


**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.354 OF 2015**

**DISTRICT : RAIGAD**

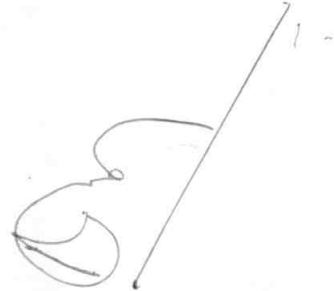
1. Shri Mahesh Mukund Sapre. )  
Working as Awal Karkun in the Office of )  
Deputy Collector (Land Acquisition), )  
Metro Center No.3, Panvel, Tal. : Panvel, )  
District : Raigad and Residing at : At & )  
Post : Thal, Tal.: Panvel, Dist : Raigad. )
  
2. Shri Rajendra Devidas Mhatre. )  
Working as Awal Karkun (Establishment )  
Branch) in the Office of Collector, Raigad, )  
Alibaug, Dist : Raigad and Residing at : )  
At : Bori, Post : Vadkhal, Tal.: Pen, )  
Dist : Raigad. )
  
3. Shri Santosh Arjun Tawade. )  
Working as Awal Karkun in the Tahasil )  
Office, Mhasala, Tal. : Mhasala, )  
District : Raigad and Residing at : At & )  
Post : Poinad, Tal.: Alibaug, Dist : Raigad.)

  
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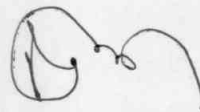
4. Smt. Suniti Sachin Deshpande. )  
 Working as Awal Karkun (Establishment )  
 Branch) in the Office of Collector, Raigad, )  
 Dist : Raigad and Residing at C/o. Shri )  
 Girish Dhulap, Rajani-Narayan, 2<sup>nd</sup> Floor,) )  
 Near J.S.M. College, Alibaug, )  
 District : Raigad. )
5. Shri Krushna Jagannath Palawe. )  
 Working as Awal Karkun, in the Office of )  
 Office of Supply Inspector, Karjat, )  
 Tal. : Karjat, District : Raigad and residing )  
 at : C/o. Shri A.B. Avhad, Mahalaxmi )  
 C.H.S, Near V.V. Tower, Badalapur, )  
 Taluka : Ambernath, Dist : Thane. )...Applicants

### Versus

1. The State of Maharashtra. )  
 Through the Chief Secretary, )  
 Revenue & Forest Department, )  
 Mantralaya, Mumbai - 400 032. )
2. The Collector. )  
 Alibaug, District : Raigad. )
3. Shri Pravin M. Varande. )  
 Working as Godown Keeper, Poynad,) )  
 Tahasil Office, Alibaug. )
4. Shri Sachin B. Mhamumkar. )  
 Working as Godown Manager, )  
 Mangaon, Tahasil Office, Mangaon. )



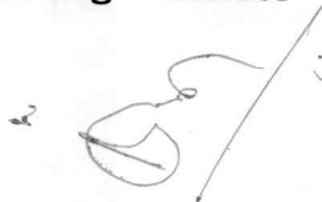
5. Shri Balkrishna B. Rawool. )  
Working as PLA Awal Karkun, )  
Tahasil Office, Roha. )
6. Shri Sachin B. Kalghatgi. )  
Working as Clerk, )  
Tahasil Office, Panvel. )
7. Shri Sameer S. Mohole. )  
Working as Clerk, Supply Branch, )  
Collector Raigad Office, Alibaug. )
8. Shri Nitin A. Gharat. )  
Working as Clerk, )  
Tahasil Office, Panvel. )
9. Shri Nitin D. Nakashe. )  
Working as Clerk, )  
Tahasil Office, Mangaon. )
10. Shri Sandeep D. Salunkhe. )  
Working as Awal Karkun (Revenue )  
Branch) Collector Raigad Office, )  
Alibaug. )
11. Smt. Kavita P. Varande. )  
Working as Clerk, )  
Tahasil Office, Alibaug. )
12. Smt. Nila G. Mhatre. )  
Working as Clerk (General Branch), )  
Collector Raigad Office, Alibaug. )
13. Smt. Pratiksha P. Patil. )  
Working as Clerk Typist, )  
Commissioner Office, Konkan Bhavan )  
Navi Mumbai. )
14. Shri Ravindra L. Dalvi. )  
Working as Clerk, )  
Tahasil Office, Mangaon. )



15. Smt. Sunita P. Mane. )  
Working as Clerk (Supply Branch), )  
Tahasil Office, Roha. )
  16. Smt. Reema S. Kadam. )  
Working as Clerk (S.G.Y. Branch), )  
Tahasil Office, Alibaug. )
  17. Shri Vinayak L. Sarnekar. )  
Working as Clerk (Revenue Branch), )  
Collector Raigad Office, Alibaug. )
  18. Shri Sachin M. Dhondage. )  
Working as Clerk, )  
SDO Office, Mangaon. )
  19. Shri Nitin S. Pawar. )  
Working as Clerk, )  
Tahasil Office, Mangaon. )
  20. Shri Mahesh M. Kadam. )  
Working as Clerk, )  
Tahasil Office, Alibaug. )
  21. Smt. Savita S. Khot. )  
Working as Clerk, )  
Tahasil Office, Alibaug. )
  22. Shri Vilas M. Mundhe. )  
Working as Clerk, )  
Tahasil Office, Uran. )
  23. Shri Sachin C. Raje. )  
Working as Clerk, )  
Tahasil Office, Mhasala. )
- )...Respondents**

**Ms. S.P. Manchekar, Advocate for Applicants.**

**Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents 1 & 2.**





**Shri A.V. Bandiwadekar, Advocate for Respondent Nos.3, 5, 9, 11 & 18.**

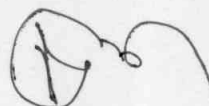
**FULL BENCH : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)  
J.D. KULKARNI (MEMBER-JUDICIAL)**

**DATE : 02.02.2017**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. This Original Application (OA) brought by five Awal Karkuns (AK) working at various places in the Office of the Deputy Collector, Land Acquisition and other Offices in Alibaug, District Raigad essentially requires adjudication of seniority list of Clerk Typists and there are two earlier Judgments of this Tribunal viz. **OA 288/2013 (Pravin Mahadu Varande and 20 others Vs. District Collector, District Raigad and 21 others, dated 16.12.2014 rendered by a Bench comprising two of us (Shri Rajiv Agarwal, Vice-Chairman and Shri R.B. Malik, Member-J) and another Judgment in OA 587/2008 (Shri Shriram Gurav Vs. The Collector, Dist : Satara and 5 others, dated 23.6.2009)(Coram : Shri R.B. Budhiraja, Vice-Chairman and Shri Justice S.R. Sathe, Member (J), taking somewhat contrary view. In accordance with**



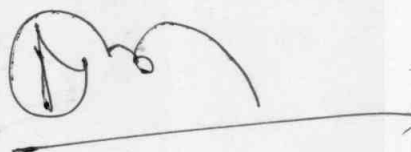
**Varande's** Judgment, seniority lists as on 1.1.2011 and 1.1.2012 of the Clerk Typists came to be published thereby revising the earlier seniority list so as to be in keeping with the mandate of **Varande's** case. These five Applicants aggrieved thereby brought this OA and by referral order of 8.9.2016, the 2<sup>nd</sup> Division Bench referred the matter to the Hon'ble Chairman so that this OA could be heard by a larger Bench. That is how and that is why, this Bench is constituted to hear and determine the issues. The following are the issues framed by the referral Bench.

- (i) Whether in **Varande's** OA, it was rightly decided that a part of the relevant rule discussed in the said order regarding loss of seniority in the Clerical Cadre was superfluous ?
- (ii) Whether the rule of precedents was accurately followed in **Varande's** OA in the context of the earlier order in **Gurav's** OA ?
- (iii) Whether in **Varande's** OA, the issue of loss of seniority was correctly decided ?



2. The main issue relates to the retention or loss of seniority, etc. of the Clerks which in turn depends upon passing the Sub-Service Departmental Examination (SSD) which is governed by the SSD Examination Rules, 1988 as amended by SSD Examination Rules, 1993. We shall have occasion to closely examine the said Rules presently.

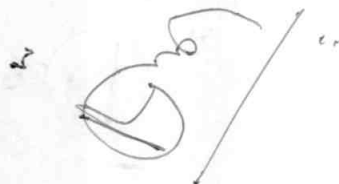
3. Awal Karkun (AK) is the next promotional post and the Recruitment Rules for that post are Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from cadre of Clerk Typist Rules, 1999 (w.e.f. 7.7.1999). Broadly so speaking, both these set of Rules lay down *inter-alia* that within the prescribed time limit therein and within the number of attempts, the said examinations must be cleared in order to retain the seniority. In SSD, the examination is held for confirmation in Clerical cadre and the Clerks who successfully cleared the said examination within the prescribed time limit and number of attempts, get their seniority related back to their dates of initial appointments. In this particular matter, a little later on, we shall have to discuss the position with regard to the Rules for appointment and promotion in the cadre of Talathis. A Judgment of Division Bench of the Hon'ble Bombay High Court Nagpur Bench in **Writ Petition No.2521/2015 (Narayan Nonune Vs. State**



of Maharashtra an 3 Others, dated 19.1.2016) will also have to be considered. The Hon'ble High Court was pleased to take a particular view in dealing with the issue of seniority of Talathis which according to the learned Advocate Shri A.V. Bandiwadekar for the private party Respondents herein is a complete answer to this OA. That particular Judgment of the Hon'ble Bombay High Court was carried to the Hon'ble Supreme Court by way of Special Leave Petition to Appeal (Civil) No.9821/2016 (R.M. Chimlate Vs. State of Maharashtra and others).

The Hon'ble Supreme Court was pleased not to entertain the Special Leave Petition and dismissed it.

4. The Applicants hereof may not have said in so many words, but basically, they are aggrieved by the mandate in Varande's matter, especially with regard to the examples that were taken in that order. Although the nature of the plea in the OA is such as to assert that even according to the mandate in Varande, they would have to be placed ahead of Varande's Applicants, but broadly so speaking, the application of the mandate of Varande's case is bound to result in the present Applicants getting pushed down in the seniority list though all of them cleared both the examinations within the time limit and number of attempts prescribed by the Rules. They, therefore, call into

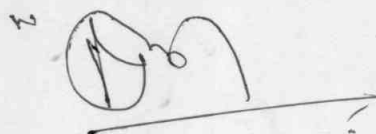


question the Judgment in **Varande's** matter. However, as indicated at the outset, the Judgment in **Varande** and **Gurav** may not be easily reconcilable, and therefore, this reference to the larger Bench was required to be made by the 2<sup>nd</sup> Bench of this Tribunal.

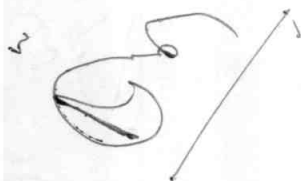
5. We have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicants, Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents 1 & 2, Shri A.V. Bandiwadekar, the learned Advocate for the Respondents 3, 5, 9, 11 and 18 while none appeared for the other private party Respondents.

6. The private party Respondents 3 to 23 are the Applicants in **Varande's** matter. The 1<sup>st</sup> Respondent is the State of Maharashtra in Revenue and Forest Department and the 2<sup>nd</sup> Respondent is the Collector of Alibaug, District Raigad.

7. At this stage itself, it needs to be mentioned that **Varande's** Judgment rendered by the 2<sup>nd</sup> Division Bench of this Tribunal came to be challenged by way of **Writ Petition (St.No.10241/2015 (Smt. Rashmi Salunkhe and others Vs. The State of Maharashtra and Others).**



That Writ Petition was apparently filed by the private party Respondents in **Varande's** matter and apart from the State, the Applicants in **Varande's** matter being the private party Respondents herein are also parties thereto. There is an order of Division Bench of the Hon'ble Bombay High Court of 24<sup>th</sup> June, 2015 which would show that the statement was made by the learned Additional Government Pleader (AGP) on instructions that they (State) were not challenging the order in **Varande's** matter, but they would like to file reply to the Writ Petition before the Hon'ble High Court. A further statement was made that the State Government had already prepared a list in deference to the Judgment in **Varande's** matter and objections raised were also decided. Time was granted as a last chance to the State and the matter stood adjourned to 1<sup>st</sup> July, 2015. In the above background, we may here and now deal with an objection of the learned Advocate for the private party Respondents herein that in much as the issue is now pending before the Hon'ble High Court, there was neither any need nor was it either congruous or proper to continue to hear and decide this matter. Therefore, he told us to reconsider the order whereby the matter was referred to the larger Bench. In that connection, he told us that pending this OA before the 2<sup>nd</sup> Division Bench, the said Bench comprising two of us had earlier shown

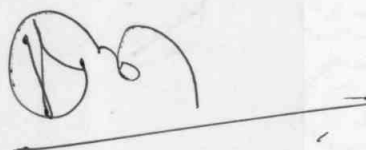




disinclination to refer the matter to the larger Bench. He apparently wanted to suggest that there was no change of circumstances necessitating reference to the larger Bench by the referral order. Now, as far as the last mentioned submission is concerned, the 2<sup>nd</sup> Bench made the following observation in the order dated 9.3.2016 which may be reproduced.

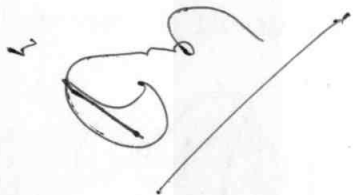
“Heard Miss S.P. Manchekar, learned Advocate for Applicant, Shri N.K. Rajpurohit, learned Chief Presenting Officer for Respondents No.1 & 2 and Shri A.V. Bandiwadekar, learned Advocate for Respondents No.3,5,9,11 and 18 in OA No.354/15. Miss S.P. Manchekar, learned Advocate for Applicant, Shri NK. Rajpurohit, learned Chief Presenting Officer for Respondent No.1 and Shri R.M. Kolge, learned Advocate for Respondents No.2 & 4 in RA No.23/15. Shri N.K. Rajpurohit, learned Chief Presenting Officer for Applicant-original Respondent and Shri RM. Kolge, learned Advocate for Respondents-original Applicants in RA No.26/15.

This group of matter was heard quite extensively and closed for orders on the point of whether the same should be referred to the

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Hon'ble Chairman for constitution of a larger bench to finally resolve the issue. Now at this stage it is not necessary to do so. That is because a judgment of the Nagpur Bench of the Hon'ble Bombay High Court (DB) in W.P. No.2521 of 2015 (Narayan Vs. State of Maharashtra & 3 Others) dated 19.1.2016 had come to our notice. Therefore, we need not consider the reference for larger bench. This group of OAs and RAs is now set down for final hearing on all points."

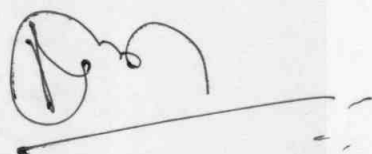
8. In the first place, it would become quite clear that the 2<sup>nd</sup> Bench had heard that issue in isolation without hearing all the points and by then, **Narayan Sonune's** order had already been rendered by the Hon'ble High Court. There is nothing therein to indicate that a final and conclusive decision against reference to the larger Bench had been taken. Such orders are passed during the life-span of a *lis* depending upon the exigencies presented by the facts and circumstances and unless it could be shown that there was any pronouncement that had become solidified into an unchangeable course of action or resulted in accrual of inalienable rights or obligations it





was always possible and open to the Bench to even alter the earlier course of action.

9. Now, quite pertinently, as far as the Writ Petition was concerned, it was always open either to the State or to any other party before the Hon'ble High Court to get the proceedings in this OA stayed but that obviously has not been done and there is no stay to the hearing of this particular OA. Mr. Bandiwadekar told us that it did not behove the State to first of all make a statement before the Hon'ble High Court that they accepted the Judgment in **Varande's** matter and then in this OA to turn around and effectively argue against **Varande's** Judgment. Now, in our opinion, if we can hear this OA because there is no order to the contrary by the Hon'ble High Court, then the other submissions of Mr. Bandiwadekar cannot prevail. The State accepted the order in **Varande's** matter which even otherwise, but for exercising their right to challenge it, they had no other-go but to do. There is no principle of law that suggests that a particular order rendered by a judicial forum would become executable only if it was confirmed by the higher judicial forum. In fact, even if there was a presumption, it would be in favour of every order of a judicial forum being conclusive and binding till such time, as it was upset by the Court of competent higher



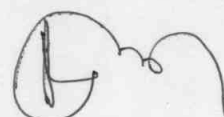
jurisdiction. The orders are binding because they are the orders of competent judicial forum. The party bound thereby has to comply therewith because they are judicial orders. They may or may not necessarily agree therewith but comply they must and, therefore, if regard being had to the facts, the State started complying with the mandate in **Varande** and prepare the list, we do not think that there was any embargo on them to present their side of the picture in this particular OA before this Tribunal. No supporting pronouncement or any other source was brought to our notice in that behalf by Mr. Bandiwadekar. We would, therefore, remain completely unimpressed by, and therefore, would reject Mr. Bandiwadekar's objection aimed at, either to reverse the order of reference to the larger Bench or even to hold it in abeyance or for that matter to hold the hearing of this OA in abeyance. We proceed further.

10. As we proceed further, at this stage, it will be appropriate to discuss the Judgments in the matter of **Gurav** (supra), **Varande** (supra) and the facts of the present OA in the light of the referral order of the 2<sup>nd</sup> Bench of this Tribunal dated 8.9.2016.

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11. In **Gurav's** OA, the sole Applicant was a Clerk in the Office of Collector, Satara from 6.4.2000. He passed the SSD examination in July, 2000 and appeared for Revenue Qualifying Test Examination (RQTE) and cleared it in July, 2004. The 1988 Rules that came into force from 18.1.1988 came to be referred and we have already indicated above that these Rules will have to be examined a little in depth herein and will have to be analysed. The Tribunal observed that under the said Rules, no Clerk would be confirmed unless he had passed the said Examination or was exempted therefrom. At this stage, it may be mentioned that a Clerk who fails to clear the Examination within the number of attempts and the duration of time can be exempted from clearing the said Examination after completing the age of 45 years.

12. The Judgment in the matter of **Gurav** (supra) then referred to the Rules called "Maharashtra Revenue Qualifying Examination for Promotion to the post of Awam Karkun from the Cadre of Clerk Typist Rules, 1999. They came into effect from 7.7.1999. The Collector, Satara prepared and published seniority list of the clerical cadre upto 2007 and published a provisional seniority list on 30.1.2008 in accordance with the 1999 Rules. The Applicant Shri Gurav was shown at Serial No.33. He made



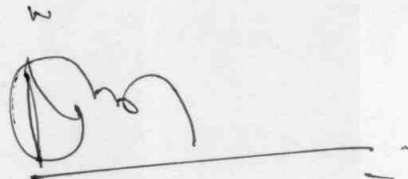
a representation thereagainst on the plea that the said list was contrary to SSD Rules. The said objection did not find favour with the Collector and the provisional list was finalized resulting in filing of the said OA. The Tribunal noted the grounds raised by the Applicants which were broadly four. Firstly, it was contended that as per SSD Rules, a Clerk could be confirmed only after passing the Examination and until then, he was not a member of the Clerical cadre and would continue in the cadre only in what can be described as fortuitous circumstances without counting the said period for his seniority. Secondly, it was the stated stand of the Government that the Clerks failing to pass the said Examination within the prescribed chances and period would lose their seniority and their seniority will be counted from the date of passing of the said Examination or from the date they would be exempted from the said Examination (post 45, etc.). Thirdly, unless a Clerk cleared the said SSD Examination, he could not take RQT Examination and the seniority *inter-se* in the Clerical cadre, therefore, could not be even considered till such time as he cleared SSD Examination. Finally, there was a reference to a Writ Petition No.3098/2007 where the Hon'ble High Court was pleased to uphold the legal position enunciated by this Tribunal that if a person passed the RQT Examination after two attempts, he would



lose his seniority. In that context, therefore, the claim of the Applicant in **Gurav** (supra) was that his seniority should be counted from his initial date of appointment which was 6.4.2000 and on that basis only, he should be considered for promotion as Awal Karkun.

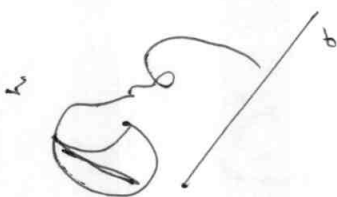
13. The State countered by making reference to the Rules 6, 7 and 15 of RQT Examination Rules, 1999. To the extent necessary, we may have to examine these provisions in some details. Rule 4(c) of the 1988 Rules and Rule 7 of the 1999 Rules were also considered. The effect of the 1993 amendment to the 1988 Rules came to be discussed in Pars 14 & 15 of **Gurav** (supra). The Tribunal made it clear that it intended to endeavour for a harmonious interpretation of the Rules as they stood at that time. Just like the referral order did we also would reproduce Paras 18 to 22 for the purpose of having a proper grasp or focus on the findings of this Tribunal in **Gurav** (supra). That would be done when we discuss the Rules themselves.

14. Turning now to the OA of **Varande**, 21 Applicants working as Clerks in the different Offices under the administrative control of the District Collector, Raigad brought **Varande's** OA. The Respondent No.1 was the District Collector, Raigad, the 2<sup>nd</sup> Respondent was





Divisional Commissioner, Konkan Division and the Respondents 3 to 22 were the private party Respondents, who or at least some of them, it may be recalled are the Writ Petitioners of the Hon'ble High Court in the Writ Petition detailed and discussed hereinabove. It was the grievance of the Applicants that the Collector, Raigad incorrectly applied the RQT Examination 1999 Rules and was placing those that were junior to the Applicants above them. The learned Advocate Mr. Bandiwadekar who appeared in that OA for the Applicants apparently told the Bench that the Applicants had no quarrel with those who cleared the Examinations within the prescribed time and attempts retaining their seniority. If he failed to do so, then he would lose his seniority to all those Clerk Typists who passed or were exempted from passing the RQT Examination before him but the Collector, Raigad was placing those persons that cleared RQT Examination after the Applicants above them in the list of seniority. It was contrary to Rule 15 of the 1999 Rules which mandated that the seniority had to be decided on the length of continuous service but subject to Rule 7 thereof. The learned PO, however, told the Bench that the seniority lists were prepared strictly in accordance with the 1999 Rules. The adverse allegations were denied. The private party Respondents apparently adopted more or less the stand as


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did the State. The Bench then reproduced the Rules 6, 7 & 15 of the 1999 Rules in Para 7. We too have to do it presently, but we shall do so in continuation with the discussion with regard to the Rules.

15. It was found that the Applicants in **Varande's** matter did not clear the said Examinations within the prescribed time limits and the number of attempts. We may repeat that in the present OA, all the Applicants are better placed in that behalf because they cleared the said Examinations within the prescribed period and the number of attempts. The 2<sup>nd</sup> Bench then referred to **Gurav's** Judgment and reproduced Para 20 therefrom which will be included in the Paragraphs that we will quote hereinbelow. In Para 11, the 2<sup>nd</sup> Bench made the following observation.

“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.”

16. A very important and significant point to be noted here is that in **Varande's** case, the 2<sup>nd</sup> Bench, going



by the tone and tenor of the Judgment thought of a situation where a person who was once senior would ultimately regain the same place once he cleared the said Examination even after having failed to clear the examinations within the prescribed period and number of attempts at the proper time. The net result thereof was that as compared to such a Clerk, the position of a Clerk who cleared the Examinations within the period and number of attempts would find himself in an uncertain situation and his position would be amenable to change every time a person who failed to clear the Examination mentioned above, cleared it. This aspect of the matter will have to be borne in mind, as we proceed further. In fact, in this behalf, **Gurav's** case (supra), generally and with particular emphasis on Para 20 which will be presently reproduced would clearly show that according to this Tribunal in that matter, the position of a Clerk who did not clear the Examination within the prescribed time limit and number of attempts was better explained and it was clarified that after the lapse of the period and the number of attempts and if we may say so even after getting exemption post 45, the said Clerk would be included in the list such as it would be at that point in time without disturbing the place/places in the seniority of those Clerks that cleared those Examinations before them or within the



time limit and/or number of attempts. We shall presently elaborate on this aspect of the matter when we take up for consideration the said Rules.

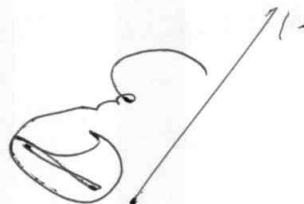
17. In the present OA, the dates of birth of the Applicants S/S M.M. Sapre, R.D. Mhatre, S.A. Tawade, Smt. S.S. Deshpande and K.J. Palve were 22.1.1971, 22.4.1971, 6.11.1970, 21.7.1980 and 1.5.1982 respectively. S/S Sapre, Mhatre and Tawade are HSC while Mrs. S.S. Deshpande and Shri K.J. Palve are graduates in Science and Arts respectively. The dates of their joining as Clerk Typists were 12.10.2007, 15.10.2007, 6.11.2007, 17.10.2007 and 18.10.2007 respectively. They have all been promoted as Awal Karkun, but as a result of **Varande's** Judgment, it seems that their position in the seniority list has become shaky, which is why they are up before us by way of this OA. The various Rules in this behalf will have to be presently considered, but we must make it very clear that not only the Rules relating to the Awal Karkuns but the SSD Rules and RQET Rules will also have important bearing and require close examination.

18. We may now consider the SSD Rules 1988 as amended by SSD Examination (Amendment) Rules, 1993.

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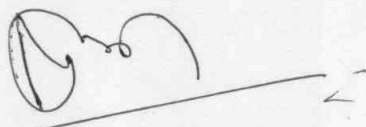
They have been framed under the proviso to Article 309 of the Constitution of India. Rule 3 thereof lays down inter-alia that the SSD Examination would be held by the Commissioner of the respective Revenue Division once in a year in the month of September at the Headquarter of the District in that Division. Rule 4(a) lays down that 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 within three chances. We have hereinabove touched upon this aspect of the matter, but now it becomes quite clear that Rule 4(a) prescribes the duration within which the examinations should be cleared viz. four years and three chances. Therefore, if the period of four years is crossed and if one failed to clear the said examination even in the 3<sup>rd</sup> chance, he stands to suffer in the manner which shall be presently discussed.

19. Rule 4(b) reserves for the Collector discretion to grant to any deserving person, "an additional chance and an extension of the period prescribed for passing the examination upto two years". In this OA, this Sub-Rule apparently is not attracted. Rule 4(1)(C) post amendment in fact needs to be fully reproduced.

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**“4(1)(C):** Subject to the provisions of sub-rule 2 of Rule 5 for the purpose of confirmation shall be determined by the date of their appointment as Clerk, if they pass the examination within the period and chances prescribed under sub-rule (a). Otherwise, the seniority shall be determined by the date of their passing the examination or date of exemption from passing the examination, as the case may be.”

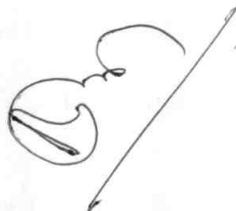
20. The above sub-rule makes it quite clear that the seniority of the Clerks who cleared their SSD Examination within the period and chances (4 years and 3 chances) would be entitled to reckon their seniority from the date of their appointments as Clerks which in simpler terms would mean that for the purpose of counting their seniority, the date of their initial appointment shall be the date which to count their seniority from. However, were they to fail to clear the said Examination within the period and attempts, then their seniority, “shall be determined by the date of their passing the examination or date of exemption from passing the examination”. It is, therefore, in our view quite clear that once the concerned Clerk misses the bus in the matter of clearing the examination within the period and chances set out in Rule 4(a), then for the purpose of



seniority, the relevant date for them would be the date of passing the examination, etc. as discussed just now. Sub-rule (d) of Rule 4 clearly lays down that a Clerk shall not be confirmed unless he cleared that SSD Examination or was exempted (post 45, etc.).

21. Rule 5(1) (post amendment) prescribes *inter-alia* the consequences of failure to pass the examination. Rule 5(1) deals with the issue of stoppage of increment in the manner of speaking till the clearance of the examination or exemption. In so far as we are concerned in this matter, Rule 5(2) post amendment is relevant.

**“5(2):** If a Clerk does not pass the examination within the period and chances prescribed in clause (a) of rule 4, he shall lose seniority in the cadre of Clerks, that is to say, he will rank below all such clerks who have passed the examination before him and also below all those who are senior to such clerks below whom he is placed and who may pass the examination after him but within the period and chances specified in clause (a) of rule 4.”

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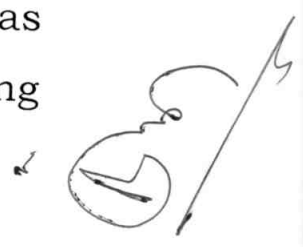
22. Now, analyzing the above provision of Rule 5(2), it would become clear that the consequences envisaged for a Clerk not passing the examination within the period and chances prescribed in Rule 4(a) would be that, " he shall lose seniority in the cadre of Clerks". These words have been further elaborated in the same Rule exemplified by the words, "that is to say" and it is then provided that, "he will rank below all such clerks who have passed the examination before him". So far, there seems to be no problem because it becomes clear that a Clerk having failed to clear the examination within the period and chances would be ranked below all those that had passed the examination before him. However, there are further words, "and also below all those who are senior to such Clerks below whom he is placed and who may pass the examination after him but within the period and chances specified in Clause-A of Rule 4". In our opinion, leaving aside the question of whether the said Rule could have been worded in a better way, the process of interpretation must show awareness to the totality of circumstances emanating from that sub-rule, and therefore, what it clearly means is that a "defaulting Clerk", if we may use that expression would be ranked below those who passed the examination before him and also those who were already above such last mentioned group of Clerks in the



list. This would in effect mean that such Clerks clearing the examinations after the period and chances would right away be placed below all those who had cleared the examination and were properly placed in the list of seniority at the time, when they cleared the examination or achieved exemption, and therefore, reading this particular Rule along with the others, it would become very clear that the position of those Clerks who had already cleared the examination before such a Clerk, who failed to do so, would never be shaky as it were which could be one of the fallouts of **Varande's** matter.

23. Rule 6 of the 1988 Rules deals with the issue of exemption which we are apparently not much concerned with herein. The 1993 amendment has also amplified that aspect of the matter. Rules 7, 8, 9, 10 and 11 deal with the details of the examination which aspect of the matter again we are not much concerned with.

24. We may now turn to the Maharashtra Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk Typist Rules, 1999. Now, in fact, the short title itself suggests that the promotion to the AK would be from the Clerk Typists which is what was observed also by this Tribunal in **Gurav's** case by calling



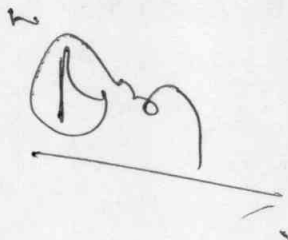


the cadre of Clerk Typists as Feeder Cadre. The dictionary clause in Section 2 defines AK in an inclusive manner so as to include Treasury Awal Karkuns, Deputy Chitnis and Shirastedars, etc. as specified under the Maharashtra Revenue Department Awal Karkun (Recruitment) Rules, 1996. Rule 2(d) while defining Clerk Typist also makes it an inclusive definition including Junior Clerk, Election Inspector, Junior Auditor, etc. The word, "Departmental Examination" is defined in Rule 2(e) as under :

**"2(e):** "Departmental Examination" means the Sub-Service Departmental Examination or Revenue Clerks Departmental Examination and includes any other Examination Declared by the Government for confirmation in service for clerks and posts included in the cadre of clerk."

Rule 2(g) defines the word, "Examination" as follows :

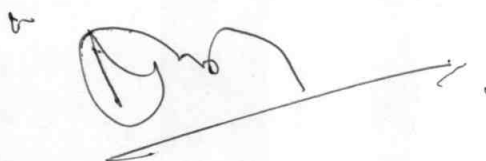
**"2(g):** "Examination" means Revenue Qualifying Examination for promotion to the post of Awal Karkun from the cadre of Clerk Typist under the Revenue and Forests Department of the Government of Maharashtra."

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25. Rule 3 of the 1999 Rules lays down that every Clerk Typist by whatever source appointed whether before or after the appointed date would be required to pass RQE for being eligible for promotion as AK unless he was exempted from passing the examination in accordance with Rule 5 of the 1999 Rules.

26. Rule 4 prescribes eligibility for the Clerk Typist to be able to appear for the RQE. He should have completed not less than three years continuous service in the Clerical Cadre. He should have passed SSD Examination or Revenue Clerk Departmental Examination so as to be eligible to appear for the RQE. It needs to be emphasized that an essential qualification for a Clerk Typist to be able to appear for RQE is that he should have passed SSD Examination.

27. Rule 5 lays down the circumstances in which exemptions shall be granted. A person who had already been confirmed in the post of AK, proper or other posts included in the said cadre before the appointed date, a person who had already passed the RQE before the appointed date and a person who had attained the age of 45 years on or after 1<sup>st</sup> November, 1976 would fall in the category of exempted persons in so far as appearing for the

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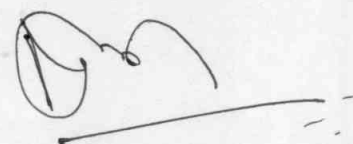


examination was concerned. The word, "Examination" has the same meaning here as defined in Rule 2(g) of the 1999 Rules. Quite significantly, the proviso to Rule 5 lays down as follows :

"Provided that, once the seniority lost by him in accordance with the provisions of Rule 7, shall not be restored on account of such exemption."

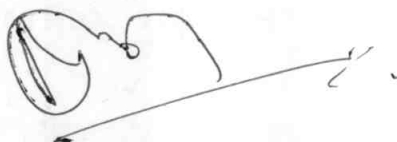
28. Although in strict terms in accordance with the principles of interpretation, the proviso to a Section or Rule will have its own ambit, but in the context of the facts, such as they are, in the present OA, this proviso shall provide useful guide to interpret and justify the said interpretation of Rule 7 read with Rule 15, discussion whereof is just about to follow. It bears repetition that before becoming eligible for exemption, if a person had lost seniority as per Rule 7, that seniority would not be restored to him, even after he cleared the said Examination after the prescribed period and number of attempts.

29. Rule 6 lays down that a Clerk Typist would be required to pass, "the examination" which again as per Rule 2(g) is RQE for promotion to the post of AK within 3 chances and within 9 years of his continuous service. This



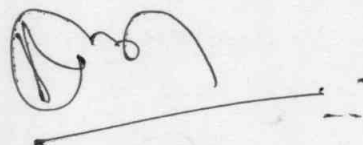
Rule read along with the others should make it quite clear that those Clerk Typists who have cleared SSD Examination would in order to become eligible for being promoted as AK have to further answer the requirements of Rule 6 of the 1999 Rules. Rule 8 provides that subject to Rules 6 and 7, a Clerk Typists may avail any number of chances for appearing for the examination. That should mean that a Clerk Typist may avail more chances than prescribed in Rule 6 provided always that he would have to lose seniority in accordance with Rule 7, if he were not to answer the requirement of Rule 6. Rule 9 deals with the details of the examination and language of the paper, etc. which is not highly relevant herefor. Rule 10 prescribes the consequences of the examination having not been held. Rule 11 deals with syllabus. Rule 12 deals with standard of passing and Rules 13 and 14 deal with exemptions in subject which is not what the term, "exemption" is as discussed above in a slightly different context and Rule 14 is about credit. Rule 16 is with regard to the Application Form. These Rules are not highly relevant for the purposes of the present discussion.

30. We may now quote verbatim Rules 7 and 15 of the 1999 Rules.

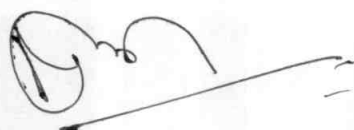


**"7. Effect of passing Examination on seniority.\_** A Clerk Typist who has passed the Examination in accordance with the provision of rule 6, shall retain his original seniority. If he fails to pass the Examination within three chances and nine years, then he will lose his seniority to all those Clerk 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."



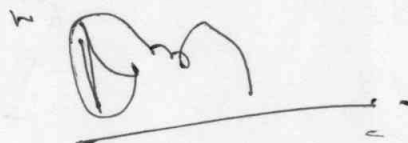
31. The above two Rules would make it clear that the Rule 15 which deals with determination of seniority is itself subject to the provisions of Rule 7 and in simpler terms, it must lead to a situation where Rule 7 would in the manner of speaking take precedence over Rule 15. Rule 7 deals with the effect of passing examination on seniority and Rule 15 deals with determination of the seniority. A Clerk Typist who clears the Examination within 3 chances and 9 years would retain, "his original seniority". Put in actual terms, without doing any violence to the express language of the Rule, we think that in its practical application to the present facts, the Applicants of this OA would retain their original seniority meaning thereby the date of their initial appointment. Going further, Rule 7 then provides the eventuality to happen were a Clerk Typist to fail to pass the RQE within 3 chances and 9 years. He would lose his seniority, "to all those Clerk Typists who have passed or were exempted from passing the same before him. This should mean that those who had already passed the examination before him or had achieved exemption would rank above the one that did not do so, and therefore, it must mean that the one who cleared the Examination within the time and chances, will not have his position shaky and uncertain vis-à-vis the one who did not do so. But the Rule 7 further prescribes, "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.” This should mean that those who were senior to him and by virtue of having passed the Examination did not lose seniority would continue to be above such a Clerk Typist. Rule 15 has already been quoted above and it deals with the issue of determination of seniority as mentioned just now and the date of passing of the RQE would be the basis for the purpose of fixing his seniority for qualifying for the promotion to AK. For those that passed the Examination of RQE, the date of continuous service in the lower post would determine the seniority and in case of a tie, the older would be better, so to say.

32. Having analyzed the Rules in the manner we have done hereinabove, we may reproduce Para 8 from **Varande's** Judgment, so as to highlight as to in what manner, the 2<sup>nd</sup> Division Bench interpreted the said Rule.

“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

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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

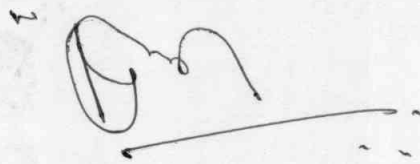




determination of seniority. It states that seniority will be fixed on the basis of the date of passing R.Q.E subject to Rule 7. Rule 7 clearly provides that a person maintain his seniority if he passes R.Q.E within 3 chances and in 9 years. So far the persons who pass R.Q.E within 3 chances and in 9 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."

33. We may now immediately reproduce Paras 18, 19, 20, 21 & 22 of **Gurav** (supra) so as to highlight as to in what manner, the Tribunal in that particular OA considered and construed the Rules under consideration.

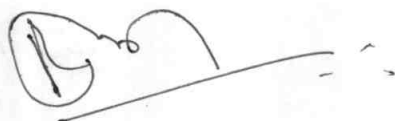
"18. It is clear that the Sub Service Departmental Examination rules require a clerk to pass the examination within the stipulated period and it is only after passing the examination that a clerk gets confirmation. After the 1993 amendment, besides losing increments, he also loses seniority in the cadre 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

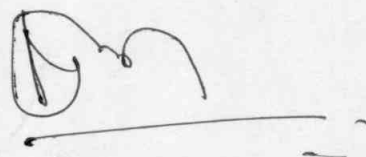




cadre for the post of Awal Karkun. Amongst them, if a clerk does not pass the examination within the prescribed time limit, then he loses further seniority among the confirmed clerks. This interpretation would necessarily imply that a clerk who had lost his seniority for delayed passing of Sub Service 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

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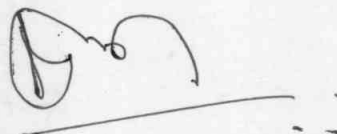
also directed to issue instructions to other Collectors so that the principles laid down herein are followed uniformly in all Districts. There will be no order as to costs. The process of preparing the fresh list be completed as early as possible, preferably within four months."

34. It will become quite clear from the discussion thus far in the context of **Varande** and **Gurav** that the interpretation of Rules in **Gurav's** matter appears to be more accurate. It seems to us quite clearly that the constant shuffling of the Clerks clearing the examinations within the time and chances which is likely to be brought in the wake of **Varande** may not be in keeping with the basic idea underlying the Rules. The basic idea quite clearly appears to be to encourage the Clerks to clear the examinations within the time and chances and were they to fail to do so, then the loss of seniority will ensue and that is not something that could be redeemable or for that matter rectifiable at the cost and expense of those that could clear the examinations in time and within the prescribed chances.

35. We may now consider the Judgment of the Hon'ble Bombay High Court, Nagpur Bench in **Narayan Sonune** (supra). As already mentioned above, that



Judgment was confirmed by the Hon'ble Supreme Court. That particular matter arose out of the Recruitment Rules for Talathis and not Clerks. Those Rules are Maharashtra Sub-Service Departmental Examination (for the cadre of Talathi) Rules, 1997. Ms. Manchekar, the learned Advocate for the Applicants in this OA, took efforts in analyzing and comparing the Rules in clerical cadre and the Talathis. Even otherwise, Aval Karkuns in the Clerical cadre and the Circle Officers in the cadre of Talathis run parallel to each other without any intertwining or amalgamation, etc. The tapering as it were, of the two cadres, takes place only by the time the promotion to the post of Naib Tahsildar is under consideration for which personnel are drawn from both these cadres. According to Ms. Manchekar, the effect of passing of examination within the period and chances which are provided in Clerical cadre are not provided as per those Rules in so far as Talathis are concerned. For Talathis also, in fact, subject to the 1997 Rules, it is compulsory to pass the examination before being confirmed in the post of Talathi. The word, "Examination" is defined as SSD Examination for the cadre of Talathis. Every Talathi who may require to clear the Examination within a period of 4 years and within 3 chances, if his date of reckoning is after appointed date.

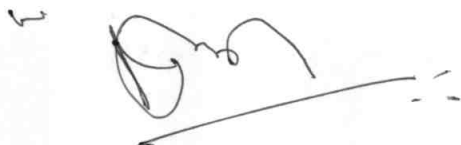


Rule 5 provides consequences of failure to pass Examination and it reads as follows :

**"5. Consequences of failure to pass**

**Examination.-** If a Talathi who fails to pass the Examination within the time limit and chances specified in rule 4,-

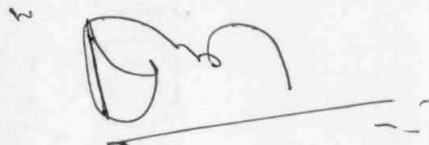
- (a) shall not, until he passes the Examination or is exempted from passing the Examination under Rule 7, be confirmed as Talathi or be allowed to draw his next increment in the scale of Talathi. Increment so withheld shall become payable to him with effect from the date on which he passes the Examination or exempted him from passing the Examination under rule 7, and all future increments shall accrue as if no increment is withheld. The arrears for past period shall not be admissible;
- (b) shall lose seniority in the cadre of Talathi that is to say that he will be placed below all those who have passed the Examination before him and also below all those who are senior to such Talathis below whom he is placed and who may pass the Examination



after him but within the period and chances specified in rule 4.”

Rule 6 provides that subject to Rule 5, a Talathi may avail any number of chances for the Examination. Rule 7 provides exemptions and the other Rules relate to the details of the Examination, etc. which we may not be much concerned with herein.

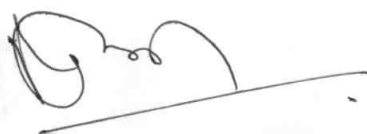
36. The above discussion must have made it quite clear that there is one distinction in the Clerical Rules and the Rules of Talathis pointed out by Ms. Manchekar, but even otherwise, the Rules are separate for the two cadres notwithstanding, the close similarity at places more than one. Even as we turn to **Narayan Sonune** (supra), we may as well refer to two Judgments of the Hon'ble Supreme Court cited by Ms. Manchekar, the learned Advocate for the Applicants. She relied upon **Bharat Petroleum Corporation Limited and Another Vs. N.R. Vairamani & Another (2004) 8 SCC 579** and **Bihar School Examination Board Vs. Suresh Prasad Sinha, (2009) 8 SCC 483**. These two Judgments are the authorities on the law of precedents and they lay down *inter-alia* that blind application of case law has to be guarded against. In Para 11 of **Bharat Petroleum** (supra), Their Lordships were



pleased to hold that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. In **Bihar School** (supra), in fact, Their Lordships relied upon a few other cases including **Bharat Petroleum** (supra) and held in effect that the Court should not place reliance on decision without discussing the factual situation and as to how, the observations of the Court in the earlier Judgment must be read and construed. In Para 23, Their Lordships bemoaned that often decisions are cited for a proposition without reading the facts of the case and the reasoning contained therein.

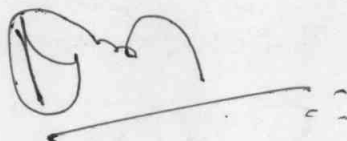
37. It is in this background that we may now turn to the Judgment in the matter of **Narayan Sonune** (supra). In fact, we have also perused the said Judgment as rendered by the Nagpur Bench of this Tribunal on 9.4.2014 in OA 953/2012 with particular attention to the facts set out therein. It was that Judgment of this Tribunal (at Nagpur) which was challenged in the Writ Petition.

38. Now, reading the Judgment of the Hon'ble High Court, we find that High Court's Petitioner and the 4<sup>th</sup>





Respondent were the only two competing personnel who were before the Court. There, we do not find that the entire list containing a number of Talathis was or were the subject matter of challenge. In such matters, the controversy is person specific with the fact situation peculiar to each matter. Academic exercises never are taken up before the judicial fora. The Petitioner of the Hon'ble High Court came to be appointed as a Talathi on 15.2.1991 and passed RQE in April, 2002 though in more than permissible time and chances. The contesting Respondent No.4 being a private party Respondent was appointed as a Talathi on 12.11.1999 and he passed the RQE in April, 2005 within permissible attempts. Both claimed the promotion to the post of Mandal Adhikari (Circle Officer). The Collector, Buldhana promoted the 4<sup>th</sup> Respondent to that post and it would appear that ultimately the reason was that the 4<sup>th</sup> Respondent cleared the Examinations within the time and the number of chances, but the facts were that Hon'ble High Court's Petitioner was appointed as well as he cleared RQE before the 4<sup>th</sup> Respondent did it. Interpreting Rule 6 of the Talathi Rules above discussed, the Hon'ble High Court made the following observations on Page 6 of the said Judgment.

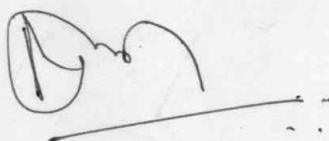


"The respondent no.4 was admittedly appointed after the appointment of the petitioner and admittedly the respondent no.4 has not passed the Revenue Qualifying Examination in permissible attempts before the petitioner passed the said examination in more than the permissible attempts, in the year 2002. Also, the respondent no.4 has not been exempted from passing the Revenue Qualifying Examination before April-2000. A junior Talathi would be entitled to gain seniority over a senior Talathi only when the senior Talathi fails to pass the Revenue Qualifying Examination within the permissible attempts and the junior Talathi passes the Revenue Qualifying Examination or is exempted from passing the Revenue Qualifying Examination before the senior Talathi has passed the qualifying examination in more than the permissible attempts. Since the third contingency, we are concerned with a senior Talathi and since the respondent no.4 was not senior to the petitioner, the respondent no.4 could not have been held to be senior to the petitioner I view of the provisions of Rule 6 of the Rules. The Tribunal did not consider the



provisions of Rule 6 in the right perspective while dismissing the original application filed by the petitioner."

39. Mr. Bandiwadekar, the learned Advocate for the private party Respondent here, and everyone else made elaborate and erudite submissions with regard to **Narayan Sonune's** case. Mr. Bandiwadekar contended that the application of the principles laid down in **Narayan Sonune** (supra) to the present facts, would quite clearly lead to upholding **Varande's** Judgment in its entirety. In our opinion, these arguments proceed in ignorance of the basic factual distinction such as it was in **Narayan Sonune** and the present one. In that particular matter, Hon'ble High Court's Petitioner was senior in the matter of appointment as well as he cleared the Examination before his contestant. His only undoing apparently was that he took more number of chances and may be overshot the period, but by the time, it came to consider the case of the 4<sup>th</sup> Respondent therein, he had already cleared the Examination also in 2002 while the Respondent did it in 2005. There was, therefore, no real occasion for placing the Petitioner of the Hon'ble Bombay High Court to any disadvantage. Now here, however, the position is quite different. Admittedly, the present Applicants cleared the



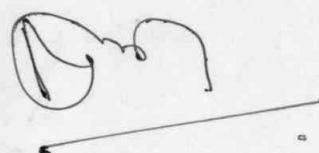
Examination before the private party Respondents and in fact, they came to be promoted also as Awal Karkuns. The private party Respondents could not clear the Examinations within the period and the number of chances, and therefore, they would be included in the list of seniority only after they did it and the list of seniority would have to be prepared bearing that aspect of the matter in mind.

40. We have already analyzed the Rules and enunciated the principles. It may not be necessary for us now to illustrate our findings with the help of any example as such. The recourse to examples may sometimes lead to avoidable confusion because ultimately, the practical applicability of the principles herein enunciated will be the task that the authorities below will have to perform. In the ultimate analysis, however, we agree with the submissions of Ms. Manchekar, the learned Advocate for the Applicants herein that in considering the seniority aspect of the matter, the position in both the lists that is of the Clerk as well as Awal Karkuns would have to be taken into consideration and on this score, the present Applicants are better placed than the private party Respondents. We also agree that the observations in **Varande's** case to the effect that a person who had joined service later and passed SSD



and RQE later can never become senior to another person who joined the service earlier and passed SSD and RQE earlier was not entirely an accurate observation because in that case, there would not be any practical utility of the concept of loss of seniority and nothing would be gained by the Clerk clearing the examination within the prescribed time and number of chances. In case, a person who may have joined the service even afterwards clears the examination before the one that joined earlier, could be placed ahead in the list of seniority in view of the foregoing and the one joining earlier but not clearing the Examination within the time and chances, would be included in the list of seniority only after he successfully did it or he was exempted. In that view of the matter, therefore, **Gurav** appears to have been correctly decided.


41. Mr. Bandiwadekar, the learned Advocate for the private party Respondents relied upon another Judgment rendered by the 2<sup>nd</sup> Bench presided over by two of us (Rajiv Agarwal, Vice-Chairman and R.B. Malik, Member (J)) in **OA 402/2013 (Shri Dilip V. Chalke and 6 Others Vs. District Collector, Raigad, dated 7.4.2015)**. That was an OA involving the Talathis and in the course of the discussion, several Rules hereinabove discussed arose for consideration. Now, that we have discussed in what we



consider to be satisfactory details, the state of affairs with regard to the Clerks vis-à-vis the Talathis, we may only mention that in this matter, now we are concerned only with Clerks, and therefore, the details of the Maharashtra Revenue Qualifying Examinatin for promotion to the post of Circle Officer (from the cadre of Talathis) Rules, 1998 dated 4<sup>th</sup> June, 1998 need not detain us much. Because they after-all, are the Rules governing the channel from Talathi upwards.

42. We have already dealt with a major challenge posed by Mr. Bandiwadekar to the reference to the larger Bench in view of the pending Writ Petition.

43. In so far as the **Gurav's** case is concerned, Mr. Bandiwadekar obviously would support **Varande** more than **Gurav**. He told us that Para 20 of **Gurav** quoted hereinabove as well, did not refer to Rules 7 and 15 of the Rules which have already been quoted hereinabove. Now, in our opinion, what is binding in **Gurav's** matter has already been discussed hereinabove. We at least cannot find any ambiguity in that particular order in **Gurav** and in order to be very focused, we have in fact, reproduced more than one Paragraphs therefrom. The reasoning aspect of the matter which may or may not appeal to Mr.



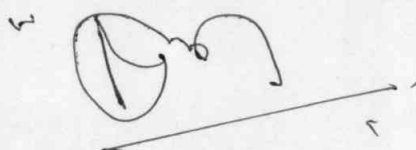


Bandiwadekar in that particular OA, would not derogate against what quite clearly emerges therefrom.

44. Mr. Bandiwadekar maintained that there was no difference between the Rules governing Talathis and Clerks. Now, this submission was obviously based on the Rule of **Narayan Sonune** (supra). Now, if the Rule maker did not want to have two separate set of Rules, he could as well have got one composite Rule for both the cadres. In so far as **Narayan Sonune** (supra) is concerned, we have already indicated quite clearly that, factually, it was entirely distinct with the facts that obtain herein.

45. The upshot is that, from the above discussion, the following principles emerge and while preparing the seniority list, the observations herein made may be followed and the course of action as hereinbelow be adopted.

- “(a) The seniority in the Clerical cadre shall be fixed as per the date of passing the SSD Examination;
- (b) In Clerical cadre if the SSD Examination was passed within the time and number of chances, the seniority shall be counted from

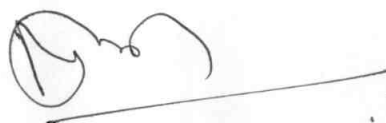


the date of initial appointment as Clerks and that date in that cadre shall remain forever;

- (c) The Clerks who fail to pass SSD Examination within the time and number of chances will lose their seniority as hereinabove discussed. Their seniority shall be counted from the date of passing SSD Examination or from the date, they would get exemption;
- (d) But they will not disturb those Clerks who were already confirmed after passing SSD within the time and chances or were senior to them.

a-i) Now, only those Clerk Typists who have passed SSD Examination after completing three years as such Clerks, would be eligible to appear for RQE.

a-ii) A Clerk Typist confirmed in that cadre in order to pass RQE will have to do so within three chances and within nine years of his continuous service as such Clerk Typist to be able to retain his original seniority.



a-iii) In the event, he were to fail to do so, then there will be a loss of seniority in exactly the same way as in case of Clerk Typist discussed above and he will then become entitled for consideration for seniority only after clearing the said Examination and he will be governed in all respects by <sup>\* (a) to (d)</sup> (a) and (b) above.

\* Substitution is made as per the order passed on Speaking to Minutes on 03.02.2017.

3/2/17

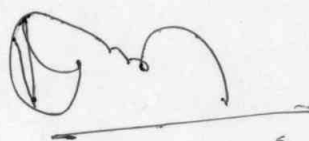
It, therefore, follows that we would answer the three issues raised by the referral order as follows :

(a-i) No.

(a-ii) No.

(a-iii) No.

46. It is held that **Varande's** case was not correctly decided and it is, therefore, over-ruled. The seniority lists prepared in accordance therewith are, therefore, quashed and set aside. The Respondents are hereby directed to prepare the seniority list afresh in accordance with the directions hereinabove and as a consequence, the Original Application No.354/2015 is allowed with no order as to costs. The Chief Secretary is hereby directed to circulate this Judgment to all the Collectors and other authorities



concerned herewith to make sure that a uniform practice is henceforth followed in this regard.

Sd/-  
**(J.D. Kulkarni)**  
**Member-J**  
**02.02.2017**

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**02.02.2017**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**  
**02.02.2017**

Mumbai

Date : 02.02.2017

Dictation taken by :

S.K. Wamanse.

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**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.354 OF 2015**

**DISTRICT : RAIGAD**

1. Shri Mahesh Mukund Sapre & 4 Ors.)...**Applicants**

**· Versus**

1. The State of Maharashtra & Ors. )...**Respondents**

**Ms. S.P. Manchekar, Advocate for Applicants.**

**Mr. N.K. Rajpurohit, Chief Presenting Officer for  
Respondents 1 & 2.**

**Mr. A.V. Bandiwadekar, Advocate for Respondents 3, 5, 9,  
11 & 18.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)  
J.D. KULKARNI (MEMBER-JUDICIAL)**

**DATE : 03.02.2017**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

**SPEAKING TO MINUTES**

This Full Bench is re-convened in view of the  
matter having been mentioned for Speaking to Minutes by

Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for Respondents 1 & 2, Ms. Manchekar, the learned Advocate for the Applicants and Mr. A.V. Bandiwadekar, the learned Advocate for the Respondents 3, 5, 9, 11 & 18 are present.

By consent, in Page 51, Clause (a-iii) the last line, for the words "respects" by (a) and (b) above, the words "(a) to (d)" will be substituted. The certified copy, if already furnished may be surrendered and the Office is directed to furnish to the parties a fresh certified copy without any extra cost.

Sd/-

**(J.D. Kulkarni)**  
**Member-J**  
**03.02.2017**

Sd/-

**(R.B. Malik)**  
**Member-J**  
**03.02.2017**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**03.02.2017**

Mumbai

Date : 03.02.2017

Dictation taken by :

S.K. Wamanse.

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