

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 496 OF 2021

DIST. : LATUR

1. Prathamesh S/o Sudhakar Vaidhya
Age 35 years, Occu: Service,
C/o R/o. Auditor Gr2,
Co-operative society,
Latur, Dist. Latur
- 2 Jagdish S/o Dattatray Murumbekar
Age: 43 years, Occu: Service,
C/o R/o: Auditor Gr 2
co-operative society, Hingoli,
Dist. Hingoli.
3. Keshav S/o Somnath Bondar,
Age: 35 years, Occu: Service,
R/o: C/o: Auditor Gr.2.
Co-operative Society, Tuljapur,
Dist. Osmanabad.

-- **APPLICANTS.**

V E R S U S

1. The State of Maharashtra,
Through Secretary.
Co-Operative Department.
Mantralaya Mumbai 32.
2. The Registrar & Commissioner
for Co Operation,
Central Building, 3th floor,
Near Railway Station, Pune 1.
3. The Divisional Joint Registrar,
Co-Operative Societies (Audit),
Aurangabad Division,
Aurangabad, Balasaheb Pawar,
Sahakari Bhavan. Jafar Gate,
Aurangabad

4. P. B. Borsc,
Occur Service Auditor Gr.2,
Co.Operative Society, Kannad,
Dist. Aurangabad
5. M.L. Mupade
Occu. Service, Auditor Gr. 2,
Co Operatively Society (Padum),
Dist. Nanded.
6. S.B. Chavan,
Occu. Service, Auditor Gr-2,
Cooperative Society, (Jangal Kamgar),
Tq. Kinwat, Dist. Nanded.
7. A.D. Sondge,
Occu. Service, Auditor Gr-2,
Cooperative Society, (Phirate Pathak),
Dist. Beed.
8. Smt. V.N. Ghorge,
Occu. Service, Auditor Gr-2,
Cooperative Society, (Jafrabad),
Dist. Jalna.
9. Kundankumar V. Deshmukh,
Occu. Service, Appar Auditor Gr-2,
Cooperative Society,
Dist. Aurangabad.
10. Sou. Jayanti Suhas Vakharkar,
Occu. Service, Auditor Gr-2,
Co-operative Society, (Panan Shikhar),
Dist. Aurangabad.
11. Bhagwan G. Baravkar,
Occu. Service, Auditor Gr-2,
Co-operative Society, Tq. Jintur,
Dist. Parbhani.
12. Pravin Y. Dongare,
Occu. Service, Auditor Gr-2,
Co-operative Society,
Tq. & Dist. Aurangabad.

-- **RESPONDENTS**

APPEARANCE :- Shri R.K. Ashtekar, learned Advocate for
the applicants.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.
: Shri K.G. Salunke, learned counsel for
respondent nos. 08, 09 and 12.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)
DATE : **11.06.2024**

ORDER

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

1. Heard Shri R.K. Ashtekar, learned counsel for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. It is the grievance of the applicants that after their inter division transfers their seniority has not been appropriately fixed in the transferred division and in the provisional, as well as, in the final seniority list published of the employees working on the post of Auditor Grade-II, they have been erroneously placed below the officers junior to them.

3. Applicant no. 01 was initially appointed in Nagpur Division on 05.03.2008, applicant no. 02 was initially appointed in Amravati Division on 24.03.2008 and the applicant no. 03

was initially appointed in Pune Division on 25.06.2010. The applicant no. 01 was transferred from Nagpur Division to Aurangabad Division on 03.03.2012, the applicant no. 02 was transferred from Amravati Division to Aurangabad Division on 24.09.2015, whereas the applicant no. 2 transferred from Pune Division to Aurangabad on 01.07.2017. The applicants were transferred as aforesaid on their request.

4. In the provisional seniority list published on 14.07.2021, the applicants are placed on the basis of their transfer and joining in Aurangabad Division. The applicants raised objection to the provisional seniority list, however, without considering their applications the respondents published the final seniority list on 05.08.2021. As alleged by the applicants, in the final seniority list also the seniority of the applicants is reckoned from the date of their joining in Aurangabad Division and the same has resulted in adversely affecting their seniority. According to the applicants, the respondents are junior to them however, their names in the seniority list are above the names of the applicants. It is also the contention of the applicants that because of erroneous seniority list the officers junior to them have been promoted to the post of Auditor Grade-I.

5. In the above circumstances, the applicants have approached this Tribunal seeking directions against the respondents to rectify the seniority list published on 09.08.2021 and place the applicants in the seniority list at the appropriate place on the basis of their initial date of appointment on the post of Auditor Grade-II. The applicants have further prayed that the promotions effected in favour of the respondent nos. 10 to 12, though they are junior to them in service, but erroneously are shown above them in the seniority list, be cancelled and the applicants be given promotion on the said posts in order of their seniority.

6. It is the contention of the applicants that during pendency of the present Original Application another provisional seniority list was published on 15.03.2022 and in the said seniority list also the respondents have shown the applicants below their juniors. The applicants, therefore, got the O.A. amended and added one more prayer seeking quashment of the provisional seniority list published on 15.03.2022 in respect of Auditor Grade-II.

7. The respondent nos. 01 to 03 have filed their joint affidavit in reply. They have resisted the contentions raised on

behalf of the applicants, as well as, the prayers made therein. The respondents have denied the objections raised on behalf of the applicants. According to these respondents, there is no error in the seniority list, which was provisionally published, as well as, final seniority list published on 05.08.2021. It is the contention of these respondents that the seniority of the applicants has been considered as per the provisions under the Maharashtra Civil Services (Regulation of Seniority) Rules, 2021. The respondents have referred to and relied upon rule 3(1) column no. 4 of the said rules to support their contentions. In view of the said provision the seniority of the applicants has been determined from the date on which they joined in Aurangabad Division. It is further contended that the seniority of the applicants has been determined as per the letter dated 09.08.2006, wherein it is clearly mentioned that after the inter-divisional transfer the seniority of the transferred employees will be ZERO in the transferred Division. It is further contended that the applicants have accepted all the conditions mentioned in the said order by putting their signature below the same. It is further submitted that in the D.P.C. meeting held on 06.08.2021 the promotions are granted after thoroughly considering the relevant provisions, as well as, the service record.

8. None of the private respondent has filed affidavit in reply. Shri Ashtekar, learned counsel appearing for the applicants submitted that even after change in the Division, the seniority of the applicants in the transferred Division could not have been treated ZERO. Learned counsel submitted that the seniority of the applicants after change in their Divisions was liable to be considered in the transferred Division in accordance with the norms laid down in the Government Resolution dated 21.01.1983. Learned counsel submitted that similar issue has been dealt with by this tribunal in O.A. No. 571/2015. Learned counsel further submitted that in the identical set of facts it was held by this Tribunal in the decision rendered in the said matter on 22.12.2015 that the seniority of the applicant therein was liable to be reckoned in the transferred Division as per the provisions under G.R. dated 21.01.1983. Learned counsel pointed out that as per the provisions under the said G.R., the Government employee does not lose his earlier service prior to inter-Divisional transfer and he can be placed at the bottom in the list below those, who were recruited in the same year working in the Division to which said employee has been transferred. Learned counsel submitted that the provisions

under rules of 2021 may not be applicable. Learned counsel, in the circumstances, prayed for allowing the O.A.

9. Learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of the respondent authorities. He submitted that the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and all other orders and instruments issued in that behalf were superseded by the Maharashtra Civil Services (Regulation of Seniority) Rules, 2021 (for short 'Rules of 2021'), which came into force on 21.06.2021. Learned P.O. submitted that as per rule 03 of the rules of 2021 the seniority of the applicants is liable to be determined on the date from which they have been absorbed in the transferred Division. Learned P.O. submitted that the respondents have not committed any error in preparing the seniority list of the cadre of Auditor Grade-II and the applicants have appropriately placed in the said seniority list by reckoning their seniority in the transferred Division from the date of their absorption in the transferred Division. Learned P.O., therefore, prayed for dismissal of the application.

10. Learned counsel appearing for respondent nos. 08 to 10 and 12 adopted the argument advanced by the learned Presenting Officer. In addition to the submissions made by

learned P.O., learned counsel submitted that even according to G.R. dated 21.01.1983, on the basis of which the applicants have based their claim, the respondents, who were appointed prior to the applicants, could not have been added as respondents. Learned counsel submitted that the date of appointment of respondent no. 08 is 25.06.2008, whereas the date of appointment of respondent nos. 11 & 12 are 12.07.2010 and 15.06.2010 respectively. Learned counsel submitted that when it is the case of the applicants that in the transferred Division they are required to be placed in the list of seniority below the officers appointed in the same year in which the applicants were appointed. Learned counsel submitted that the applicants in the circumstances could not have added respondent nos. 08, 09, 11 and 12 as the respondents. Learned counsel submitted that since these respondents have been unnecessarily made the party respondents and are subjected to appear in the present matter and contest this O.A., they are entitled for adequate cost from the applicants.

11. We have duly considered the submissions made on behalf of the applicants, as well as, the respondents. It is not in dispute that all 03 applicants on their request were transferred from their original Divisions to Aurangabad Division. The

information in that regard we deem it appropriate to place in below in a tabular form:-

Sr. No.	Name of Applicant	Date of Initial appointment	Date of joining in the transferred Division.
01	Prathamesh s/o Sudhakar Vaidhya	05.03.2008	03.03.2012
02	Jagdish s/o Dattatray Murumbekar	24.03.2008	24.09.2015
03.	Keshav s/o Somnath Bondar	25.06.2010	01.07.2017

12. In the seniority list, which was published on 24.02.2021 the applicant nos. 01 to 03 are placed at sr. nos. 34, 40 and 61 respectively. The applicants have also placed on record the seniority list, which was prepared as per Government Notification dated 21.01.1983, wherein these applicants are shown at sr. nos. 10, 11 & 18 respectively. As is revealing from the stand taken by respondent nos. 01 to 03 the seniority list, which has been challenged by the applicants has been prepared according to the amended rules notified on 21.06.2021. As mentioned hereinabove, according to the respondent nos. 01 to 03, the seniority as has been determined in the impugned seniority list is strictly as per the provisions of the amended rules and, as such, the respondents have not committed any error in placing the applicants in the said seniority list according to their dates of joining in Aurangabad Division.

Similar argument has been made on behalf of the private respondents.

13. We have gone through the amended rules, as well as, notification dated 21.01.1983. The amended rules cannot be made applicable in case of the present applicants for the reason that inter-division transfer of all of them was made respectively in the year 2012, 2015 and 2017. At the relevant time their seniority was liable to be determined as per G.R. dated 21.01.1983. We deem it appropriate to reproduce the said particular clause, which reads thus:-

“4(e) In case of transfer of class-III employee from one Division to other, seniority of the employees concerned should be fixed as per the date of his/her recruitment/promotion in the cadre or post and he/she will be placed below the persons recruited/promoted during year of recruitment/promotion of the employees so transferred.”

14. The rules notified on 21.06.2021 were to be made prospectively applicable. As such, the seniority of the applicants determined in view of G.R. dated 21.01.1983 could not have been changed because of coming into effect of rules of 2021. The respondent nos. 01 to 03 in their affidavit in reply have referred to one clause under rule 3 of the rules of 2021, which reads thus:-

“Provided also that, in accordance with the provisions made regarding permanent absorption, if any Government servant, on his own request, is permanently absorbed in another post, cadre or service governed by another appointing authority, other than the post, cadre or service governed by original appointing authority, then earlier service of such government servant shall not be reckoned as a continues service for the purpose of seniority in the absorb post, cadre or service. The seniority of such government servant shall be determine on the date from which he is appointed by absorption to the another post, cadre or service.”

15. On the basis of the aforesaid provision the respondent nos. 01 to 03 have contended that seniority of the applicants has been correctly determined in view of the aforesaid provision from the date of their joining in the transferred division.

16. The contention as has been raised on behalf of respondent nos. 01 to 03 i.e. the State authorities, as well as, the private respondents is difficult to be accepted. We have reproduced hereinabove the dates of initial appointments of the applicants, as well as, the dates of their inter-division transfers. It may not be disputed that in the relevant period, the services of the applicants and more particularly their inter-say seniority was regulated as per the provisions under G.R. dated 21.01.1983. Clause 4.1 thereof, which we have reproduced hereinabove provides that, in case of transfer of class-III

employee from one Division to other, seniority of the employees concerned should be fixed as per the date of his/her recruitment/promotion in the cadre or post and he/she will be placed below the persons recruited/promoted during year of recruitment/promotion of the employees so transferred.

17. When the applicants initially entered into the Government service, as well as, transferred to another Division, their seniority was determined as per provisions under G.R. dated 21.01.1983. In year 2017, the respondents have determined the seniority of the applicants as per the provisions under said G.R. dated 21.01.1983. However, the said seniority list was revised by the respondents after coming into effect of the rules of 2021. While revising the seniority as such, the respondent authorities reckoned the seniority of the applicants from the date of their joining in Aurangabad Division. We have carefully perused the rule relying on which the seniority of the applicants was fixed by the respondents. It is quite evident that the respondent authorities have misread and misinterpreted the said provision. The aforesaid provision cannot be made applicable to the employees, who have voluntarily opted for transfer from one Division to another. The aforesaid provision is for those Government servants, who on their request are

permanently absorbed in another post, cadre or service governed by another appointing authority, other than the post, cadre or service governed by original appointing authority. In such circumstances, according to said rule, earlier service of such government servants shall not be reckoned as a continues service for the purpose of seniority in the absorbed post, cadre or service and the seniority of such government servant shall be determine on the date from which he is appointed by absorption to another post, cadre or service. In the present matter all 03 applicants have been transferred on the same post in the same cadre and even on transfer their services are governed by same appointing authority. As such, in no case the aforesaid rule can be made applicable for determining the seniority of the applicants in the transferred division.

18. Moreover, as we have noted earlier, the rules of 2021 can only be made prospectively applicable and could not have applied in the case of the present applicants. We have, therefore, no manner of doubt in recording the finding that the seniority of the applicants after their inter-divisional transfer in Aurangabad Division was liable to be determined under the provisions of G.R. dated 21.01.1983 and accordingly the applicants must have placed in the seniority list of their cadre

below the officers working as Auditor Grade-II recruited in the year of their recruitment in their erstwhile Division. To illustrate, the applicant nos. 01 and 02, who were recruited in year 2008, were liable to be placed below the officers, who were recruited in year 2008 working in the transferred division. Since the seniority of the applicants in Aurangabad Division was reckoned from the date of their joining in Aurangabad Division, the applicants were placed below the officers, who were much junior to them. The applicants though made representations and agitated their grievance, their request was turned down and on the basis of the erroneous seniority list the officers junior to the applicants were promoted vide order dated 03.08.2021. According to the applicants, respondent nos. 04 to 12 were wrongly promoted by the respondents superseding the claim of the applicants. Applicants have, therefore, prayed for cancellation of promotions of the said respondents and have further prayed for their promotion and also the deemed date in the promotional cadre.

19. After having considered the facts involved in the present matter and the legal provisions relating to determination of seniority, it is apparently revealed that though the applicant nos. 01 to 02 namely Prathamesh s/o Sudhakar

Vaidhya and Jagdish s/o Dattatray Murumbekar were liable to be placed in the seniority list of the officers in the cadre of Auditor Grade-II immediately below the officers in Aurangabad Division recruited in year 2008, they are placed below the officers, who were appointed in Aurangabad Division in year 2012. Applicant no. 03, Keshav s/o Somnath Bondar, was also liable to be placed immediately below the officers appointed in Aurangabad Division in the year 2010. Even he has not been placed accordingly. Had the applicants appropriately placed in the list of seniority, it is quite evident that instead of respondent nos. 10, Smt. Jayanti Suhas Vakharkar, and respondent no. 11, Shri Bhagwan G. Baravkar, the applicant nos. 01 and 02 would have been promoted to the post of Auditor Grade-I. Insofar as the applicant no. 03, Keshav s/o Somnath Bondar, is concerned, no person junior to him seems to have been promoted to the post of Auditor Grade-I. However, his placement in the seniority list, however, needs to be modified and as mentioned above he needs to be placed immediately below the officers recruited in Aurangabad Division in the year 2010.

20. During the course of hearing it is brought to our notice that in the meanwhile period the applicant nos. 01 and

02 both have been also promoted to the post of Auditor Grade-I. In view of the facts as aforesaid it does not appear to us that there is any propriety now in directing cancellation of promotions awarded in favour of respondent Nos. 10, 11 & 12. However, the request made by the applicants for award of 03.08.2021 as a deemed date for their promotion to the post of Auditor Grade-I certainly deserves to be considered.

21. The documents on record reveal that respondent Nos. 04 to 09 are admittedly senior to the applicants. None of them is appointed in Aurangabad Division after 2008. In the circumstances, on their transfer to Aurangabad division applicant Nos. 01 & 02 were in any case not entitled to be placed above the aforesaid respondents. If the averments in the O.A. are concerned, there is reason to believe that the applicants were quite aware of the legal position that according to the provisions under G.R. dated 21.01.1983 on their transfer to Aurangabad division in no case they could have been placed in the seniority list in the transferred division above the candidates appointed in the said division up to year 2008. In the circumstances, there was no reason for the applicants to make respondent Nos. 04 to 09 as respondents in the present matter. There is substance in the submission made by Shri

Salunke, learned counsel appearing for some of these respondents that these respondents are unnecessarily subjected to face the litigation. Insofar as case of applicant No. 03 is concerned, he could not have been placed above any of the private respondents i.e. respondent Nos. 04 to 12. In the circumstances, the prayer made by the learned counsel appearing for these respondents to award cost to respondent Nos. 04 to 12 deserve consideration. For the reasons elaborated above, the following order is passed: -

ORDER

- (i) Respondent Nos. 01 to 03 are directed to place the applicant Nos. 01 & 02 in the seniority list of Auditor Grade-II immediately below the officers recruited in Aurangabad division in the year 2008 and to place the applicant No. 03 below the officers recruited in the year 2010 and to revise the seniority list accordingly.
- (ii) Applicant Nos. 01 & 02 shall be deemed to have promoted to the post of Auditor Grade-I w.e.f. 03.08.2021.
- (iii) Applicant No. 3 shall be considered for his promotion to the post of Auditor Grade-I as per his position in the seniority list of the cadre of Auditor Grade-II.
- (iv) The applicants shall jointly pay the costs of Rs. 2000/- to respondent Nos. 04 to 09.

- (v) The Original Application is allowed in the aforesaid terms.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 11.06.2024

ARJ O.A. NO. 496 OF 2021 (SENIORITY/PROMOTION)