

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.384/2017

DISTRICT: - JALGAON

-----  
Ramesh S/o. Jaysingh Patil,  
Age : 44 years, Occu. : Service,  
R/o. Old G.P. Office, Patilwada,  
Pimprala, Jalgaon, Dist. Jalgaon.

...APPLICANT

**V E R S U S**

- 1) The Divisional Joint Registrar,  
Co-operative Societies,  
Nasik Division, Nasik.
- 2) Special Auditor,  
Co-operative Societies,  
Plot No.12, Behind M.J.College,  
Old Postal Colony, Jalgaon.
- 3) Sandip S/o. Khushal Pawar,  
Sub Auditor,  
C/o. Special Auditor (Class II),  
Co-operative Societies  
(Animal, Dairy & Fisheries),  
Office at Plot No.8-B,  
Saihyadri Building,  
Near Indira Garden,  
Anandnagar, Deopur, Dhule.

...RESPONDENTS

-----  
APPEARANCE :Shri P.B.Patil Advocate for the Applicant.  
:Smt. Deepali Deshpande, Presenting  
Officer for the respondent nos.1 and 2.  
:None appeared for respondent no.3.

-----  
**CORAM** : JUSTICE M.T.JOSHI, VICE-CHAIRMAN  
AND  
ATUL RAJ CHADHA, MEMBER (A)

-----  
DATE : 12<sup>th</sup> April, 2018  
-----

**O R A L O R D E R**  
**[Delivered on 12<sup>th</sup> day of April, 2018]**

1. Heard Shri P.B.Patil Advocate for the Applicant and Smt. Deepali Deshpande Presenting Officer for the respondent nos.1 and 2. Respondent no.3 remained absent throughout in the O.A. though he was duly served with the notice.
2. Grievance of the present applicant in the application is that he is wrongly placed in the seniority list of the year 2017 in the cadre of Clerk as junior to the respondent no.3 by respondent no.1.
3. It is an admitted fact that the present applicant was earlier placed in the seniority list senior to the respondent no.3 (paper book page 19). Departmental examinations used to be conducted by the respondents. Result of the same is at paper book page 17 & 17-A, more particularly, paper book page 17-A would show that both of them have passed the requisite departmental examination in the year 2016. However, in the seniority list, the present applicant was placed as Junior to the respondent no.3. Hence, this original application.

4. Post Recruitment Training and Examination (for Clerks in the Co-operative Department of Government of Maharashtra) Rules, 1983 are relevant to the present issue.

Relevant rule no.4 (paper book page 38) is as under:

*"4. Period and number of chances for passing Examination-(1) Every Clerk appointed to the post after the appointed date shall be required to undergo a course of training and to pass the Examination within a period of four years from the date of his appointment and within three chances.*

*(2) Every clerk appointed to the post before the appointed date shall be required to pass the Examination within the period of four years from the appointed date and within three chances unless he is already exempted from passing the Examination under rule 16.*

*(3) Notwithstanding anything contained in sub-rules (1) and (2)-*

*(a) a clerk who belongs to the Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes and Nomadic Tribes and to whom the provisions of sub-rules (1) and (2), as the case may be, apply, shall be given one more year and one more chance to pass the Examination;-"*

5. The effect of non-passing of examination as prescribed above would result into application of Rule 13 (paper book page 39), which reads as under:

*"13. Consequences of failure to pass Examination-  
(1) A clerk who fails to pass the Examination within the time limit and chances allowed in accordance with the provisions of rule 4-*

*(a) shall not until he passes the Examination or is exempt from passing the Examination under rule 16 or his failure is condoned under clause (e) of sub-rule (3) of rule 4, be confirmed in his post or promoted to higher post ;*

*(b) shall lose his seniority to all those who pass the Examination before he passes the Examination ;"*

*(emphasis supplied)*

6. The affidavit in reply of the respondent nos.1 and 2 and the submissions of the learned P.O. would show that the applicant has taken 2 more chances than prescribed for passing the examination and the respondent no.3 has availed only 1 extra chance. Therefore, according to the respondents, the applicant has lost seniority to the respondent no.3.

7. In the circumstances, rule 13(1)(b) is required to be taken into consideration, which is quoted as above. It would show that an employee would lose his seniority "*to all those who passed examination before he passes the examination.*" Thus, the employee would lose seniority in the contingency as detailed above only to the employees who had earlier passed the examination.

8. It is an admitted fact that the applicant as well as the respondent no.3 has passed the examination in the same year i.e. in the year 2016 and thus the applicant would not lose his seniority to respondent no.3. Therefore, decision of the respondent no.1 in this regard is not sustainable. Hence, we pass following order:

### **ORDER**

- (i) O.A. is allowed without any order as to costs.
- (ii) Impugned seniority list dated 01-01-2017 to the extent of applicant and respondent no.3 is hereby quashed and set aside.
- (iii) The respondent no.1 is directed to make corrigendum to the seniority list and thereupon

shall take a fresh decision regarding promotion of the applicant or respondent no.3.

(iv) Respondent no.1 shall take decision as per this order within a period of 3 months from the date of this order and communicate the same to the concerned in writing.

**MEMBER (A)**

**VICE-CHAIRMAN**

**Place : Aurangabad  
Date : 12-04-2018.**