

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 215 OF 2022

DISTRICT :- HINGOLI & AURANGABAD

1. **Salim Mohd. Hanif Shaikh,**
Age : 51 years, Occu. : Service (as
Executive Engineer, U.P.P. Division
No. 4, Akahda Balapur,
Tal. Kalamnuri, Dist. Hingoli),
R/o : Plot No. 2, Mantri Nagar,
Nanded

2. **Dhananjay S/o Maruti Godase,**
Age : 51 years, Occu. : Service (as
Executive Engineer, Minor
Irrigation Division No. 1,
Sinchan Bhawan, Aurangabad),
R/o : "Shivneri" Bungalow,
BHagirath Nagar, Irrigation Chny.,
Aurangabad.

... **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**
Through its Principal Secretary,
Department of Water Resources,
M.S. Mantralaya, Mumbai-32.

2. **The Additional Chief Secretary,**
General Administration Department,
M.S. Mantralaya, Mumbai-32.

3. **The Maharashtra Public Service
Commission,** Through its Secretary,
5-8 Floors, Cooperej, Telephone
Exchange Bldg., Maharshi Karve,
Marg, Cooperej, Mumbai-21.

4. **Mr. Santosh R. Bhosale,**
Executive Engineer,
Jalgaon Medium Project Division,
No. 2, Jalgaon.

5. **Mr. Pruthviraj M. Phalke,**
Executive Engineer,
Ghodajhari Canal Division,
Nagbhid, Dist. Chandrapur.
6. **Mr. Chandrashekhar K. Godbole,**
Executive Engineer,
Minor Irrigation Division No. 1,
Pandharpur, Dist. Solapur.
7. **Mr. Mahadev S. Kadam,**
Executive Engineer,
Minor Irrigation Division,
Oros, Sindhudurg.
8. **Mr. Anil V. Farkade,**
Executive Engineer,
Goshikhurd Lift Irrigation Division,
Ambadi, Dist. Bhandara.
9. **Mr. Pravin U. Zhod,**
Executive Engineer,
Pench Irrigation Division,
Nagpur (Irrigation), Nagpur.
10. **Mr. Shriram V. Hazare,**
Executive Engineer,
Jigaon Project Dam &
Rehabilitation Division,
(Wan Project Division
Shegaon), Shegaon.
11. **Mr. Rajesh B. Gowardhane,**
Executive Engineer,
Palkhed Irrigation Division,
Nashik.
12. **Mr. Vikas H. Patil,**
Executive Engineer,
Dhom Canal Division No. 2,
Satara.
13. **Mr. Pravin V. Khedkar,**
District Water Conservation Officer,
Nashik.

- 14. Mr. Rahesh R. Sonone,**
Executive Engineer,
Asolamendha Project Renewal
Division No. 2, Savali, Dist. Chandrapur.
- 15. Smt. Rajani S. Deshmukh,**
Executive Engineer,
Dagdi Dam Division No. 2,
Nashik.
- 16. Mr. Roshan D. Hatwar,**
Executive Engineer,
Nagpur Irrigation Division (North),
Nagpur (Irrigation), Nagpur.
- 17. Smt. Priyadarshani V. Sonar,**
Executive Engineer,
Sankalp Chitra Division,
Kokan Bhawan, Navi Mumbai.
- 18. Smt. Pallavi K. Jagtap,**
Executive Engineer,
Project Sankalp Chitra Canal
Division No. 2, Pune.
- 19. Mr. Rajendra Kumar G. Dhodapkar,**
Executive Engineer,
Pune Irrigation Division, Pune
(Irrigation), Pune.
- 20. Smt. Sangeeta R. Jagtap,**
Executive Engineer,
Nandur Madhmeshwar Project
Division, Nashik.
- 21. Smt. Shilpa S. Magdum,**
Executive Engineer,
Krushna Irrigation Division,
Satara.
- 22. Mr. Yogesh V. Sonawne,**
Executive Engineer,
State Level Technical Advisory
Committee, Section -1 Mulyamapan
(Appraisal), Nashik.

- 23. Mr. Chiraj S. Dhum,**
Executive Engineer,
Jalniyojan Division (Yewa),
Nashik.
- 24. Mr. Anurag O. Savarkar,**
Executive Engineer,
Minor Irrigation Division,
Wardha.
- 25. Mr. Sunil Gurukul Rathi,**
Age : 53 years, Occu. Service as
Executive Engineer, Quality Control Division,
Khamgaon, Taluka Khamgaon, District- Buldhana.
R/o: B-103, Arjun Empire, Shilangan Road,
Krushnarpan Colony, Amravati.

**(Added as intervenor vide Tribunal's Oral Order dated
13.01.2023 in M.A. (St.) No. 105/2023 filed on
13.01.2023)**

.. RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicants.

: Shri M.S. Mahajan, Chief Presenting
Officer for respondent Nos. 1 to 3.

: Shri Mahesh Deshmukh along with Shri
U.L. Momale, Advocate for respondent
Nos. 4 to 24.

: Shri V. B. Wagh, Advocate for respondent
No. 25.

**CORAM : SHRI V.D. DONGRE, MEMBER (J)
AND
SHRI BIJAY KUMAR, MEMBER (A)**

RESERVED ON : 13.01.2023

PRONOUNCED ON : 13.02.2023

ORDER**[Per : Hon'ble Shri Bijay Kumar, Member (A)]**

1. This Original Application (St.) No. 342 of 2022 had been filed jointly by Shri Salim Mohd. Hanif Shaikh and Shri Dhananjay Maruti Godase on 17.02.2022, invoking provisions of Sections 15 and 19 of the Administrative Tribunals Act, 1985. The applicants had also filed a Miscellaneous Application No. 90 of 2022 in O.A. No. 342 of 2022 for grant of leave to sue jointly on 17.02.2022, which was granted vide Tribunal's order dated 01/03.2022. Thereafter, the Original Application was registered and assigned as O.A. No. 215 of 2022.

2. On the date of issue notices to the Respondents, i.e. on 09.03.2022, ***ex-parte*** interim relief in terms of prayer clause "E" of the present O.A. had been granted till filing of the affidavit in reply by the respondents (***Emphasis supplied***). For ready reference, the said prayer clause "E" is reproduced below:-

"E) Pending admission, hearing and final disposal of this Original Application Resp. No.1 may kindly be restrained from effecting any promotion to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil)."

3. It is admittedly that on request made on behalf of the applicants the IR had been extended from time to time. In view of

this, a Miscellaneous Application No. 244 of 2022 in O.A. No. 215 of 2022 was filed on behalf of private respondent Nos. 4 to 24 on 06.06.2022 praying for vacating the Interim Relief granted **ex-parte** in O.A. No. 215 of 2022. However, it was decided to hear the O.A. expeditiously so that both the Original and Miscellaneous Application No. 244/2022 get decided together. On looking afresh on time-line of grant of interim relief it is observed that the respondent authorities were served notices on 25.03.2022 and private respondent Nos. 4 to 24 had been served notices during period extending from 04.04.2022 to 12.04.2022 whereas, interim relief was granted **ex-parte** on 09.03.2022 which continues to be in force for last 11 months.

4. **Brief Facts of the Case:-** Following may be listed as main facts required to be appreciated/ understood for adjudication of the present Original Application, which may also include the gist of the grievance of the Applicants for which they have approached this Tribunal:-

(a) The two Original Applicants had entered into service of the Department of Water Resources in the year 2000 as Assistant Engineer, Grade-1 (Civil) (in short, "AE- I") upon selection by the Respondent No. 3 i.e. the Maharashtra Public Service Commission (in short, "MPSC"). On the other

hand, the private respondent Nos. 4 to 24 have been directly appointed *Assistant Executive Engineer (in short, AEE)*. Yet another officer who had been initially appointed as *AE -I* and presently working as Executive Engineer (civil) (in short, "*EE*"), Quality Control, Buldhana, on ad hoc and fortuitous basis promotion like the applicants, has been permitted by this Tribunal vide its oral order dated 24.11.2022 to join at the stage of final hearing of the present O.A. No. 215/2022 as intervenor and thus listed in the array of respondent as party respondent No. 25.

(b) The applicants who had been in the cadre of *AE-I*, had subsequently been promoted on ad hoc basis to the post of *EE (Civil)* by a promotion order dated 31.03.2010 against promotion quota of Assistant Executive Engineer (in short, *AEE*), on ad hoc basis due to unavailability of sufficient number of officers in the cadre of *AEE* for promotion as *EE* against their own quota. The promotion of the applicants as Executive Engineers on ad hoc basis for an initial period of 11 months was due to administrative exigency, on recommendation of a Departmental Promotion Committee (in short, *DPC*) but subject to concurrence by Maharashtra Public Service Commission (in short, *MPSC*). The

promotions order bearing No. एलएल एस ११०९/(३६२/२००९)/आ. (वर्ग-१)-(८), मंत्रालय, मुंबई-३२, dated 31.03.2010 had opening para as quoted below for ready reference :-

“जलसंपदा विभागातील खालील तक्त्यात नमूद केलेल्या सहाय्यक अभियंता श्रेणी-१ या संवर्गातील अभियंत्यांना कार्यकारी अभियंता (स्थापत्य) या पदावर रूपये १५६००-३९१००, ग्रेड पे ६६०० या सुधारित वेतनश्रेणीतील प्रशासकीय हितास्तव रिक्त पदे भरण्याची प्रशासकीय निकड (Administrative Exigency) लक्षात घेउन, तदर्थ (Adhoc), अभावित (Fortuitous), अस्थायी व अत्यंत तात्पुरत्या स्वरूपात ११ महिन्यांकरीता पदोन्नती देण्याचा शासन आदेश देत आहे. या पदोन्नत्या अभावित (Fortuitous) स्वरूपाच्या असून त्या लोकसेवा आयोगाच्या मान्यतेच्या अधीन राहतील.”

(c) The Applicants had further stated that though their promotion from the post of *AE- I* to the post of *EE* had been on ad hoc and fortuitous basis, for an initial period of 11 months only, however; after joining the post of Executive Engineer (Civil) on 30.06.2010, they have been working continuously as Executive Engineers (Civil) without a single-day break. The Applicants have also asserted that they had been selected for promotion to the cadre of Executive Engineer (Civil) on recommendation of *DPC*, subject to concurrence by *MPSC*.

(d) It is admittedly that the applicants and the private respondents, both are governed by the Government Resolution issued by the then Irrigation and Power

Department, bearing No. GAB 1070-E (I), Sachivalaya, Bombay-32, dated 19.12.1970 dealing with Appointment to *The Maharashtra Service of Engineers Class-I and Class-II, "Procedures and Rules Regarding"*, (in short, "*Appointment Rules, 1970*"). Similarly, the Applicants and the Respondents are both admittedly also governed by *The Maharashtra Service of Engineers, Class-I and the Maharashtra Service of Engineers, Class-II (Regulation of seniority and preparation and revision of seniority lists) Rules, 1983*, (in short, "*Seniority Regulation Rules, 1983*").

(e) For ready reference the organizational structure of Maharashtra Services of Engineers is depicted as follows :-

Organizational structure of Maharashtra Services of Engineers, Class-I and Class-II

| Maharashtra Services of Engineers Class-1 | | |
|--|---|---|
| 1 | Chief Engineer (CE) | By promotion from SE |
| 2 | Superintending Engineer (SE) | By promotion from EE |
| 3 | Executive Engineer (EE) | By Promotion from feeder cadres |
| 4 | Assistant Engineer Class-I (Renamed as Assist Executive Engg.- AEE)# | Nomination through MPSC from Graduate Engineers |

| Maharashtra Services of Engineers Class-2 | | |
|--|---|--|
| 1 # | Deputy Engineer* | Those appointed / officiating as Deputy Engineers prior to 1977 |
| 2 A S | Assistant Engineer Class-II (Renamed as AE-Grade I)# | From open competition by MPSC |
| 3 S S | Sub Divisional Engineer (SDE) | Promotion from Graduate Junior Engineers |
| 4 A n | Sub Divisional Officer (SDO) | Overseers holding Diploma Qualification and Overseers holding Upper Subordinate Certificates |

Engineer, Class-2 renamed as Assistant Engineer, Grade-1 and Assistant Engineer, Class-1 renamed as Assistant Executive Engineer vide G.R. dated 16.04.1984 on creation of post of Sectional Engineer and Assistant Engineer, Grade-II.

(f) Executive Engineer and its Feeder Cadres with Quota Rule

| Number of Vacancies in Executive Engineers | | | |
|---|--|------------|------------|
| AE Class-I (Renamed as AEE) | All Eligible Deputy Engineers* to be promoted first against 60% quota | | |
| | AE Class-II Renamed as (AE Grade-I) | SDE | SDO |
| 40% | 25% | 25% | 10% |

**Deputy Engineer is dying cadre, permanent vacancies in this to be distributed amount 3 cadres of Maharashtra Engineering Services Class-II i.e. AE-I, SDE and SDO in ratio of 34%, 33% and 33% respectively and temporary vacancies to be distributed in ratio of 0%, 50% and 50% respectively.*

(g) **Main Grounds for filing O.A. No. 215/2022:-**

Applicants have agitated mainly following grounds for seeking relief in terms of prayer clause :-

(i) *Quota for different feeder cadres for promotion to the vacant post of Superintending Engineers should be finalized based on vacancies ascertained in the feeder cadres of Executive Engineer as per rule 4 of the Rule for Seniority Regulation Rules, 1983 and not on the basis of cadre strength of Executive Engineers.*

(ii) *The Applicants who had been promoted from cadre of AE-I to the post of Executive Engineers for over a decade without a single day break should be treated as absorbed as Executive Engineers and should not be liable to be reverted back on ground of their promotion being ad hoc and fortuitous in nature,*

(iii) *Seniority list for the cadre of Executive Engineers, as on 01.01.2021, has to be finalized before undertaking promotion to the post of Superintending Engineers from the feeder cadre of Executive Engineers,*

(iv) The applicants further assert that the respondent No.1 had made a categorical statement on oath before the Hon'ble Tribunal in O.A. No. 711 /2014 to the effect that the promotions from the cadre of Executive Engineers (Civil) to the Cadre of Superintending Engineers would be effected only after publishing final seniority list of cadre of EEs;

therefore, the respondents should not undertake process of filling up vacancies in the cadre of Superintending Engineers without publishing final seniority list of *EE* cadre,

(v) The Applicants has submitted that in past, due to prolonged judicial proceedings final seniority list for the post of Executive Engineers from period of 21.12.1970 to 31.03.1983 was published on 28.09.2007. Thereafter, seniority list for the same post for period from 01.04.1993 to 31.12.2000 was published on 07.05.2013. Further, the seniority list for period from 01.01.2001 to 31.12.2013 was published on 30.08.2014. As of now, final seniority list for the post of Executive Engineers as on 01.01.2014, 01.01.2015, 01.01.2016, 01.01.2017 and 01.01.2018 have been published subject to decision in O.A. No. 711/2014, which is still pending before the Principal Bench of this Tribunal.

(vi) The applicants have further contended that the final seniority list for the cadre of EEs as on 01.01.2019 is yet to be published, though findings on all claims & objections have been decided by the respondent authorities and communicated to the concerned employees and seniority list published thereafter is still not referred to as Final Seniority List. Despite this, publication of provisional seniority list for the cadre of EEs as on 01.01.2020 and 01.01.2021 has been made by a Circular No. काअज्ये

११२१/प्र.क. ३८८/२०२१/आ.(वर्ग-१) मंत्रालय, मुंबई, dated 24.01.2022, which is illegal and arbitrary.

(vii) The learned senior counsel for the applicants has also contended that as per provisions of Government Resolution issued by the General Administration Department, dated 01.08.2019, no promotion to the post of Superintending Engineer should be effected without publishing final seniority list of Executive Engineers (Civil) as on 01.01.2019, 01.01.2020 and 01.01.21.

(viii) The Applicants have further contended that the representations had been made by the Applicant No. 1 to the provisional seniority lists of 01.01.2019 on 31.12.2020. However, objections raised by the Applicants have been rejected by the Applicant No. 1.

(ix) The Applicants have also contended that the representations made by the Applicant No. 1 on 03.02.2022 registering objections in respect of his own position in the provisional seniority list for the cadre of Executive Engineers as on 01.01.2020 and 01.01.2021 had also been rejected and the respondent authorities have taken stand that seniority list so finalized after deciding claims & objections will continue to be referred to as Provisional Seniority list while publishing the same during pendency of SLP (C) No. 28306 of 2017 before Hon'ble Apex Court,

(x) The Applicants have contended that the Respondent No. 1 has, vide communication dated 01.02.2022, asked Respondent Nos. 4 to 24 to submit their respective individual information in requisite pro-forma, which strongly indicates that the Respondent No. 1 has initiated process for effecting their promotions to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil) on the basis of provisional seniority lists without publishing final seniority list; whereas, the Applicants have already completed more than seven years of service in the cadre of Executive Engineers (Civil) on ad hoc and gratuitous basis and as such, should be treated to be eligible for promotion to the post of Superintending Engineers.

5. Relief Sought in O.A. No. 215 of 2022:- Being aggrieved mainly due to the background of facts mentioned in para 3 (g) (i) to 3 (g) (x) of this order that the Applicants have filed the present Original Application bearing registration number as O.A. No. 215 of 2022 and have prayed for relief in terms of prayer clause para No. 13 (A) to (E) and Interim Relief in terms of para 13 (F), which are being reproduced verbatim for ready reference:-

“13) THE APPLICANT THEREFORE PRYS THAT,

A) *This Original Application may kindly be allowed thereby directing Resp. No. 1 to finalize the provisional seniority lists of the cadre of Executive Engineers (Civil) as on 01.01.2019, 01.01.2020 and*

01.01.2021 within stipulated period of three months or within such stipulated period as deemed fit and appropriate by this Hon'ble Tribunal.

- B) This Original Application may kindly be allowed thereby directing the Resp. No. 1 not to effect any promotion to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil) before finalizing the provisional seniority lists of the cadre of Executive Engineers (Civil) as on 01.01.2019, 01.01.2020 and 01.01.2021.*
- C) Cost of the Original Application be kindly awarded to the applicants.*
- D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.*

INTERIM RELIEF

- E) Pending admission, hearing and final disposal of this Original Application Resp. No.1 may kindly be restrained from effecting any promotion to the cadre of Superintending Engineers from the cadre of Executive Engineers (Civil).”*

6. Pleadings:

- (a) Affidavit in reply in O.A. No. 215 of 2022 on behalf of Respondent Nos. 1 and 2 was filed by learned Chief presenting officer on 05.05.2022 which was taken on record and copies thereof were supplied to the other parties. Learned Advocate for the applicants in O.A. No. 215 of 2022 filed rejoinder affidavit to affidavit in reply by respondent Nos. 1 and 2 which was taken on record on 07.06.2022. Learned Advocate for the private respondents

No. 4 to 20 and 22 to 24 also filed affidavit in reply on behalf of respondents on 07.06.2022 to which rejoinder affidavit was filed on behalf of applicants on 10.06.2022, copy of which was provided to the other sides. A short affidavit in reply was filed on behalf of respondent No. 3 on 26.07.2022.

(b) A written submission entitled as affidavit in reply on behalf of respondent No. 25 was filed on 30.11.2022. Later on, a Praceipe was filed by learned Advocate Shri V. B. Wagh referring to O.A. No. 1078/2016 pending before the Principal Bench of the Tribunal and requested that in view of the same contentions of similar type mentioned in the present O.A. may be recalled.

(c) A Miscellaneous Application No. 244/2022 was filed by learned Advocate for respondent Nos. 4 to 20 and 22 to 24 in O.A. No. 215/2022 for vacating interim relief granted in the present O.A. It is on 15.06.2022 that the learned Advocate for Respondent Nos. 4 to 22 and 21 to 24 prayed for leave to submit annexure to affidavit in reply filed which was left out inadvertently; the prayer was granted. In response, the learned Advocate for the applicant also submitted additional documents on 05.08.2022 with

permission of the Tribunal. Again on 18.08.2022, the learned Advocate for the applicant submitted additional affidavit with permission of the Tribunal which was taken on record and copy thereof served on other parties.

(d) During final hearing of the matter, learned Advocate for the Private Respondents has cited following two judgments of Hon'ble Apex Court in favour of his contentions that any change in recruitment rules after recruitment has taken place, may not entitle any employee to get benefits under changed rules and period of ad hoc promotions granted to the applicants over and above quota for them cannot fetch in counting regular service and benefits of seniority:

(i) *(1999) 1 Supreme Court Cases 354: 1999 Supreme Court Cases (L&S) 216, Dinkar Anna Patil and Anr. Vs. State of Maharashtra and Ors., Civil Appeal No. 5582 of 1998, decided on 09.11.1998,*

(ii) *(1990) 2 Supreme Court Cases 715, Direct Recruit Class II Engineering Officers Association State of Maharashtra and Ors., Civil Appeal No. 194-202 of 1986, decided on 02.05.1990.*

(e) Subsequently, the learned Advocate for respondent Nos. 4 to 24 also submitted on 04.01.2013 copies of Orders / Judgments to buttress his contentions

in respect of assigning seniority etc., which are listed below, but not dealt with in details as the same have either been repetition of points raised with respect to rules under Recruitment Rules, 1970 and Seniority Regulation Rules, 1983.

- (i) *Judgment and order passed by MAT bench at Mumbai in O.A. No. 107/1999 and 146/1999*
- (ii) *Judgment and order passed in W.P. No. 1797 on 21.01.2005*
- (iii) *1992 supp (1) SCC 272, Keshiv Chandra Joshi and Ors.*
- (iv) *2996 (11) SCC 361, M.S.L. Patil and Ors.*
- (v) *1999 (1) SCC 354 Dinkar Anna Patil and Ors.*
- (vi) *2005 (BCI) 224, Nishad Pawar and Ors.*

7. Miscellaneous Application No. 244 of 2022 in O.A. No. 215 of 2022 filed by Private Respondents for getting vacated

Interim Relief granted to the Applicants:- M.A. No. 244/2022 in O.A. No. 215/2022 was filed on behalf of respondent Nos. 4 to 20 and 22 to 24 in O.A. No. 215/2022 on 06.06.2022 praying for vacating Interim Relief granted to the two applicants in O.A. No. 215/2022. Learned Advocate for private respondents in M.A. No. 244 of 2022 (the two applicants in O.A. No. 215 of 2022) filed affidavits in reply on behalf of respondent Nos. 1 and 2 on 15.06.2022 which were taken on record and copies thereof

served on other parties. The matter was fixed for final hearing on 22.08.2022 which took place as scheduled. Thereafter, the matter was reserved for Orders. O.A. No. 215/2022 with M.A. No. 244/2022 was heard and reserved for orders on 22.08.2022. Order in O.A. No. 215/2022 was being finalized which was to take some more time, it was considered to be in the interest of public service being rendered by the Department of Water Resources not to hold entire process of promotion of officers in the cadre of Executive Engineers to the post of Superintending Engineer for reason of grievance of only two (wrongly mentioned as one) applicant(s). Therefore, it was considered expedient to pass orders in M.A. No. 244 of 2022 in O.A. No. 215 of 2022 on 26.08.2022. The order so passed was as follows :-

“O R D E R

(A) Interim relief granted by this Tribunal in O.A. No. 215 of 2022 on 09.03.2022 is hereby modified as under: -

“Pending passing of final order in Original Application No. 215 of 2022, the process of promotion from the cadre of Executive Engineer to the post of Superintending Engineer may be undertaken keeping one post of Superintending Engineer vacant.

(B) All decisions taken by the Respondent Nos. 1 to 3 in O.A. No. 215 of 2022 regarding promotion from the post of Executive Engineers to Superintending Engineers shall be subject to outcome of the O.A. No. 215 of 2022.

(C) Accordingly, M.A. No. 244/2022 stands disposed of with no orders as to costs.”

8. Order passed by this Tribunal in M.A. No. 244/2022 in O.A. No. 215/2022, dated 26.08.2022 and Decision thereon by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 9067 of 2022 filed by Shri Saleem Mohd. Hanif Shaikh, the applicant No. 1 in O.A. No. 215 of 2022 :-

Being aggrieved by the order of this Tribunal in M.A. No. 244/2022 in O.A. No. 215/2022, the applicant No. 1 in O.A. No. 215 of 2022 filed a Writ Petition No. 9067 of 2022 challenging the Order dated 26.08.2022 in M.A. No. 244/2022 in O.A. No. 215/2022. Hon'ble High Court vide its order dated 06.09.2022 and corrections applied thereto on 08.09.2022, allowed the Writ Petition quashing and setting aside the impugned order. It further ruled that the interim relief that was in operation since beginning shall continue till pronouncement of the final judgment by the Tribunal. The Tribunal has been required to make every endeavor to decide the Original Application finally as early as possible.

9. Allowing M.A No. 515/2022 for joining as intervenor- It is on 24.11.2022 that learned Advocate Shri V.B. Wagh filed M.A. No. 515/2022 on behalf of one Shri Sunil Gorulal Rathi, originally appointed as AE Grade-I as the applicants and

presently working as Executive Engineer, Quality Control Division, Khamgaon Buldhana, District-Buldhana to be joined as intervenor / respondent, claiming him to be a proper and necessary party respondent. As the miscellaneous application No. 515/2022 had been filed for joining as respondents during the stage of re-hearing of the matter after reconstitution of the Division Bench after the earlier Division Bench had reserved the same for orders, this Tribunal had allowed the Miscellaneous Application vide oral orders dated 25.11.2022 believing the submissions of the learned Advocate Shri V. B. Wagh that he was likely to be adversely affected if relief as prayed for the two applicants were granted. Operating part of this Tribunal's order passed in M.A. No. 515/2022 in O.A. No. 215/2022 is quoted below for ready reference:

“(i) The present applicant is allowed to join as intervenor in O.A. No. 215/2022 as respondent No. 25 to the extent and on the basis of contentions raised in para Nos. 13 & 14 of the present M.A.

(ii) The applicants in O.A. shall carry out the necessary amendment in O.A forthwith.

(iii) Accordingly, M.A. No. 515/2022 stands disposed of with no order as to costs.

(iv) The Original Application No. 215/2022 will proceed further for arguments on behalf of the parties.

(v) S.O. to 30.11.2022.”

Later on, learned Advocate for respondent No. 25 filed M.A. (St.) No. 105/2023 in O.A. No. 215/2022 praying for recalling the order allowing respondent No. 25 to join as respondent to the extent and on the basis of contentions raised in para Nos. 13 & 14 of the present M.A and for allowing him to file affidavit in reply to the Original Application etc., which was not allowed as it came to notice of the Tribunal that the respondent No. 5 joined as respondent to support the applicants in O.A. No. 215/2022 in the garb of being adversely affected party if prayers are granted to the applicants. The respondent No. 25 was posted as *EE* on promotion from cadre of *AE-I* in Buldhana district, he could not join the applicants as co-applicants even though his interest were the same as that of the applicants is under territorial jurisdiction of Nagpur Bench of this Tribunal. It is now also revealed that the applicant was not qualified for joining as party respondent as he originally belonged to *AE-I* cadre, and for that reason, he was supporting the applicants by joining the process of adjudication as party respondent (intervenor). This strategy adopted by respondent No. 25, in our considered opinion, amounts to abuse of process.

10. Allegations of non-disclosure of material facts levelled against Applicant No. 2 and others in O.A. No. 215/2022:-

The learned Advocate for the private respondent Nos. 4 to 20 and 22 to 24 has made allegation of non-disclosure/ suppression of material facts by Applicant No. 2 while filing present O.A. No. 215/2022. The background facts for the allegations so made are narrated in Para (9) of the affidavit in reply submitted on behalf of respondent Nos. 4 to 20 and 21 to 24 in the present O.A. The gist of allegations made is as follows:-

(i) One O.A. No. 938/2009 had been filed on behalf of officers from cadre of S.D.E. and S.D.O. Officers of the cadre of AE-I were respondents which included Shri Dhananjay Maruti Godse who was then as respondent No. 5 and is applicant No. 2 in the present O.A. The learned Advocate for the Applicants in the present O.A. No. 215 of 2022 was then appearing on behalf of applicant in O.A. No. 938/2009. In the said O.A. No. 938 of 2009 the Applicant had prayed for maintaining balance of quota while granting ad hoc promotion to officers from feeder cadres of Assistant Engineers Grade-I, Sub-Divisional Engineers and Sub-Divisional Officers in the ratio of 25:25:10 while filling the posts of Executive Engineers against vacancies under 40% quota for Assistant Executive Engineers during the period sufficient number of officers from feeder cadre of Assistant Executive Engineers are not available. Learned Advocate for respondent No. 5 in O.A. No. 938/2009 is appearing on behalf of respondent No. 25 (intervenor) in the present O.A. No. 215/2022. The applicant no. 2 in the present O.A. No. 215/2022 had, later on, challenged the order passed by this Tribunal in O.A. No. 938/2009 dated 07.04.2010 before

Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. Therefore, learned Advocate for respondent No. 4 to 20 and 22 to 24 in O.A. No. 215/2022 has levelled allegation that the applicant No. 2 has willfully suppressed the material background facts and has not disclosed the same in the present O.A. even though the issues involved in the two O.A.s pertain to 'quota rules' and 'reversion of officers' originally belonging to AE- I cadre and promoted to the cadre of EE in excess of their quota of 25% on ad hoc and fortuitous basis. Relevant operating parts of the order dated 07.04.2010 in its para 13 may be quoted as below for ready reference to show that the facts in O.A. No. 938/2009 required disclosure the present O.A. In response, the learned Advocate for the applicants in the present O.A. claimed the mistake on part of applicant as inadvertently committed and offered through submissions made in rejoinder affidavit to affidavit in reply that the applicant no. 2 may withdraw from the array of applicants.

“13. In view of the discussion above, we dispose of the O.A. with direction to respondent Nos. 1 to 4 to restore the balance in the three feeder cadres of A.E. Grade-I, S.D.E. and S.D.O. by maintaining ratio of 25:25:10 between these cadres, while filling up the short-fall in the feeder cadre of A.E.E. To illustrate on the basis of status in the table quoted above (at page 78 of paper-book) A.E. Grade-I will enjoy 104 plus 40 posts, S.D.E. will enjoy 104 plus 49 posts and S.D.O. will enjoy 42 plus 20 posts in the cadre of Executive Engineer i.e. 153, 153 and 62 respectively, till such time as sufficient officers of A.E.E are available. This will necessarily involve reversion of those, who have been given excess ad hoc promotion from A.E. Grade-I cadre beyond the figure of 153 mentioned above. The balance should be restored as early as possible, and in any case, within a period of six months.”

(ii) Further, as stated in foregoing para, the Applicant No. 2 in the present O.A. No. 215 of 2022 had been Respondent No. 5 in O.A. No. 938/2009 decided by this Tribunal on 07.04.2010. He had also filed a writ petition No. 3971 of 2010 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad challenging the above mentioned order of the Tribunal. However, the Applicants in the present matter have not disclosed this fact too, while filing the present O.A.

(iii) It is also worth mentioning that in the said O.A. No. 938/2009, this Tribunal had taken in to account cadre strength of Executive Engineers (Civil) for determining quotas for various feeder cadres for the post of Executive Engineers (Civil) and not the vacancy position at the time of effecting promotion to the post of Executive Engineer (Civil) as shown in a tabular form reproduced below. As the applicants are praying for computation of quota for the feeder cadres for the cadre of Executive Engineer (Civil) based on vacancy position, therefore, the applicants ought to have disclosed the relevant facts in O.A. No. 938/2009 in the present O.A.

(iv) Following above allegation along with case details, the two Applicants in O.A. No. 215 of 2022 had, through averments made in para 2 of their Rejoinder Affidavit to the affidavit in reply of respondent Nos. 4 to 20 and 22 to 24 filed on 10.06.2022, sought permission of this Tribunal to withdraw the name of Applicant No. 2 from the array of the applicants in the present O.A filed by them. However, from

record, any such permission does not appear to have been granted by this Tribunal.

11. Resuming the proceedings in accordance with orders of Hon'ble High Court in in W.P. No. 9067 of 2022- O.A. No. 215/2022 with M.A. No. 244/ 2022 had been taken on Board on 26.09.2022 and with consent of contesting parties the matter was reserved for orders. Thereafter, learned Advocate for the applicant submitted new documents details of which is as follows:-

(a) On 27.09.2022 :- Documents as evidence that respondent Nos. 7 and 17 in the present matter had filed intervention application in O.A. No. 1078/2016 pending before the Principal Bench of this Tribunal and the learned Principal Bench has clubbed O.A. No. 53/2015, 912/2015 and 1078/2016 for hearing together and that the Principal Bench has passed an order thereby, restraining the respondents from effecting the promotions to the post of Superintending Engineer from the cadre of Executive Engineer till the said matters are decided. As the learned advocate for private respondent was not present the matter could not be deliberated in details about impact on the present matter.

(b) As the constitution of the Division Bench was changed, therefore, the matter was decided to be fixed for rehearing on 22.11.2022.

(c) On 22.11.2022- Learned Advocate for the applicant had made oral submission that respondent No. 4 has filed

proceedings before Hon'ble Supreme Court challenging the interim order of the Hon'ble High Court dated 06.09.2022 passed in W.P. No. 906/2022 and placed on record diary record of the said proceedings bearing No. 36917/2017.

(d) On 23.11.2022- Learned Advocate Shri V.B. Wagh mentioned that he was in the process of filing of intervention application on behalf of some of Government Employees in the cadre of Executive Engineer. Upon enquiry, he submitted that such application was not yet registered. He sought adjournment of the present matter for hearing by one day which was not granted.

(e) On 25.11.2022- The learned Advocate Shri V. B. Wagh filed M.A. No. 515/2022 in O.A. No. 215/2022 on 24.11.2022 for grant of leave to one Shri Sunil Gorukul Rathi from Quality Control Division of Buldhana to join as party respondent, which was allowed with conditions.

(f) On 13.01.2023- Learned Advocate Shri V.B. Wagh filed M.A. (St.) No. 105/2023 in O.A. No. 215/2022 praying for recalling order dated 25.11.2022 passed in M.A. No. 515/2022 in O .A. No. 215/2022 restricting the respondent No. 25 for advancing his arguments to the extent of para 13 & 14 and thus permitting to argue full-fledged and by placing all the relevant documents on record for proper adjudication of the Original Application. It was verbally conceded by Learned Advocate Shri V. B. Wagh and Leaned Advocate for the applicants that the intervenors are supporting the applicants. The respondent no. 25 has revealed following facts for allowing his intervention

applications without which he apprehended that his interest in O.A. No. 1078/2016 pending before the Principal Bench of this Tribunal and in O.A. 187/2022 before Nagpur Bench of this Tribunal will be adversely affected-

(i) The respondent No. 25 who has been working on the post of Quality Control Division, Khamgaon, Buldhana, had filed O.A. No. 443/2014 before Nagpur Bench of this Tribunal which was subsequently transferred before the Principal Bench of this Tribunal and registered as O.A. 1078/2016. The same is pending before the Hon'ble Principal Bench for final hearing.

(ii) The respondent No. 25 has also filed O.A. No. 187/2022 in respect of deemed date of promotion to the post of Executive Engineer in excess of quota and the same is pending before Nagpur bench of this Tribunal.

(iii) The respondent No. 25 also submitted in M.A. No. 515/2022 in O.A. No. 215/2022 that respondent No. 7 and 17 in the present matter have filed intervention application bearing M.A. No. 559/2022 in O.A. No. 1078/2016 before Hon'ble Principal Bench which has allowed them to intervene vide order dated 28.09.2022.

(iv) The intervenor is claiming break-down of quota rules since year 1995 thereby, striving to introduce a new factor of break-down of quota rules which has not

been agitated by the original applicant in O.A. No. 215/2022 or any subsequent pleadings and written submissions.

(g) This Tribunal, after considering all the facts before it, did not allow the M.A. (St.) No. 105/2023 in 215/2022. Moreover, the respondent No. 25 had been informed at the time of passing orders in M.A. No. 515/2022 in O.A. No. 215/2022 that he could seek relief against the decision of this Tribunal at appropriate forum, in case he was aggrieved by the same, which he has not done.

(h) This Tribunal has had comprehensive view of all facts pertaining to the respondent No. 25 praying for permission to join as party respondent through M.A. No. 515/2022 in O.A. No. 215/2022 which has eventually been allowed. Thus, he had impliedly claimed to be likely to be adversely affected in case prayers of the applicants in O.A. No. 215/2022 are granted. However, respondent No. 25 is originally from the cadre of *AE-I* like the two applicants and his entire pleadings are similar to that of the applicants. The respondent No. 25 is also working as *EE* on ad hoc and fortuitous basis promotion from cadre of *AE-1* in Quality Control Division, Water Resources Department at Khamgaon, District-Buldhana; therefore, he did not meet criterion of being from within territorial jurisdiction of Aurangabad Bench of this Tribunal which would have been required for joining as co-applicant in the present matter. Moreover, the respondent No. 25 is already contesting as applicant in O.A. No. 443/2014 of Nagpur Bench, renumbered as 1078/2016 at Principal Bench of this

Tribunal claiming seniority as per date of joining cadre of Executive Engineer on ad hoc basis on the ground of breakdown of quota rules. He is also contesting O.A. No. 187/2022 filed at Nagpur Bench of this Tribunal claiming deemed date of promotion to the cadre of Executive Engineer on similar grounds; therefore, it is inferred that the respondent No. 25 has joined as party respondent in order to infringe criterion of territorial jurisdiction which would have applied in case of his joining as co-applicant, and that is why the intervenor represented that he is likely to be adversely affected if relief as prayed for by the applicants are granted. In addition, the applicant is striving to introduce a new ground of '*Break-down of Quota Rules*' which has not been a part of grounds of filing O.A by the applicants and had not been raised by the applicant even while filing rejoinder affidavits. Therefore, we are constrained to infer that the respondent No. 25 has not come to this Tribunal with clean hands. Serious view is taken of such act on part of respondent No. 25.

12. Analysis of Issues Emerging out of Pleadings and Arguments made on behalf of the Applicants:-

Issue No. 1:- Whether Quota Rule elaborated in para 4 (f) above is based on cadre strength or on vacancy position in a recruitment year?

(a) At the stage of final hearing, the learned Advocate for the applicants had asserted that the provisions of rule 4 of Seniority *Regulation Rules, 1983* that quota of feeder cadres for promotion to the posts of

Executive Engineers i.e. (i) Assistant Executive Engineers, (ii) Assistant Engineers Grade-I, (iii) Sub-Divisional Engineers and (iv) Sub-Divisional Officers, which is prescribed in rule in the ratio of 40:25:25:10, is applicable on number of vacancies in a particular year. The respondents Nos. 1 to 24 have, on the other hand, contended that the said quota is to be computed based on cadre strength of Executive Engineers? In order to appreciate the rationale of the two contentions, we need to refer to rule 4 of the Seniority Regulation Rules, 1983 and rule 27 of the Recruitment Rules, 1970.

(b) For ready reference, rule 4 with sub-rule (1) and sub-rule (2) of the Seniority Regulation Rules, 1983 is reproduced ad verbatim as follows, upon plain reading of which it is observed that rule 4 (1) deals with cadre strength of Executive Engineers whereas rule 4 (2) mentions total number of vacancies in the cadre of Executive Engineers as determined under rule 4 (1). This anomaly needs harmonious reading:-

“4. Determination of strength of cadre of Executive Engineers and allocation of vacancies in that cadre for promotion of Assistant Engineers, Class-I and officers belonging to Maharashtra Services of Engineers, Class-II- (1) As far as possible, within 60 days from the date of publication of these rules in the Official Gazette, the relevant Department shall determine and declare strength of the cadre of Executive Engineers for the financial year and for each of years during the period commencing on the 1st day of April 1971 and ending on the 31st March 1982 and thereafter as far as possible within 60 days from

commencement of every year, the relevant Department shall determine and declare the strength of the cadre of Executive Engineers for that year.

- (2) *Out of the total number of vacancies in the cadre of Executive Engineers as determined under sub-rule (1) for the financial year or for any particular year, the first 40 percent, of the vacancies shall be allocated for filling the promotions of Assistant Engineers, Class-I (nomenclature changed later on as Assistant Executive Engineer (in short, "A.E.E.") who have completed not less than four years of continuous service in that capacity. The subsequent remaining 60 per cent vacancies in the fractional year or, as the case may be, in the said particular year shall be allocated appointed for filling by promotions of Deputy Engineers who are not fortuitously appointed as such and who have completed not less than seven years continuous service in that capacity, and if any vacancies remain to be filled after promoting Deputy Engineers those vacancies or if no Deputy Engineer eligible for promotion remains to be promoted then all the subsequent 60 per cent vacancies referred to above shall be allocated for filling by promotions of officers belonging to other cadres in Maharashtra Service of Engineers, Class-II in the following ratio and order namely:-*

(i) 25 per cent for Assistant Engineers, Class II who have completed not less than seven years continuous service in that capacity,

(ii) 25 per cent for Sub divisional Engineers who are not fortuitously appointed as such and who have completed not less than Seven years continuous service in that capacity

(iii) 10 per cent for Sub Divisional Officers who are not fortuitously appointed as such and who have completed not less than ten years continuous service in that capacity.

Explanation 1. For the purpose of determining the proportion of vacancies to be allocated under this rule, a fraction of half or more shall be treated, as one and fraction of less than half shall be ignored.

Explanation II. -For the purpose of determining continuous service of an officer under this rule, the period during which he is appointed fortuitously shall be excluded.”

(c) On the other hand, the rule 24 to 27 of the Recruitment Rules, 1970 reads as follows :-

“V) PROMOTION AND CONFIRMATION AS EXECUTIVE ENGINEERS.

24) All the posts of Executive Engineer (permanent and temporary) shall be filled by promotion of (i) direct recruits to Class-1 i.e. Assistant Engineers Class-1 and (ii) Officers from the four cadres in Class-11 viz Deputy Engineers, Assistant Engineers Class-II, Sub Divisional Engineers and Sub Divisional Officers in the ratio of 40% for direct recruits to Class-1 and 60% for promotions for Class-11

25) After all the Deputy Engineers ((Excepting those who are finally considered unfit for promotion have been promoted, the 60% posts of Executive Engineers available for promotees from Class-11 shall be filled by promotion in the following proportions.

i) 25% by promotion from among the direct recruits to Class-II

ii) 25% by promotion from among the graduate promotees in Class-II and

III) 10% by promotion from among the non-graduate promotees Class-II

26) The proportions fixed in Rules 24 and 25 will be in force for three years and will be reviewed thereafter.

27) *These proportions shall, as far as possible, be maintained while making officiating promotions also. The proportions may not necessarily apply to permanent or temporary vacancies in any particular year. The posts shall be filled as far as possible, in the overall proportions fixed for the various categories with reference to the total number of posts in the Executive Engineers cadre (permanent and temporary) as a whole.”*

(d) From reading of rule 4 (1) of the Seniority Regulation Rule, 1983 and rule 24 -27 of the Recruitment Rules, 1970 it is again observed that the two sets of Rules rule 27 of the Recruitment Rules, 1970 speak of proportion of quota of AAE, AE-1, SDE and SDO to be maintained as 40%, 25%, 25% and 10% on total number of posts in the Executive Engineers, whereas, rule 4 (2) of the Seniority Regulation Rule, 1983 is in deviation with above position. This necessitates harmonious regarding of rules in the light of Orders passed by this Tribunal or Judgments of the Courts of Law laying down case-laws.

(e) At this stage, relevant part of the order passed by this Tribunal in O.A. No. 938/2009 dated 07.04.2010 and orders passed by Hon'ble Aurangabad High Court are reproduced below:-

(i) APPLICATION OF QUOTA RULES IN CADRE STRENGTH OF 416 for EXECUTIVE ENGINEERS AS FINALISED BY THIS TRIBUNAL IN O.A. No. 938/2009

| S. No. | Name of Feeder Cadre | % meant for promotion | No. of posts in the cadre of Executive Engineer | No. of Posts held at present |
|--------|----------------------|-----------------------|---|------------------------------|
| 1 | AEE | 40% | 166 | 48 |

| | | | | |
|---|-------------|-----|-----|-----|
| 2 | AE, Grade-I | 25% | 104 | 218 |
| 3 | S.D.E. | 25% | 104 | 95 |
| 4 | S.D.O. | 10% | 42 | 41 |

(ii) Writ Petition No. 4284 of 2010 was filed by State Government challenging the orders passed by this Tribunal in O.A. No. 938 of 2009. The two writ petitions were heard by the Hon'ble High Court. As per order dated 06.05.2010 passed by the Hon'ble High Court in Writ Petition No. 4284 of 2010 this Writ Petition was to be heard along with the Writ Petition No. 3971 of 2010. Subsequently, Hon'ble High Court had passed following orders in Civil Application No. 12122 of 2017 in W.P. 4284 of 2010 with Civil Application No. 1028 of 2013, Civil Application No. 4396 of 2014 and Civil Application No. 12123 of 2017 in W.P. No. 4284 of 2010 on 26.09.2017 which is quoted below:-

“O R D E R

- I. Civil Application No. 12122/2017 is made absolute in terms of prayer clause (B)
- II. It is, however, made clear that all the promotions which are to be made under this order shall be subject to outcome of Writ Petition No. 4284/2010 and Writ Petition No. 3971/2010. The candidates, who are promoted to the post of Executive Engineer, shall be informed about this order passed by this Court and their promotions would be subject to the outcome of this petition.
- III. It is also made clear that if any candidates from the cadre of Assistant Executive Engineer Cadre-I are available during pendency of this petition for the purpose of getting promotion to the post of getting promotion to the post of Executive Engineer as directed by the Maharashtra Administrative Tribunal to the extent the candidate, who is granted

*promotion of Executive Engineer pursuant to this order, shall be reverted.***(Emphasis supplied)**

- IV. *It is made clear that in so far as the respondent No. 1 is concerned, though he is retired from the service, if writ petition No. 4284/2010 and Writ Petition No. 3971/2010 are dismissed by the this Court, the rights and entitlement of respondent No. 1 if any would be considered by this Court at this at the stage of final disposal of the Writ Petitions are not affected by this order.*
- V. *Civil Application No. 12122/2017 is disposed of in the aforesaid terms,*
- VI. *Parties to act on the authenticated copy of this order.”*

(f) Thus a harmonious interpretation has emerged in respect of Quota Rules applicable for the present in respect of Water Resources Department in view of order passed by this Tribunal in O.A. No. 938/2009 dated 07.04.2010 read with Oral Order passed by Hon'ble High Court of Judicature in Civil Application No. 12122/2017 in W.P. No. 4284/2010 with C.A. No. 1028/2013, C.A. No. 4396/2014, C.A. No. 12123/2017 in W.P. No. 4284 of 2010 which was being heard together with W.P. No. 3971 of 2010 filed by the present applicant No. 2.

(g) Quota Rule had also been before the Principal Bench of this Tribunal also in O.A. No. 1231/2013, 1040/201 with M.A. No. 70/2014 in O.A. No. 1040/2013 & O.A. No. 335/2014 decided by a common order dated 22.07.2014. Officers from AE-I and S.D.E. cadres from Public Works and Drinking Water Supply Department had filed the Original Applications which required interpretation of quota rules. The Principal Bench of this Tribunal had

observed after carrying out a reasoned analysis that if quota rule is applied on vacancy position in contrast with cadre strength, then the posts filled up by officers from one or more of the four feeder cadres in excess of quota, on ad hoc and fortuitous basis should be treated as vacant positions. However, the Tribunal did not prescribe a particular manner of making harmonious interpretation of Quota Rules.

Inference:- In view of above analysis of fact, in our considered opinion, the order passed by this Tribunal, Bench at Aurangabad in O.A. No. 938/2009, subject to final outcome in Writ Petition No. 4284/2010 with W.P. No. 3971/2010, may continue to be applicable.

Issue No. 2:- Whether promotion of the two applicants which has been ad hoc and fortuitous basis liable to reversion upon availability of suitable candidate from the feeder cadre of AE- I?:-

(a) Rule 2 (g) of the Seniority Regulation Rules, 1983 has defined the term “Fortuitously appointed” as follows :-

“Fortuitously appointed means appointed in any vacancy which, according to the rule 4 or rule 12 is not allocated or assigned for the class of officers to which the person appointed in that vacancy belongs or appointed in contravention of any of the recruitment rules.”

(b) It has been stated in preceding paras of this Order, promotion of the applicants from the cadre of AE- I to the cadre of EE was on ad hoc basis for an initial period of 11

months due to administrative exigency, on recommendation of the *DPC* but, subject to concurrence by *MPSC*). The promotions order bearing No. एलएल एस ११०९/(३६२/२००९)/आ. (वर्ग-१)-(८), मंत्रालय, मुंबई-३२, dated 31.03.2010 had opening para as quoted below for ready reference :-

“जलसंपदा विभागातील खालील तक्त्यात नमूद केलेल्या सहाय्यक अभियंता श्रेणी-१ या संवर्गातील अभियंत्यांना कार्यकारी अभियंता (स्थापत्य) या पदावर रुपये १९६००-३९१००, ग्रेड पे ६६०० या सुधारित वेतनश्रेणीतील प्रशासकीय हितास्तव रिक्त पदे भरण्याची प्रशासकीय निकड (*Administrative Exigency*) लक्षात घेउन, तदर्थ (*Adhoc*), अभावित (*Fortuitous*), अस्थायी व अत्यंत तात्पुरत्या स्वरूपात ११ महिन्यांकरीता पदोन्नती देण्याचा शासन आदेश देत आहे. या पदोन्नत्या अभावित (*Fortuitous*) स्वरूपाच्या असून त्या लोकसेवा आयोगाच्या मान्यतेच्या अधीन राहतील.”

(c) It is admittedly that the promotion of the applicants from the cadre of *AE- I* to the cadre of *EE* had been on ad hoc and fortuitous basis, for an initial period of 11 months only; however, after joining the post of Executive Engineer (Civil) on 30.06.2010, they have been working continuously as Executive Engineers (Civil) without a single-day break. This has been cited by the applicants as a ground for their absorption in the cadre of *EE* even after officers in the cadre of *AEE* have become available and the applicants continue to be over and above quota for officers in the cadre of *AE-I*. This contention of the applicants is not supported by any rule under Recruitment Rules, 1970 or Seniority Regulation Rules, 1983. Moreover, the order passed by this Tribunal in O.A. No. 938/2009 has quenched this issue subject to final outcome in the Writ

Petition No. 4284/2010 with W.P. No. 3971/2010. To quote relevant part of the order in O.A. No. 938/2009 :-

“13. In view of the discussion above, we dispose of this O.A. with directions to the respondents No. 1 to 4 to restore the balance in the three feeder cadres of AE- I, S.D.E. and S.D.O. by maintaining the ratio of 25:25:10 between these cadres, while filling up the shortfall in the feeder cadre of A.E.E.. To illustrate on the basis of status in the table quoted above (at page 78 of the paper-book) (of O.A. No. 938 /2009 and para 9 (ii) of this Order). A.E.- I cadre will enjoy 104 plus 49 posts, S.D.E. will enjoy 104 plus 49 posts and S.D.O. will enjoy 42 plus 20 posts in the cadre of Executive Engineer i.e. 153, 153 and 62 respectively, till such time as sufficient officers of AEE are available. This will necessarily involve reversion of those, who have been given excess ad hoc promotion from AE- I cadre beyond 153 mentioned above. This balance should be restored as early as possible, and in any case within a period of six months.”

(d) The present applicant No. 2 had challenged the order of this Tribunal passed in O.A. No. 938/2009 by filing a writ petition No. 3971 of 2010 before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad which was heard together with W. P. No. 4284/2010 along with Civil Application No's. 12122/2017, 1028/2013, 4396/2014 and 12123/2017 in WP. No. 4284/2010 and one of the operating parts of the Oral Order passed by Hon'ble High

Court on 26.09.2017 reads as follows. This Writ Petition is yet to be finally decided :-

“(c) It is also made clear that if any candidate from the cadre of AEE are available during pendency of this Petition for the purpose of getting promotion to the post of Executive Engineer as directed by the Maharashtra Administrative Tribunal, to the extent the candidate, who is granted promotion to the post of Executive Engineer pursuant to this order, shall be reverted”

Inference:- In view of above discussion, we are of considered opinion that the applicants are liable to reversion if they have been promoted fortuitously under 40% quota for officers of cadre of AEE and remaining in excess of 25% quota for officers from cadre of AE- I prior to availability of officers from AEE cadre for promotion to the cadre of EE within their 40% quota.

Issue No. 3:- Whether the applicants have been able to substantiate their claim that the quota rule has broken down?

Analysis of Facts:- The two applicants have not pleaded breakdown of quota rules in the O.A. No. 215/2022; therefore, this contention is inadmissible on technical grounds. However, they have later on submitted a representation dated 06.05.2022 addressed to the Additional Chief Secretary, Water Resources Department, claiming thereby, claiming that Quota Rule has broken down during period from ear 1995 to 2020. In this context, cognizance is taken of the fact that the applicants had not taken this plea while respondents issued a number of promotion orders in accordance with *Recruitment Rules, 1970* and *Seniority Regulation Rules, 1983* in the year 2021. They have

not challenged final seniority list as on 01.01.2018 and Seniority lists as on 01.01.2019, 01.01.2020 and as on 01.01.2021. Relief sought by the applicants is, in contrast, pertaining to undertaken promotion to the cadre of Superintending Engineers after publication of final seniority list of the cadre of *EE* and for not treating the promotion of applicants to the cadre of *EE* on ad hoc and gratuitous basis. In addition, the Principal Bench of this Tribunal too, has examined the contention of break-down of quota rules and observed while hearing O.A. No. 1231/2013, 1040/2013 with M.A. No. 70/2014 in O.A. No. 1040/2013 & O.A. No. 335/2015 and recorded its findings in the para 10 of the common order passed on 22.07.2014 that –*“However, there is nothing to show that quota rule has broken down after 1998. In fact, the Government seems to be taking steps to bring about the situation to maintain quota as per different feeder cadres as prescribed by the Rules in the letter and spirit.”*

Inference:- Therefore, the contention raised by respondent No. 26 that there is a break-down of Quota Rules is not only outside scope of his intervention, but is clearly an afterthought on his part which is devoid of merit.

Issue No. 4:- Whether the applicants had challenged the seniority list of Executive Engineers as on 01.01.2018?

Findings:- There is nothing on record which shows that the applicant had challenged seniority list for the cadre of *EE* as on 01.01.2018.

Issue No. 5:- Whether in the present O.A. No. 215/2022 the applicants have challenged the seniority list for the post of

Executive Engineers as on 01.01.2019, 01.01.2020 and 01.01.2021 published after completion of process of inviting and deciding claims & objections subject to final decision in SLP 28306/2017 in W.P. (C) 2797/2015?

Findings:- It is observed that the applicants have not challenged the seniority list of the cadre of EE as on 01.01.2019, 01.01.2020 and 01.01.2021. Instead, the applicants are contesting the nomenclature of the said seniority list which the respondents do not refer to as Final Seniority List in view of order pendency of SLP No. 28306/2017 filed by State of Maharashtra in W.P. No. 2797 of 2015.

Issue No. 6:- Whether the applicants have been able to successfully establish that any Order of this Tribunal or any Judgment of Hon'ble High Court of Judicature at Bombay or, Hon'ble Apex Court had mandated that the Seniority Lists for year 2019, 2020 and 2021 ought to be referred to as Final Seniority List pending SLP No. 28306/2017 filed by State of Maharashtra in W.P. No. 2797 of 2015 before undertaking promotion based on the same.

Findings:- Nothing has been brought on record by the applicant or the respondents to show that any Order of this Tribunal or any Judgment of Hon'ble High Court of Judicature at Bombay or, Hon'ble Apex Court had mandated that the Seniority Lists for year 2019, 2020 and 2021 ought to be referred to as Final Seniority List pending SLP No. 28306/2017 filed by State of Maharashtra in W.P. No. 2797 of 2015, before undertaking promotion based on the same to the cadre of Superintending Engineers. However, in order to remove ambiguity, two deferent

nomenclature should be used to refer Provisional Seniority List and the Seniority List Published after deciding claims and objections, which eventually is subject to outcome of SLP No. 28306/2017 filed by the State in W.P. No. 2797/2015

Issue No. 7:- Whether the applicants has challenged any promotion order to the cadre of Executive Engineer from the cadre of AEE, granted pending finalization of seniority list for the post of Executive Engineers during the period after finalization of seniority list as on 01.01.2018, if any?:-

Analysis of Facts on Record:- Respondent No. 4 to 24 have enclosed following promotion orders issued before publication of up to date seniority list for the cadre of Executive Engineers in the Water Resources Department as Annexure R-4-11 (page 449 to 472 of paper-book):-

(i) Promotion order of 58 officers from cadre of AEE vide Government Resolution issued by Water Resources Department bearing No. SLS 1119/ file no. 342/2019/A (class-1)...2, Mantralaya Mumbai, dated 30/04.2021,

(ii) Promotion order of 15 officers from cadre of AEE vide Government Resolution issued by Water Resources Department bearing No. SLS 1121/ file no. 63/Part-5/2021/A (class-1)...2, Mantralaya Mumbai, dated 13/08.2021

(iii) Promotion order of 14 officers from cadre of AEE vide Government Resolution issued by Water Resources Department bearing No. SLS 1121/ file no. 63/Part-

6/2021/A (class-1), Mantralaya Mumbai, dated 23/09.2021

(iv) Promotion order of 23 officers from cadre of AEE vide Government Resolution issued by Water Resources Department bearing No. SLS 1115/ (261/2015)/A (class-1)...(1),Mantralaya Mumbai, dated 17/09/2016

Inferences- The applicants have given ground for contention of respondent Nos. 4 to 24 raised through rejoinder affidavit or during oral submissions that the applicants are taking inconsistent and self-contradictory stand by adopting strategy of pick & choose of cases of individuals for opposition by raising issue of quota rules and break-down of quota rules in an arbitrary manner.

Issue No. 8:- Whether the applicants have been able to establish their good faith in applicant No. 2 not disclosing his being respondent in O.A. No. 938/2009 and petitioner in W.P. No. in which the quota rule was one of the main issues for adjudication.

Analysis of Facts on Record:-

(a) The quota rule had been dealt with at length by this Tribunal in O.A. No. 938/2009 at para no. 10 of its order dated 07.04.2010. This Tribunal had applied quota for the four feeder cadres for the post of Executive Engineer in the ratio of 40%, 25%, 25% and 10% respectively on the cadre strength of Executive Engineer (Civil) in contrast with vacancy position. The computation sheet depicted in the order passed by the Tribunal has been reproduced in para ...of this order for ready reference to which two of the

learned Advocates appearing for the applicant Shri Dhanshiram Tulsiram Sihipane in the said O.A. No. 938/2009 (appearing for the applicants in the present O.A. No. 215/2022) and the applicant No. 2 in the present O.A. No. 215 of 2022 (Respondent No. 5 in O.A. No. 938/2009) had acquiesced to. However, this fact has not been disclosed by the applicants in the present O.A.

(b) As two of the four senior Advocates appearing for the Applicant and respondent No. 5 in the said O.A. No. 938/2009 (applicant No. 2 in the present O.A. No. 215/2022 respectively), are also the counsel for the Applicant and respondent No. 25 in the present O.A. No. 215 of 2022, in our considered opinion, the respondent No. 5 in O.A. No. 938/2009 should have disclosed such material facts in the original application filed before this Tribunal or at a subsequent stage but, before the private respondents revealed the same while submitting affidavit in reply. It assumes significance in the background of facts that the applicants have taken stands in the present O.A. No. 215/2022 in deviation with earlier order passed by this Tribunal in O.A. No. 938/2009 to which they have not challenged before competent forum i.e. Hon'ble Apex Court. The order passed by this Tribunal in O.A. No. 938/2009 had been challenged by the present Applicant No. 2 by the above mentioned Writ Petition No. 9371/2010 which is pending before Hon'ble Aurangabad Bench of Bombay High Court but this aspect also has not been disclosed in the present O.A.

Inference:- The Applicant has taken inconsistent and contradictory stand in the present O.A. No. 215/2022 with respect to the one adjudicated by this Tribunal in O.A. No. 938/2009 and which has not been challenged by the Applicant No. 2 or anyone else at appropriate judicial forum after Interim Order has been passed by Hon'ble High Court filed by the Applicant No. 2 through Writ Petition No. 3971/2010 before Aurangabad bench of Hon'ble High Court Judicature at Bombay challenging the order passed by this Tribunal in the aforesaid O.A. No. 938/2009. The interim order so passed has upheld that officers of any feeder cadre promoted in excess of quota may be reverted back upon availability of sufficient number of officers from the related feeder cadre. Therefore, we are of the considered opinion that the Applicant ought to have disclosed the judgment / orders passed by this Tribunal in O.A. No. 938/2009 and interim Oral Orders passed by Hon'ble High Court in W.P. No. 3971/2010. There is nothing on record to show that the purpose behind suppression of vital facts could be benign.

Issue No. 9:- Whether the applicant has been able to substantiate his contention that the respondent No. 1 has erred in calling for service particulars for the officers on the post of AEE before taking positive steps for getting them relaxation in length of service rendered by them for specified period?:-

During arguments, the learned Advocate for the Applicants had also raised additional point that the State Government has erred by calling for information regarding services rendered by the private respondents before taking positive steps for granting them relaxation in respect of the length of regular services rendered by the respondent Nos. 4 to 24 in the cadre of

Executive Engineer (Civil) from 7 years to 5 years, which is the feeder cadre for Superintending Engineers. However, the learned Advocate could not establish / prove any violation of standard operating procedure in this regard or any legal requirement showing any malafide on part of respondent authorities in this regard. We are of considered opinion that the applicants had aimed at creating baseless suspicion regarding the sanctity of the process being drawn.

Issue No. 10:- Whether the Government Resolution No. SRV-2018/file no. 159/Desk-12, Mantralaya, Mumbai, dated 01.08.2019, issued by the General Administration Department, restricts the Respondent No. 1 in absolute terms from undertaking any process of promotion before final seniority list of feeder cadre as on 1st day of the year in which such promotions are intended to be effected has been published?

Analysis: The G.R. issued by GAD dated 01.08.2019 is compilation of Guidelines issued from time to time in respect of promotion of officers and employees of the State Government. Respondent No. 1 has issued provisional seniority list for the cadre of Executive Engineer after disposing of claims & objections thereto. The Applicants have not sought relief against the decision of respondent No. 1 to the claims & objections raised by them to the provisional seniority list, nor have they adduced any evidence to make out a case that despite availability of adequate number of vacant posts as per quota of 25 percent for feeder cadre of Assistant Engineer, Grade-I, the applicants have not been regularized against the available quota in the promotional cadre of Executive Engineer (Civil) as per rules. On

the other hand, the respondent No 1 has, even after deciding all claims & objections to the provisional seniority list, not referred the same as “Final Seniority List” apparently by way of abundant caution against multiple litigations which may arise after final judgment of Hon’ble Apex Court in the SLP No. 28306/2017 (in W.P. No. 2797/2215 of Hon’ble High Court of Judicature at Bombay). In addition, the applicants have not advanced any clinching arguments made by learned Advocate for Respondent Nos. 4 to 24 that the applicants themselves had availed ad hoc and fortuitous basis promotions before updated, final seniority list had been published. Moreover, it is also observed that para (ऐ) of the said G.R. permits ad-hoc / temporary promotions. The provisions of this para are reproduced below for ready reference:-

“ऐ) पदोन्नतीचे आदेश निर्गमित करताना त्यामध्ये अंतर्भूत करावयाच्या बाबी

- (१) नियमित निवडसूचीतील पदोन्नत्यांच्या आदेशामध्ये, सदरहू पदोन्नत्या नियमित पदोन्नत्या (Regular Promotion) असल्याचे सुस्पष्ट करण्यात यावे. जर काही प्रकरणी मा. न्यायाधिकरण/न्यायालय येथे दाखल असलेल्या न्यायप्रविष्ट प्रकरणाच्या अधीन राहून किंवा तात्पुरती ज्येष्ठतासूची इ. अन्य कारणास्तव पदोन्नती देताना संबंधित कारण नमूद करून तात्पुरती पदोन्नती (Temporary Promotion). देण्यात येत असल्याचे आदेशामध्ये स्पष्टपणे नमूद करावे.
- २) तदर्थ निवडसूचीतील पदोन्नती आदेशामध्ये खालील अटी सुस्पष्टपणे नमूद कराव्यात :-
 - i) सदरहू पदोन्नती ही तदर्थ पदोन्नती (Adhoc promotion) असल्याबाबत.
 - ii) सदरहू पदोन्नती दिलेल्या अधिकारी/कर्मचारी यांना सेवाज्येष्ठतेचा कोणताही लाभ मिळणार नाही.

- iii) अशा पदोन्नत्या सरळसेवेद्वारे आयोग/मंडळाकडून उमेदवार उपलब्ध होईपर्यंत किंवा प्रतिनियुक्तीवर बाहेर गेलेले अधिकारी/कर्मचारी रुजू होईपर्यंत किंवा पदोन्नतीच्या आदेशापासून ११ महिन्यांसाठी यापैकी जे आधी घडेल त्या कालावधीसाठी असतील व आवश्यकता असल्यास दर ११ महिन्यांनंतर खंडित करून पुढे चालू ठेवल्या जातील. तसेच, आदेशामध्ये नियुक्तीच्या कालावधीची तारीख स्पष्टपणे नमूद करण्यात यावी आणि प्रस्तुत नियुक्ती नियुक्तीच्या आदेशात नमूद केलेल्या कालावधीनंतर आपोआपच संपुष्टात येतील असा स्पष्ट उल्लेख आदेशात करावा. (संदर्भ क्र. १७ येथील दि. ८.१०.१९९० चा शासन निर्णयानुसार)
- iv) तदर्थ पदोन्नती दिलेल्या पदावर सरळसेवेने उमेदवार उपलब्ध झाल्यास अथवा प्रतिनियुक्तीवर बाहेर गेलेले अधिकारी/कर्मचारी रुजू झाल्यास तदर्थ पदोन्नती दिलेल्या अधिकारी/कर्मचाऱ्याची तदर्थ पदोन्नती संपुष्टात आणण्यात येईल,
- v) याव्यतिरिक्त अन्य कारणास्तव तदर्थ पदोन्नती दिली असल्यास, ज्या कारणास्तव तदर्थ पदोन्नती दिली असेल त्या कारणाचा पदोन्नती आदेशात स्पष्ट उल्लेख करावा.”

Inference: Based on above facts, in our considered opinion, the G.R. dated 01.08.2019 with special reference to para (ऐ) does not restrict undertaking process of promotion to the cadre of Superintending Engineer.

Issue No. 11: *Whether submissions made by Respondent No. 1 on 21.08.2014 before the Principal Bench of this Tribunal in O.A. No. 711/2014 to the effect that promotion from the cadre of Executive Engineers to the cadre of Superintending Engineer would be made after publication of final seniority list for the cadre of Executive Engineers (Civil), operates as a bar on any such promotion after the Respondent No. 1 had made such submission?*

Analysis: The present O.A. has been filed before this Bench of the Tribunal and the O.A. No. 711/2014 is still pending before the Principal Bench of this Tribunal. No provisions of law or administrative orders have been quoted which prohibit this Tribunal to decide the present O.A. on this count.

Inference: In our considered opinion, there is no legal or procedural impediment in deciding the present O.A. independently, based on merit of the matter taking into account all the facts before us, as the order passed in the present O.A. is subject to final outcome in Writ Petition No. 4284 of 2010 and Writ Petition No. 3971 of 2010 pending before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and also subject to final outcome in SLP (C) No. 28306 of 2017 in W.P. No. 2797/2015 filed by the State of Maharashtra before the Hon'ble Apex Court. Hence, the following order :-

ORDER

- (A) The Original Application No. 215 of 2022 is, hereby, dismissed.
- (B) Interim relief granted on 26.08.2022 is hereby vacated.
- (D) No order as to costs.

MEMBER (A)

MEMBER (J)

KPB/O.A. No. 215 of 2022 (DB) provisional seniority list / promotion