

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No.570 of 2022

WITH CIVIL APPLICATION Nos.249/2022 and 658/2023 (D.B.)

Sarla Prataprao Rajurkar,
 Aged about 43 yrs, Occ. Service,
 R/o Presently at Talathi Saza Kondala Zambre,
 Tah. & Distt. Washim.

Applicant.

Versus

- 1) The State of Maharashtra,
 Through its Principal Secretary,
 Department of Revenue & Forest, Mantralaya, Mumbai-32.
- 2) The Collector, Washim, Tah. & Distt. Washim.
- 3) Yogita Vijayrao Gadhve,
 Aged about 39 yrs, Occ. Service,
 Working as Talathi at Office of the Sub-Divisional Officer,
 Karanja, Tah. & Distt. Washim.
- 4) Subhash Sahebrao Jawanjal,
 Aged 44 yrs, Occ. Talathi, IODP Colony;
 Near Mahakali Mandir, Washim.
- 5) Gajanan Ganaji Pawar,
 Aged 47 yrs, Occ. Talathi, Tulsi Vihar Colony, Manrul Road,
 Karanja.
- 6) Sanjay Mahadev Uike,
 Aged 49 yrs, Occ. Talathi, Vinayak Nagar, Washim.
- 7) Mahesh Ambadas Dhanorkar,
 Aged 47 yrs, Occ. Talathi, Rangaripura Karanja.
- 8) Nilesh Vijay Gugale,
 Aged 49 yrs, Occ. Talathi, Bembalpat, Malipura, Karanja.

Respondents.

Shri D.T. Shinde, Id. Advocate for the applicant.
Shri V.A. Kulkarni, Id. P.O. for respondent nos.1 and 2
S/Shri S.I. Khan, R.R. Evnate, S.M. Khan, Advs. for R-4 to 8.
None for respondent no.3.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 8th April,2024.

Date of Pronouncement of Judgment : 2nd May,2024.

JUDGMENT

(Delivered on this 2nd day of May,2024)

Heard Shri D.T. Shinde, learned counsel for the applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 and 2, Shri S.I. Khan, learned counsel for respondent nos.4 to 8 (Intervener), none for respondent no.3.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

3. The case of the applicant in short is as under –

The applicant was appointed on the post of Talathi on 03/03/2004. The applicant joined on the said post on 03/03/2004, whereas, respondent no.3 who was appointed as a Talathi joined on 05/03/2004. The respondent no.3 was shown junior to the applicant.

On 01/01/2018, 01/01/2019 and 01/01/2020, the respondent no.2 had published the final seniority cum gradation list of Talathi working in Washim district as per the service details of all Talathis working in various sub-divisions of Washim district. The names of applicant and respondent no.3 had been shown at rightful places, because, respondent no.3 who joined as a Talathi on 05/03/2004 is junior to the applicant. After getting the knowledge of illegal and irregularities of the provisional selection list of Talathi cadre for the year 2020, the applicant submitted objection-cum-representation against the illegal action of respondent no.2. Without considering the objection-cum-representation of applicant dated 13/04/2020 and 12/05/2022, the respondent no.2 issued impugned provisional seniority list of Talathi cadre for the year 2020.

4. It is submitted that the applicant was initially appointed in Washim Division. The applicant was transferred from Sub Division, Mangrulpir (Saza Karkheda, Tah. Manora) to Sub Division, Washim (Saza Khandala Khu., Tah. Washim) as per order dated 31/05/2014. The applicant has joined as Talathi Saza Khandala Khu., Sub-Division, Washim w.e.f. 01/07/2014 as per order dated 03/07/2014.

5. By amending the O.A., it is submitted that the Superintendent Shri Rahul Wankhede through respondent no.2 issued letter dated 23/05/2022 through the Tahsildar, Washim to the applicant thereby

directing her to remain present for hearing on 24/05/2022 at 11.00 a.m. In response to the said letter, the applicant submitted her explanation to the respondent no.2 thereby informing about pendency of the O.A. It is submitted that the applicant was again directed to remain present for hearing on 03/06/2022 in relation to her objection in respect of seniority list. The applicant had given explanation to respondent no.2 thereby informing about the pendency of present O.A. It is submitted that respondent no.2 issued provisional district level seniority list of Talathi cadre on 01/01/2021 and circulated to all Tahsildars and Sub Divisional Officers in Washim District thereby directing them to get the objection or any exception against the said provisional seniority list. In response to the said provisional district level seniority list of Talathi cadre, the applicant forwarded her detailed objection. It is learnt through reliable sources that respondent no.2 issued final district level seniority list of Talathi cadre on 01/01/2021 along with decision over the objections submitted by the concerned Talathis. Prior to finalizing the said district level seniority list of Talathi cadre, respondent no.2 failed to consider the catena of the Judgments and the decision delivered by the Tribunal.

6. It is submitted that as per the service record, the applicant and respondent no.3 were appointed in the year 2004. The respondent no.3 was shown junior to the applicant. The applicant has passed the

departmental examination in the 1st attempt in the year 2007. Thereafter, she has passed the Revenue Qualifying Examination (in short "RQE") on 25/04/2008 in first attempt. As such promotion to the post of Circle Inspector cadre was to be granted to the applicant. The respondent no.3 joined as a Talathi on 05/03/2004. She has also passed the RQE on 25/04/2008. Therefore she is junior to the applicant.

7. The respondents authority have shown the name of applicant at Sr.no.107 instead of Sr.No.4 in the seniority list and committed gross irregularity and illegality and failed to follow the rules, regulations and guidelines. It is submitted that as per the appointment order, respondent no.3 is shown junior to her. Now respondent no.3 is shown senior to applicant. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“ (9) (i) quash and set aside impugned order purportedly dated 5.5.2022 which is serve upon the applicant on 17.5.2022 (Annexure-A1); and

(ii) quash and set aside provisional selection list of the year 2020 for granting promotion from the cadre of Talathi to the cadre of the Circle Inspector in Washim District dated 23.3.2020 and further quash and set aside district level eligibility list of Talathi of the year 2020 in relation to granting promotion to the cadre of Circle Inspector from Talathi cadre published vide impugned letter dated 5.5.2022 (Annexures - A3 & A2) to the extent of applicant and respondent No. 3;

(ii-a) this Hon'ble Tribunal be pleased to quash and set aside Final District Level Seniority List of Talathi cadre on 1.1.2021 published by respondent No. 2 vide letter dated 22.6.2022 (Annexure-A18) and direct the respondent No. 2 to prepare and finalise fresh seniority list of District Level Seniority List of Talathi cadre on 1.1.2021 by strictly following judgments delivered by this Hon'ble Tribunal in O.A. No. 749/2015 and 285/2018 with 286/2018 respectively;

(ii-b) this Hon'ble Tribunal also be pleased to direct the respondent No. 2 to prepare and finalise fresh seniority list of District Level Seniority List of Talathi cadre on the basis of final seniority list published on 1.1.2018, 1.1.2019, 1.1.2020 and final selection list of Talathi cadre for the year 2015 & 2017 (Annexures A5, A6, A7, A9 & A10) by giving appropriate fitment and placement in favour of the applicant who is senior to the respondent No. 3 and be pushed down the name of the respondent No. 3 below the applicant in the Final District Level Seniority List of Talathi cadre on 1.1.2021 within such time as this Hon'ble Tribunal may deem fit.

(iii) allow this original application and may kindly be pleased to issue direction/order against the respondent No. 2 to show the present applicant in place of the respondent No. 3 by giving her correct placement in the impugned provisional selection list of the year 2020 and district level eligibility list of Talathi of the year 2020 (Annexures - A3 & A2) on the basis of the service details duly shown in final seniority list (published on 1.1.2018, 1.1.2019 & 1.1.2020) and final selection list of Talathi cadre of the year 2015 & 2017;

(iv) direct the respondent No. 2 to give promotion to the applicant as per her final seniority list (published on 1.1.2018, 1.1.2019 & 1.1.2020) and final selection list of Talathi cadre for the year 2015 & 2017 as mentioned in the foregoing paragraphs to the Circle Inspector cadre from Talathi cadre.

(iv-a) further, issue order/direction against the respondent No. 2 to promote the applicant as Circle Officer/Circle Inspector with deemed date of promotion on which her junior i.e. respondent No. 3 is promoted vide order dated 4.8.2022 and grant all consequential benefits including monetary benefits arising therefrom.

(10) By way of interim relief may kindly be pleased to stay effect, operation, execution, implementation of provisional selection list of Talathi for the year 2020 dated 23.3.2020 (Annexure-A3) and district level eligibility list of Talathi of the year 2020 dated 5.5.2022 (Annexure-A2) to the extent of respondent No. 3 who is absolutely not eligible for the purposes of consideration of her name for grant of promotion to the cadre of Circle Inspector in the interest of justice.

(ii) grant ad-interim relief in terms of prayer clause (i).

8. The respondent no.2 filed reply. It is submitted that the applicant was appointed by the Sub Divisional Officer (S.D.O.) on 03/03/2004 as per appointment order dated 26/02/2004 issued by respondent no.2 thereby posted her in the office of S.D.O., Mangrulpir, District Washim. She was working in the Mangrulpir Sub Division till 2014. During the service tenure of applicant, she has requested for transfer to Washim Sub Division. On her request, she was transferred to Talathi saza Khandala Khu., Tahsil Washim as per the order dated 31/05/2014. The applicant was transferred on her request and thereafter as per the order dated 03/07/2014 Sub Divisional Officer, Washim posted her on vacant post at village Talathi Saza Khandala (Khu.). As per transfer order, her appointment is considered in Sub

Division Washim from 03/07/2014 as per the Govt. G.R. dated 03/06/2011.

9. It is further submitted that as per the Govt. G.R. dated 15/05/2019, as per the Clause 8 (9) “ the seniority of the employee on the post of absorption would be determined from the date of absorption permanently. He would not get the benefit of seniority of the earlier office. The concerned employee would be treated as junior to all those employees who are appointed before him in the office where he is absorbed. The earlier service would be considered for the purpose of pay fixation, leave as well as pension in pursuance of provisions of law as well as guidelines issued by the Finance Department” Thereafter, the Govt. G.R. dated 23/05/2022 declared that transfer of Talathi from one sub division to another sub division is governed by G.R. dated 15/05/2019.

10. It is submitted that as per Talathi Under Revenue and Forest Department (Recruitment), Rules, 1984, under rule 2 (a) Sub Divisional Officer or Assistant Collector of respective revenue sub-division is appointing authority under the Revenue and Forest Department. The Rule-5 discloses that a person selected by the District Selection Committee shall be appointed anywhere within sub-division to which he is allotted and shall be liable to be transferred

within that sub-division. But when appointing authority is changed, then the employee will have to loss his / her original seniority.

11. It is submitted that as per provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 more specifically Rule 3 (c), 3 (i) and Rule 4 (2) b and 4 (2) (c), it is incumbent on the part of the answering respondent to prepare seniority cum gradation list annually for the cadre of Talathi of all the Government servants who are working on the post of Talathi and eligible for granting promotion to the post of Circle Inspector in Washim district and shown them in their actual placement so as to get the service benefits. Since 2014 to 2019 during the preparation of seniority list, there was a clerical mistake. Government Resolution dated 03/06/2011 mistakenly was not taken into consideration, as soon as the same is realized by the respondent authority, the said mistake is rectified and the seniority list was prepared on 05/05/2022 as G.R. dated 03/06/2011 which is not under challenge in the present application.

12. The applicant has taken objection on the temporary seniority list. Other Talathis of Washim District also raised objection. Hence, the entire objection taken by concerned Talathis along with the applicant were given opportunity for hearing on 14/03/2022. It is clear that the applicant and respondent no.3 came to be appointed by common order dated 26/02/2004 wherein respondent no.3 obtained

354 marks and applicant obtained 329 marks. The said fact is considered by the answering respondents as per the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 under Rule 4 (3) (a). Hence, the objection raised by the applicant is rightly decided by the respondents / authority. Therefore, the O.A. is liable to be dismissed.

13. The applicant has filed rejoinder and denied the contention. The respondent nos. 4 to 8 who were joined as per the order of this Tribunal submitted that the applicant was transferred to sub-division Washim, therefore, she lost her seniority. The respondent nos. 4 to 8 are seniors to the applicant in the seniority list of the year 2024. Hence, the O.A. filed by the applicant is liable to be dismissed.

14. During the course of submission, the learned counsel for applicant Shri D.T. Shinde vehemently argued that the applicant was appointed in the year 2004. The name of applicant is at Sr.No.3 and name of respondent no.3 is at Sr.No.4, as per the appointment order dated 26/02/2004. The learned counsel for applicant has submitted that as per the appointment order, the applicant is senior and therefore she was shown senior to respondent no.3 upto the impugned seniority list. But in the impugned order dated 05/05/2022 it was communicated to the applicant that respondent no.3 obtained 354 marks, whereas, the applicant secured 329 marks and therefore

respondent no.3 is senior to her. On that ground the objection raised by applicant is rejected.

15. The learned counsel for the applicant has submitted that the rank shown in the appointment order is to be considered. The rank of respondent no.3 is below the applicant. The applicant was shown at Sr.No.3, whereas, respondent no.3 is shown at Sr.No.4 in the appointment order dated 26/02/2004. In support of his submission he has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Tulshidas S/o Baliram Bastewad Vs. Mahatma Phule Krishi Vidyapeeth, Rahuri and Ano., 2016 (2) Mh.L.J.,857***. The learned counsel for applicant has submitted that the applicant cannot lose the earlier service because of her transfer from Mangrulpir sub-division to Washim sub-division. He has pointed out the Judgment of this Tribunal and submitted that the applicant shall not lose her seniority because of her transfer.

16. The learned counsel for the applicant Shri D.T. Shinde has submitted that the applicant was rightly shown in the seniority list published earlier to the seniority list of 2021. The respondents authority have wrongly shown respondent no.3 senior to the applicant. Hence, prayed to allow the O.A. as per the relief claimed by the applicant.

17. The learned P.O. Shri V.A. Kulkarni has pointed out Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and submitted that as per this rule, seniority is to be maintained as per the rank, according to the marks obtained by the respective candidates in the examination. The applicant secured less marks in the examination for the post of Talathi. The applicant secured 329 marks and respondent no.3 secured 354 marks in the examination and therefore respondent no.3 should have been shown senior to the applicant. Mistakenly the applicant was shown senior to respondent no.3, that mistake is corrected by the respondents authority, therefore, the applicant cannot say that she is senior to respondent no.3.

18. The learned P.O. has submitted that the applicant was transferred on her own request from one sub-division to other i.e. from Mangrulpir sub-division to Washim sub-division. Her appointing authority is changed. The SDO, Washim appointed her in the year 2014 at Talathi saza Khandala. Therefore, as per the G.R. dated 15/05/2019 she has lost her earlier seniority. Hence, the O.A. is liable to be dismissed.

19. Shri S.I. Khan, learned counsel for respondent nos.4 to 8 (Intervener) supported the contention of the learned P.O. He has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***South Kokan Distilleries & Ano. Vs. Prabhakar Gajanan Naik &***

Ors., in Civil Appeal No.5567 of 2008 (arising out of SLP (C) No.1822 of 2007), decided on 09/09/2008.

20. The applicant has prayed to show her above respondent no.3 in the provisional seniority list of the year 2020 and direct respondent no.2 to give promotion to her on the post of Circle Officer / Inspector with deemed date of promotion on which her junior i.e. respondent no.3 is promoted vide order dated 04/08/2022.

21. On perusal of the relief clause, there is no any prayer against respondent nos.4 to 8. This Tribunal has to decide whether the applicant was / is senior to respondent no.3. As per the mark sheet produced by respondent no.2, prepared by the District Selection Committee, the applicant secured 329 marks, whereas, respondent no.3 secured 354 marks. As per Rule 4 (2) (a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the inter se seniority is to be prepared according to the ranks (marks) obtained by the candidates in the examination. The Rule 4 (2) (a) is reproduced below –

“(4) General principles of seniority –

(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.”

22. The learned counsel for the applicant relying on Rule 4 (2) (b) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 submitted that the seniority shown in the appointment order as per the rank is to be considered. In the appointment order, the applicant is shown senior to respondent no.3. Therefore, the applicant is senior to respondent no.3. In support of his submission pointed out the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Tulshidas S/o Baliram Bastewad Vs. Mahatma Phule Krishi Vidyapeeth, Rahuri and Ano.*** (cited supra). The Hon'ble High Court has held that the seniority is to be decided on the basis of merit rank in the examination.

23. The learned counsel for the applicant has pointed out particular para and submitted that the seniority is to be taken into consideration as per the rank shown in the appointment order. In the cited Judgment, the petitioner was appointed in the reserved category. He had obtained less marks as compared to respondent no.2. But as per his submission, he was appointed in a particular category and

therefore he should be shown above the respondent no.2. It was held as under –

“The petitioner stands at serial No. 5 in the merit list and the respondent No. 2 stands at serial No. 1 in the merit list. Therefore, if the relevant Rules and the other documents placed on record is considered in its entirety, inevitable conclusion is that, the respondent No. 2 is senior to the petitioner. The relevant Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules makes it abundantly clear that, if the candidates are selected from one selection process, the seniority has to be given as per the merit rank. (Para 11)”

24. In view of the above cited Judgment in the case of ***Tulshidas S/o Baliram Bastewad Vs. Mahatma Phule Krishi Vidyapeeth, Rahuri and Ano.*** (cited supra), it is clear that as per Rule 4 (2) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, it is clear that the applicant had secured less marks than respondent no.3, therefore, she should have been shown junior to respondent no.3. The mistake which was noticed by respondent no.2 was corrected and therefore it cannot be said that the applicant was / is senior to respondent no.3. As per the merit rank, the applicant is junior to respondent no.3. Her name was wrongly shown senior to respondent no.3 in the seniority list published earlier before the impugned seniority list.

25. The second objection raised by the respondents authority that the applicant was transferred on her own request in the year 2014 therefore she lost her earlier seniority. This objection cannot be taken into consideration because in the year 2014 it was permissible only inter-district transfer i.e. from one district to another district. The Government of Maharashtra has issued G.R. dated 23/05/2022 by which the sub-division transfer in the district for Talathi is permitted. The G.R. cannot act retrospectively. Therefore, the applicant cannot be shown junior to other Talathis in the Washim division losing her earlier seniority. The applicant cannot lose her earlier length of service, because, of her transfer from Mangrulipir sub-division to Washim sub-division. This Tribunal in O.A.No.749/2015 has held in Para nos. 6 and 7 as under –

“(6) In the present case, we are, of the opinion that the Applicant cannot be made to lose his earlier service merely on the ground of transfer from one sub division to another sub division To protect the interest of Talathis in Hinganghat sub division the Applicant can be placed the bottom of the list of Talathis in that sub division, who were recruited in the year 1994, the year in which the Applicant was recruited as Talathi in Wardha sub division. He, therefore, loses seniority to those persons who were appointed in the year 1994 or those who were appointed before 1994.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 2 is directed to make necessary correction in the seniority list of 2015 and place the Applicant in the light of the directions contained in the preceding paragraph of this

order. This should be done within 3 months from the date of this order. This Original Application is accordingly allowed with no order as to costs.

26. The applicant was transferred in the year 2014 and therefore, she cannot lose her earlier service merely on the ground of transfer from Mangrulpir sub division to Washim sub division. Hence, the following order –

ORDER

(i) The O.A. is partly allowed.

(ii) The respondent nos.1 and 2 are directed to follow the decision of this Tribunal in the O.A.No.749/2015, in the case of ***Shri Dnyaneshwar S. Kapkar Vs. the State of Maharashtra & Ano.***, decided on 10/03/2017.

(iii) Other reliefs claimed by the applicant are hereby rejected.

(iv) The C.As. are also disposed of.

(v) No order as to costs.

Dated :- 02/05/2024.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 02/05/2024.