

MAHARASHTRA ADMINISTRATIVE TRIBUNAL : MUMBAI**BENCH AT NAGPUR****C.A.No.68/2025 in O.A.No.983/2023 (D.B.)****(Ms.Surekha D/o Banduji Rathod Vs. The State of Maharashtra and Others)**

Shri G.G.Bade, ld. counsel for the applicant.

Shri A.P.Potnis, ld. P.O. for the respondents/State.

**Coram : Shri Justice Vinay Joshi, Member (J) &
Shri Nitin Gadre, Member (A)****Dated : 20/02/2025.**

Heard Shri G.G.Bade, ld. Counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the respondents finally with the consent of both the counsel.

2. The applicant came to be appointed on the post of Accountant on 27.04.2010 at Chandrapur Circle. At relevant time District Chandrapur and Gadchiroli both fell in Chandrapur Circle known as North Circle. At initial appointment applicant was posted and joined at Gadchiroli District. After bifurcation of Chandrapur Circle, the applicant requested for transfer from Gadchiroli to Chandrapur District. On her request, she was transferred to Chandrapur in the year 2012. However, her seniority was fixed at Chandrapur Circle as per her date of joining in the Chandrapur Circle. Being aggrieved, the applicant made

representations, however, they have been turned down vide impugned orders and, therefore, this original application seeking re-fixation of seniority.

3. Few facts are not in dispute that initially Chandrapur and Gadchiroli both Districts fell in Chandrapur Circle. On 07.05.2010, the Chandrapur Circle was bifurcated and a new Gadchiroli Circle/Division was created. The applicant's initial appointment was in Chandrapur Circle which comprises Gadchiroli District also. It is not in dispute that at the time of bifurcation option was not asked to the applicant, but it appears from record that in the year 2012 the applicant's option was asked. At that time, applicant opted for Chandrapur Circle, however, it was not considered.

4. It is applicant's contention that though she has opted for bifurcated Chandrapur Circle, however, her option was not considered, but her transfer to Chandrapur was treated to be a request transfer resulting into loss of seniority. The learned counsel for the applicant would submit that though applicant gave an undertaking about loss of seniority, however, she would not lose the seniority in view of settled position of law. In this regard, the learned counsel for the applicant heavily relied on the decision Tribunal rendered **on 13.02.2017 in**

O.A.No.785/2014 (Harshal S/o Bhaskar Kalikar Vs. The State of Maharashtra), wherein the Tribunal has occasion to deal with the issue of seniority and effect of undertaking given by the employee. The Tribunal has also considered the Government Resolution dated 03.06.2011 which provides that on request transfer out of Circle, the employee would lose the seniority. The Tribunal has also considered applicability of Circular on the canvass of Rule 4(2)(C) of The Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 as well as taken into account the undertaking given by the employee. Having regard to the said facts, the Tribunal has observed that despite territorial transfer in same cadre, it would not result into loss of past service but the employee can be placed below all the employees in that post in new cadre who were appointed in the same year as the concerned employee. The relevant observations made in para 6 of the decision reads as below-

6. *We find that this G.R. dated 03.06.2011 is issued in the context of the Maharashtra Government Servants Regulation of Seniority and Prevention of Delays in Discharge of official Duties Act, 2005 (hereinafter called the Transfer Act). This G.R. has completely ignored the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 4(2)(C) reads as below:-*

"(C) the seniority of a transferred Government servant vis-à-vis the Government servants in the post, cadre or service to

which he is transferred shall be determined by the competent authority with due regards to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer." (emphasis provided)

5. The applicant has given an undertaking however, we cannot lose sight of the fact that at the time of bifurcation, her option for Circle/Division was not asked. In addition to that though in the year 2012 she gave her option and opted for Chandrapur, however, it was not considered. In the circumstances, the action of the respondent authority of fixing her seniority as per her date of joining at transferred post would be erroneous. The applicant ought to have been placed below the last candidate appointed in the years 2010 in Chandrapur Circle. In view of above, we pass the following order-

ORDER

1. The impugned communications dated 24.11.2021 and 20.10.2022 are hereby quashed and set aside.
2. The respondents are directed to correct the seniority of the applicant by fixing her seniority in Chandrapur Circle below the last candidate appointed in the year 2010 at Chandrapur Circle.

3. The O.A. is allowed and disposed of accordingly.

C.A. also stands disposed of.

4. No order as to costs.

Member(A)

Member (J)

rsm.