

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 98/2010**

Sunil Bapurao Sukhdeve,
Aged about 42 years, Occ. Service,
R/o at Post : Jawala,
Tq. Arni, Distt. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through Department of Revenue,
Mantralaya, Mumbai-440 032.
- 2) The Commissioner,
Amravati Division, Amravati.
- 3) The Collector,
Yavatmal.
- 4) The Sub Divisional Officer,
Yavatmal.

Respondents

Shri S.V. Bhutada, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for respondents.

Coram:- Hon'ble Shri B. Majumdar, Vice Chairman
and
Hon'ble Shri S.S. Hingne, Member (J).

Dated:- 30th June 2016.

S/S

ORDER**PER : MEMBER (J)**

The applicant, a Talathi has filed the O.A. seeking promotion to the post of Circle Officer.

2. Heard Shri S.V. Bhutada, Id. counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents. The O.A. is heard finally and decided at the admission stage with the consent of Id. counsel for the parties.

3. The applicant was appointed as Talathi in 1991. According to him, his case for promotion to the post of Circle Officer is governed under the old rules i.e. Maharashtra Revenue Division Circle Officers (Service Entry) Rules, 1966 (in short "old Rules,1966"), however, the respondents have applied the rules of The Maharashtra Revenue Qualifying Examination for promotion to the post of Circle Officer (from the cadre of Talathis) Rules,1998 (in short "new Rules,1998") (A-2,P-15) which is not proper and correct, hence he sought the promotion as Circle Officer by applying the old Rules, 1966.

4. The respondent no.3 filed the reply (P-45) and submitted that the applicant is governed by the new Rules,1998 and as he has not cleared the qualifying examination, he was not considered for promotion. According to him his name is mentioned in the seniority list of 1-1-2008 (A-3,P-21) at sr.no.358.

S.B.L.

5. The main plank of the contention of the applicant is that since he is appointed in the year 1991, the Rules of 1998 are not applicable to him and his appointment is not governed by this new Rules. As per Rule-3 (A) of Rules, 1966 the Talathi has to clear the Revenue Qualifying Examination before 31-12-1999. As per Rule-3 of the new Rules, 1998, the Talathi is eligible for promotion and has to pass sub service departmental examination. The new rules came into force from 4th June, 1998. The relevant rule-5 (2) governing the case of Talathis appointed prior to this date runs as under –

“ A Talathi appointed before the Gazette date and who is otherwise eligible under rule 3 shall be required to pass the Examination, unless he is exempted from passing the Examination under rule 8, within the period of four years and three chances from the Gazettee date. So also the Talathi who is already promoted to the post of Circle Officer shall be required to pass the Examination prescribed to the post of Circle Officer within three years from the date of his promotion or before the 31st December, 1999 whichever is later, unless he is exempted from passing the said Examination as per the provisions of the Maharashtra Revenue Department Circle Officer (Recruitment) Rules, 1996”.

6. These rules ~~are~~^{was} came into force and notified under Article 309 of the Constitution. The bald submission of the applicant is that his case is not covered by the new rules does not hold the field. So long as the rules are in force and they are not quashed hold the

field. Unless the rules are quashed, it cannot lie in the mouth of the applicant that they are not binding on him.

7. According to the applicant, the other Talathis are given promotion as per the provisions of old rules of 1966 and their orders are at Page nos. 41 to 44 (A-A-5). According to the respondents, these employees were exempted from passing the Revenue Qualifying Examination w.e.f. 10-06-2001, 29-04-2008, 15-10-1998 and 01-07-2002 respectively on attaining the age of 45 years and hence they were promoted. Thus these case are not helpful to the applicant.

8. Needless to mention that when legally framed rule are in force the cases of employees are governed by the said rules. The bare statement of the applicant that these rules are not applicable to him has no legs to stand.

9. The applicant's counsel also relied on H.L. Trehan and others Vs. Union of India & Ors., (AIR, 1989, SC 568). In the said case, it is held that the terms and conditions of service of the employees were substantially and adversely altered to their prejudice, by issuing circular without giving opportunity of being heard which was in violation of the principles of natural justice. Such are not the facts of the case in hand. Reliance is also placed on K.V. Subba Rao & Ors. Vs. Govt. of A.P. & ors. (AIR 1988, S.C.887) and T.R. Kapur &

Ors. Vs. State of Haryana & Ors. (AIR 1987, S.C.415). In these cases the question was that any rules or provisions cannot have a retrospective effect. Such point is not involved in the instant case. He also relied on P.D. Aggarwal & Ors. Vs. State of U.P. & Ors. (AIR 1987, S.C.1676). In this case the point of reckoning of the service was involved and change of the statutory rules by office memorandum was held not correct. Such are not the aspects to be considered in the case in hand.

10. As a sequel to these reasons, the applicant cannot get the relief as claimed. Consequently, the O.A. is rejected with no order as to costs.

sd/-

(S.S.Hingne)
Member (J).

sd/-

(B. Majumdar)
Vice-Chairman.

dnk.