

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 37 OF 2017

DISTRICT : NANDED

1. Balasaheb Nagorao Raut,)
Age : 43 years, Occu. : Service,)
R/o : A/p Walegaon Station, Tq. Sonpeth,))
Dist. Parbhani.)
2. Anteshwar S/o Gangaram Chatgile,)
Age : 39 years, Occu. : Service,)
R/o : At Post Ratoli, Tq. Naigaon (Kh),)
Dist. Nanded.)
3. Pralhad Gopal Pawar,)
Age : 41 years, Occu. : Service,)
R/o : 59 Yantrik Nagar, Sanai Nagar,)
Taroda (Bk), Dist. Nanded.)

.. APPLICANTS

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
PWD (Road) Department,)
Mantralaya, Mumbai-400032.)
2. **The Superintending Engineer,**)
PWD, 7th Floor, Kokan Bhavan,)
Navi Mumbai.)
3. **The Superintending Engineer,**)
PWD, Aurangabad Zone, Sneha Nagar,)
Bandhakam Bhavan, Aurangabad.)
4. **The Superintending Engineer,**)
PWD Circle, Nanded, Sneha Nagar, Nanded.)

.. RESPONDENTS

APPEARANCE : Shri S.S. Dambe, Advocate for the Applicants.

: Shri V.R. Bhumkar, P.O. for respondent
Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)
Reserved on : **25.04.2023**
Pronounced on : **22.06.2023**

O R D E R
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed jointly by Shri Balasaheb Nagorao Raut and two others on 11.01.2017, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, seeking directions to the respondent authorities to grant them promotion to the post of Junior Engineer (Mechanical) and quashing and setting aside impugned order dated 31.12.2016 issued by the Executive Engineer, Public Works Department Division, Nanded. For the reasons best known to the applicants, the Executive Engineer, Public Works Department, Nanded, has not been joined as party-respondent, though order passed by him has been challenged in the present Original Application.

2. A Miscellaneous Application No. 22/2017 was filed in O.A. No. 37/2017 to seek leave to sue jointly, which was granted vide oral order dated 18.01.2017.

3. Interim relief in terms of Prayer Clause D-2 was granted vide oral order dated 03.05.2017 until further orders, by which orders passed by Executive Engineer (PWD) Nanded dated 31.12.2016 was stayed.

4. Though the applicants have not submitted copies of their first appointment order and copies of orders granting them benefits of first time bound promotions, and the applicants have used inconsistent terminologies for their designations in different paras of the original application, following particulars in these respects have been gathered from various other documents such as extract of service books, internal communications between respective controlling officers and authorities senior to them etc. and recorded in tabulated form in TABLE 1 that follows :-

TABLE-1

Applicant No.	Name of Applicant	Post of 1st appointment and date (in parenthesis)	Pay Band and Grade Pay (Rs.)	Post of 1st Time-Bound Promotion and date (in parenthesis)	Pay Band and Grade Pay (Rs.)	Date passing Professional Exam*
1	Balasaheb Nagorao Raut	Mechanic (18.04.1994)	5200-20200 + GP 2000	Senior Assistant (Mechanic) (01.07.2013)	5200-20200 + GP 2400	22.04.2014
2	Anteshwar Gangaram Chatgile	Junior Assistant (Mechanic) (08.04.1999)	5200-20200+ GP 2000	Senior Assistant (Mechanic) (07.04.2011)	5200-20200 + GP 2400	22.04.2014
3	Pralhad Gopal Pawar	Junior Assistant (Mechanic) (07.12.2000)	5200-20200+ GP 2000	Senior Assistant (Mechanic) (06.12.2012)	5200-20200 + GP 2400	22.04.2014

NOTE* Professional Exam was conducted by Maharashtra Engineering Training Institute, Water Resources Department, Nashik

5. Grounds for Seeking Promotion to the Post of Junior Engineer (Mechanical) w.e.f date of Passing Professional Examination-

The applicants have claimed promotion to the posts of Junior Engineer (Mechanical) w.e.f. the date of passing professional examination conducted by Maharashtra Engineering Training Institute, Nashik, Water Resources Department, Government of Maharashtra for posts of Junior Engineer (Civil, Mechanical and Electrical). The applicants have based their claim on following grounds-

(a) The applicants have passed professional examination, which entitles them to get promotion to the post of Junior Engineer (Mechanical) from the date of passing the said examination.

(b) Recruitment Rules for the posts of Overseers in Public Works Department, which was issued in the year 1959 provides for promotion of Senior Assistant (Mechanic) as Junior Engineer (Mechanical)

(c) Rural Development Department (Ground Water Development & Survey Agency and Zilla Parishads) grant such promotions to Senior Assistant (Mechanic) to the post of Junior Engineers (Mechanical).

(d) In Civil Engineering Stream, there is a provision of promotion opportunity for Civil Engineering Assistants to the post of Junior Engineer; similar provision should also be provided for Mechanical Engineering stream in P.W.D.

(e) There has to be quota of 75%: 25% for filling up posts of Junior Engineer (Mechanical) in PWD by Nomination and Promotion respectively, as is there for Civil Engineering Stream.

(f) Respondent No. 2 i.e. the Superintending Engineer (Mechanical), PWD, Konkan Bhawan, Navi Mumbai vide his letter dated 06.07.2015 (Annexure A-6, page No. 68 of P.B. of O.A.) has recommended promotion of applicants on line with promotion policy of Water Resources Department issued by means of a letter of Superintending Engineer (Mechanical) Circle, Pune bearing No. 141/यलयुव/3648, Dated 09.05.1973, which has been scrapped vide Notification No. से.प्र.नि.1207/1958/(54/2007 आ. तांत्रिक) Dated-13.04.2010. The Superintending Engineer (Mechanical) PWD Konkan Bhawan, Navi Mumbai has justified his proposal on the ground that the Posts of Senior Assistant (Mechanic) have already been declared as 'Dying Cadre' and

the three applicants have been working on the posts such as Store Keeper after passing professional Examination.

(g) The applicants have staked claims for promotion in view of large number of vacancies in the cadre of Junior Engineer (Mechanical) and at present, the posts of Junior Engineer (Mechanical) in PWD are filled up by taking officers from Water Resources Department.

(h) Executive Engineer (PWD) Nanded, who has not been joined as party-respondent, had granted the applicants pay-scale of Junior Engineer (Mechanical) w.e.f. the date of passing professional examination i.e. 22.04.2014, and issued orders to that effect vide Order No. 174, Dated 06.06.2016. However, the Executive Engineer (PWD) Nanded himself cancelled his aforementioned order vide his letter No. सेवा -१/ 351, Dated 31.12.2015. Therefore, the order of Executive Engineer (PWD), Nanded dated 06.06.2016 deserves to be cancelled and recovery order stayed.

6. **Relief Prayed For:-** The applicants have prayed for relief in terms of para 16 of the Original Application which is being reproduced verbatim for ready reference :-

“16. HENCE IT IS PRAYED THAT:

- A)** *The application may kindly be allowed;*
- B)** *By issuing appropriate order or directions to the respondent No. 1 to decide the application dated 27.07.2016 as well as the proposal dated 23.06.2014 for that purpose necessary directions be issued.*
- C)** *By issuing any appropriate directions and respondent may direct to promote on the post of Junior Engineer (Mech.) PWD forthwith and for that purpose necessary directions be issued.*
- C1)** *By issuing necessary orders or directions declares that, the order dated 31.12.2016 cancelling the pay fixation in pay Rs. 9300-34800 in Grade Pay 4300/- from the date of passing the departmental Examination junior engineer i.e. 22.04.2014 and recovery of amount paid in salary declaring excess payment in 15 installment and reverting in pay scale of Rs. 5200-20200 in grade pay 2400/- may quash and set aside.*

INTERIM RELIEF :-

- D)** *Pending hearing and final disposal of this petition the respondent may direct to issue promotion orders on the post of Junior Engineer (Mech.) PWD and protect the pay granted by the authority.*
- D2)** *Pending hearing and final disposal of this Original Application the order dated 31.12.2016 i.e. (**Annexure-A10**) may kindly be stayed.*
- E)** *Any other just and equitable relief to which this Honorable court deem fit and proper in the particular facts and circumstances of the case may be kindly be granted.”*

7. **Pleadings and Final Hearing-** Learned Presenting Officer filed affidavit in reply on behalf of Respondent Nos. 1 to 4 on 25.07.2017 which was taken on record and a copy thereof served

on the other side. The learned Advocate for the applicants filed rejoinder affidavit on behalf of the three applicants on 19.04.2018 which was taken on record and a copy thereof provided to the other side. Recruitment Rules for the post of Junior Engineer (Mechanical) in Public Works Department were called for which was submitted by the learned Presenting Officer On 02.02.2022. Along with this, the Learned P.O. also submitted Recruitment Rules for Junior Engineer (Mechanical) in Water Resources Department and a copy of policy of PWD to take Junior Engineer (Mechanical) on deputation from Water Resources Department. In response, the learned Advocate for the applicants submitted a copy of Recruitment Rules of year 1959 issued by PWD for the post of Overseers (Mechanical). He has also cited policy adopted by Rural Development Department in this regard citing cases of Ground Water Survey & Development Agency (in short, GSDA) and Zilla Parishads. Learned Advocate for applicants also submitted a short affidavit and served a copy thereof to the other side. The matter was finally heard and reserved for orders on 02.05.2022. However, on change in constitution of Division Bench, the matter was re-heard on 25.04.2023 and reserved for orders.

8. Analysis of Facts on Record and Brought Out During**Oral Submissions :-**

(a) The established legal position is that promotion is governed by recruitment rules for the post of promotion. Any other ground such as automatic entitlement of promotion from date of passing some examination, which is not prescribed under applicable recruitment rules or, drawing parity with practice in other administrative department or, a presumption that ratio of nomination to promotion should ideally be 75:25, in our considered opinion, may merely amount to wish list of applicants.

(b) The argument advanced by the learned Advocate for the applicants that the posts of Sub-Overseers and Senior Assistant (Mechanic) carry same pay-scale and Grade Pay as shown on page No. 155 of paper-book of this O.A. and therefore, the two posts are equal / equivalent is also not based on any rules/ order/ circulars etc. or sound principles.

(c) It has been contended by the learned Presenting Officer that as per provisions of Government in Public Works Department issued a Resolution No.

एलटीएस-१०९१/२८७/सेवा-२, मंत्रालय, मुंबई-४०००३२, dated 24.09.1992 the posts of Junior Engineer (Mechanical) and Deputy Engineer (Mechanical) in Public Works Department are filled by officers taken on deputation from Water Resources Department (a copy of the said G.R. is appended at Page No. 99 of the paper book of this O.A.). Though, no rationale has either been stated in aforesaid GR in this regard nor any submission has been made by learned Presenting Officer/ Respondents, it is learnt that the Mechanical Division and Workshop in Public Works Department are being down-sized and contractors are required to arrange for their own plant & machinery for execution of works awarded to them. The internal communications in Public Works Department which have been put on record by the applicants as part of O.A. also show that the Mechanic/ Senior Assistant (Mechanic) / Junior Assistant (Mechanic) are dying cadres and therefore, services of persons holding these posts are being utilized for purposes like Store-Keeper etc.

(d) It has been clarified by the respondents that the *Recruitment Rules for the Posts of Overseers (Civil, Mechanical or Electrical) in Public Works Department, 1959*

has not been superseded (A copy of the said Recruitment Rules is appended at page 153A-153B of the paper book of this O.A.). It provides for promotion to the post of Junior Engineer (Civil, Mechanical or Electrical) as quoted below :-

“Provided further that Government may permit appointments being made by promotion from amongst the persons holding posts of sub-overseers, technical assistants or similar posts, under such circumstances, and on such conditions of Government may decide from time to time.”(Emphasis supplied)

(e) The Applicants cannot be treated as Technical Assistants as the Recruitment Rules for Technical Assistants notified by G.R. issued by Building and Communication Department, Government of Maharashtra, issued by GR bearing No. BCS-1362/11009-E(I) ii, Sachivalaya, Bombay-32 dated 05.10.1965 provides for appointment to the post of Technical Assistant by nomination only. A copy of the said Recruitment Rules for the post of Technical Assistant is appended at page No. 154 of the paper book of this O.A.

(f) It is also observed that the applicants may be due for grant of benefit of second time-bound promotion after 20 years of regular service as Junior Assistant (Mechanic). Therefore, in view of the fact that the posts of Junior

Assistant (Mechanic) and Senior Assistant (Mechanic) are dying cadre, there is a need for respondent No. 1 to assess whether passing professional examination from Engineering Training Institute, Nashik being run by Water Resources Department of Government of Maharashtra gets the applicants and similarly situated other persons in the cadre of Senior Assistant (Mechanic) eligibility for promotion to the post of Junior Engineer (Mechanical) under Recruitment Rules of 10.03.1959. If the answer to the same is in affirmative then the existing persons in aforementioned cadre of Senior Assistant (Mechanic) may be considered for promotion to the post of Junior Engineer (Mechanical) by constituting a Departmental Promotion Committee and following rules and guidelines for promotion.

(g) The stand taken by the respondents that there is no post of Junior Engineer (Mechanical) in establishment pattern of the Public Works Department and at the same time, it has been argued by the respondents that persons on the post of Junior Engineer Mechanical are taken on deputation from Water Resources Department are mutually contradictory and therefore, do not hold water. If it be a

case that number of Junior Engineers (Mechanical) to be taken on deputation has not been fixed then the practice needs to be discontinued and number of posts of Junior Engineer (Mechanical) and Terms & Conditions for deputation need to be incorporated in establishment pattern of PWD.

9. Conclusions: The applicants have not been able to establish merits in their claim for promotion to the post of Junior Engineers (Mechanical) w.e.f. the date of passing professional examination. Moreover, under recruitment rules for the post of Junior Engineer (Mechanical) 1959, any promotion of the applicants is not a matter of right unless and until the respondent No. 1 takes a policy decision on merit, in view of all the facts before it. Hence, the following order :-

ORDER

- (A) Original Application No. 37 of 2017 is dismissed for being devoid of merit.
- (B) Interim Order Passed vide Oral Order dated 03.05.2017 and extended from time to time is hereby vacated.
- (C) The Respondents may decide grant of benefits of second time-bound promotion to the applicants as

per latest Government Resolutions issued in this regard, so that financial burden of recovery ordered by the Executive Engineer, PWD Nanded vide his order dated 31.12.2016 is minimized.

(D) No order as to costs.

MEMBER (A)

Kpb/D.B. O.A. No. 37/2017 Promotion

MEMBER (J)