विभाग / इन्चार्ज / इन्चार्ज / शिक्षण / उच्च शिक्षण / केल्याचा दिनांक	विभागाचे मुख्य अधिकारी / सेवा / पदावतीने / आदेश	विभागाचे मुख्य अधिकारी / सेवा / पदावतीने / आदेश	उच्च शिक्षण / इन्चार्ज / इन्चार्ज / शिक्षण / उच्च शिक्षण / केल्याचा दिनांक	महसुल अर्हता / परिश्रम / आदेश	महसुल अर्हता / परिश्रम / आदेश	महसुल अर्हता / परिश्रम / आदेश	पदावतीने सादर केलेल्या दिनांक	अवकाश कारकून पदावतीने दिलेल्या दिनांक	शेरा संबंधित पदावतीने सेवानिवृत्त किंवा आंतर जिल्हा बदली असल्याबाबत तपशील
१	२	३	४	५	६	७	८	९	१०	११	१२	१३	१४	१५
१४३	प्रमोद के. हुसे	१९६९	इमाव	३१	१०	-	१.९.१४	३१.१२.१०	-	-	१.९.१४	३१.१२.१०	-	-
१७०	पाटील विलास मंगलराव	१९६८	इमाव	३०	१२	-	१३.५.१३	३०.४.१२	-	-	३०.४.१३	३०.४.१२	-	-
१७१	गुलाब रूपा पवार	१९६९	विजाअ	३०	१२	-	४.४.१४	३०.४.१२	-	-	४.४.१५	३०.४.१२	-	-
१८१	दिलीपसिंग ल. पवार	१९६७	विजाअ	११	०४	-	२१.६.१२	२१.६.१२	-	-	२१.६.१२	२१.६.१२	-	-
१८६	भरत मो. झुरावत	१९६८	खुला	१६	०८	-	१.६.१३	१.६.१३	-	-	१.६.१३	१.६.१३	-	-
१९९	गणराज सं. नाथा	१९६९	अनुजाती	१८	१३	-	१२.८.१४	१२.८.१३	-	-	१२.८.१५	१२.८.१३	-	-
१००९	रामेश्वर द. ढवळे	१९६८	इमाव	१०	१४	-	१०.२.१४	१०.२.१४	-	-	१०.२.१५	१०.२.१४	-	-
१०१२	निवृत्ती बा. डवरी	१९६७	भजब	३	१४	-	३.३.१४	३.३.१४	-	-	३.३.१५	३.३.१४	-	-
१०१३	शोभा रं. टाक	१९७०	इमाव	३	१४	-	२०.८.१५	३.३.१४	-	-	३.३.१५	३.३.१४	-	-
१०२८	सिताराम ना. शिकारे	१९६६	खुला	२७	१४	-	२७.५.१७	२७.५.१४	-	-	२७.५.१७	२७.५.१४	-	आंतर जिल्हा बदली
१०३२	सदावर्त सुरेश गंगाराम	१९६९	खुला	२१	१४	-	३१.७.१७	३१.७.१४	-	-	३१.७.१७	३१.७.१४	-	-
१०३३	रंजय बा. ताले	१९६९	इमाव	३१	१४	-	३१.७.१७	३१.७.१४	-	-	३१.७.१७	३१.७.१४	-	-

TABLE - 2
DEPTING SENIORITY LIST PARTICULARS FOR APPLICANTS

अ.क्र.	कर्मचा-यचे नांव	जन्म दिनांक	प्रवर्ग (नियुक्ती नंतर प्रवर्ग बदलला असल्यास त्याचा)	लिपिक पदावर / आंतर जिल्हा बदलीने / आंतर विभाग / बदलीने / सरळ सेवा / पदेन्नीने प्रवेश केल्याचा दिनांक	विभागीय दुय्यम परिक्षा उत्तीर्ण केल्याचा दिनांक	विभागीय दुय्यम परिक्षेचा सेवा परिक्षेचा संधी कर्मांक	विभागीय दुय्यम परिक्षेचा सेवा परिक्षेचा संधी कर्मांक	महसुल दुय्यम परिक्षेचा दिनांक	ज्येष्ठतेचा दिनांक / ज्येष्ठतेचा मानीव दिनांक	महसुल अर्हाता परिक्षेचा दिनांक	महसुल अर्हाता परिक्षेचा दिनांक / आदेश	महसुल अर्हाता परिक्षेचा दिनांक	पदेन्नीसाठीच्या ज्येष्ठतेचा दिनांक	अव्वल कारकून पदेन्नी दिलेल्या दिनांक	शेरा संबंधीत पदेन्नी सेवानिवृत्त किंवा अंतर जिल्हा बदली असल्याबाबत तपशिल
१	२	३	४	५	६	७	८	९	१०	११	१२	१३	१४	१५	
१०३६	डी.एम. त्रिभुवन	१५	अनु. जाती	१३	५.११.०९	२	-	९	१४.८.१४	६	-	१३	१४.८.१४	३१.१२.१४	अव्वल कारनुन पदी पदेन्नी बदली
१०४०	करणसिंग पन्नालाल जारवाल	११	खुला	२८	५.१२.१५	२	-	२८.८.१४	२८.८.१४	९	-	२८.८.१४	-	-	आंतर जिल्हा बदली
१०४२	नंदकिशोर कचरु घुगे	१०	भजड	१९	१८.७.११	१	-	१९.९.१४	१९.९.१४	१	-	१९.९.१४	-	-	आंतर जिल्हा बदली / मुळ नियुक्तीचा दिनांक १६.८.१०
१०४५	स्तोष संभाजी मंगरे	९	अनु. जाती	१८	४.१२.१४	१	-	१८.११.१४	१८.११.१४	१	-	१८.११.१४	-	-	आंतर जिल्हा बदली
१०९०	शशांक चंद्रप्रसाद जेस्वाल	२	इ. मा.व	६	१२.१८	४	-	१२.१८	१२.१८	२	-	१२.१८	-	-	-

7. **Analysis of Facts on Record:-**

a) First of all, the cases of respondent No. 4 to 15, as depicted in Table-1 are being taken up for threadbare examination. Referring to case of respondent No. 4 (S. No. 943 in seniority list), it is noticed that the said respondent no. 4 had joined on the post of clerk-typist on 31.12.2010, could not pass sub-service departmental examination until he applied for and got exemption from passing the said examination on 01.09.2014. Still, the respondent No. 4 has been given seniority of 31.12.2010 for the purpose of confirmation in the cadre of clerk-typist.

b) Further, the said respondent No. 4 did not have eligibility to appear for Revenue Qualifying Examination before passing sub-service departmental examination or getting exemption from passing the same as per prescribed rules. It is a fact that he had attained age of 45 years by the time he became so eligible. Therefore, as per the guidelines issued by the circular issued by the General Administration Department bearing No. परीक्षा 2012/प्र. क्र. 3/17, मंत्रालय, मुंबई-३२, dated 13.09.2012, the respondent No. 4 could be exempted from passing Revenue Qualifying Exam not before the next day of getting exemption from passing Sub-Service Departmental Examination i.e. from 02.09.2014 and could be given seniority of 02.09.2014.

c) On examination of cases of other respondents, a new factor is noticed that in cases a clerk-typist attains age of 45 years before completing 4 years on the post or, before exhausting 3 chances for passing sub-service departmental examination, the concerned employee has been given benefit of lack of adequate opportunity to pass sub-service departmental examination before getting exemption from passing the same, and his seniority has been protected. Though this aspect has not been examined by earlier orders of the Tribunal or Hon'ble High Court, it is pertinent to consider the facts thrown up in such cases. In this context, it is noted that, a clerk-typist is not bound to avail exemption from passing sub-service departmental examination or Revenue Qualifying Examination on attaining age of 45 years, even though the related rule 6 (b) of the Maharashtra Sub-Service Departmental Examination Rules, 1988 reads as quoted below.

“ (b) Clerks who shall attain the age of 45 years hereafter shall be exempted from passing the examination from the date they attain the age of 45 years.”

and, the Rule 5 (c) of the Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk-Typist Rules, 1999 is similarly worded.

As per ruling practice a Clerk-Typist has to apply for getting exemption on attaining age of 45 years and get the said granted. Therefore, in our considered opinion, by accepting exemption, a clerk-typist subjects himself / herself to rules relating to effect of availing exemption from passing the said examinations on seniority. On these basis we determine that seniority of such clerk-typists has not been fixed correctly as they have been protected from loss of seniority.

d) Now, we take up cases of the five co-applicants for examination based on information depicted in Table -2. It is clear from the entries for applicant no. 2 to 5 in column no. 9 and 13 that the same have been worked out in a uniform manner which matches with the prescribed rules; however, entry in column no. 9 in respect of applicant no. 1 is an outlier to the rule followed in cases of other four applicants. In addition, as the date of joining on the post of clerk-cum typist before inter-district transfer has not been mentioned in respect of applicant no. 2 to 4, it is not clear whether these applicants had fulfilled requirement of minimum 3 years regular service in the cadre of clerk-cum typist before Revenue Qualifying Examination.

e) It is also noticed that the seniority list of clerk-typist has been finalized as on 01.01.2020 but while doing so provision of G.R. issued by G.A.D. Department

bearing No. संकिर्ण-२३१८/प्र.क्र.३/का, १७, मंत्रालय-३२, मुंबई dated 1.3.2018 have not been taken into account to the extent the same is applicable.

8. Based on analysis of facts on record and on considering oral submissions, in our considered opinion, there is merit in the original application. Hence following orders:-

ORDER

Original Application No. 330 of 2020 is allowed in following terms:-

A) Impugned order of Respondent No. 3 dated 17.07.2020 notifying final Seniority List of clerk-typist as on 01.01.2020 is hereby quashed and set aside. A revised seniority list shall be finalized within a period of 3 months from the date of receipt of this order taking in to account the revised provisional seniority published by the respondent No. 3 on 13.03.2020.

B) While revising seniority list as on 1.1.2020 such provision of G.R. issued by G.A.D. bearing संकिर्ण-२३१८/प्र.क्र.३/का, १७, मंत्रालय-३२, मुंबई dated 1.3.2018, as are applicable, may also be taken into account.

C) Effect of revised final seniority list be taken in to account by respondents while deciding matters arising out of relevant provisions of applicable Maharashtra Civil Services Rules.

C) No order as to costs.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 05.05.2022

O.A.NO. 330-2020(DB)-HDD