

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 35 OF 2017

DISTRICT : RATNAGIRI

Shri Sudam Anna Adake)
Working as Office Superintendent,)
Government I.T.I, Ratnagiri,)
R/o: Block No. 103, Chintamani)
Hairties, Behind Nachane)
Grampanchayat, Ratnagiri.)...**Applicant**

Versus

1. The Director of Vocational)
Education & Training)
Directorate,)
[Through Joint Director],)
Having office at Vocational,)
Education & Training)
Directorate, 3, Mahapalika)
Marg, Mumbai 400 001.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Skill Development and)
Entrepreneurship Department)
Having office at Mantralaya,)
Mumbai 400 032.)
3. The Joint Director [Regional],)
Vocational Education &)
Training, Bandra [E],)
Mumbai 400 051.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.
Ms Archana B.K, learned Presenting Officer for the Respondents.

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

RESERVED ON : 02.07.2024

PRONOUNCED ON : 19.09.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the impugned order dated 22.8.2016 passed by Respondent no. 1, under which he has shown the applicant at Sr. No. 35 of the State level final seniority list of employees working in the cadre of Office Superintendent, stating that he has passed the Supervisory Examination in December, 2004 in third attempt and accordingly the applicant be granted all consequential service benefits as if the impugned order had not been passed including the earlier order of reversion dated 13.8.2004.

2. At the outset it is necessary to point out in the order dated 17.8.2022, in M.A 337/2017 in O.A 35/2017, we have held in para 6 as under:-

“However, we make it clear the order of reversion on the point of second part of the prayer is not kept open and the submissions of learned P.O on that point are accepted. If the applicant wanted to challenge the reversion, then he should have challenged the reversion within one year when his order of reversion was passed, i.e., on 17.8.2004. Thus, on the point of reversion the matter is closed. We do not condone the delay of so many years. The cause given by the learned Advocate for the applicant that though the applicant was reverted his seniority was maintained till the impugned seniority list of 2016 is not just and good reason to condone the delay for the said case. The applicant has worked for four years after his demotion. The applicant can make submissions on the point of his seniority from 2008 onwards.

3. Learned counsel for the applicant challenges the seniority list dated 22.8.2016 and prays that the same be quashed and set aside. The applicant at that time was working as Office Superintendent in the Department of Vocational Education and

Training. The applicant is shown at Sr. No. 35 in the seniority list. The applicant cleared the departmental examination in the year 2004. Learned counsel for the applicant relied on para 24 of the affidavit in reply dated 10.3.2017 of Dilip R. Bhokare, Inspector in the office of the Vocational Education and Training, Regional Office, Kherwadi, Banndra [E], Mumbai.

4. Learned counsel has submitted that the applicant was promoted as Head Clerk on 28.3.2003. For the first time State level seniority list of the post of Office Superintendent was published on 22.8.2016 and he was shown pushed down. Head Clerk is the feeder cadre for promotion to the post of Office Superintendent. On 19.7.2011 the applicant was promoted to the post of Office Superintendent. Learned counsel has further submitted that the condition that the applicant should pass the departmental examination within a period of one year is contrary to the rules but a period of 4 years and 3 chances was required to be given to the applicant to pass the departmental exam. Learned counsel has submitted that the applicant should have been shown at Sr. No. 5 in the State level seniority list of Office Superintendent on 22.8.2016. Learned counsel submits that no provisional seniority list or final seniority list of Office Superintendent was published by the Department after 2011 when he was promoted on 19.7.2011 to the post of Office Superintendent.

5. We directed the applicant to make statement on oath that the seniority list of the post of Office Superintendent was never published by the Department after he was promoted on 19.7.2011 till 2016. Learned counsel for the applicant has filed affidavit of the applicant dated 13.8.2014 and relied on para 3 of the said affidavit.

6. Ms Nidhi Choudhary, Commissioner, Vocational Education and Training remained present and submitted that Regional provisional seniority list of Office Superintendent was published on 4.2.2012 and Regional final seniority list of Office Superintendent was published on 29.8.2012. The Commissioner explained that the applicant's name was at Sr. No. 10 in the Region wise provisional seniority list and at Sr. No. 9 one Mr M.U Khan is shown as his date of appointment is 1.7.2011 and the applicant was appointed as Office Superintendent on 19.7.2011. Further in the final seniority list dated 29.8.2012 the name of the applicant appeared at Sr. No. 11 and the name of Mr V.K Tiwaskar was shown at Sr. No. 10, as he was appointed on 1.8.2011 because Mr Tiwaskar had cleared the Departmental Exam, i.e., Supervisory Recruitment Test (SRT) before the applicant in the year 1995 and the applicant cleared the said examination later on 16.6.2005. Further, applicant and Mr Tiwaskar both were promoted on the same day. The Commissioner further explained that the provisional Seniority list of the Office Superintendent at State level was published on 25.4.2012 and thereafter the final seniority list of the Office Superintendent at the State level was published on 12.9.2012 and the name of the applicant did not appear in the Regional Seniority list and also in the State level Seniority list. As his name did not appear in the Regional Seniority List, his name could not appear in the State level Seniority List.

7. On query the Commissioner explained that the final State level seniority list dated 12.9.2012 was communicated to all the Regional Offices and it was published on the website of the Department and so full protocol was followed by the Department. The Commissioner further explained that in the year 2016 the applicant stood at Sr. No. 35 in the Seniority List and Mr Tiwaskar stood at Sr. No. 36 because at the State level seniority, the

seniority was considered as per the date of joining. Further one Ms Gamre at Sr No. 34 was shown senior to the applicant as she was promoted on 21.6.2011. Further the Commissioner made statement that no Office Superintendent in the final Seniority List at State Level was shown senior to the applicant who joined subsequent to the applicant. Thus, in substance, no junior is shown senior to the Applicant in the State Level Seniority List of 2016. We took into account the affidavit-in-reply dated 16.8.2024 by Anil G. Gavit, Incharge Joint Director, Vocational Education and Training on this point. Learned P.O relied on para 5 of the said affidavit in reply. The submissions of the learned counsel that in this case, reversion and seniority are to be treated separately is a jugglery of words. Applicant was promoted to the post of Head Clerk on 28.3.2003. Applicant passed the departmental examination on 11.12.2004. He was reverted to the post of Senior Clerk on 17.8.2004. The applicant did not challenge the said reversion order. He was again promoted to the post of Head Clerk on 14.7.2008. The applicant has accepted the reversion order to the post of Senior Clerk on 17.8.2004.

8. After considering the submissions of both the parties even it is accepted that the applicant had no opportunity to challenge his seniority before 22.08.2016 as the said seniority list was published first time, though earlier the state level final seniority was published on 12.09.2012; yet the relief prayed by the Applicant cannot be brought within limitation as it is based on the order of reversion which was never challenged. The chronological facts stated by the Applicant that he was recruited as Clerk on 03.06.1998. He was promoted to the post of Head Clerk on 28.03.2003 on the condition that he must pass the PRT / Supervisory examination in first chance, failing which he would be reverted. It is also admitted by both the parties that he could not

pass the said examination in the first attempt so by order dated 17.08.2004 the Applicant was demoted to the post of Senior Clerk. Subsequently, after ten months he passed the examination on 16.06.2005. He was again repromoted to the post of Head Clerk on 14.07.2008. Thus from 17.08.2004 to 14.07.2008 i.e., nearly for the period of four years the Applicant remained to be demoted to the post of Senior Clerk. Then he was promoted to the post of Office Superintendent on 30.06.2011. The submissions of learned Counsel that it was wrong and illegal decision of the State of giving him only one chance to pass the PRT examination when as per the Rules of the State examination 1977 Rules 3 to 9 total five chances were required to be given to pass the PRT examination and therefore his seniority should have been counted from the year 2003 when the applicant was first time promoted as he had passed the said examination on 16.06.2005 and therefore he should have been given the date of seniority from 13.08.2004 i.e. his order of reversion are not convincing. The Applicant was fully aware of his reversion order in the year 2004. He could have challenged the said order if it was illegal on the ground that he was entitled to exhaust five chances. However, he kept quiet and thus he accepted the order of his reversions without any protest before the authorities or sought any recourse which is permissible under the law. Thus, under the garb of challenging the order of seniority which was prepared in the year 2016 the Applicant is praying to set aside his reversion which he has accepted and never challenged, thus under the principle of acquiesce he has no cause. We are unable to appreciate his prayer of giving him deemed date of promotion from 13.08.2004. We make it clear again that unless the order of reversion is set aside the applicant cannot enter the cadre of Head Clerk in the year 2004 and therefore on account of order of reversion the applicant worked for four years on the demoted post and not in the cadre of Head Clerk which is feeder

cadre of Office Superintendent. Thus, unless we touch the order of reversion, he cannot enter the cadre of Head Clerk and further earlier deemed date of the post of Office Superintendent which he has attempted. Thus, under such circumstances no indulgence is required by us.

9. We appreciate the diligence with which Ms Nidhi Choudhary, Commissioner, Vocational Education and Training, who was personally present today at our request provided requisite information about the Applicant so as to facilitate expeditious disposal of this Original Application.

10. We find no merit in the Original Application and same stands rejected.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.09.2024
Dictation taken by : A.K. Nair.