MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 813 OF 2022

DISTRICT :- NANDED.

Sheshrao Maruti Koturwar
Age: 52 Years; Occu: Service;
as Talexthi.
R/o: Bhokar, Tq. Mudkhed,
Dist. Nanded. ..... **APPLICANT**

V E R S U S

1. The State of Maharashtra
Through, the Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 400032.

2. The Divisional Commissioner
Divisional Commissioner Office
At Aurangabad, Tq. & Dist. Aurangabad.

3. The District Collector,
Collector Office, Nanded,
Tq.& Dist. Nanded.

4. The Sub Divisional Officer,
Office of the Sub Divisional Officer,
Nanded, Establishment Branch,
Nanded Collector office,
Tq. & Dist. Nanded. .. **RESPONDENTS**

APPEARANCE : Smt. Suchita Dhongde, learned counsel for the applicant.

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

CORAM : HON'BLE JUSTICE V.K. JADHAV, VICE CHAIRMAN
AND
: HON'BLE VINAY KARGAONKAR, MEMBER (A)

Reserved on : 10.03.2025

Pronounced on : 20.03.2025

O R D E R

Per : Shri Vinay Kargaonkar, Member (A)

1. Heard Smt. Suchita Dhongde, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities

2. Brief facts of the Case:

This Original Application has been filed by Shri Sheshrao Maruti Koturwar, who is presently serving as a Talathi in Mudkhed Urban area, District Nanded. The applicant challenges the seniority list prepared and published by the Collector, Nanded (Respondent No. 3) vide Notification No. 2022/MaShaka 1/Astha 1/Te 1/P.K. 25 dated 29.07.2022. The principal grievance of the applicant is that in the impugned seniority list, the date of his exemption from departmental examination (10.11.2015) has been considered as his seniority date, instead of his actual date of appointment (30.05.2011).

3. Pleadings and Arguments of the Applicant

(i) The applicant, Sheshrao Maruti Koturwar, was appointed as Talathi on compassionate grounds on 30.05.2011, as per the order issued by respondent No. 4. The respondent No. 3 issued a notification regarding Departmental Examination for employees working as Talathi within Nanded District Revenue Establishment. This examination was scheduled from 01.06.2011 to 03.06.2011. The applicant submits that it was impossible for him to appear for this examination as he had not even completed one month of service at the relevant time.

(ii) The applicant further submits that the Departmental Examination for Talathi employees was not conducted in the year 2012. Therefore, there was no opportunity for the

applicant to attempt the examination during that year. The State Government, through its Resolution dated 29.10.1997, implemented the Maharashtra Sub Services Departmental Examination (for the Cadre of Talathis) Rules, 1997. As per Rule 4(1) of these Rules, every Talathi appointed after the appointed date is required to pass the examination within four years from the date of appointment and within three chances. Additionally, Rule 9 of these Rules states that if the examination is not held in a particular year, that year shall be excluded when computing the total period of years specified in Rule 4. The respondent by notification No. 2012/Astha 2/T 1/P.K. 08 dated 21 May 2013 announced a departmental examination to be held from 10.06.2013 to 13.06.2013. The applicant appeared for this examination, and as per the results declared on 26.09.2013, he passed in two papers but failed in three papers.

(iii) The applicant submits that in the year 2014, the respondent did not conduct any Departmental Examination. In 2015, the applicant attained 45 years of age. Consequently, the respondent No. 3 issued order No. 2015/Astha 2/T 2/P.K. 40 dated 10.12.2015, whereby the applicant was exempted from the Departmental Examination as per Rule 8 of the Government Resolution dated 4th June 1998.

(iv) On 07.09.2010, the respondent No. 3 published a draft seniority list of candidates from the Talathi cadre who were eligible for promotion as Circle Officer. The applicant objected to this list on the grounds that the respondent had considered the date of exemption from the examination (10.12.2015) as the date of appointment, instead of his actual appointment date (30.05.2011). The applicant specifically referenced Rule 9 of the Government Resolution dated 29.10.1997. The respondent accepted the applicant's objection and considered his actual

date of appointment for seniority purposes, as evidenced by circular No. 2019/MaShaka 1/Astha 1/T 1/P.K. 210 dated 13.11.2019.

(v) The respondent No. 3 issued circular No. 2019/Mashaka 1/Antha 1/T 1/P.K. 28 dated 22.12.2020, modifying the seniority list as per objections, in which the applicant's name appeared at serial No. 571, with his actual appointment date considered for seniority.

(vi) Meanwhile, the Maharashtra Administrative Tribunal, Bench at Aurangabad passed orders in Original Applications No. 330/2020, 280/2021, 390/2020, and 389/2020, wherein the Tribunal, based on the specific facts of those cases, considered the date of exemption from the examination as the date of appointment.

(vii) In 2022, respondent No. 4 revised the seniority list for promotion from Talathi to Circle Officer and published a draft list with circular No. 2020/Astha/Talathi/J.S. 1997/T 3/P.K. 01 dated 30.06.2022. In this list, the applicant's name appeared at Serial No. 85, with the date of exemption from the examination (10.11.2015) shown as the date of appointment, rather than his actual appointment date (30.05.2011). The applicant objected to this draft list on 20.06.2022, providing supporting documents. The respondent rejected the applicant's objection, citing the order passed by the Maharashtra Administrative Tribunal in Original Application No. 389/2020, which considered the date of exemption from examination as the date for seniority.

(viii) The respondent No. 3 issued circular No. 2022/MaShaka 1/Astha 1/T 1/P.K. 25 dated 12.07.2022, again inviting objections to the draft seniority list by 19.07.2022. The

applicant submitted his objection on 13/14.07.2022 to respondent No. 4. The respondent No. 3 prepared the final seniority list, rejecting the applicant's objection. The applicant's name appeared at serial No. 756. The respondent noted that as the applicant was given exemption from the Maharashtra Sub Services Departmental Examination, the exemption date (10.11.2015) was considered as the date for seniority.

4. Legal Arguments of the Applicant

(a) The applicant contends that from his appointment on 30.05.2011, the Departmental examination was only held twice. During the first examination in 2011, the applicant had not even completed one month of service. The second examination was held in 2013, where the applicant cleared some papers. In 2015, he was exempted from the examination after attaining 45 years of age. The applicant argues that he was not given the three fair chances as required by Rule 4 of the Maharashtra Sub Services Departmental Examination (for the Cadre of Talathis) Rules, 1997, as the examination was not held in certain years.

(b) The applicant submits that the respondent's decision to consider the date of exemption from examination as the date for seniority, based on the order dated 28.03.2022 in Original Application No. 389/2020, is inappropriate. The applicant argues that he was not a party to that Original Application, and the factual aspects of that case were entirely different from his case. The applicant contends that legal precedents cannot be applied blindly without comparing the facts of the case.

(c) The applicant relies on the Supreme Court judgment in K.K. Gohil Vs. State of Gujarat & Ors, 2015 AIR (SC) (Supp) 2229, where the Court held that if a higher departmental examination is not organized during the eligibility period for

obtaining higher pay scales, then the benefit of higher pay scales cannot be withheld on such grounds.

(d) The applicant also relies on the Supreme Court judgment in State of Maharashtra Vs. Jagannath Karandikar, 1989 AIR 1133, where the Court held that if an examination is not held in any year, Rule 2 (which states that a candidate who does not pass the examination at the end of nine years of service will lose his seniority) cannot operate to the prejudice of a person who has not exhausted all his chances. The Court emphasized that it would be unjust, unreasonable, and arbitrary to penalize a person for the default of the Government in not holding the examination every year.

(e) The applicant submits that the Maharashtra Sub Services Departmental Examination (for the Cadre of Talathis) Rules, 1997, and the Maharashtra Revenue Qualifying Examination for Promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998, are silent on the contingency that has occurred in his case. The applicant argues that even if it is accepted that the departmental examination must be passed within four years and three attempts, if the examination was not held and the candidate attains 45 years of age during that period, the candidate cannot be blamed or punished by denial of seniority.

(f) The applicant further contends that on 13.11.2019, a draft seniority list was prepared, to which he objected. At that time, respondent No. 3 accepted his objection and awarded him seniority from the date of his actual appointment vide notification dated 22.12.2020. The applicant argues that once the authority passed this order and no other candidate objected to his seniority as mentioned in the list dated

22.12.2020, the same authority cannot reverse its decision and change his seniority.

(g) The applicant emphasizes that he was effectively allowed to appear for only one examination, as no examinations were held in 2012 and 2014. On 10.12.2015, the respondent authority itself exempted him from the departmental examination. The applicant notes that Rule 9 of the Maharashtra Revenue Qualifying Examination for Promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998, imposes a duty on the state authority to conduct examinations twice a year, in April and October, by the respective Divisional Commissioners. The applicant argues that no such examinations were held, and therefore, he should not be punished for circumstances beyond his control.

5. Pleadings and Arguments of the Respondents

(i) The respondents submit that the applicant joined government service as a Talathi at the Sub-Divisional Office, Nanded, on 30.05.2011. As per the service rules, every Talathi is required to pass two departmental examinations, namely the Sub-Service Examination (SSD) and the Revenue Qualifying Examination (RQE), within the time and attempts prescribed by law.

(ii) The respondents contend that according to the departmental examination rules, any person who does not clear the examination within the stipulated time and attempts shall lose their seniority. If a candidate receives an exemption from passing the departmental examination, this exemption does not entitle them to retain their initial seniority. Instead, their seniority is fixed on a date after they attain the age of 45 years (now 50 years as per revised rules) in accordance with the law.

(iii) The respondents submit that as per Rule 4(1) of the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathi) Rules, 1997, the applicant was required to pass the Departmental Examination (SSD) within 4 years and within 3 chances from the date of his appointment to government service as a Talathi.

(iv) The respondents provide details of the first three SSD Examinations held since the date of the applicant's appointment: (a) First examination on 01.06.2011: The applicant did not appear for this examination. (b) Second examination on 10.06.2013: The applicant appeared but failed to pass. (c) Third examination on 28.12.2015: The applicant did not appear due to exemption.

(v) The respondents note that the applicant did not appear for the first and third consecutive SSD examinations since his appointment. The office of respondent No. 3 granted him exemption from appearing for the departmental examination once he attained 45 years of age on 10.11.2015, following his request.

(vi) The respondents cite Rule 5 of the Maharashtra Sub-Service Departmental Examination (for the cadre of Talathi) Rules, 1997, which outlines the consequences of failing to pass the examination within the specified time limit and chances. According to this rule, a Talathi who fails to pass the examination shall not be confirmed as Talathi or be allowed to draw the next increment until passing the examination or receiving an exemption. Additionally, they shall lose seniority in the cadre of Talathi.

(vii) The respondents also cite Rule 7(2) of the Maharashtra Sub-Service Departmental Examination (for the cadre of

Talathi) Rules, 1997, which states that a Talathi who has attained the age of 45 years shall be exempted from passing the examination, but the seniority lost by them in accordance with the provisions of clause (b) of Rule 5 shall not be restored due to such exemption.

(viii) The respondents submit that as the applicant failed to pass the examination and opted for exemption after attaining 45 years of age, he lost his initial seniority, and his seniority was fixed on the date of exemption (10.11.2015) in accordance with the rules.

(ix) The respondents acknowledge that the office of respondent No. 3 had prepared and published a provisional seniority list for the Talathi cadre through circular dated 13.11.2019, showing the applicant's seniority on the date of securing exemption from passing the departmental examination (10.11.2015). Following the applicant's objection, respondent No. 3 revised the seniority list, restoring the applicant's original seniority (30.05.2011).

(x) However, the respondents note that the Maharashtra Administrative Tribunal, in its order dated 28.03.2022 in Original Application No. 389/2020, considered the date of exemption from examination as the date of seniority. In view of this judgment, the office revised the applicant's seniority, restoring it to the date on which he received exemption from passing the examination (10.11.2015).

(xi) The respondents maintain that the circular issued by respondent No. 3 is fair, just, and in accordance with the law. They argue that the present application is baseless and devoid of merit, and therefore should be dismissed.

6. Analysis and Findings

(i) Having heard the learned counsel for the applicant and the learned Presenting Officer for the respondent authorities, we now proceed to determine the central issue in this case: Whether the applicant's seniority should be calculated from his date of appointment (30.05.2011) or from the date of exemption from departmental examination (10.11.2015).

(ii) The essential facts of the case are not in dispute. The applicant was appointed as a Talathi on compassionate grounds on 30.05.2011. As per the Maharashtra Sub-Services Departmental Examination (for the Cadre of Talathis) Rules, 1997, he was required to pass the departmental examination within four years from the date of his appointment and within three chances. On 10.11.2015, the applicant attained the age of 45 years and was subsequently granted exemption from appearing in the departmental examination.

(iii) The chronology of events reveals that since the applicant's appointment, the departmental examination was conducted only in 2011 and 2013, while no examinations were held in 2012 and 2014. In the 2011 examination, the applicant had barely joined service and could not reasonably be expected to prepare adequately. In the 2013 examination, the applicant managed to pass in two papers but failed in three. Before he could appear for a third attempt, he attained the age of 45 years and was granted exemption from the examination.

(iv) (a) The applicant was entitled to three attempts within four years to pass the departmental examination, as per Rule 4(1).

(b) As per Rule 9, if the examination is not held in a particular year, that year shall be excluded when

computing the total period. Since examinations were not held in 2012 and 2014, these years should be excluded from the computation of the four-year period.

(c) Rule 5(a) clearly states that a Talathi will lose his seniority only if he does not pass the examination in three attempts within four years or if he is not given exemption from passing the examination before he completes his mandatory three attempts.

(d) In the present case, the applicant received exemption from passing the examination as he attained 45 years of age before he could appear for his third attempt. Since the applicant had not exhausted all mandatory three attempts before receiving the exemption, he should not lose his seniority as per Rule 5(a).

(e) The proviso to Rule 7(2) states that seniority lost in accordance with the provisions of clause (b) of Rule 5 shall not be restored on account of exemption. This implies that only those Talathis who have already lost seniority due to not passing the examination within the stipulated period and attempts will not regain their lost seniority upon receiving exemption after attaining the age of 45 years.

(v) The central legal question in this Original Applications revolves around the correct interpretation of Rule 7(2) read with Rule 5(b) of the Maharashtra Sub-Services Departmental Examination (for the Cadre of Talathis) Rules, 1997. The respondents have adopted an interpretation that leads to an automatic loss of seniority for any Talathi who obtains exemption from passing the departmental examination upon attaining 45 years of age. This interpretation, however, fails to

harmoniously construe the relevant provisions and ignores the established principles of statutory interpretation.

(vi) Rule 7(2) states: "A Talathi who has attained the age of forty-five years on the appointed date or attains that age thereafter shall be exempted from passing the Examination: Provided that, the seniority lost by him in accordance with the provisions of clause (b) of rule 5 shall not be restored to him on account of such exemption."

(vii) The critical phrase here is "the seniority lost by him in accordance with the provisions of clause (b) of rule 5." This necessitates a careful examination of Rule 5(b), which prescribes the consequences of failure to pass the examination within the time limit and chances specified in Rule 4. Rule 5(b) specifically states that a Talathi "shall lose seniority in the cadre of Talathi" if he fails to pass the examination within the prescribed period and attempts.

(viii) The proviso to Rule 7(2) does not independently create a new ground for loss of seniority. Instead, it merely clarifies that if seniority has already been lost under Rule 5(b), such lost seniority will not be restored merely because the individual subsequently receives an exemption. The respondents have erroneously interpreted Rule 7(2) as if it reads: "Upon receiving exemption after attaining 45 years of age, a Talathi shall lose his original seniority and his seniority shall be reckoned from the date of exemption." This interpretation adds a consequence not expressly provided in the rule.

(ix) Applying the principle of *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of others), if the rule-makers had intended that obtaining an exemption would automatically lead to the loss of original

seniority for all Talathis, irrespective of whether they had exhausted their prescribed attempts, they would have explicitly provided for it. The absence of such a stipulation is significant.

(x) Furthermore, the cardinal principle of statutory interpretation requires that provisions that impose penalties or create disadvantages must be strictly construed. The respondents' broad interpretation of Rule 7(2) imposes a significant disadvantage on Talathis who, through no fault of their own, could not exhaust their prescribed attempts before attaining 45 years and receiving exemption.

(xi) When Rules 4, 5, 7, and 9 are read together, the legislative intent becomes clear: a Talathi must pass the examination within four years and three attempts; if examinations are not held in certain years, those years are excluded from the calculation; a Talathi loses seniority only if he fails to pass within the prescribed period and attempts; and if a Talathi has already lost seniority under Rule 5(b) and subsequently receives exemption upon attaining 45 years, the lost seniority is not restored.

7. In the present case, the applicant had not exhausted their three attempts before receiving exemption, primarily because examinations were not held in certain years. Thus, the condition precedent for the application of Rule 5(b), i.e., failure to pass within the prescribed period and attempts, was not fulfilled. Consequently, there was no "seniority lost" under Rule 5(b) that the proviso to Rule 7(2) could prevent from being restored.

8. The respondents' interpretation creates an absurd result where a Talathi who has been diligent in attempting the examinations

whenever held, but who has not been given the full opportunity to exhaust his attempts due to administrative failures, is penalized by losing his original seniority. Such an interpretation violates the principle that a statute should not be construed to produce an absurd or unjust result, particularly when another interpretation consistent with the legislative purpose is available.

9. The respondents appear to have erroneously assumed that all Talathis who are exempted from passing the examination after attaining the age of 45 years will automatically lose seniority to the date of exemption. This interpretation is not supported by a harmonious reading of Rules 5 and 7. Only those Talathis who have failed to pass the examination in four years and three attempts, and subsequently receive exemption, will lose seniority to the date of exemption.

1. The respondents' reference to the Maharashtra Administrative Tribunal's order in Original Application No. 389/2020 is noted. However, as rightly pointed out by the applicant, precedents cannot be applied mechanically without considering the specific facts of each case. The applicant was not a party to that proceeding, and the factual matrix of that case is significantly different from the present one.
2. Moreover, the Supreme Court, in State of Maharashtra Vs. Jagannath Karandikar (1989 AIR 1133), has clearly held that if an examination is not held in any year, the rule regarding loss of seniority cannot operate to the prejudice of a person who has not exhausted all their chances. The Court observed:

"Rule 5 requires the Government to hold the examination every year. This rule is the basis of the entire scheme and the effect of other rules depends upon holding the examination. If examination is not held in any year, rule 2 cannot operate to the prejudice of a person who has not exhausted all his chances. The person who has not exhausted the available chances to appear in the examination cannot be denied his seniority. It would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year."

Similarly, in K.K. Gohil Vs. State of Gujarat & Ors. (2015 AIR (SC) (Supp) 2229), the Supreme Court held that if a higher departmental examination is not organized during the eligibility period, then benefits cannot be withheld on such grounds.

3. It is also pertinent to note that respondent No. 3 had initially accepted the applicant's objection and considered his actual date of appointment for seniority purposes through circular dated 13.11.2019. This decision was later reversed based on a misinterpretation of the rules and an inappropriate application of a precedent from a different case.
4. The fundamental principle of justice demands that an individual should not be penalized for circumstances beyond their control. In the present case, the applicant was deprived of opportunities to appear for the examination due to the respondents' failure to conduct examinations in 2012 and 2014. It would be unjust to penalize the applicant by demoting his seniority for the administrative lapses of the respondents.

10. In light of the above analysis, I conclude that the applicant's seniority should be reckoned from his date of

appointment (30.05.2011) and not from the date of exemption from the departmental examination (10.11.2015).

MEMBER (A)

Per : Justice V.K. Jadhav, Vice Chairman :-

11. My learned colleague Shri Vinay Kargaonkar, Member (A) has aptly reproduced the facts and the rival submissions made on behalf of the parties. It is, therefore, not necessary to repeat the same again.

12. On perusal of the pleadings and after hearing the elaborate submissions made on behalf of the respondents, it appears that the respondents have pressed the points that in view of the provisions of rule 5 r/w rule 9 of the S.S.D.E. Rules, 1997 the Talathi loses his seniority in the cadre for the reason of not passing the said Examination till he attains the age of 45 years and getting exemption thereof without exhausting the total number of chances. Further, question also arises as to whether the prescribed period and number of chances for passing the examination in terms of provisions of rule 4 of the S.S.D.E. Rules, 1997 survives even after the concerned Talathi has attained the age of 45 years and exempted from passing the Examination in terms of rule 7(2) r/w proviso of the S.S.D.E. Rules, 1997.

13. In normal course, an employee, who has not exhausted the available chances to appear in the Examination, cannot be denied his seniority and the provisions of SSDE Rules, 1997 particularly rule 5 thereof cannot operate to the prejudice of such employee, who has not exhausted all his chances. However, in the instant Rules, in view of sub rule (2) of rule 7 read with proviso thereunder, on attaining the age of 45 years, the employee get exemption from passing the Examination and consequently rule 4(1) r/w rule 9 seizes to operate.

14. In this context, what we have noticed that S.S.D.E. Rules, 1997 are silent in this regard and this particular contingency is not taken into consideration while framing the said Rules. Further, there are no administrative instructions issued to fill up the said gap. Thus, in view of the larger interest of the employees, particularly, when they are not at fault in exhausting all the number of chances to appear in the examinations since the Department has failed to hold the Examination continuously and regularly, the view taken by my learned colleague Shri Vinay Kargaonkar, Member (A) appears to be reasonable and in consonance with the view expressed by the Hon'ble Supreme Court in the cases of **State of Maharashtra Vs. Jagannath Achyut Karandikar, 1989 AIR 1133** and **K.K. Gohil Vs. State of Gujrat & Ors., 2015 AIR (SC) (Supp.) 2229**.

15. In this context, I, however, hope and expect that necessary amendment will be carried out in the S.S.D.E. Rules, 1997 keeping in mind the interest of the employees, as well as, the public

interest. In view of the discussion above, the present Original Application deserves to be allowed.

VICE CHAIRMAN

16. Hence the following order is passed:

O R D E R

(a) The seniority list prepared and published by respondent No. 3 vide notification dated 29.07.2022 is set aside to the extent it relates to the applicant's seniority.

(b) The respondents are directed to reconsider and allow the objection raised by the applicant dated 13/14.07.2022 to the draft seniority list and award seniority to the applicant from the date of his appointment i.e., 30.05.2011.

(c) The revised seniority list shall be issued within a period of two months from the date of receipt of this order.

(d) Respondent shall consider the applicant for promotion based on his seniority cum merit criterion, provided he is otherwise eligible as per applicable rules and guidelines.

(e) The Original Application is allowed in the above terms with no order as to costs.

MEMBER (A) **VICE CHAIRMAN**