

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO 587 OF 2008

DISTRICT : SATARA

Shri Shriram Shivaji Gurav,)
Clerk, Office of Sub-Divisional Officer,)
Karad, Dist-Satara)
R/o: Indumati Nagar, Malkapur, Tal-Karad,)
Dist-Satara.)...Applicant

Versus

1. The Collector,)
Dist-Satara.)
2. Shri Anol G. Lokhande,)
Clerk, Office of Collector, Satara.)
3. Shri Nissar Isaq Shaikh,)
Clerk, Office of Tahsildar, Wai, Dist-Satara.)
4. Shri Dhawle J. Prakash,)
Clerk in the office of Tahsildar, Patan,)
Dist-Satara.)
5. Government of Maharashtra,)

through Addl. Chief Secretary.)
Revenue & Forest Department, Mantralaya.)
Mumbai 400 032.)...Respondents

Shri M.D. Lonkar, learned advocate for Applicant.

Shri D.B. Khaire, learned Chief Presenting Officer for Respondents 1 & 5.

Ms Swati Manchekar, learned advocate for Respondents 2 to 4.

CORAM : Shri R.B.BUDHIRAJA (VICE-CHAIRMAN)

Shri Justice S.R. SATHE (MEMBER) (J)

DATE : 23.6.2009

PER : Shri R.B. BUDHIRAJA (VICE-CHAIRMAN)

ORDER

1. The applicant was appointed as a Clerk in the office of Respondent No.1, w.e.f 6.4.2000. He appeared for the Sub-Service Departmental Examination and passed the same in July, 2000. Subsequently, he also appeared for Revenue Qualifying Test Examination and passed the same in July, 2004

2. In exercise of powers conferred by proviso to Art. 309 of the Constitution of India, Government of Maharashtra in Revenue & Forest Department, promulgated rules called "The Maharashtra Sub Service Departmental Examination Rules of 1988", which came into

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force from 18th January, 1988. Rule 4 prescribed the period and number of chances within which a Clerk in the Revenue department is required to pass the Sub Service Departmental examination. It specifically states that no clerk shall be confirmed unless he has passed or has been exempted from passing the examination.

3. Government also promulgated rules called "Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk Typist Rules, 1999", on 7.7.1999.

4. Respondent No.1 prepared and published seniority list in the Clerical cadre upto the year 2007 and published a provisional seniority list in the Clerical cadre on 30.1.2008, referring to the Rules of 1999. The applicant is shown at serial No.33. As he was aggrieved by the publication, he submitted a representation dated 16.2.2008, pointing out that the provisional list is contrary to the provisions of Sub Service Departmental Examination Rules. However, Respondent No.1 finalized the aforesaid list without accepting the representation of the applicant, on 22.8.2008. Being aggrieved by the same, the applicant has filed this Original Application.

5. The main grounds adduced by the learned advocate for the applicant are as under:-

a) As per the Sub Service Departmental examination Rules, a Clerk can be confirmed in service only after passing the examination. Until then, he is not a member of the Clerical

cadre and his continuation in the post has to be termed as fortuitous which cannot count for seniority.

- b) The issue is clearly settled by Government through letter dated 15.9.1995 issued to the Divisional Commissioner, Aurangabad as also to all Collectors in the State, emphasizing that clerks who fail to pass the said examination within the prescribed chances and period, lose their seniority, which will be counted from the date they pass the said examination or secure exemption from passing the said examination. (This was issued in the context of the 1993 amendment mentioned in para 15).
- c) Even the RQT examination rules clearly contemplate that unless and until a Clerk is confirmed in service, he is not even eligible to appear for the examination and hence there is no question of considering the said rules while fixing inter se seniority in the clerical cadre.
- d) In Writ Petition No. 3098/2007, the Hon'ble High Court held that the Tribunal had correctly appreciated the position that if a person passes the Revenue Qualifying examination after two attempts, then he loses his seniority.

6. It is therefore the contention of the applicant that his seniority should be shown from his initial date of appointment, i.e. 6.4.2000 and the same should be considered for promotion to the cadre of Awal Karkun.

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7. In the affidavit-in-reply filed on behalf of Respondents 1 & 5, it has been stated that the final seniority list has been published on the basis of provisions contained in Rule 6, 7 & 15 of the Maharashtra Revenue Qualifying Examination Rules of 1999 and Rule 15 deals with the determination of seniority. All the candidates in the seniority list have already passed or are exempted from passing the Sub Service Departmental Examination and Revenue Qualifying Examination also. Thus, the challenge to the seniority list does not deal with the fixation of seniority for the purpose of confirmation as mentioned in Rule 4(c) of the 1988 rules. The seniority determined as per Rule 4(c) is only for the purpose of confirmation and not for any other purpose. However, the consequence of not passing the examination is only the loss of arrears of amount between the withheld increment and subsequent increment, but there is no consequence prescribed about loss of seniority for the purpose of promotion to Awal Karkun cadre from Clerical cadre.

8. The seniority of a clerk in clerical cadre is determined as per the provisions of the Maharashtra Civil Service (Regulation of Seniority) Rules, 1982. According to Rule 4(1) of these rules, seniority of a Government servant shall ordinarily be determined on the length of his continuous service. Hence, the seniority of an officiating clerk is fixed according to the date of his continuous service.

9. The 1999 rules deal specifically with fixation of seniority for the purpose of promotion to the cadre of Awal Karkun from Clerk-Typist cadre. The challenged seniority list does not deal with seniority for the purpose of confirmation as mentioned in Sub Service

Departmental Examination Rules 1988, nor with the seniority of officiating clerks as per 1982 Rules. Also the letter of 11.9.1995 written by Government was prior to the Rules of 7.7.1999 and cannot be made applicable for the purpose of fixation of seniority of clerks for promotion to Awal Karkun. Also, the order in Writ Petition No. 3098/2007 has been distinguished and it is argued that the same is not applicable to the present case.

10. In the affidavit-in-reply filed on behalf of Respondents 2 to 4 it is stated that the impugned seniority list published on 22.8.2008 has been prepared on the basis of Rule 6, 7 and 15 of the 1999 Rules. Rule 15 deals with determination of seniority, but the present Original Application does not take into consideration the said rule.

11. Rule 4(c) of the 1988 rules deals with seniority of a clerk for the purpose of confirmation in the clerical cadre and Rule 5 prescribes the consequence of failure to pass the Sub Service Departmental Examination, i.e only loss of arrears of amount between the withheld increment and subsequent increment.

12. The 1999 rules deal with the promotion of Awal Karkun from the cadre of clerk-typist. Rule 7 prescribes that if a candidate fails to pass the examination within three chances and within nine years, then he will lose his seniority to all clerk-typists who have passed the examination or are exempted from passing the examination before him. According to Rule 15. the seniority of candidates can be fixed on the basis of passing of the Revenue Qualifying Examination for the purpose of promotion and among candidates who pass the

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examination, the date of continuous service in the lower post, shall determine the seniority. Hence, the seniority list published is according to rule 15 of 1999 rules and the prayer of the applicant is not tenable.

13. In the affidavit-in-rejoinder filed on behalf of the applicant, it was pointed out that it would be appropriate for the department to file a reply through some responsible officer from the office of Respondent No.5. Further, seniority cannot be fixed by applying one set of rules alone. The 1988, 1999 and 1982 rules need to be interpreted harmoniously. However, only 1999 rules have been considered giving a complete go by to the 1988 rules. In the process, the 1982 rules have also been violated. Besides, the seniority list of clerical cadre has been published on 1.1.2008 without preparing the seniority list for the earlier period, annually.

14. Since it was necessary to clarify the harmonious interpretation of various rules involved, we directed Respondent No.5 to file an affidavit-in-reply. According to the said reply filed by Smt Shaila Targe Patil, Joint Secretary, in the office of Revenue and Forests Department, it is stated that the 1988 rules were issued vide Government Notification dated 18.1.2008. According to Rule 4, a clerk recruited in the Revenue department is required to pass the Sub Service Departmental Examination within four years of his recruitment and within three chances. Rule 5 prescribes that if a clerk does not pass the examination within the stipulated period, he shall not be allowed to draw the increments until he passes the examination or is exempted from passing the same.

15. Further, an amendment to Rule 5 was made vide Government notification dated 20.7.1993, inserting Rule 5(2), which stipulates that if a clerk does not pass the examination within the period and chances prescribed in Rule 4, he shall lose seniority in the cadre of clerks. Thus, it is clear from the amendment that if a clerk does not pass the examination within the stipulated period and chances, he shall lose seniority in the cadre of clerks. Taking into consideration this amendment, Respondent No.5 has stated in the reply that Rule 15 of the 1999 rules appears to be redundant and in 1998 the Law & Judiciary department opined that the department could reconsider the incorporation of such a provision. However, Rule 15 was included in the 1999 rules and Government is now examining the need for its existence.

16. We have carefully considered the pleadings before us and the argument advanced by Shri M.D. Lonkar, learned advocate for the applicant, Shri D.B. Khaire, learned Chief Presenting Officer for Respondents 1 & 5 and Kum. Swati Manchekar, learned advocate for Respondents 2 to 4.

17. Keeping in view the scheme of examination prescribed for the Sub Service Departmental Examination in 1988 as amended in 1993, as also the 1999 rules for the Revenue Qualifying Examination required for promotion to the post of Awal Karkun, we intend to endeavor a harmonious interpretation of the rules as they stand today.

18. It is clear that the Sub Service Departmental Examination rules require a clerk to pass the examination within the stipulated period

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and it is only after passing the examination that a clerk gets confirmation. After the 1993 amendment, besides losing increments, he also loses seniority in the cadre of clerks and ranks below all clerks who have passed the examination before him. Keeping in view this provision, it is clear that the applicant had passed the examination within the prescribed period and his seniority in the clerical cadre needs to be counted from 6.4.2000, the date of his appointment.

19. The Rules of 1999 prescribe the Revenue Qualifying Examination for promotion to the post of Awal Karkun. Rule 3 indicates that every clerk-typist shall be required to pass the examination for being eligible for promotion as Awal Karkun. Rule 7 indicates that a clerk-typist who has passed the examination within the period prescribed by Rule 6 shall retain his original seniority. If he fails to do so, he will lose his seniority to all clerk-typists who have passed or are exempted from passing the examination before him.

20. Thus, 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.

21. With this view, it is seen that the impugned seniority list has been prepared without considering loss of seniority at the first stage. Hence, to the extent the seniority list under challenge ignores the loss of seniority for delayed passing of Sub Service Departmental examination, it violates the 1988 rules. Hence, we find that there is serious a flaw in the seniority list, as indicated herein.

22. Accordingly, this Original Application is allowed and the seniority list finalized on 22.8.2008 is hereby quashed and set aside. Respondent No.1 is directed to prepare a fresh seniority list keeping in view the above observations. Respondents No.5 is also directed to issue instructions to other Collectors so that the principles laid down herein are followed uniformly in all Districts. There will be no order as to costs. The process of preparing the fresh list be completed as early as possible, preferably within four months

Sd/-

(R.B.Budhiraj)
Vice-Chairman.

Sd/-

(S.R. Sathe)
Member (J)

Place : Mumbai

Date : 23.6.2009

Typed by : A.K. Nair.

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