

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.937 OF 2023**

**DISTRICT : Pune  
SUBJECT : Promotion**

Shri. Kiran Mohan Jadhav )  
Age-37 years, Working as Talathi, )  
Office at Tahasil Office Shirur, )  
Dist.-Pune. )  
Residing at- Flat No. 402, Swagat )  
Residency near Narayani Dham Mandir, )  
Katraj, Pune. )...**Applicant**

V/s

1) State of Maharashtra, Additional Chief )  
Secretary, Revenue and Forest Department, )  
Mantralaya, Mumbai 400 032. )

2) Divisional Commissioner, Pune Division, )  
Council Hall Opp. Poona Club, Camp Area, )  
Pune - 411001. )

3) Collector, Pune District, )  
Sassoon General Hospital, Station. )  
Pune-411 001. )...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.  
Hon'ble Shri A. M. Kulkarni, Member (A)

Reserved on : 25.04.2025

Pronounced on : 28.04.2025

Per : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

**JUDGEMENT**

Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Case of the applicant is as follows. The Applicant belongs to S.T. category. He joined as Talathi in Latur District in Aurangabad Division on 1-10-2008. By order dated 1-7-2011 he was transferred to Saja-Kavate (Yemai), Taluka Shirur, District Pune in Pune Division. As per G.R.s dated 24-8-1976 and 16-11-2006 the Applicant, since he belongs to S.T. category, could clear S.S.D. examination in 5 years by availing 4 chances. Relevant details are as follows :-

Sr. No	Date of SSD examination conducted	Date of result/Remarks
1	28/08/2012 to 31/08/2012	First year - Did not fill in the form for the exam. It cannot be treated as a chance.
2	18/12/2013 to 21/12/2013	Second year 01/09/2014-1st chance (Exemption in one subject)
3	2014	Examination not conducted
4	18/11/2015 to 21/11/2015	Third year - Did not fill in the form for the exam. It cannot be treated as a chance.
5	2016	Examination not conducted.
6	19/12/2017 to 22/12/2017	Fourth year - 03/04/2018-2 <sup>nd</sup> chance (Exemption in one subject)
7	2018	Examination not conducted

8	02/03/2019 to 05/03/2019	Fifth year - 06/06/2019-3rd chance. Appeared for exam and failed
9	22/07/2019 to 25/07/2019	Fifth year - 31/12/2019- 4 <sup>th</sup> chance. (Exemption in two subjects) Cleared the examination in 4 chances and 5 years.

3. By relying on the aforequoted details the Applicant prays that it be declared that as per Rule 4 (1) of Maharashtra Sub-Service Divisional Examination (for Talathi cadre) Rules, 1997 he has passed the SSD departmental examination as per Rules read with the G.R.s dated 24-08-1976 and 16.11.2006, his seniority be accordingly fixed and he be held entitled to all consequential benefits, including promotion to the post of Circle Officer. Hence, this Original Application.

4. The only issue involved in the O.A. is within how many chances the Applicant can be said to have cleared S.S.D. examination. On this point stand of the Applicant is set out in the chart reproduced above. Stand of Respondent No.3 on this point is reflected in the following chart -

5	Details and period of passing S.S.D. exam	Date of appointment after Inter-District transfer chances for S.S.D  i) 28.08.2012 to 31.08.2012  ii) 11.12.2013 to 21.12.2013  iii) 18.11.2015 to 21.11.2015  iv) 19.12.2017 to 22.12.2017  v) 02.03.2019 to 05.03.2019
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		vi) 22.07.2019 to 25.07.2019 (passed on in 6 <sup>th</sup> chance) as per SDO Maval Notification dated 31.12.2019
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5. Comparison of these two charts shows that the dispute relates to examination held in the Years 2012 and 2015. According to the Applicant, he did not avail these two chances since he did not appear for either of these examinations. According to Respondent No.3 both these chances can be said to have been availed by the Applicant and thus total number of chances would come to 6 and as a result, the Applicant was bound to lose seniority as per Rules of 1997.

Rules 4,5,6 and 9 of these Rules which are relevant, read as under-

“४. परीक्षा उत्तीर्ण होण्याच्या संधी व कालावधी (१) नियत दिनांकानंतर तलाठी पदावर नियुक्त करण्यात आलेल्या प्रत्येक तलाठ्याला त्याच्या नियुक्तीच्या दिनांकापासून चार वर्ष व तीन संधीत परीक्षा पास होणे बंधनकारक राहिल.

(२) नियत दिनांकापूर्वी तलाठी पदावर नियुक्त करण्यात आलेल्या प्रत्येक तलाठ्याला नियम ७ अन्वये परीक्षेतून पास होण्यास सूट मिळाल्याखेरीज नियत दिनांकापासून तीन वर्षांच्या आत व दोन संधीत परीक्षा पास होणे बंधनकारक राहिल.

५. परीक्षा उत्तीर्ण न झाल्यास होणारे परिणाम - नियम ४ मध्ये विहित केलेल्या कालावधी व संधीमध्ये तलाठी परीक्षा उत्तीर्ण न झाल्यास,

(अ) परीक्षा उत्तीर्ण होईपर्यंत किंवा नियम ७ च्या तरतुदीप्रमाणे परीक्षा उत्तीर्ण होण्यास सूट मिळेपर्यंत त्याला तलाठ्याच्या पदावर कायम करण्यात येणार नाही. तलाठ्याच्या वेतनश्रेणीतील पुढील वेतनवाढ काढण्यास परवानगी देण्यात येणार नाही. अशा रीतीने रोखून ठेवलेली वेतनवाढ ही तो परीक्षा उत्तीर्ण झाल्याच्या दिनांकापासून किंवा त्याला परीक्षा उत्तीर्ण होण्यापासून नियम ७ अन्वये सूट देण्यात आल्याच्या दिनांकापासून देय होईल आणि कोणतीही वेतन वाढ रोखून न धरल्याचे समजून पुढील सर्व वेतनवाढी त्याला देण्यात येतील. पूर्वीच्या काळातील थकबाकी त्याला अनुज्ञेय नसेल.

(ब) त्याला तलाठी संवर्गातील ज्येष्ठता गमवावी लागेल. म्हणजेच जे तलाठी त्याच्या अगोदर परीक्षा उत्तीर्ण झाले असतील त्या सर्व तलाठ्यांखाली त्याचा ज्येष्ठताक्रम लागेल, त्या तलाठ्यांना ज्येष्ठ असणा-या आणि त्यांच्यानंतर परंतु नियम ४ मध्ये विनिर्दिष्ट केलेल्या कालावधीत आणि संधीमध्ये परीक्षा उत्तीर्ण होणा-या तलाठ्यांच्या खालचा ज्येष्ठताक्रम त्याला देण्यात येईल.

६. परीक्षेला बसण्याकरिता संधी - नियम ५ च्या तरतुदींना अधीन राहून तलाठ्याला परीक्षेला बसण्यासाठी कितीही वेळा संधी मिळू शकेल.

९. परीक्षा न घेण्यात आल्यास त्याचे परिणाम - जर एखाद्या वर्षी परीक्षा घेण्यात आली नाही तर या नियमाच्या नियम ४ मध्ये विनिर्दिष्ट केलेल्या एकूण देय संधीमध्ये त्या वर्षाची गणना करण्यात येणार नाही.”

6. The Applicant has relied on G.R. dated 24-8-1976 issued by G.A.D., Government of Maharashtra which states -

*“The Government has now decided that in the departmental examinations rules for promotion to the higher posts applicable to the Government servants, both Gazetted 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 examination, than is permissible under the rules to other candidates.”*

7. The applicant has further relied on G.R. of G.A.D., Government of Maharashtra dated 16.11.2006 which states -

“विविध विभागातील/कार्यालयातील वरिष्ठ पदावर पदोन्नती देण्यासाठी ज्या विभागीय परीक्षा उत्तीर्ण होणे आवश्यक ठरविले आहे, त्या विभागीय परीक्षा उत्तीर्ण होण्याकरीता अनुसूचित जाती, अनुसूचित जमाती, भटक्य व विमुक्त जमातीच्या उमेदवारांना, सर्वसाधारण (खुल्या) उमेदवारांपेक्षा एक अतिरिक्त संधी व एक जादा वर्ष देण्याची तरतूद शासन निर्णय, सामान्य प्रशासन विभाग, क. ईएक्सएम-१०७५/१६८१/१७, दि.२४ ऑगस्ट, १९७६ च्या आदेशान्वये केलेली आहे. सदर सवलत आता “विशेष मागास प्रवर्गातील” उमेदवारांनाही लागू करण्यात येत आहे.”

8. The Applicant has further relied on judgment of Aurangabad Bench of this Tribunal in **O.A.No.171/2022 (Madansingh Shivsingh Gusinge V/s. the State of Maharashtra and 3 others)**. In this case, it is held :-

*“As held by the Principal Seat of this Tribunal in O.A.No.480 & 481, G.R. dated 24.08.1976 is applicable to SSDE and candidates belonging to backward class should be given one more chance and one more year to pass the Departmental examination.”*

9. Crux of the matter is whether the Applicant can be said to have availed chances when S.S.D. examination was held in the Years 2012 and 2015 though he did not admittedly appear and participate in either of these examinations. This question will have to be answered in the negative in view of precedent of Hon'ble Bombay High Court in **W.P. No.1420/2015 (S. B. Sahasrabudhe V/s Prasad Vasant Mahajan; The State of Maharashtra; The Commissioner of Transport)**. In this case, it is held –

*“In the instant matter, the word, that appears in the rule, is “chance” and not “attempt”. The word “attempt” as defined in the Black’s English Dictionary, is the act or instance of making effort to accomplish something especially without success. The “attempt” is something more than a “chance”.*

*In the instant matter, the petitioner did not appear for July 1985 examination and as such, it cannot be construed as a ‘chance’ availed of by him.*

*For computing the three chances, what is required to be considered is three chances availed of by the candidate.”*

10. Considering undisputed facts and the legal position in respect of what amounts to chance availed of, the Original

Application deserves to be allowed. It is accordingly allowed in the following terms :

- [i] The seniority of the applicant is restored back to the date of appointment i.e. 01.10.2011 and as per the merit list in the appointment order.
- [ii] Necessary corrections be carried out in the seniority list.
- [iii] Thereafter, applicant be considered for promotion as Mandal Adhikari (Circle Officer) as per his seniority and other applicable criteria as per rules within one month from today.
- [iv] O.A. stands allowed, however, with no order as to costs.

**Sd/-**

**(A.M. Kulkarni)**  
**Member (A)**

**Sd/-**

**(M. A. Lovekar)**  
**Vice-Chairman**

Place: Mumbai

Date : 28.04.2025

Dictation taken by: V. S. Mane

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