

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 25 OF 2017**

DISTRICT : SINDHUDURG

Mr Sambhaji Namdeo Khade,)
Occ-Awal Karkoon,)
At Tahsil Office Vaibhavwadi,)
Tal-Vaibhavwadi, Dist-Sindhudurg.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The Divisional Commissioner)
[Revenue], Konkan Division,)
CBD Belapur, New Bombay.)
3. The District Collector,)
Office at Oras,)
Dist-Sindhudurg.)
4. Mr Umesh K. Rathod)
Working as Awal Karkoon,)
R/at: Austra Building,)
Near Don Bosco School,)
Oras, Sindhudurg, Tal-Kudal,)
Dist-Sindhudurg.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents
No 1 to 3.

Shri Umesh K. Rathod, Respondent No. 4, present in person.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **11.06.2024**

J U D G M E N T

1. The applicant prays that the impugned communication dated 5.1.2016 passed by Respondent No. 3, seeking proper placing of the applicant in the State wise seniority list dated 5.1.2016 at Sr No. 176 instead of Sr. No. 238. Further the applicant prays that applicant be placed at Sr. No. 1748 instead of 2236 in the Divisional seniority list dated 10.2.2016. Applicant also further prays that he be placed at Sr. No. 33 instead of Sr No. 82 in the seniority list dated 15.2.2016 published by Respondent No. 3. The applicant further prays that the Respondents be directed to grant the applicant seniority of the post of Awal Karkoon w.e.f 27.9.2010 condoning the one day break in service on 1.6.2014 forthwith. Finally, he prays that the Respondent No. 2 be directed to modify the seniority list of the cadre of Awal Karkoon dated 28.10.2022 and place the applicant at Sr No. 134(A) instead of Serial No. 436 with all consequential benefits.

2. Learned counsel submitted that the applicant was appointed as Clerk in NT(D) category on 13.2.2006, while Respondent No. 4 was appointed as Clerk on 25.9.2006. He was later on promoted as Awal Karkoon under N.T(D) category on 27.9.2010. Learned counsel submitted that the applicant was reverted to the post of Clerk-cum-Typist by order dated 6.1.2011 on the ground of excess appointment which was beyond the roster

point. Again on 1.2.2011 the applicant was promoted to the post of Awal Karkoon in NT(D) category. Learned counsel further submitted that on 28.5.2014 he was given one day's break and reverted to the post of Clerk-cum-Typist and was again promoted as Awal Karkoon in the open category after the meeting of the D.P.C held on 28.5.2014. The meeting of the D.P.C was held to consider the case of Respondent No. 4, who belongs to NT(A) category as he has filed application that he is not considered for promotion. Learned counsel further relies on the D.P.C meeting dated 28.5.2014, wherein the applicant was reverted from the post of Awal Karkoon to the post of Clerk-cum-Typist. However, he was again promoted on 2.6.2014 to the post of Awal Karkoon from the open category. Learned counsel submits that though Respondent No. 4 is junior to the applicant, he is shown senior. Learned counsel for the applicant relied on the communication dated 5.1.2016 regarding seniority of the applicant, wherein applicant is shown at Sr. No. 238 and after objection was taken by the applicant it was rejected. The seniority of the applicant is fixed on the post of Awal Karkoon from 2.6.2014 when he was last promoted to the said post in the open category. Learned counsel however claims that his seniority is to be counted from 27.9.2010 when he was first promoted to the post of Awal Karkoon and if that date is fixed then he is entitled to get seniority as prayed for against Respondent No. 4. Learned counsel further relies on the communication dated 11.11.2015 wherein he has raised objection regarding his prayer of counting the earlier service in the cadre of Awal Karkoon. However, the same was rejected by the Respondents.

3. Learned P.O relied on the affidavit in reply dated 27.3.2017 filed by Shri Rahul A. Sarang, Tahsildar (Establishment) in the office of Divisional Commissioner, Konkan Division, Navi Mumbai.

Learned P.O also relied on the affidavit in reply dated 16.6.2017 filed by Govind K. Sawant, Naib Tahsildar, in the office of Naib Tahsildar-Devgad, Dist-Sindhudurg. Learned P.O submitted that the representation regarding his seniority made by the applicant was considered by the Respondents and the same was rejected.

4. Learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Narender Chadha & Ors Vs. Union of India & Ors, (1986) 2 SCC 157**, on the point of deciding seniority. In this case the Supreme Court dealt with the merger and seniority between the direct recruits and promotees of the Indian Economic Service and Indian Statistical Service. While deciding the issue the Supreme Court has observed that after long period is it open to the Government to place the persons in seniority at the place lower than the place held by the persons who were directly recruited after they had been promoted. In the present case, the ratio laid down by the Supreme Court is not applicable as the facts of the present case are completely different than the case of Narender Chadha. In the present case the applicant challenges the date of fixation of his seniority without challenging the basic cause of it, that is the reversion order dated 28.5.2014. The fixation of the date of his seniority in the cadre of Awal Karkoon is based on his order of promotion which was finally passed on 2.6.2014. Earlier though there is a history since 2011 of he getting promoted to the post of Awal Karkoon and again reverted to the post of Clerk-cum-Typist twice and though there was protection of continuous service given in the last order of promotion there was no such assurance or protection. Moreover, on 28.5.2014, when he was promoted his feeder cadre was shown as Clerk-cum-Typist and then he was promoted to the post of Awal Karkoon. Thus, the date of fixation of his seniority is rightly considered by the Respondents as 2.6.2014.

5. In the present case, the applicant was reverted twice and even when the last order was passed on 2.6.2014, his feeder cadre was shown as Clerk-cum-Typist and therefore he became Awal Karkoon on 2.6.2014. The applicant has not challenged his reversion order and also not challenged his discontinuation from the post of Awal Karkoon to the post of Clerk-cum-Typist. He should have challenged at the relevant time or today. Hence, unless the reversion order is challenged by the applicant, his seniority cannot be fixed in the cadre when he was not in the said cadre. Thus, the principle that when the person enters the cadre, his seniority will be counted from that day, is rightly followed.

6. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 11.06.2024
Dictation taken by : A.K. Nair.