

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.01 OF 2024
IN
ORIGINAL APPLICATION NO.899 OF 2023
WITH
ORIGINAL APPLICATION NO.681 OF 2023**

**REVIEW APPLICATION NO.01 OF 2024
IN
ORIGINAL APPLICATION NO.899 OF 2023**

1. The State of Maharashtra.)
Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)

 2. Divisional Commissioner,)
Pune Division, Council Hall,)
Opp. Poona Club, Camp Area,)
Pune – 411 001.)

 3. Collector.)
Pune District, Opp. Sasoon General)
Hospital, Pune.)
-)...Applicants
(Ori. Respondents)**

Versus

Shri Chetan Ramdas Pol.)
Age : 34 Years, Working as Talathi,)
Office at Tahasil Office, Baramati,)
District : Pune and residing at Flat No.2,)
Gadhawe Nanavre Apartment,)
Karikrupanagar, Baramati, Dist.: Pune.)

**)...Respondent
(Ori. Applicant in OA 899/23)**

WITH

**REVIEW APPLICATION NO.01 OF 2024
IN
ORIGINAL APPLICATION NO.681 OF 2023**

1. The State of Maharashtra.)
Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. Divisional Commissioner,)
Pune Division, Council Hall,)
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Pune – 411 001.)
3. Collector.)
Pune District, Opp. Sasoon General)
Hospital, Pune.)
-)...Applicants
(Ori. Respondents)**

Versus

Shri A.S. Allewar.)
Age : 38 Years, Working as Talathi,)
Office at Tahasil Office, Malshiras,)
District : Solapur and residing at)
Rajgad Niwas, Rajsinh Nagar-3,)
Akluj, Tal. Malshiras, Dist.: Solapur.)

**)...Respondent
(Ori. Applicant in OA 681/23)**

Ms. S.P. Manchekar, Chief Presenting Officer for Applicants (Ori. Respondents)

Smt. Punam Mahajan, Advocate for Respondents (Ori. Applicants)

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A**

DATE : 29.01.2024

JUDGMENT

1. The Applicant seeks declaration from Tribunal that he had passed the Maharashtra Sub-Service Departmental Examination (MSSD

Examination) in 3 Chances and 4 years as per Rule 4(1) and Rule 9 of MSSD Examination (for Talathi Cadre) Rules 1997, which are as follows:-

- “४. **परीक्षा उत्तीर्ण होण्याच्या संधी व कालावधी.**- (१) नियत दिनांकानंतर तलाठी पदावर नियुक्त करण्यात आलेल्या प्रत्येक तलाठ्याला त्याच्या नियुक्तीच्या दिनांकपासून चार वर्षे व तीन संधीत परीक्षा पास होणे बंधनकारक राहिल.
९. **परीक्षा न घेण्यात आल्यास त्याचे परिणाम.**- जर एखाद्या वर्षी परीक्षा घेण्यात आली नाही तर या नियमाच्या नियम ४ मध्ये विनिर्दिष्ट केलेल्या एकूण देय संधीमध्ये त्या वर्षाची गणना करण्यात येणार नाही.”

2. The Applicant in OA 899/2023 is working as ‘Talathi’ in Pune District. The ‘Final Seniority List’ published by District Collector, Pune dated 06.07.2023 qua the Applicant is set aside and he is put at his Original Position at Serial No.58 in ‘Final Seniority List’.

3. The Applicant in OA 681/2023 is working as ‘Talathi’ in Solapur District. The ‘Final Seniority List’ dated 03.04.2023 published by District Collector, Solapur qua the Applicant is set aside and he is put at his Original Position at Serial No.108 in ‘Final Seniority List’.

4. The Applicant in OA 899/23 submits that, the Respondent No.3 had conducted Sub-Service Divisional Examination for Talathi in Revenue Department as per their convenience. According to result declared by Respondent No.3, Applicant passed SSD Examination within 3 Chances. The details are as under :-

Sr.No.	Date of SSD Examination conducted	Date of result/Remarks
1	11/12/2013 to 21/11/2013	Information regarding exam. not received from Tahasil Office, therefore not appeared.
2	18/11/2015 to 21/11/2015	02/03/2016 – 1 st chance
3	19/12/2017 to 22/12/2017	03/04/2018 – 2 nd chance
4	02/03/2019 to 05/03/2019	06/06/2019 – 3 rd chance. Cleared the examination in 3 chances

5. The Applicant in OA 681/2023 submits that he passed SSD Examination within 3 Chances. The details are as under :-

Sr.No.	Year of SSD Exam.	As per 1997's Gazette in which exam. to be conducted	Month actually of conducted exam.	Chances taken to clear exam.
1	2014	Aug./Sept, 2014	10 th Sept, 2014	1 st Chance
2	2015	Aug./Sept, 2015	--	2 nd Chance due to illness form not filled.
3	2016	Aug./Sept, 2016	21 st Sept, 2016	Form not filled, chance has not been considered.
4	2017	Aug./Sept, 2017	24 th Oct./Sept, 2017	3 rd Chance. Exam. was conducted in October instead of August/September and for seniority date of exam has been considered.

6. The Applicant in OA 899/2023 could not appear for SSD Examination in 2013. Further, SSD Examination was not conducted in 2014, so this cannot be construed to be 'Chance' taken by Applicant. He appeared in SSD Examination in 2015 but had failed; so it is to be considered as his 1st 'Chance'. He then appeared for SSD Examination in 2017 but failed again; so it is to be considered as his 2nd 'Chance'. He finally appeared for SSD Examination conducted in 2019 and was declared passed, so it is to be considered as his 3rd 'Chance'.

7. The Applicant in OA 681/2023 appeared for SSD Examination in 2014; so it is to be considered as 1st Chance. In SSD Examination in 2015, he could not appear as he was ill; so it is not to be considered as his 2nd 'Chance'. He then appeared for SSD Examination in 2016 but he had not filled-in the Form; so it is not to be considered as his 2nd 'Chance'. He finally appeared for SSD Examination conducted in 2017 and was declared passed, so it is to be considered as his 2nd 'Chance'.

8. The learned CPO mentioned that judgment of Hon'ble High Court at Bombay in **S.B. Sahasrabudhe** (supra) was later challenged in Hon'ble Supreme Court of India, but both 'Special Leave Petition' and 'Review Petition' were dismissed. The fine distinction between 'Chance' or 'Opportunity' and 'Attempt' which came to be decided by Hon'ble High Court at Bombay in **S.B. Sahasrabudhe** (supra) would be applicable to the case of Applicant.

9. The learned CPO relied on Affidavit-in-Reply filed by Smt. Shama S. Pawar, Resident Deputy Collector, Solapur dated 14.09.2023 in OA 899/2023. It is mentioned in Affidavit-in-Reply that Applicant has appeared for four times in Sub-Service Divisional Examination. The details of Applicant regarding SSD and Revenue Qualifying Examination are as under :-

Sr.No.	Details of the Applicant	Details
1.	Date of Birth	07.04.1989
2.	Original Appointment Order	19.09.2013
3.	Way of Appointment	Direct Recruitment
4.	Date of Retirement	30.04.2047
5.	Details and period of passing S.S.D exam	Date of appointment 19/09/2013 chances for S.S.D i) 11.12.2013 to 21.12.2013 ii) 18.11.2015 to 21.11.2015 iii) 19.12.2017 to 22.12.2017 iv) 02.03.2019 to 05.03.2019
6.	Details and period of passing RQT exam	Divisional Commissioner Pune order dated 08.02.2021, the Applicant passed the RQT examination held in the period of 13.01.2020 to 17.01.2020 in first attempt.
7.	Date considered for promotion	06.03.2019

Thus, from the above Table, it is clear that Applicant in OA 899/2023 has taken 4 chances to clear S.S.D examination. It is further stated in Affidavit-in-Reply that Applicant in OA 899/2023 has not passed the

S.S.D exam within stipulated period. The period of examination has been counted only when examination conducted by Respondent.

10. The learned CPO then relied on Affidavit-in-Reply filed by Smt. Shama S. Pawar, Resident Deputy Collector, Solapur dated 14.09.2023 in OA 681/2023. It is mentioned in Affidavit-in-Reply that Applicant was attempted SSD Examination for the year 2014, but failed. So it was his 1st Chance. In the year 2015, the Applicant did not appear in SSD Examination, so it was his 2nd Chance. In the year 2016, the Applicant was not attempted SSD Examination. So it was his 3rd Chance. In the year 2017, the Applicant attempted SSD Examination and was passed. So this was his 4th Chance. This fact clearly shows that Applicant did not pass the SSD Examination within 4 years. It is further mentioned that Applicant was having an opportunity to appear the examination for the year 2015 & 2016 but he failed to do so, therefore, he could not take benefit for conducting the Examination on 24.10.2017 i.e. after 4 years from his appointment.

11. The learned Advocate for Applicants relied Para Nos. 8 and 9 of the decision of Hon'ble High Court at Bombay delivered in **W.P. No.1420/2015 (S.B. Sahasrabudhe V/s Prasad V. Mahajan, State of Maharashtra & Anr.), dated 16.02.2017**, which reads as under :-

“8. For the purposes of considering the controversy involved in this petition, sub-rule (3) of Rule 4 is relevant for consideration. The rule prescribes that the District Transport Officer, working as such, on the appointed date and who has not passed the examination or has not been exempted from passing it under the existing Rules, shall be required to pass the examination within the period of two years from the appointed date and within three chances including any chance or chances availed of by him under the existing rules.

9. So far as petitioner is concerned, he was appointed on 05.02.1994 before the Rules of 1984 were enforced, there was an examination held in July 1984. The petitioner did not apply and did not appear in the said examination. In January 1985, the examination was held, the petitioner appeared, however, failed. This was the first chance availed of by the petitioner. In July 1985, the departmental examination was held, however, the petitioner did not apply, and did not appear for the examination. In

January 1986, the examination was held, petitioner also appeared, but failed. This was the second chance availed of by him, but he was unsuccessful. Thereafter in July 1986, when the examination was held, the petitioner {7} judgment-wp-1420-15.doc cleared examination and according to the petitioner, it was the third chance availed of by him.”

12. Hence, we direct Respondents in both OA No.899/2023 and OA No.681/2023 specifically (i) District Collector, Pune, and (ii) District Collector to consider the Applicants for promotion to the post of ‘Circle Officer’ as per seniority of the Applicants in the post of Talathi based on their respective Dates of Appointment and grant all consequential Service Benefits. The (i) District Collector, Pune and (ii) District Collector, Solapur to complete the necessary exercise to consider the Applicants for promotion to the post of Circle Officer and issue ‘Orders of Promotion’ within Six Weeks from today along with sanction of all consequential ‘Service Benefits’.

13. With these directions, OA No.899/2023 and OA No.681/2023 stands disposed of accordingly with no order as to costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai
Date : 29.01.2024
Dictation taken by :
S.K. Wamanse.

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