

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1072 OF 2022**

**DISTRICT:- OSMANABAD**

**1. Vishal S/o Govindrao Waghmare,**

Age-37 years, Occu. Service,  
as Revenue Assistant,  
District Office, Osmanabad,  
R/o Osmanabad.

**2. Jafar Khan Bahaddur Shaikh,**

Age 49 years, Occu. Service, as  
Revenue Assistant,  
District Office, Osmanabad,  
R/o Osmanabad.

..

**APPLICANTS**

**V E R S U S**

**1. The State of Maharashtra,**

Through: The Secretary,  
Revenue & Forest Department,  
Mantralaya, Hutatma Chowk,  
Madam Kama Road,  
Mumbai 400 032.

**02. The Collector,**

Dist. Osmanabad

.. **RESPONDENTS**

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APPEARANCE : Shri S.D. Joshi, learned counsel for  
the applicants.

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

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

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**RESERVED ON : 14.02.2024**

**PRONOUNCED ON : 26.04.2024**  
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**ORDER**

(Per : Vinay Kargaonkar, Member (A))

Heard Shri S.D. Joshi, learned counsel for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. **Brief facts :-**

(i) Applicant No. 1 belongs to OBC category; whereas applicant No. 2 belongs to general category. Applicant No. 1 was appointed to the post of Junior Clerk on 11.05.2010; whereas applicant No. 2 was appointed to the post of Junior Clerk on 17.05.2010.

(ii) Both the applicants are challenging the combined seniority list of the cadre of Clerks/Revenue Assistants published on 01.01.2022 by respondent No. 2 i.e. the Collector, Osmanabad, in which both the applicants were placed below all those who had passed Sub-services Departmental Examination (SSD Examination) and Revenue Qualifying Examination (RQ Examination) after the applicants.

3. **Submissions of the applicants :-**

(i) Applicants submit that Rule 4 of the SSD Examination Rules requires the incumbent to pass the said examination within 4 years and 3 chances, failing which the incumbent is to lose his seniority in the said

cadre and his seniority will be reckoned from the date of passing the examination, as provided in rule 5 of the SSD Examination Rules. The clerk who passes the examination within the prescribed time and the chances, would be entitled to reckon his seniority from the date of his appointment as Clerk.

(ii) As far as Revenue Qualifying Examination Rules are concerned, every Clerk/Typist is required to pass R.Q. Examination for the purpose of earning promotion to the post of Awwal Karkun unless he is exempted from passing the examination in accordance with Rule 5 of the R.Q. Examination Rules. The applicants prayed that on 09.05.2022, the respondent No.2 had published the combined seniority list of the cadre of Clerk/Revenue Assistant as on 01.01.2022. In that seniority list the names of both the applicants are shown at Sr. Nos. 554 and 555 respectively. The date of reckoning seniority is shown as 08.11.2016. The applicants have taken objection to the seniority list under the representation dated 20.07.2022. In the said representation the applicants have submitted that the incumbents shown at Sr. Nos. 1 to 53 in the representation dated 20.07.2022 have joined the Government service after the applicants have joined. However, the incumbents who have passed the R.Q. Examination with and after them have not only been shown senior to them but they are also promoted to the post of Awwal Karkun.

(iii) Applicants submit that in support of their contention the applicants have placed reliance upon the judgment

rendered by the Nagpur Bench of this Tribunal dated 10.06.2022 passed in O.A.No. 947/2018. The said judgment is based upon the judgment passed by the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No. 2521/2015 decided on 19.01.2016.

(iv) The applicants submit that all the 53 incumbents mentioned in the representation dated 20.07.2022 are appointed after the applicants. Their date of passing S.S.D. examination is after the applicants whereas the date of passing R.Q. examination is in some cases same as that of applicants and in most of the cases, after the applicants. It was thus the case of the applicants that, since those incumbents have passed the examination with and after the applicants, they cannot be placed above the applicants in terms of seniority. The applicants further submitted that while fixing the seniority, the respondent No.2 had only taken into consideration the order dated 02.02.2017 passed by the Principal Seat of this Tribunal at Mumbai in O.A.No. 354/2015 in total disregard to the order passed by the Hon'ble Bombay High Court, Bench at Nagpur dated 19.01.2016 in W.P.No. 2521/2015. It was on the basis of judgment of Nagpur Bench dated 19.01.2016, the Co-ordinate Bench of this Tribunal has passed the order in O.A.No. 947/2018 on 10.06.2022. The applicants are similarly situated to that of the applicants in O.A.No. 947/2018 and therefore, the ratio laid down by the Nagpur Bench of Hon'ble Bombay High Court and the interpretation made with regard to the passing of R.Q. examination is squarely applicable to the cases of the applicants. Both the applicants are senior

to the incumbents at Sr. Nos. 1 to 53 mentioned in the representation dated 20.07.2022. It is due to wrong interpretation adopted by respondent No.2, those 53 incumbents are not only shown above the applicants in terms of seniority but also some of them have been promoted to the post of Awwal Karkun.

(v) Both the applicants have passed R.Q. Examination on 8.11.2016 along with the clerks mentioned at Sr. Nos. 1 to 5, 10 to 15 and before rest of the clerks, who have passed the R.Q. Examination much after 8.11.2016 and some of them as recently as 29.11.2021, therefore, the applicants deserve to be placed above of those incumbents who have passed R.Q. Examination much after them. However, despite pointing out this position categorically in the form of representation and in a tabular form, the respondent No. 2 has substantially failed to correct the seniority list.

4. **Submissions by the respondents:-**

Respondents submitted that while preparing seniority list they have considered rules as well as directions given in O.A. No.354/2015 (Mahesh Mukund Sapre Vs. the State of Maharashtra & Ors.). The respondents submitted that as per Rule 7 of the Maharashtra Revenue Qualifying Examination, Clerk-Typist, who has not qualified the Maharashtra Revenue Qualifying Examination within 03 chances will lose his seniority to all those Clerk-Typist who have passed the said examination or exempted from passing the said examination. The

respondents further submitted that, 53 incumbents mentioned by the applicants in their representation have passed the Maharashtra Revenue Qualifying Examination within 03 chances and hence, their seniority was reckoned from the date of initial appointment, and therefore, they were shown as senior to the applicants. The respondents have submitted copy of the order in response to the representation dated 20.07.2022 of both the applicants. The relevant part of the order dated 31.3.2023 passed by the respondents in response to the representation dated 20.07.2022 is reproduced hereinbelow: -

### मुळ अर्ज क्र. १०७२/२०२२

ज्या अर्थी, अर्जदार यांचा ज्येष्ठता यादीचे अनुषंगाने सेवातपशील खालीलप्रमाणे आहे.

| अ. क्र. | कर्मचारी यांचे नांव            | लिपीक पदावरील रुजू दिनांक | विभागीय दुय्यम सेवा परीक्षा उत्तीर्ण दिनांक  | महसूल अर्हता परीक्षा उत्तीर्ण दिनांक  | शेरा  |
|---------|--------------------------------|---------------------------|--|---|---|
| १.      | श्री. विशाल गोंविंदराव वाघमारे | १४.५.२०१०                 | १३.११.२०१३ (चौथी संधी) संधी क्र. १.११.४.२०११ २.२३.११.२०११ ३.२१.८.२०१२ ४.१३.११.२०१३ | ८.११.२०१६ (चौथी संधी) संधी क्र. १.५.४.२०१४ २.२५.९.२०१४ ३.२०.१०.२०१५ ४.८.११.२०१६ | श्री. विशाल वाघमारे हे विभागीय दुय्यम सेवा परीक्षा चौथ्या संधीत उत्तीर्ण झाल्यामुळे विभागीय परीक्षा उत्तीर्ण झाल्यानंतर त्यांचा ज्येष्ठतेचा दिनांक १३.११.२०१३ निश्चित करण्यात आला आहे. (संदर्भ विभागीय दुय्यम सेवा नियम १९८८ (४ सी) परंतु श्री. शेख हे विहित मुदतीत प्रथम संधीत परीक्षा उत्तीर्ण झाल्यामुळे विभागीय परीक्षा उत्तीर्ण झाल्यानंतर त्यांचा ज्येष्ठतेचा दिनांक या आस्थापनेवर रुजू झाल्याचा दि. १८.७.२०१४ हा निश्चित करण्यात आला आहे. (संदर्भ शासन निर्णय ३.६.२०११)<br><br>श्री. वाघमारे हे महसूल अर्हता परीक्षा विहीत संधीत उत्तीर्ण न झाल्यामुळे महसूल व वन विभाग अधिसूचना दि. ०७.०७.१९९९ मधील नियम ६ व ७ अनुसार त्यांची ज्येष्ठता महसूल अर्हता परीक्षा उत्तीर्ण दिनांकांनुसार |

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|    |                             |   |  |   | म्हणजेच दि. ८.११.२०१६ पासून निश्चित करण्यात आली आहे.  |
| २. | श्री. जफर खान<br>बहादूर शेख | १७.५.२०१०<br>(सोलापूर<br>जिल्हा)<br>१८.७.२०१४<br>(उस्मानाबाद<br>जिल्हा) | ९.३.२०१२<br>(पहिल्या संधीत)<br>संधी क्रं.<br>१. ९.३.२०१२ | ८.११.२०१६<br>संधी क्रं.<br>सोलापूर<br>जिल्ह्यात २<br>संधी व<br>उस्मानाबाद<br>जिल्ह्यात<br>दुस-या संधीत<br>संधीत उत्तीर्ण<br>एकूण ४ संधीत<br>उत्तीर्ण<br><br>३.२०.१०.<br>२०१५<br>४.८.११.२०१६ | श्री. शेख हे सोलापूर<br>जिल्ह्यातून बदलीने उस्मानाबाद<br>जिल्हा आस्थापनेवर दि. १८.७.<br>२०१४ रोजी रुजू झाले<br>असल्यामुळे त्यांची या<br>आस्थापनेवरील सुरुवातीची<br>ज्येष्ठता दिनांक १८.७.२०१४<br>पासून निश्चित करण्यात आली<br>आहे. (संदर्भ शासन निर्णय<br>दिनांक ३.६.२०११)<br><br>श्री. शेख हे महसूल अर्हता<br>परीक्षा विहित संधीत उत्तीर्ण न<br>झाल्यामुळे महसूल व वन विभाग<br>अधिसूचना दि. ०७.०७.१९९९<br>मधील नियम ६ व ७ अनुसार<br>त्यांची ज्येष्ठता महसूल अर्हता<br>परीक्षा उत्तीर्ण दिनांकानुसार<br>म्हणजेच दि. ८.११.२०१६ पासून<br>निश्चित करण्यात आली आहे. |

##### 5. **Conclusions: -**

- (i) There are two stages where loss of seniority is envisaged for Clerks/Revenue Assistants. If the Sub Service Departmental Examination (SSDE) is not passed within time and number of attempts (four years and three attempts) then the clerk loses his seniority. Rule 4 (c) says that seniority shall be determined from the date of passing the examination or date of exemption from passing the examination. Applicant Vishal Waghmare has passed SSDE examination in fourth attempt on 13.11.2010 so his seniority will be reckoned from the date of passing the SSDE examination. Applicant Jafar Khan has passed SSDE in first attempt so his seniority will be reckoned from date of appointment.

- (ii) Second stage of losing the seniority is passing the Revenue Qualifying Examination (RQE). Clerks have to pass the RQE within 9 years and 3 chances. Since both the applicants have passed the R.Q. Examination in 4<sup>th</sup> attempt on 8.11.2016, they will have to lose the seniority. Eligibility to appear for Revenue Qualifying Examination and the Effect of passing examination on seniority is given following rules:

*“4. Eligibility to appear for Examination:- Every Clerk Typist who has;-*

- (a) Completed not less than three years continuous service in his post; and*
- (b) Passed the Sub-Service Departmental Examination or Revenue Clerk Departmental Examination, as the case may be shall be eligible to appear for the Examination.*

5. ....

6. ....

*7. Effect of passing Examination on seniority:- A Clerk Typist who has passed the Examination in accordance with the provision of rule 6, shall retain his original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or are exempted from passing of the Examination, before him, as well as to those Clerk Typists who are senior to him and who may pass the Examination after him; but within prescribed period and chances specified in these rules.”*



Applicants will lose seniority to all those who were eligible to appear for the RQE and passed on or before the applicants passed the RQE. Applicants cannot become junior to those clerks who were not even eligible to appear for the RQE of 8.11.2016. Eligibility for appearing for RQE is “completed not less than 3 years continuous service”. Therefore applicants will not be junior to those clerks who joined the service on or after 9.11.2013 i.e. three years prior to 8.11.2016.

Applicant 1, Vishal Waghmare, has passed the SSDE examination in fourth attempt on 13.11.2013, therefore his seniority will be reckoned from the date of passing SSDE i.e. 13.11.2013. Therefore he shall be placed above all those clerks who joined the service on or after 13.11.2013.

Applicant 2, Jafar Khan Bahaddur Shaikh, who has passed SSDE examination in first attempt and within prescribed time limit (within 4 years) but has passed RQE in fourth attempt will lose his seniority and will be placed above all clerks who joined the service on or after 9.11.2013.

(iii) In view of the above facts and circumstances of the case following order is passed: -

### **ORDER**

The Original Application is allowed. Conspectus to the abovementioned discussions respondents shall revise the seniority list and place the applicants at appropriate place.

**MEMBER (A)**

**VICE CHAIRMAN**