

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 282 OF 2019
(Subject :- Pay Fixation & Arrears of Pay Scale)**

DISTRICT:-BEED

Deorao Gangaram Kale,)
Age:- 62 years, Occ. Pensioner,)
R/o. Kulswamini Nivas, Ahilyadevi Nagar,))
Kaij, Tq. Kaij, Dist. Beed.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Public Works Department,)
Mantralaya, Mumbai-32.)
2. **Superintendent Engineer,**)
Circle, P.W.D., Bandhkam Bhavan,))
Old High Court Premises,)
Aurangabad.)
3. **The Superintending Engineer,**)
P.W.D. Department,)
Bandhkam Bhavan, Samta Nagar,))
Osmanabad.)
4. **The Executive Engineer,**)
P.W.D. Division, Ambejogai,)
Tq. Ambejogai, Dist. Beed.)
5. **The Sub-Divisional Engineer,**)
P.W.D. Sub-Division Kaij,)
Tq. Kaij, Dist. Beed.) **... RESPONDENTS**

APPEARANCE : Shri H.P. Jadhav, learned Advocate for
Applicant

: Shri B.S. Deokar, learned Presenting Officer for
Respondents

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **07.10.2021.**

ORDER

1. The Original Application has been filed by the applicant Shri Deorao Gangaram Kale on 01.12.2018 invoking the provision of Section 19 of Administrative Tribunal Act, 1985 praying for issue of directions to respondent No. 4 to implement the revised orders issued by respondent Nos. 2 and 3 relating to date of absorption of the applicant in the cadre of Civil Engineering Assistant and granting him benefits of time bound promotion scheme. Later on, the present Original Application was amended challenging the order / communication dated 02.11.2019 issued by Section Officer, Public Work Department (P.W.D.), Government of Maharashtra, Mantralaya, Mumbai. A delay of 670 days in filing the original application was condoned by this Tribunal's order dated 26.03.2019 in Miscellaneous Application No. 485 of 2018. Thereafter, M.A. No. 573 of 2019 was allowed vide Tribunal's order dated 03.12.2019 to amend the Original Application in terms of prayer clause 10 (C-1).

2. The background facts as stated by the applicant in the present Original Application are as follows:-

(a) The applicant joined Public Works Department (P.W.D.) as a Road Karkun (a class -III post) by appointment order dated 14.12.1977 at Sub-Division Office, Ambejogai and thereafter, he worked at various places. The applicant retired on superannuation on 30.06.2014.

(b) The applicant attended a training course of employees which was called as 'Training of Mistries, Mukadam, Muster Clerk etc. at Vigilance & Quality Control Circle, Aurangabad and passed the examination conducted at the end of the said training on 19.05.1980 with 61.70 % marks. The applicant has further contended that the said examination is equivalent to the examination required to be passed for inclusion in cadres of Civil Engineering Assistant (in short, "CEA") vide G.R. dated 31.01.1989. However, the applicant was not included in the cadre of CEA as per provisions of Government Resolution dated 01.01.1989 w.e.f. the date of issue of the said G.R.; instead, the applicant was absorbed in the

newly created cadre of CEA w.e.f. 03.05.2005 vide order dated 03.05.2005.

(c) The applicant has cited a case of similarly situated one Shri B. K. Sanap, who was absorbed in the cadre of CEA vide order No. 538, dated- 01.09.1994 issued by the respondent No. 2 i.e. the Superintending Engineer, P.W.D. Circle, Aurangabad.

(d) The applicant contends that an order was passed granting him benefits of second time-bound promotion vide order No. 58, dated 20.09.2014 w.e.f. 01.12.2006, considering his continuous service of 12 years on the same post and total service of 24 years. This order was later on modified considering the revised date of his absorption in the cadre of CEA.

(e) Government had issued G.R. dated 31.07.2013 and 01.11.2013 pursuant to the order of this Tribunal in O.A. No. 963 of 2010 which was upheld by Hon'ble Apex Court. Resultantly, the applicant became entitled for benefit of second time bound promotion w.e.f. 01.01.1992. The applicant states that similarly situated other employees also got benefit of pay scale of Junior

Engineer as per the scheme of Time Bound Promotion under provisions of G.R. dated 31.07.2013 and 01.11.2013. According to order passed by Respondent No. 2, dated 10.09.2014, the respondent No. 3, issued revised order dated 23.09.2014 and granted pay scale of Junior Engineer to the applicant w.e.f. 01.01.1992 and allowed payment of pay difference.

(f) The Applicant has made many representations to the Respondent No. 4 to give effect to order passed by Respondent Nos. 2 & 3 and release pay difference. But, the Respondent No. 4 has not complied with the same. Therefore, the applicant had filed this original application.

3. The applicant has prayed for following reliefs in terms of prayer clause stated in para No. 10 of the Original Application which is reproduced as follows:-

“10 (A) *This Original Application may kindly be allowed.*

(B) *The respondent authorities, specifically respondent No.4, may kindly be directed to consider the case of applicant as per order dated 10.09.2014 issued by Respondent No.2*

and order dated 23.09.2014 issued by Respondent No. 3 by fresh pay fixation and pay arrears of pay scale as a Civil Engineer from 01.01.1992 with interest as per deemed date as a C.E.A. on 01.01.1989 and Civil Engineer 01.01.1992 and decide the representation dated 03.02.2016 and 22.10.2018 given by applicant in accordance with law within stipulated period considering the judgments of this Hon'ble Court, Hon'ble High Court and Hon'ble Supreme Court as per law and policy of State.

(C) *Any other suitable and equitable relief may kindly granted in favour of applicant which may applicant deem fit.*

(C-1) *That the impugned order dated 02.11.2019 may kindly be quash and set aside considering the provisions of law and considering the Article-14 of Constitution of India by holding that the applicant is entitled to pay scale as a CEA on 01.01.1989 and thereafter, three years i.e. on 01.01.1992 as a Civil Engineer or at least hold that the applicant is entitled for pay scale of Civil Engineer on 01.01.2001 as per assured progressive scheme and as per the policy decisions taken by respondent state from time to time in various government resolutions.”*

4. Affidavit in reply on behalf of Respondent Nos.1 to 5 had been filed on 06.11.2019. As the two contesting sides completed their pleadings, an oral order was passed on 30.07.2021 admitting the matter and for keeping the same for final hearing on 02.09.2021. Final Hearing took place on the scheduled date and the two sides were given liberty to cite case laws, if any, if they so wish, by 22.09.2021. Accordingly, learned Advocate for the applicant submitted a set of documents which was taken on record and a copy thereof was provided to the learned Presenting Officer to respond within a week's time. The present matter was closed for orders. The learned Presenting Officer too, has submitted written notes of arguments on behalf of respondents on 28.09.2021, which are taken on record.

5. From the background facts submitted by the applicant, following issues have been identified for determination based on which the merits of claims of the applicant has been decided-

- i. Whether passing of examination under training course offered by Vigilance & Quality Control Circle, Aurangabad for Mistries, Mukadam, Muster Clerks etc., in during September 1979 to February, 1980 entitles the applicant to be considered as having passed the examination under

training course for Civil Engineering Assistant organized by the Maharashtra Engineering College, Nashik as stipulated in G.R. dated 31.01.1989 issued for creating cadre of CEA?

- ii. The applicant was at first, included in the cadre of CEA w.e.f. 03.05.2005 and was given benefits of pay fixation accordingly vide order No. 477, dated 03.05.2005, passed by the respondent No. 2 i.e. the Superintending Engineer, PWS circle, Aurangabad & Coordinating Superintending Engineer, PWD Region, Aurangabad. A copy of the said order is enclosed as Annexure A-7 at page 35 of the paper-book. However, the said order was modified by the respondent No. 2 on request of the applicant; vide another order No. 924/2014 dated 10.09.2014. By this order the respondent No. 2 revised the date of inclusion of the applicant in cadre of CEA w.e.f. 01.01.1989 mentioning that “नाशिक प्रशिक्षण उत्तीर्ण 19/05/80” which is factually wrong and amounts to misstatement. A copy of the said order of respondent No. 2, dated-10.09.2014 has been enclosed with the original application as Annexure A-9 at page No. 45 of the paper-book. Therefore, it is to be decided whether this order of the Superintending Engineer, P.W.D. Circle

Aurangabad & Regional Coordinator Superintending Engineer, P.W.D. Region, Aurangabad was in order and maintainable?

- iii. The applicant was, at first; given benefit of second time-bound promotion w.e.f. 01.12.2006 vide order passed by the respondent No. 3 i.e. the Superintending Engineer, P.W.D. Circle Osmanabad, dated 20.09.2014. A copy of the said order has been enclosed with this O.A. as Annexure A-7, at page 36 of the paper-book. However, subsequently the respondent No. 3 took the basis of the order passed by respondent No. 2 dated 10.09.2014, as mentioned in para 2(e) above and issued revised order dated 23.09.2014 directing the respondent No. 4 to carry out fresh exercise of pay fixation of the applicant taking into account the revised date of his absorption in the cadre of CEA and grant of benefits of second time-bound promotion. A copy of the order passed by the respondent No. 3, dated 23.09.2014 is at page no. 46 of the paper-book for ready reference. This order of respondent no. 3 has not been implemented by respondent No. 4. It is to be determined whether order passed by respondent No. 3, dated 23.09.2014 is in order

requiring issue of directions to the respondent No. 4 to comply with the same?

- iv. Being aggrieved from respondent No. 4 not implementing the order passed by respondent No. 3, dated 23.09.2014, the applicant had made representation to respondent no. 1 vide his letter dated 03.02.2016 and 21.10.2018. Accordingly, respondent No. 1 issued direction to respondent No. 3 vide its letter no. न्याय प्र.-२०१६/प्र.क्र. १३/सेवा-३, Public Works Department, Madam Cama Road, Mumbai-32, dated 02.11.2019, endorsing a copy of the same to other respondents and also to the applicant. The applicant had, therefore, filed a miscellaneous application No. 573/2019 seeking permission to amend the prayer clause which was granted by this Tribunal on 03.12.2019. The applicant has accordingly, amended the prayer clause by inserting clause **(C-1)** and is asking for relief of quashing and setting aside the impugned communication from respondent No. 1, dated 02.11.2019. The original applicant has also prayed for issuing direction to respondent No. 4 to comply with order issued by respondent No. 3, dated 23.09.2014. Thus, the fourth issue to be determined

whether communication issued by respondent No. 1 addressed to respondent No. 3, dated 02.11.2019 suffers from any infirmity so as to be quashed and set aside as prayed for by the applicant?

6. **Analysis of facts:** - Above mentioned 4 issues listed in para 5 above are analyzed in the light of rules applicable in this regard as follows:-

(i) The applicant has drawn reference to a communication purportedly sent by Deputy Director, Regional Office of Technical Education, Nashik, dated 06.08.1982, which states that the training-course (which is of five-month duration) organized by Vigilance & Quality Control Circle, Aurangabad during September 1979 to February 1980 for lower field supervisory staff (Muster Karkun, Road Karkun, Mitry etc.), is equivalent to the training-course (which is of one-year duration) required for induction in the cadre of CEA and organized by Maharashtra Engineering College, Nashik of the government. This communication had been addressed to the Superintending Engineer, P.W. D. Circle, Aurangabad in response to a reference made by the later to the Deputy

Director, Technical Education, Nashik Region. In order to settle this issue, a reference is made to the P.W.D. Recruitment Rules, 1989 as applicable for the post of CEA, which has clear mention of qualifying examination for CEA's conducted by Maharashtra Engineering College Nashik of Government. Moreover, the course run by Vigilance & Quality Control Circle, P.W.D., Aurangabad is of only 5 months' duration whereas, the course for CEA's is of one year duration. Therefore, it is beyond comprehension that the P.W.D. department relied on the opinion that a course of 5 months' duration was equivalent to a course of one year duration taking the same on face-value without scrutiny of course content and teaching hours. Now, the issue has been finally settled by the communication received by the respondent No. 3 from the Public Works Department, Mantralaya Mumbai, dated 02.11.2011 which categorically states that passing of examination under training course organized by Vigilance & Quality Control Circle, Aurangabad for Mistries, Mukadam, Muster Clerks etc., in the month of February, 1980 does not entitle the applicant to be considered as having passed the examination for training course for CEA organized by the

Maharashtra Engineering College, Nashik as stipulated in G.R. dated 31.01.1989 issued for creating cadre of CEA.

(ii) The Respondent No. 2 modified his original order No. 477, dated 03.05.2005 on request of the applicant; by issuing revised order No. 924/2014 dated 10.09.2014. By this order the respondent No. 2 revised the date of inclusion of the applicant in cadre of CEA w.e.f. 01.01.1989 mentioning that “नाशिक प्रशिक्षण उत्तीर्ण 19/05/80” which is factually wrong and amounts to misstatement. In view of conclusion arrived at para 6 (i) above, it is clear that the revised order of the respondent No. 2 i.e. the Superintending Engineer, P.W.D. Circle Aurangabad & Regional Coordinator Superintending Engineer, P.W.D. Region, Aurangabad, bearing No. 924/2014, dated 10.09.2014, is not in order and as such, the same is not maintainable. Therefore, the said orders are, fit to be quashed and set aside. In this context, it is necessary to discuss the similarly situated case of one Shri B. K. Sanap which has been cited by the applicant. In this matter a reference was made by the respondent No. 2 to the administrative department to confirm his understanding in

respect of eligibility of one Shri B. K. Sanap who had completed training course offered by Vigilance & Quality Control Circle, Aurangabad but has not passed prescribed qualifying examination for induction in cadre of CEA. Shri B. K. Sanap had been given temporary appointment on the post of Civil Engineering Assistant by the Superintending Engineer, P.W.D. Circle Aurangabad vide order No. 538 dated 01.09.1994 subject to Government approval. Thereafter, a reference was made to the Secretary, P.W.D. on 21.09.1994 stating that the training course (of 5 months' duration) offered by Vigilance & Quality Control Circle, Aurangabad was equivalent to the training course (of one year duration) organized by Maharashtra Engineering College, Nashik of govt., quoting opinion given by Deputy Director, Technical Education, Nashik Region. The said reference is drafted with ambiguity mixing the issue covered by clause 5 (2) and 8 (e) of the G.R. No. ईएसटी १०८३/[४८०]-आ [तांत्रिक], मंत्रालय, मुंबई, dated 31.01.1989. Based on facts stated in the said reference, the Public Works Department had confirmed that Shri B. K. Sanap possessed qualification required for inclusion in the cadre of Civil

Engineering Assistant, vide its letter No. आस्था १०९४/८०७७७/४११/सेवा-३, dated 02.01.1995. This anomaly stands removed by the communication received from respondent No. 1 dated 02.11.2019. After weighing pros & cons of using of the matter, I have come to conclusion that it may not be in public interest to allow perpetuation of the mistake committed in case of Shri B. K. Sanap and as such the clarification given by respondent No. 1 on the point of qualifying examination for induction in the cadre of CEA vide its communication dated 02.11.2019 be made applicable in the present original application and in future cases.

(iii) From above analysis, it is clear that the applicant who had not passed the qualifying examination for induction in cadre of CEA could be included in the cadre of CEA only after getting exemption from passing the training course for CEAs organized by Maharashtra Engineering College, Nashik of the Govt. or, on attaining age of 45 years. As the G.R. for exemption from passing qualifying examination had been issued on 06.12.2001 therefore, no exemption could be granted on a date prior to issue of said G.R. The

applicant attained age of 45 years on 17.06.2001 therefore; he is entitled for being exempted from passing the said qualifying examination w.e.f. 06.12.2001. In view of above analysis, it is not warranted to issue any directions to the respondent No. 4 to implement the orders passed by respondent No. 3, dated 23.09.2014 as mentioned in preceding paragraphs, which merits quashing and setting aside.

(iv) Clarificatory communication issued by the respondent No. 1 vide its letter No. न्याय प्र.-२०१६/प्र.क्र. १३/ सेवा-३, Public Works Department, Madam Cama Road, Mumbai-32, dated 02.11.2019 addressed to the respondent No. 3 and endorsing a copy of the same to other respondents and also to the applicant is self-explanatory. It has given cogent reasons for including name of the applicant in the cadre of Civil Engineering Assistant w.e.f. 06.12.2001 and his eligibility to get time bound promotion by way of granting of pay scale of Junior Engineer after 12 years therefrom. I find merit in clarification given by respondent No. 1 that an employee in cadre of CEA is eligible for promotion to the cadre of Junior Engineer on completion of 3 years' service

as CEA, subject to passing professional examination and subject to fulfilling criterion of seniority etc. Such an employee will become eligible for exemption from passing professional examination not only on attaining 45 years of age but also on completion of 3 years' service on the post of CEA. However, the claim of the applicant to the effect that an employee in the cadre of Civil Engineering Assistant shall be eligible for getting second benefits of scheme of time bound promotion on completion of 3 years' service in the cadre of CEA seems to be misconceived. To sum up, all the issues clarified by respondent No. 1 pass the test of scrutiny in the light of provisions of rules, related government resolutions and case laws. There seems to be no merit in prayer of the applicant for quashing and setting aside the impugned order / communication issued by the respondent No. 1, dated 02.11.2019.

7. In view of above analysis, it is concluded that the claims of the applicant are devoid of merit. Therefore, following order is being passed:-

ORDER

A] The Original Application No. 282 of 2019 is, hereby, dismissed for being devoid of merit.

- B] Order No. 924/2014, No. जा.क्र. आस्था/ परि/6758, dated 10.09.2014, passed by respondent No. 2 and order no. 388, जा.क्र. ओएसएम / पीडब्लुसी / आस्था-१ / 5053, dated 23.09.2014 issued by respondent No. 3 are quashed and set aside, which shall not have effect of making any recovery of any benefit already paid to the original applicant in pursuance of the same.
- C] No orders as to cost.

(BIJAY KUMAR)
MEMBER (A)