

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.39/2020

DISTRICTS :- JALGAON

Anil s/o. Bhagwan Nikam,
Age : 31 years, Occ. Service [as Talathi,
Tehsil Office, Chalisgaon],
R/o. At Post Mehunbare (June Gaon),
Tq. Chalisgaon, Dist. Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
M.S., Mantralaya, Mumbai - 32.
2. The Collector,
Jalgaon.

...RESPONDENTS

APPEARANCE : Shri A. S. Deshmukh, Counsel for
Applicant.
: Shri V.G.Pingle, Presenting Officer
for the respondents.

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

Date : 23-04-2024

O R A L O R D E R

1. Heard Shri A.S.Deshmukh, learned Counsel for
Applicant and Shri V.G.Pingle, learned Presenting Officer
for the respondent authorities.

2. The applicant entered into Government service
as Talathi on 08-05-2008. Initially, he was given

appointment in the Erandol Sub Division of District Jalgaon. On 17-04-2017 applicant was transferred on his own request from Erandol Sub Division to Chalisgaon Sub Division. Applicant accordingly joined in Chalisgaon Sub Division on 08-07-2017. In the seniority lists published of the cadre of Talathis on 14-02-2018 and 13-04-2018, the applicant was appropriately placed in the seniority list of the cadre of Talathis in Jalgaon District. On 06-08-2019 respondent no.2 i.e. Collector, Jalgaon published provisional seniority list of the cadre of Talathis in Jalgaon District as on 27-07-2019. In the said list applicant was assigned lower placement at Sr.No.134 on the basis of the date of his joining in Chalisgaon Sub Division upon inter-Sub Divisional transfer. On 19-08-2019 the applicant submitted his objection to the provisional seniority list with respondent no.2 and prayed for assigning proper placement to him in the final seniority list. However, in the final seniority list published on 18-09-2019 also the applicant was assigned lower placement. In the circumstances, applicant has approached this Tribunal praying for the following reliefs:

“A) This Original Application may kindly be allowed thereby holding & declaring the action of Resp. No. 2 of assigning lower placement to the

applicant in the final Seniority List of the cadre of Talathis as on 27/07/2019 published on 18/09/2019 on the basis of the date of his joining in the Chalisgaon Sub-Division in 2017 to be bad & unsustainable in law.

B) This Original Application may kindly be allowed thereby directing the Resp. No. 2 to modify the final Seniority List dated 18/09/2019 (Annex. A-11) of the cadre of Talathis and assign proper placement to the applicant therein on the basis of the initial date of his appointment in the said cadre in the year 2008.

C) This Original Application may kindly be allowed thereby directing the Resp. No. 2 to extend all the consequential service benefits to the applicant to which he would all become entitled in view of grant of Prayer Clauses "A" & "B" in his favour.

D) Costs of this Original Application may kindly be awarded to the applicants.

E) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted."

3. Learned Counsel for the applicant submitted that the seniority list published on 18-09-2019 wherein the applicant was given a lower placement is illegal and contrary to the rules of seniority. Learned Counsel pointed out that though the Government employee is transferred at his own request from one Sub Division to another Sub Division, he does not lose seniority and can be placed at the bottom of the employees appointed in the same year in the said cadre. Learned Counsel pointed out that, it is well settled that in such

cases the employee though loses his seniority, he loses it amongst the Talathis appointed in the same year in which he was appointed. Learned Counsel in the circumstances prayed for allowing the O.A.

4. Respondent nos.1 and 2 have filed their joint affidavit in reply and thereby opposed the contentions raised and prayers made in the O.A. It is contended that seniority list has been published by respondents as per G.R. dated 03-06-2011 in consonance with the earlier G.R. dated 18-09-1986. Learned P.O. pointed out that since the respondents have adhered to the rules of seniority and the guidelines laid down in the G.Rs. referred to hereinabove, no error can be said to have been committed by them in giving placement to the applicant in the seniority list. They have, therefore, prayed for dismissing the O.A.

5. We have duly considered the submissions made on behalf of the applicant as well as the respondent authorities. We have also gone through the documents placed on record. The factual aspects are not in dispute. Applicant was admittedly transferred to Chalisgaon Sub Division from Erandol Sub Division on his own request. However, it does not mean that the period of service

rendered by him in the erstwhile Sub Division is to be completely sacrificed by him and will not be considered for any purpose in the transferred Sub Division.

6. Issue involved in the present matter is in fact no more *res-integra*. It has been dealt with in several O.As. decided by this Tribunal in the past. Learned Counsel for the applicant has placed on record the order passed by this Tribunal in O.A.No.445/2021. We have gone through the said order. Perusal of the said order reveals that, same facts which exist in the O.A. existed in the aforesaid O.A.No.445/2021. The judgment delivered by this Tribunal in the said matter would thus squarely apply to the facts of the present case. As observed by this Tribunal in the said judgment, law is well settled that, even if any employee is transferred on his own request from one Sub Division to another or from one establishment to another, no such condition can be imposed on him to forego the total period of service rendered by him in the erstwhile division. Moreover, having regard to the Circular dated 20-11-2017 issued in concurrence with the General Administration Department, there remains no doubt that the seniority of such transferred employees is to be reckoned in the same batch, however, the transferred employee will be placed at

the bottom of the employees who are recruited in the same year in terms of Clause 1(A) of the said Circular.

7. After having considered the facts and legal position as aforesaid, we are convinced that respondents have committed error in placing the applicant at lower level in list of seniority of the cadre of Talathis. Respondent no.2 has considered seniority of the applicant from the date of his joining in the Chalisgaon Sub Division i.e. from 17-04-2017 and has placed him in the seniority list below the candidates appointed on or before 17-04-2017. In view of the settled legal position and the Circular dated 20-11-2017 respondents must have placed the applicant at the bottom of the Talathis who are recruited in the year 2008. Final seniority list published by respondent no.2 on 18-09-2019, therefore, deserves to be modified to the extent of present applicant. Applicant needs to be placed in the said seniority list at the bottom of Talathis having recruited in the same batch of 2008.

8. We, therefore, direct the respondents to modify the seniority list accordingly. Needless to state that the seniority list finalized on 18-09-2019 stands set aside to that extent. Exercise of revising seniority list to be

completed within 8 weeks from the date of this order. After modification of the seniority list, applicant shall be entitled for all consequential benefits.

9. The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 23-04-2024.