

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.859/2023

**DISTRICT:- AURANGABAD,
NANDURBAR, JALGAON, DHULE**

1. Smt. Aruna Bhimrao Kharat,
Age: 47 years, Occu: Service as Junior Geologist
in the office of Deputy Director of Ground Water
Survey and Development Agency, Jyoti Nagar,
Aurangabad, District Aurangabad.
R/o. Row House No. 75, Sara Siddhi Complex,
Beed Bypass, Aurangabad, District Aurangabad.

2. Pramod Himmatrao Khairnar,
Age: 43 years, Occu: Service as Junior Geologist
in the office of Rural Water Supply, Nandurbar,
Zilla Parishad Office, Nandurbar.
R/o. Flat No. 2, Samarth Nagar Icon, Kole Nagar,
Anandwali, Nashik. 422013.

3. Dr. Krishna Bakuldas Deshpande,
Age: 42 years, Occu: Service as Junior Geologist
in the office Senior Geologist, D-Wing, 3rd Floor,
Old B.J. Market, Jalgaon, District Jalgaon.
R/o. C/o. P.B. Patil, Plot No. 30, Gut No. 78,
Kolhe Ngar (West), Jalgaon.

4. Lalit Brijlal Waikar,
Age: 42 years, Occu: Service as Junior Geologist
in the office of Ground Water Survey and Development
Agency, Dhule, District Dhule. Plot No. 52, Jaihind Colony,
Nakane Road, Deopur, Dhule, District Dhule.
R/o. Plot No. 75, Income Tax Colony, Nakane Road,
Deopur, Dhule, District Dhule.

...APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Water Supply and Sanitation Department,
7th Floor, Gokuldas Tejpal Hospital Campus,
Lokmanya Tilak Marg, Near Crofferd Market,
New Mantralaya Building, Mumbai-400001.

2. The Commissioner,
Ground Water Survey and Development Agency,
New Agriculture College Building, 1st Floor,
Bhujal Bhavan, KB Joshi Marg, Near Shivajinagar,
Pune (M.S.) - 411005. **...RESPONDENTS**

APPEARANCE :Shri V.B.Wagh, Counsel for Applicants.
:Shri V.R.Bhumkar, Presenting Officer for
the respondent authorities.

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

Reserved on : 18-03-2024

Pronounced on : 30-04-2024

O R D E R

[Per : Shri Vinay Kargaonkar, M (A)]

1. Heard Shri V.B.Wagh, learned Counsel for the
Applicants and Shri V.R.Bhumkar, learned Presenting
Officer for the respondent authorities.

By this O.A. applicants are seeking correction in the
seniority list as per their date of entry in the service.

2. Pleadings and arguments of the Applicants :-

(a) Applicant nos.1, 2 and 4 were initially appointed
as Junior Geologist (Group-B) and applicant no.3 who was
in the waiting list was also subsequently appointed as
Junior Geologist Group-B in the year 2005. Applicants

submitted that respondent no.1 notified the Departmental Examination Rules of 1992 on 31-07-1992. As per Rule 3 of the said Rules, candidates appointed by nomination shall be required to pass the examination within the probation period of 2 years. The candidates shall get the additional chance with prior permission of Government to pass the examination. The applicants state that all the applicants were appointed by way of nomination, and therefore, they were required to pass the departmental examination within 2 years of probation as per the Rules. First examination was conducted by the respondents on 8th and 9th November, 2006. The result of the said examination was declared in November, 2008. However, before declaration of result of examination of November, 2006 the respondents conducted second examination in the year 2007 and the result of second examination was declared on 01-12-2008. Third examination was held on 29-12-2008 and the result of their examination was declared on 23-04-2010. Some candidates passed the examination in their third attempt and some candidates like the present applicants failed in the examination even in their third attempt. However, all the candidates were continued in service without any

interruption till 2012. By order dated 04-05-2012, the applicants were terminated/discharged from services.

(b) All the applicants being aggrieved by the impugned order dated 04-05-2012 approached the Maharashtra Administrative Tribunal Bench at Nagpur. The Tribunal passed a detailed order on 12-10-2012 and quashed the impugned order dated 04-05-2012 to the extent of those applicants who had passed the examination within 3 chances but the O.A. was dismissed for those applicants who failed to pass the departmental examination in their third chance. However, the Tribunal granted one more opportunity/chance to the applicants to appear for the examination on the ground that the second departmental examination conducted by the respondents is null and void. The Tribunal directed the respondents to grant an additional chance to the candidates who could not pass the examination in 3 chances. Applicants subsequently passed the departmental examination on 05-12-2013.

(c) Applicants submitted that the respondent no.1 published the provisional final seniority list as on 01-01-2016 to 01-01-2023 of the cadre of Junior Geologist. The

applicants submit that the applicants are at Sr.No.72, 79, 75 and 82, respectively in the temporary final seniority list and all have been shown below the candidates who are recruited in the year 2011 onwards. Applicants claim that they should have been actually shown at Sr.No.18, 34, 21 and 29 as per their initial date of appointment.

(d) Applicants further submitted that, respondent no.1 had considered case of 20 Junior Geologists who had not passed the departmental examination within 2 years of probation. All these candidates were granted additional chance i.e. third chance to appear for the departmental examination. All these 20 candidates passed their departmental examination in the third attempt and their seniority was retained from their date of appointment.

(e) The applicants further submit that they had submitted representations on 31-08-2018, 27-07-2023 and 26-07-2023 for corrections in the seniority list published on 18-07-2023, showing their proper placement at Sr.No.18, 34, 21 and 39 instead of 72, 79, 75 and 82. It is further contended that the respondent authorities have not considered their representations and no decision has been communicated to the applicants. It is submitted that

seniority list has to be maintained as prescribed in Rule 4(2)(a) and (b) as per the ranking of the Maharashtra Public Service Commission. The applicants submitted that respondent authorities should have taken into consideration the fact that when the department has given extra chance and all the applicants have passed the examination in the extra chance given by the department then the said authorities cannot place the applicants below the juniors who were recruited later on. It is further contended that the respondent authorities have considered only last attempt given to the applicants for passing the departmental examination and given them seniority from the date of passing the departmental examination i.e. 05-12-2013 and this is contrary to the recruitment rules.

3. Submissions of the Respondents:-

(a) As per Rule 3 of the Gazetted Officers (Technical) in the Groundwater Surveys and Development Agency (Departmental Examination) Rules, 1992 Director, Groundwater Surveys and Development Agency may allow more chance to appear for the examination if the officers fail in the examination during the probation period of 2 years. As per these Rules, additional chance to appear in

the departmental examination is not the right of the officer who fails to pass the examination during the probation period of 2 years. As the applicants have not passed the departmental examination in 2 chances, therefore, they were terminated vide order dated 14-05-2012. Applicants have not passed departmental examination in two chances as per the Departmental Examination Rules or in third attempt allowed by the State Government as per the Departmental Examinations Rules. In fact, the applicants have passed the departmental examination in their fourth attempt given by the State Government as per the directions of the Maharashtra Administrative Tribunal at Nagpur by order dated 12-10-2012.

(b) Respondents have further submitted that final seniority list as on 01-01-2015 was published on 21-11-2016. Provisional seniority list of Junior Geologist as on 01-01-2016 to 01-01-2023 was published on 17-05-2023 as per the Maharashtra Civil Services (Regulation of Seniority) Rules, 2021. No objection was received from the Junior Geologist on provisional seniority list of 2016 to 2023. Seniority list was published as per the prevalent seniority rules.

(c) With respect to seniority of applicants and similarly situated candidates, the respondents have relied upon the judgment of Hon'ble Supreme Court in the case of **M.P.Chandoria V/s. State of Madhya Pradesh and Ors.** [JT 1996 (5) 378 (Civil Appeal No.7046/1996 – Special Leave Petition No.2559/1994 on 29-03-1996)]. As per the said judgment, it is submitted that, if an officer fails to pass the examination as per rules and as per order of the court extra chance is given to him for passing examination and he passes the examination in that extra chance then seniority has to be counted from the date of passing the examination and not from the date of his first appointment. Opinion of Law and Judiciary Department was taken in this regard. If the Hon'ble Court directs to reinstate the concerned and he avails extra chance to pass the examination, then in that case keeping his original seniority as per the date of appointment is not proper as this will lead to injustice to candidates who pass the departmental examination in prescribed attempts and time.

4. Analysis of facts and conclusions:-

(a) Rule 3 and 4 of the Departmental Examination Rules, 1992 are reproduced herein below:

“Rule-3: Eligibility for appearing period and number of chances for passing examination. (1) Subject to the provisions of Rule 5 every person appointed by nomination shall be required to pass the examination within his probation period of two years, provided that, if for any reasons or otherwise any person fails to appear for the examination, the Director of Ground Water Survey and Development Agencies with the prior permission to the State Government allow to appear the person for appear to the said examination.

Rule-4: Consequence of failure to pass the examination (1) a person appointed on probation any of the Scheduled Post failed to pass the examination within the period prescribed as per Rule 3 shall be liable to be discharged from services.”

The number of attempts taken by the applicants to pass the departmental examination is given in the following table:

Sr . No.	Date of Departmental Examination conducted	Date of Result/Remarks				Chance	Seniority Rank as per G.R. dated 17.07.2023
		Aruna Kharat, Jr. Geologist	Pramod Khairnar	Lalit Waikar	Krishna Deshpande		
1	8, 9 November, 2006	18 Nov. 2008, Paper No.3 is cleared	18 Nov. 2008, Paper No.3 is cleared	18 Nov. 2008, Paper No.3 is cleared	18 Nov. 2008, Paper No.3 is cleared	1 st	72
2 *	31 October, 2007, 1 November, 2007	1 Dec, 2008 This Exam was not attended	1 Dec, 2008 Appeared	1 Dec, 2008 Appeared	1 Dec, 2008 Appeared	2 nd	74
3	29, 30 December, 2008	23 April 2010 Paper No.2 is cleared	23 April 2010	23 April 2010	23 April 2010	3 rd	79
4	4, 5 July, 2013 9 January 2013	5 Dec, 2013 Departmental exam is cleared	5 Dec, 2013 Departmental exam is cleared	5 Dec, 2013 Departmental exam is cleared	5 Dec, 2013 Departmental exam is cleared	4 th	82

[*Maharashtra Administrative Tribunal, Nagpur passed order in O.A.No.554/20212 and held that the examination conducted in October/November, 2007 is no examination in the eye of law and hence the examination which was conducted for the third time would be the second examination in the eye of law.]

(b) All the above-mentioned applicants/candidates were terminated from service by order dated 04-05-2012. This order was challenged by the applicants before the Tribunal. Tribunal in a detailed order passed on 12-10-2012 had quashed the impugned order dated 04-05-2012 and reinstated those applicants and given them one more

chance to pass the examination. Tribunal in its order has also directed the respondents to maintain the continuity of their services together with all consequential benefits. All the applicants had passed the departmental examination in the extra chance given by the Tribunal/Government i.e. third attempt.

(c) Rule 4 of the departmental examinations does not mention about loss of seniority, in case, a candidate passes the departmental examination in extra chance given by the Government. Since there is no provision of loss of seniority in the Departmental Examination Rules, therefore seniority will be governed by Rule 4(2)(a) and (b) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 4(2)(a) of the said Rules of 1982 is reproduced below:

“4. General principles of seniority.

(1)

(2) Notwithstanding anything contained in sub-rule (1)-

(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by

the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;”

By applying Rule 4(2)(a) of general principles of seniority of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the applicants are entitled for seniority from the order of appointment.

(d) Twenty other Junior Geologists who did not pass the departmental examination in two attempts were given one more chance by the government to pass the examination. All 20 of these Junior Geologists passed their departmental examination in their third attempt, and their seniority was retained from the date of their appointment. If another group of 20 junior geologists were given a third chance to pass the departmental examination without losing their seniority, then there would be no reason to deny seniority from the date of appointment to these applicants, as they also passed their departmental examination in their third attempt.

(e) When implementing rules and regulations within an organization, it is imperative to uphold the principle of equality by treating all sets of employees equitably. Equality in treatment fosters a sense of fairness, fosters trust in leadership, and promotes a cohesive work environment. Equality in treatment ensures that all employees, regardless of their rank or position within the organization, are subject to the same standards and expectations. When rules are applied uniformly across the board, employees are more likely to trust in the integrity of the organization and its leadership. Moreover, treating two sets of employees equally sends a powerful message about the organization's commitment to diversity and inclusion. It demonstrates that differences in roles, backgrounds, or demographics do not influence how individuals are treated or valued within the workplace.

7. In view of the above, the Original Application is allowed in the following terms:

[i] The seniority of the applicants shall be reckoned from their date of appointment and according to their ranks in the order of preference arranged by the Maharashtra Public Service Commission.

Respondents shall correct the seniority list and place the applicants at appropriate place within two months from the date of this order.

[ii] Other consequential benefits as per law shall be given to the applicants.

[iii] O.A. stands allowed, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 30-04-2024.