

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 288 OF 2013**

**DISTRICT : RAIGAD**

1. Shri Pravin Mahadu Varande, )
2. Shri Sachin Baban Mhamunkar, )
3. Shri Balkrushna Babaji Rawool )
4. Shri Sachin Baburao Kalghatgi )
5. Shri Sameer Sharad Mohole )
6. Shri Nitin Avinash Gharat )
7. Shri Nitin Dattaram Nakashe )
8. Shri Sandeep Dharma Salunkhe )
9. Kavita Pravin Varande )
10. Nila Ganesh Mhatre )
11. Smt Pratiksha Pradnesh Patil )
12. Shri Ravindra Laxman Dalvi )
13. Sunita Pandurang Mane )
14. Reema Sunil Kadam )
15. Vinayak Lakhama Sarnekar )
16. Shri Sachin Mahadev Dhondage )
17. Shri Nitin Sadashiv Pawar )
18. Shri Mahesh Madhukar Kadam )
19. Savita Santosh Khot )
20. Shri Vilas Mahadeo Mundhe )

4

21. Shri Sachin Chandrakant Raje )  
 All are working as Clerks in different )  
 Office under the administrative control )  
 of the Respondent in District-Raigad )  
 C/o: Shri A.V. Bandiwadekar, )  
 Advocate, 9 "Ram-Kripa", Lt Dilip Gupte )  
 Marg, Mahim, Mumbai 400 016. )...**Applicants**

**Versus**

1. The District Collector, )  
 Dist-Raigad, having office at Alibaug )  
 Dist-Raigad. )
2. The Divisional Commissioner, )  
 Konkan Division, having office at )  
 Konkan Bhavan, )  
 Navi Mumbai 400 614 )
3. Smt Rashmi Rajendra Salunkhe )  
 Working in the cadre of Awal Karkun )  
 as Supply Awal Karkun, )  
 Supply Branch, Tahsil Office )  
 Khalapur, Dist-Raigad )
4. Shri L.N. Shelke, )  
 Entertainment Tax Inspector, )  
 Entertainment Tax Branch, )  
 Office of the Collector, Dist-Raigad )
5. Shri T.B. Patil, )  
 Working in the cadre of Revenue )

- Awal Karkun, Tahsil Office Uran, )  
Dist-Raigad. )
6. Shri R.D Bhagat )  
Working in the cadre of Awal Karkun)  
as Supply Awal Karkun, )  
Supply Branch, Tahsil Office )  
Srivardhan, Dist-Raigad )
7. Shri C.S Khot, )  
Working in the cadre of Awal )  
Karkun, Supply Accounts, )  
Tahsil Office, Mangaon, Dist-Raigad )
8. Shri Mahesh Dada Patil, )  
Working in the cadre of Supply )  
Inspector, Supply Branch, )  
Tahsil Office, Srivardhan, )  
Dist-Raigad. )
9. Shri Balasaheb Dadaso Jadhav, )  
Working in the cadre of Revenue )  
Awal Karkun-1, Tahsil Office Mahad,)  
Dist-Raigad. )
10. Smt Priti Trimbak Patil, )  
Working in the cadre of Awal Karkun)  
Mrigs, Tahsil Office-Roha, )  
Dist-Raigad. )
11. Smt Arati K. Palwankar, )  
Working in the cadre of Awal Karkun)  
Office of Deputy Collector, )  
Land Acquisition, Raigad-2, )



- Office of the Collector, )  
Dist-Raigad. )
12. Smt Yotita Maniram Patil, )  
Revenue Awal Karkun, )  
Tahsil Office Mangaon, Dist-Raigad )
13. Smt Smita M. Mokal, )  
Working in the cadre of Awal Karkun )  
as Supply Awal Karkun, )  
Supply Branch, Tahsil Office )  
Srivardhan, Dist-Raigad. )
14. Shri Sachin Ramesh Kachare, )  
Working in the cadre of Awal Karkun )  
Municipal Council, )  
Administration Branch, )  
Office of the Collector, Dist-Raigad )
15. Shri Chandrakant Thakaji Kende, )  
Working in the cadre of )  
Awal Karkun as supply Awal Karkun )  
Supply Branch, Tahsil Office )  
Srivardhan, Dist-Raigad. )
16. Smt Vaishali Uddhav Bagul. )  
Working in the cadre of )  
Awal Karkun, E.G.S. Branch )  
Office of the Collector, )  
Dist-Raigad. )
17. Smt Saroj Motiram Vetkoli, )  
Gadown Manager, Tahsil Office, )  
Alibaug, Dist-Raigad )

18. Shri Amol Moreshwar Bandari, )  
Shirestedar, in the office of the )  
Deputy Collector, [Land Acquisition], )  
Mentro Centre, Panvel-1, )  
Dist-Raigad. )
19. Smt Sarika Suresh Parkar, )  
Deputy Accountant, )  
Tahsil Office, Murud, Dist-Raigad. )
20. Smt Poonam Jayant Chavan/Raokar )  
Shirestedar, [in the office of Deputy )  
Collector, [Land Acquisition], )  
Minor Irrigation, )  
Office of the Collector, Dist-Raigad )
21. Smt Darshana Sandip Sarpatil, )  
Revenue Awal Karkun, )  
Revenue Branch, office of the )  
Collector, Dist-Raigad. )
22. The State of Maharashtra, )  
Through Addl. Chief Secretary, )  
Revenue & Forest Department, )  
[Revenue], having office at )  
Mantralaya, Mumbai 400 032. )...**Respondents**

Shri A.V. Bandiwadekar, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1, 2 & 22.

14

Shri M.R. Patil, learned advocate for Respondents no 3 to 15.

None for Respondent no. 20.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**  
**Shri R.B. Malik (Member) (J)**

**DATE : 16.12.2014**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**


1. Heard Shri A.V. Bandiwadekar, learned advocate for the Applicants, Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1, 2 & 22, Shri M.R. Patil, learned advocate for Respondents no 3 to 15 and None for Respondent no. 20.

2. The Applicants in this Original Application are challenging the final seniority lists dated 24.4.2012 and 16.11.2012 in respect of the Clerk-Typist cadre in Raigad District published by the Respondent no. 1.

3. The Applicants are working as Clerk-Typist on the establishment of the Respondent no. 1. The Applicants claim that the Respondent no. 1 has applied the relevant rules, viz the Maharashtra Revenue

Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk-Typist Rules, 1999 (the Rules of 1999) erroneously and has been placing persons, who are junior in service to the Applicants and who have passed Revenue Qualifying Examination (R.Q.E) later in point of time as compared to the Applicants, above the Applicants in the seniority list.

4. Learned Counsel for the Applicants argued that Rule 6 of the Rules of 1999 provides that a Clerk-Typist has to pass R.Q.E within three chances and within nine years of his continuous service. Rule 7 provides that a Clerk-Typist, who has passed the R.Q.E in accordance with Rule 5 shall retain his original seniority. If he fails to pass R.Q.E within three chances and nine years, he will lose his seniority to all those Clerk-Typist who have passed or exempted from passing of R.Q.E before him. Learned Counsel for the Applicants argued that the Applicants have no quarrel with this. However, the Respondent no. 1 has been placing persons who passed the R.Q.E later than the Applicants above them in the seniority list which is contrary to this express provision. Learned Counsel for the Applicants argued that Rule 15 ibid makes it clear that seniority has to be decided on length of continuous service, subject to Rule 7. Learned Counsel for the Applicants contended that the Respondent no. 22 had issued letter dated 18.2.2012 to the Divisional Commissioner, Nagpur, clarifying this



position. A circular dated 31.1.2014 has also been issued by Respondent no. 22 reiterating the same. However, the Respondent no. 1 continues to flout the statutory rules of 1999 and the Government instructions in this regard.

5. Learned Presenting Officer argued on behalf of the Respondents no 1, 2 & 22 that the seniority lists published on 24.4.2012 and 16.11.2012 are strictly prepared in accordance with the Rules of 1999. It was denied that the instructions contained in Government letter dated 8.2.2012 or the Circular dated 31.1.2014 are flouted by the Respondent no. 1.

6. Learned Advocate Shri M.R. Patil argued on behalf of the Respondents no. 3 to 15 stating that the seniority lists have been prepared as per the Rules of 1999. The Applicants failed to pass R.Q.E as per Rule 6 ibid. They have accordingly lost seniority to the private Respondents who have passed the R.Q.E within given period and chances.

7. Rule 6, 7 and 15 of the 1999 Rules are reproduced below:-


“6. Period and number of chances for passing Examination – A Clerk Typist shall be required to pass the Examination within three chances and within nine years of his continuous service.



7. Effect of passing Examination on seniority – A Clerk Typist who has passed the Examination in accordance with the provision of Rule 6, shall retain his original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk Typists who have passed or are exempted from passing of the Examination before him, as well as to those Clerk Typists who are senior to him and who may pass the Examination after him; but within prescribed period and chances specified in these rules.

15. Determination of Seniority – Subject to the provision of rule 7, the seniority of a candidate may be fixed on the basis of the date of passing of the Examination for the purpose of qualifying for promotion to the post in the cadre of Awal Karkun. As among the candidates who pass the Examination, the date of continuous service in the lower post shall determine the seniority and in case it is the same, the candidate older in age shall be declared as senior.”

8. From Rule 7, it is clear that a Clerk-Typist who fails to pass R.Q.E within three chances and nine year and loses his seniority to all those who have passed (or exempted) before him. This part of the rule is quite clear. However, Rule 7 also provides that such a person will



also lose seniority to those Clerk-Typists who are senior to him, but who may pass the Examination after him, but within prescribed period and chances. The word 'him' clearly refers to the person who loses seniority. Now on cursory reading itself this provision appears to be superfluous, as a person cannot be said to have lost seniority to those, who are already senior to him (emphasis supplied). Again reading this clause carefully, let us consider one illustration of the circumstances in which this clause may be invoked. A Clerk-Typist say 'A' exhausts his chances say within 3 years. He obviously loses seniority (to some person) as he will pass it in more than 3 chances. Another person 'B', one year senior to him, passed R.Q.E within 5 years and three chances, but after 'A'. 'A' will lose seniority to 'B'. But 'A' is in any case junior to 'B'. There appears to be no necessity of this clause as the same contingency is covered by earlier part of Rule 7, which provides that a person maintain his seniority, if he passes R.Q.E within 3 chances and nine years. This clause "as well as those Clerk-Typists who are senior to him and who may pass the examination after him, but within prescribed period and chances specified in these rules" is clearly superfluous. A person will lose seniority to all those Clerk-Typists who have passed the Examination before him. Rule 15 is regarding determination of seniority. It states that seniority will be fixed on the basis of the date of passing R.Q.E subject to Rule 7. Rule 7 clearly provides that a person maintain

24

his seniority if he passes R.Q.E within 3 chances and in 9 years. So far the persons who pass R.Q.E within 3 chances and in 9 years, their seniority will be counted from the date of their appointment (on regular basis) as Clerk-Typist. The seniority of only those who fail to pass R.Q.E within 3 chances and in 9 years will be fixed on the basis of the date of passing the R.Q.E.

9. In the present case, let us examine the seniority list in the light of above rule position. Learned Counsel for the Applicants submitted compilation of certain documents at the time of arguments in this Original Application. Appendix 4 gives the relevant dates of appointment, passing of S.S.D (Sub-Service Departmental) Examination, passing R.Q.E and position in the seniority list. The Applicant no. 1 was appointed as Clerk-Typist on 21.1.1999. The Applicant passed S.S.D Examination on 23.9.2005 in six chances. As per Rule 4(c) of the Maharashtra Sub-Services Departmental Examination Rules 1988, (the Rules of 1988) the seniority of a Clerk is fixed from the date of his appointment if he passes S.S.D examination within 3 chances and 4 years. If he fails to pass S.S.D examination as above, seniority is fixed on the date of passing the Examination. Rule 4 of the Rules of 1988 is reproduced below:

14

“4. Period and number of chances- (a) A Clerk recruited in the Revenue Department shall be required to pass the Sub-Service Departmental Examination within four years of his date of recruitment and three chances.”

10. The Applicant no. 1 failed to pass S.S.D examination within 3 chances and 4 years. He passed it on 23.9.2005. He, therefore, became junior to those who passed the S.S.D examination before him. The Respondent no. 3 passed the S.S.D examination in 3 chances and 3 years on 2.2.2008., i.e. after the Applicant no. 1 had passed it. The Applicant no. 1, therefore, does not lose seniority to the Respondent no. 3. The Applicant no. 1, also passed R.Q.E on 23.10.2008. The Respondent no. 3 passed it on 31.10.2009, i.e., after the Applicant no. 1. Neither under Rule 4(c) of 1988 Rules, nor under Rule 7 of 1999 Rules, the Applicant loses seniority to the Respondent no. 3. The Respondent no. 3 has been promoted on 10.6.2011 as Awal Karkun, but the Applicant no. 1 is yet to be promoted.

10. This Tribunal has examined this issue in O.A no 578 of 2008. By order dated 23.6.2009, it was held in para 20 that:-

“20. There are two stages where loss of seniority is envisaged. If the Sub Service Departmental

Examination is not passed within time the clerk loses his seniority after the amendment of 1993 and his name will not figure in the list of confirmed clerks until he passes the examination. The second stage is that of passing the qualifying examination for promotion to the post of Awal Karkun. According to our view, a harmonious interpretation requires that only the confirmed clerks as per their seniority (after loss, if any, for delayed passing of examination) will be the feeder cadre for the post of Awal Karkun. Amongst them, if a clerk does not pass the examination within the prescribed time limit, then he loses further seniority among the confirmed clerks. This interpretation would necessarily imply that a clerk who had lost his seniority for delayed passing of Sub Service Departmental examination cannot regain his original seniority only if he passes the qualifying examination in time. Both the requirements are essential and lay down prescribed time period at the Sub Service Departmental Examination level and the qualifying level.”

11. In the example of the Applicant no. 1 vis-à-vis, the Respondent no. 3, it is clearly demonstrated that the Respondent no. 1 has not applied Rules of 1988 and the Rules of 1999 in determining the seniority of the Applicants and the private Respondents correctly. A

person, who has joined service later and passed S.S.D and R.Q.E examination later can never become senior to another person, who joined service earlier and passed S.S.D AND R.Q.E examinations earlier than that person. The seniority lists as on 1.1.2011 and as on 1.1.2012 are not drawn correctly. These lists published on 24.4.2012 and 16.11.2012 are accordingly declared invalid. The Respondent no. 1 is directed to prepare the seniority list as on 1.1.2011 and 1.1.2012 strictly in accordance with the Rules of 1988 and Rules of 1999 as discussed above. This should be done within a period of 3 months from the date of this order. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)  
Member (J)

Sd/-

(Rajiv Agarwal )  
Vice-Chairman

**Place : Mumbai****Date : 16.12.2014****Dictation taken by : A.K. Nair.**