

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 197 OF 2022

DIST. : NANDED

Abhijit s/o Vasanttrao Bharane,
 Age. 39 years, Occu. : Service as Talathi,
 Sajja Yelam, Tq. Hadgaon,
 Dist. Nanded.
 C/o Tahsil Office, Hadgaon,
 Tq. Hadgaon, Dist. Nanded.

.. **APPLICANT**

V E R S U S

1. State of Maharashtra,
 Through its Secretary,
 Revenue and Forest Department,
 Mantralaya, Mumbai - 32.
2. The Divisional Commissioner,
 Aurangabad Region,
 Aurangabad.
3. The District Collector, Nanded,
 Dist. Nanded.

.. **RESPONDENTS**

 APPEARANCE :- Shri G.K. Muneshwar, learned counsel
 for the applicant.

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

CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : 29.04.2024

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri G.K. Muneshwar, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. The grievance of the applicant is that though he passed the Sub-Service Departmental Examination (for short SSDE) within the stipulated period and stipulated chances and as such his seniority in the cadre of Talathis was liable to be reckoned from the date of his appointment, the respondents have considered it from the date on which the applicant passed the SSDE.

3. The applicant was appointed as a Talathi vide order dated 05.04.2010 and he joined on the said post on 05.06.2010. He passed the SSDE on 16.01.2017 in the 4th attempt. In view of the provisions of the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathis) Rules, 1997, the candidate appointed on the post of Talathi has to pass the SSDE within 04 years and within 03 chances. The rules also provide that the candidate, who fails in passing the SSDE in the

time limit and chances specified in rule 4 thereof shall not until he passes the examination or he is exempted from passing the examination under rule 7 be confirmed as Talathi or will allow to draw his next increment in the scale of Talathi. The applicant belongs to Scheduled Caste category. It is the contention of the applicant that in view of the Government Resolution dated 24.08.1976 the candidates belonging to Scheduled Caste, Scheduled Tribes, De-notified Tribes and Nomadic Tribes are provided one more chance and one more year to pass the departmental examination than permissible under the rules to other candidates. It is the contention of the applicant that he has passed the SSDE within the given time and given chances.

4. The contention raised by the applicant is resisted by the respondents in their affidavit in reply. As contended in the said affidavit in reply, since the applicant did not pass the SSDE within 03 chances and within 04 years, his seniority has rightly reckoned from the date of his passing the SSDE i.e. from 16.01.2017. it is the further contention of the respondents that the provisions under the G.R. dated 24.08.1976 and G.R. dated 16.11.2006 issued by the General Administration Department are not applicable for the SSDE and they are applicable only for

the Revenue Qualifying Examination (for short RQE). The respondents have, therefore, prayed for dismissal of the Original Application.

5. We have duly considered the submissions made on behalf of the applicant, as well as, the State authorities. As noted hereinabove, the only objection raised on behalf of the respondents is that the applicant did not pass the SSDE within the given period and given chances. The applicant entered into the Government services as Talathi on 05.06.2010. The applicant admittedly belongs to SC category. He passed the SSDE on 16.01.2017. In 4th attempt he passed the said examination. As per the SSDE rules referred to hereinabove, the applicant was required to pass the SSDE within 04 years and 03 chances. It is the contention of the applicant that he being SC candidate was entitled for one more year and one more chance to pass the said examination. According to the learned counsel appearing for the applicant, the applicant was thus required to pass the said examination within the period of 05 years and 04 chances.

6. As noted hereinabove, the objection as has been raised on behalf of the respondents is that G.R. dated

24.08.1976 is not applicable for the SSDE. The relevant extract of the G.R. dated 24.08.1976 is as follows:-

“The Government has now decided that in the Departmental examination rules for promotion to the higher posts and Non-Gazetted, in all the Government offices, a provision should be made therein to the effect, that the candidates from (i) Scheduled Castes, (ii) Scheduled Tribes, and (iii) Denotified Tribes and Nomadic Tribes, should be given one more chance and one more year to pass the Departmental examinations, than is permissible under the rules to other candidates.”

7. Principal Seat of this Tribunal at Mumbai had decided similar issue of seniority in O.A.No.480 & 481 of 2021.

Relevant observations made in the said judgment are as under:-

“The G.R. dated 24.8.1976 is very clear and thus the applicants who have passed the Departmental examinations in the year 2012 within four years and four chances should not be pushed down in the seniority list published on 29.6.2021. The concerned authority should have understood the spirit of the G.R. dated 24.8.1976 properly and should have treated that the fourth chance is equivalent to the third chance.”

As held in the aforesaid matters, G.R. dated 24.08.1976 would be applicable to the SSDE and, as such, the candidates belonging to SC or any of backward class would get one more year and one more chance to pass the SSDE. The applicant has admittedly passed the SSDE within 04 chances and he being belonging to Scheduled Caste must be held to have passed the SSDE within the given chances.

8. Now it has to be examined whether the applicant passed the SSDE within the period of 05 years. Such a question arises having regard to the fact that the applicant joined the Government services in the year 2010 and he has passed the SSDE in the year 2017 and hence ostensibly it appears that, the applicant took the period of 07 years for passing the SSDE. The applicant, however, has sufficiently clarified the above aspect. Learned counsel for the applicant has submitted the chart providing the information in which years the SSDE were held and in which years the SSDE were not held. We deem it appropriate to reproduce the said tabular information as it is, which reads thus:-

Sr. No.	Year of the Examination	Date of Examination	Date of Result	Remarks
1.	1010	24.05.2010 to 26.05.2010	29.07.2010	The examination was held before Applicant joined the Government service as Talathi
2.	2011	01.06.2011 to 03.06.2011	08.12.2011	The applicant remained absent to the examination; hence, failed.
3.	2012	---	---	Examination was not conducted
4.	2013	10.06.2013 to 12.06.2013	26.09.2013	The Applicant appeared to the examination and failed.
5.	2014	---	---	Examination was not conducted.
6.	2015	28.12.2015 to 30.12.2015	12.05.2016	The Applicant appeared to the examination and failed
7.	2016	---	---	Examination was not conducted
8.	2017	14.01.2017 To 16.01.2017	26.04.2017	The Applicant passed the examination in 4 th attempt.

9. From the information revealing from the aforesaid table, the first chance for the applicant was in the year 2011, second in the year 2013, 3rd in the year 2016, 4th in the year 2017. In the years 2012, 2014 and 2016 the examinations were not conducted. The examination for the year 2015 was conducted in the year 2016. From the aforesaid information there remains no doubt that the applicant had passed SSDE within the period of 05 years as was permissible for him.

10. The documents on record further reveal that the applicant passed RQE on 27.07.2018. He passed the said examination within 02 chances. Undisputedly, he passed the said examination within 09 years from the date of his joining. The RQE is required to be passed by the candidate within 09 years from the date of his appointment and within 02 chances. The applicant thus passed the RQE without claiming any relaxation on the basis of his caste. Seniority of the applicant in the cadre of Talathis thus is liable to be considered from the date of his appointment i.e. 05.06.2010.

11. For the reasons stated above, the following order is passed:-

ORDER

- (i) We hold and declare that the applicant did pass the Sub-Service Departmental Examination, as well as, Revenue Qualifying Examination within the time and chances provided therefor.
- (ii) Respondents are directed to consider the seniority of the applicant from the date of his appointment i.e. 05.06.2010 and not from 16.01.2017 and accordingly give him appropriate place in the said seniority list by revising the same to that extent.
- (iii) Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)**VICE CHAIRMAN****Place : Aurangabad****Date : 29.04.2024**