

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**COMMON ORDER IN ORIGINAL APPLICATION NOS. 704 AND  
749 BOTH OF 2017**

**(Subject – Deemed Date of Promotion)**

**DISTRICT : AURANGABAD, BEED  
& JALNA**

**1. ORIGINALA APPLICATION NO.704 OF 2017**

**DISTRICT: - AURANGABAD, BEED  
& JALNA.**

- 1. Asman Dhondiram Garje**  
Age - 62 years, Occ- Sectional Engineer,  
P.W.D., Beed. (Now retired)  
R/o Dnyaneshwar Nagar,  
Behind Government I.T.I.,  
Circus Ground, Nagar Road, Beed.
- 2. Hasvi Khairul Mateen Abdul Wahed**  
Age-63 years, Occ- Govt. Servant (Now Retired)  
R/o Nehru Nagar, Katkat Gate,  
Aurangabad.
- 3. Rajaram Narharrao Joshi,**  
Age-64 years, Occ- Govt. Servant (Now Retired)  
R/o. Ramnagar,  
Jalna.
- 4. Syed Abed Ali Syed Ahmed Ali,**  
Age-60 years, Occ- Sectional Engineer  
National Highway, PWD Division,  
Aurangabad. (now retired)  
R/o 1-13-92, Kabadipura,  
Buddi Lane, Aurangabad.

**....APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra**  
Through the Secretary,  
PWD Department,  
Mantralaya, Mumbai.
2. **The Secretary,**  
General Administration Department,  
Mantralaya, Mumbai.
3. **The Superintending Engineer (Zonal),**  
PWD Circle, Aurangabad.

....RESPONDENTS

**WITH**

**2. ORIGINAL APPLICATION NO. 749 OF 2017**

**DISTRICT: - AURANGABAD, BEED  
& JALNA.**

1. **Mohammad Abdul Hai Mohammad Abdul Gani,**  
Age -59 years, Occ- Sectional Engineer  
In the office of National Highway Division,  
Aurangabad (now retired)  
Presently R/o Flat No.9, IInd Floor,  
Hayat Residency, Near An-Nisa School,  
Ravindra Nagar, Kat Kat Gate Road,  
Aurangabad.
2. **Kishore Sudhakarrao Khekale,**  
Age – 53 years, Occ- Sectional Engineer  
In the Office of Supdt. Engineer,  
PWD Circle, Snehanagar,  
Nanded.
3. **Mohammad Abdul Majid S/o Mohammad Amin,**  
Age – 57 years, Occ- Junior Engineer  
Public Works Division, Bhokar, Dist. Nanded.

4. **Prashant Srikantrao Moreshwar,**  
Age -59 years, Occ- Sectional Engineer  
In the office of PWD Division,  
Parbhani (now retired)  
Presently residing at Trimurti Nagar,  
Parbhani.
5. **Sudhakar Chandrakantrao Futane,**  
Age -57 years, Occ- Sectional Engineer  
Public Works Division, Nanded,  
Sub-Division, Mudkhed,  
District Nanded.
6. **Sanjay Baburao Devde,**  
Age -54 years, Occ- Junior Engineer  
In the office of PWD Sub Division,  
Pathri, Dist. Parbhani.
7. **Yousuf Khan Mahemood Khan,**  
Age -57 years, Occ- Sectional Engineer  
In the office of PWD Division,  
Nanded.
8. **Shaikh Abdul Bashir S/o Gulam Hamed,**  
Age -60 years, Occ- Sectional Engineer  
PWD Sub Division No.1,  
Kinwat Dist. Nanded (now retired)  
Presently residing at Peer Burhan Nagar,  
Nanded.
9. **Mohammad Abdul Wase,**  
Age-64 years, Occ- Junior Engineer (Now retired)  
R/o Chaupala, Nanded,  
District Nanded.

....**APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,**  
Through the Secretary,  
PWD Department,  
Mantralaya, Mumbai.
2. **The Superintending Engineer (Zonal),**  
PWD Circle, Aurangabad.
3. **The Superintending Engineer,**  
PWD Circle, Nanded.

**....RESPONDENTS**

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**APPEARANCE** : Shri J.B. Choudhary, Advocate for the  
Applicants in both the O.As.  
  
: Smt. M.S. Patni, Presenting Officer for the  
Respondents in both the O.As.  
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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN.**  
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**RESERVED ON** : **12.12.2019.**

**PRONOUNCED ON** : **18.12.2019.**  
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**C O M M O N - O R D E R**

1. The issue involved in both the Original Applications are identical. Therefore, both the Original Applications are heard simultaneously and decided by the common order.

2. The applicants were appointed as Sub-overseer/ Surveyor. In O.A. No. 704/2017, the applicant No. 1 viz. Asman Dhondiram Garje was appointed as Sub-Overseer in the year 1979. The applicant No. 2 viz. Hasvi Khairul Matten Abdul

Wahed was appointed as Sub-Overseer in the year 1979. The applicant No. 3 viz. Rajaram Narharrao Joshi was appointed as Sub-Overseer in the year 1979. The applicant No. 4 viz. Syed Abed Ali Syed Ahmed Ali was appointed as Sub-Overseer in the year 1979. While the applicant No. 1 in O.A. No. 749/2017 viz. Mohammad Abdul Hai Mohammad Abdul Gani was appointed as Sub-Overseer in the year 1981. The applicant No. 2 viz. Kishore Sudhakarrao Khekale was appointed as Sub-Overseer in the year 1982. The applicant No. 3 viz. Mohammad Abdul Majid Mohammad Amin was appointed as Sub-Overseer in the year 1981. The applicant No. 4 viz. Prashant Srikantrao Moreshwar was appointed as Sub-Overseer in the year 1981. The applicant No. 5 viz. Sudhakar Chandrakantrao Futane was appointed as Sub-Overseer in the year 1981. The applicant No. 6 viz. Sanjay Baburao Devde was appointed as Sub-Overseer in the year 1984. The applicant No. 7 viz. Yousuf Khan Mahemood Khan was appointed as Sub-Overseer in the year 1984. The applicant No. 8 viz. Shaikh Abdul Bashir Gulam Hamed was appointed as Sub-Overseer in the year 1979. The applicant No. 9 viz. Mohammad Abdul Wase was appointed as Sub-Overseer in the year 1981. Thereafter they were promoted on the post of Junior Engineer. In the year 1989, the State of Maharashtra has merged all the cadres of Class-3 (Technical Posts) and accordingly one cadre of

Civil Engineering Assistant was created. In view of the policy decision taken by the State of Maharashtra, the applicants were designated as Civil Engineering Assistant. Prior to issuance of the G.R. in the year 1989, the applicants were working as Sub-overseer/Surveyor and for getting the promotion on the post of Junior Engineer, they were required to pass the professional examination and thereafter, they were eligible to get the promotion on the post of Junior Engineer. The applicants have passed the professional examination prior to their merger in the cadre of Civil Engineering Assistant in the year 1989. The applicants have passed the professional examinations on different dates, which are as follows:

**O.A. No. 704/2017**

<b>Sr. No.</b>	<b>Name</b>	<b>Date of passing the Professional Examination</b>
1	Asman Dhondiram Garje	DEC 1981
2	Hasvi KHairul Matten Abdul Wahed	JAN 1983
3	Rajaram Narsharrao Joshi	17.11.1986
4	Syed Abdul Ali Syed Ahmed Ali	23.12.1983

**O.A. No. 749/2017**

<b>Sr. No.</b>	<b>Name</b>	<b>Date of passing the Professional Examination</b>
1	Mohammad Abdul Hai Mohammad Abdul Gani	31.03.1990

2	Kishore Sudhakarrrao Khekale	03.01.1988
3	Abdul Majid Mohammad Amin	31.03.1990
4	Prashant Srikanttrao Moreshwar	03.01.1988
5	Sudhakar Chandrakanttrao Futane	31.03.1990
6	Sanjay Baburao Devde	31.12.1988
7	Yousuf Khan Mahemood Khan	31.03.1990
8	Shaikh Abdul Bashir Gulam Hamed	03.01.1985
9	Mohammad Abdul Wase	31.03.1990

3. On 16.09.1964, the Government of Maharashtra issued the G.R. dated 16.09.1964, by which the policy decision has been taken that the seniority of the Sub-overseer who passed the professional examination of Overseer/Junior Engineer should be fixed in the cadre of Overseer/Junior Engineer according to the date of entry in to that cadre on passing the professional examination and the benefit of deemed date of promotion was to be given to the applicants from the month of February of passing the professional examination. In view of the said decision taken by the Government, the respondent Nos. 1 to 3 should have given the deemed date of promotion to the applicants from date of passing the professional examination. But the respondent authority had failed to give the deemed date of promotion to the applicants. Thereafter, the applicants were promoted on the higher post of Junior Engineer/Overseer and thereafter, on the

post of Sectional Engineer as per their date of entry in the cadre of Overseer and not on the date of passing the professional examination. In view of the G.Rs. dated 16.09.1964 and 07.06.1965, the applicants have made several representations individually and jointly with the respondent Nos. 1 to 3 and requested to grant deemed date of promotion in the cadre of Junior Engineer from the date of passing the professional examination. The Superintending Engineer (Zonal), PWD Circle Nagpur, had given the deemed date of promotion to the Junior Engineers from the date of passing the professional examination in similar circumstances.

4. It is contention of the applicants that some of the employees working in Mumbai Region in Irrigation Department had filed O.A. before the Maharashtra Administrative Tribunal Mumbai. This Tribunal at Principal Seat at Mumbai has passed the order and in view of the said order, the Secretary Irrigation Department has passed the order on 25.09.2002 and given the deemed date of promotion to the Junior Engineers from the date of passing the professional examination. Not only this, but some of the employees from Irrigation Department, Nasik Circle had filed the complaint before the Industrial Court claiming deemed date of promotion from the date of passing the professional

examination on the post of Junior Engineer. The Industrial Court passed the order and directed to give deemed date to the Junior Engineers. The said order has been challenged before the Hon'ble High Court Mumbai by filing W.P. No. 2675/1990. It was decided in the year 1995 and the Hon'ble High Court upheld the order passed by the Industrial Court. It is their contention that the Public Works Department has also given the benefit to some of the Junior Engineers and granted them deemed date of promotion from the date of passing of professional examination. It is their contention that the proposal of giving them deemed date of promotion in the cadre of Junior Engineer was submitted by the respondent No. 3 from time to time and it was specifically requested to the respondent No. 1 to give the deemed date of promotion to the applicants. The respondent No. 1 raised queries from time to time, to which the respondent No. 3 had given explanation. The respondent No. 3 had informed the respondent No. 1 that the applicants were entitled for promotion as Junior Engineer in view of the provisions of G.R. dated 25.11.1965, as the 25% quota was available by way of promotion prior to 17.06.1998. The respondent No. 3 has also informed to the respondent No. 1 that the applicants in O.A. No. 704/2017 had been considered by the DPC on 04.12.1986 for the promotion on the post of Junior Engineer, but no order regarding

their promotion has been issued and therefore, they are entitled for deemed date of promotion in the cadre of Junior Engineer from the date of passing the professional examination.

5. It is contention of the applicants that in view of the G.Rs. and the policy decision taken by the Government, the respondent No. 1 submitted proposal before the respondent No. 2 on 19.01.2009 and 17.04.2009 along with remarks that the applicants are entitled for deemed date of promotion. Till the year 2010, the applicants were representing before the respondent No. 3 claiming deemed date of promotion and respondent No. 3 was also forwarding the proposal to the applicants to the respondent No. 1 for granting the deemed date of promotion. In the month of July, the respondent No. 1 submitted the proposal before the General Administration Department, Mumbai i.e. the respondent No. 2 for granting the deemed date of promotion to the applicants, but the respondent No. 2 rejected the proposal stating that the deemed date of promotion cannot be given to the applicants, as the quota was not available at the relevant time and informed accordingly to the respondent No. 1. The respondent No. 1 by the order dated 09.08.2010 rejected the request of the applicants for grant of deemed date by referring the letter of the respondent No. 2. It is

their contention that the respondent No. 1 could not have submitted proposal for grant of deemed date of promotion to the applicants to the respondent No. 2, as he is the competent authority to grant deemed date of promotion to the applicants. It is their contention that the respondent No. 2 has wrongly rejected the request of the applicants on the ground that the posts were not vacant and the quota was not available at the relevant time. It is their contention that at the relevant time when the applicants were due for promotion, the quota of 25% was fixed and subsequently that quota was reduced to 10% from the year 1988. Therefore, the applicants again submitted representation on 16.11.2011 to the respondent No. 2 and pointed out that they were wrongly denied the deemed date of promotion and requested to grant the deemed date of promotion. Thereafter the applicants submitted the application before the Lokayukta. The Lokayukta disposed of the complaint of the applicants. Thereafter, they made representation to the respondent No. 2 and requested to allow the proposal for giving them deemed date of promotion in the cadre of Junior Engineer, but no steps had been taken. Therefore, they made representation before the Hon'ble Chief Minister and the office of the Chief Minister, Maharashtra State, Mumbai directed the respondent Nos. 1 and 3 to verify the cases of the applicants. In

view of the said directions, on 03.08.2013, the respondent No. 3 submitted the proposal of the applicants to the respondent No. 1 for granting deemed date of promotion. But the respondent No. 1 without verifying the factual position and G.Rs., rejected the proposal.

6. As the respondents have not granted the deemed date of promotion in the cadre of Junior Engineer from the date of passing the professional examination, the applicants have filed O.A. No. 147/2014 and O.A. No. 745/2013 before this Tribunal seeking direction to the respondents to take decision on the proposal sent by the respondent No. 3 and prayed to quash aside the communication dated 09.08.2010, by which their request has been rejected. This Tribunal passed the common order in O.A. Nos. 147/2014 and 745/2013 and quashed and set aside the communication dated 09.08.2010 and directed the Superintending Engineer (Zonal), P.W.D. Circle, Aurangabad to submit fresh proposal to the Secretary, Public Works Department, Mantralaya, Mumbai for granting deemed date of promotion from the date of passing of professional examination within two months from the date of order and further directed the State of Maharashtra through its Secretary in P.W.D., Mantralaya, Mumbai to take a decision on such proposal within

three months from the date of receipt of such proposal. In view of the order passed in the above said O.A., the respondent No. 3 had submitted the fresh proposal before the respondent No. 1 on 24.10.2016 and recommended to grant deemed date of promotion to the applicants from the date of passing the professional examination in view of the provisions of G.Rs. dated 16.09.1964 and 07.06.1965. On the said proposal, the Secretary made endorsement and directed the Desk Officer to submit the proposal on 25.10.2016. On 13.01.2017, the respondent No. 1 passed the order and rejected the proposal and also rejected the claim of the applicant. Immediately after receiving the order dated 13.01.2017, the applicants submitted representation on 24.01.2017 to the respondent No. 1, but no response has been received to him from the respondent No. 1. It is their contention that the respondent No. 1 has passed the order dated 13.01.2017 without applying the mind and without considering the observations made by this Tribunal while deciding the O.A. Nos. 147/2014 and 745/2013. The respondents had not considered the G.Rs. issued by the Government from time to time and therefore, they have challenged the impugned orders dated 13.01.2017 (O.A. No. 704/21017) and 23.03.2017 (O.A. No. 749/2017) by filing the present Original Applications and prayed to quash and set aside the same. They have also prayed to direct

the respondent Nos. 1 to 3 to give them deemed date of promotion from the date of passing the professional examination in view of the G.Rs. dated 16.09.1964 and 07.06.1965.

7. The respondent Nos. 1 and 3 have filed their affidavit in reply and resisted the contentions of the applicants. They have admitted the fact that the applicants made representations and claimed deemed date of promotion from the date of passing the professional examination. It is their contention that the professional examination for the post of Junior Engineer is the qualifying examination and it is one of the criteria to give promotion. The candidates can only be considered for the promotion considering the number of post, seniority and fitness i.e. seniority and qualifying criteria. It is their contention that the promotions are always accorded against the vacant post. It is their contention that the General Administrative Department rejected the proposal of deemed date of promotion and the decision thereof was communicated by the letters dated 09.08.2010 and 31.10.2013. It is their contention that in view of the directions given by this Tribunal in O.A. Nos. 147/2014 and 745/2013, necessary proposal of the applicants were submitted by the Superintending Engineer, Aurangabad vide letter dated 24.10.2016. The State Government considering the facts behind

the decision regarding the 52 employees from Nagpur Division and factual positions in case of the present applicants, scrutinized the proposal submitted by the Superintending Engineer, Aurangabad and rejected the demand of the applicants by the communication dated 13.01.2017. The said decision is in view of the provisions of G.Rs and the Rules. It is their contention that as per the paragraph No. 3 of the G.R. dated 16.09.1994 “the seniority of the sub-overseers who passed the professional Examination of Overseers should be fixed in the overseer cadre according to the date of entry in to the cadre on passing the professional examination.” It is their contention that the seniority should be fixed according to the date of entry to the cadre of overseer and not from the date of passing the professional examination as contended by the applicants. . It is their contention that the entry into the cadre of overseer can be done only after the regular promotion. For the regular promotion to the post of overseer passing the professional examination after completion of minimum five years of service in sub-overseer/surveyor post, availability of vacant post in overseer cadre, Annual Confidential Reports are also mandatory conditions. If a person fulfills all these conditions, then a person can have regular promotion i.e. entry into the cadre of overseer. Accordingly, the Government rightly promoted

applicants in view of the G.R. dated 16.09.1964. Therefore, the applicants had not been given deemed date of promotion from the date of passing the professional examination. The applicants were promoted on higher posts of Junior Engineer/overseer. As per the G.R. dated 16.09.1994 the applicants were promoted on higher posts of Junior Engineer/overseer as per their entry into the cadre of overseer and therefore, they justified the action taken by the respondents. It is their contention that the action taken by the Superintending Engineer (Zonal), Public Works Department Circle, Nagpur vide order dated 28.01.2005 it is contrary to the provisions of above said G.R. and the benefits extended to those employees is not as per the Rules. Therefore, they cannot be benefited to the said Rules. It is their contention that the deemed date of promotion given to the said employee by Irrigation Department vide order dated 25.09.2002 is not accordance with the provisions of G.R. dated 16.09.1964. It is their contention that there is no illegality in the impugned order and therefore, they justified the same.

8. It is further contention of the respondent Nos. 1 and 3 that the General Administration Department is the final authority to decide the deemed date of promotion of employees of the Government of Maharashtra as per the rules of business.

They examined the proposal of the applicants as per the provisions of G.R. dated 06.06.2002.

9. It is their contention that in view of the provisions of G.R. dated 07.06.1965, “the professional examination for overseers for any year should held any time between October and December according to the local condition/convenience. The results of such examination should be declared in the month of January of the following year and successful sub-overseer/surveyors should be absorbed in the cadre of Overseers with effect from 1<sup>st</sup> of February of the year in which the result is declared, subject to the condition laid down in G.R. dated 16.09.1964”. It is their contention that the absorption of the successful sub-overseers or surveyors into the cadre of overseers should be done only if the posts for the promotion quota are vacant in the overseer cadre. The seniority of the sub-overseers who passed the professional examination of overseers into the cadre of overseers should be fixed according to the date of entry in to the cadre of Overseer and not from the date of passing the professional examination. It is their contention that the applicants were promoted on higher post of Junior Engineer/overseer as per their entry into the cadre of overseer and there is no illegality in the impugned order and therefore,

they justified the same. It is their contention that the General Administrative Department of the State of Maharashtra had given remarks on 23.08.2010 on the proposal and while rejecting the request of the applicants and there is no illegality in it. It is their contention that the applicants were promoted in the year 1995 to the post of Junior Engineer after due process of law. The applicants have submitted representation to the Government on 12.12.2005 after lapse of 20 years. There is intentional delay in filing the said representation and therefore, request of the applicants cannot be considered. On these grounds, they have prayed to dismiss the present O.As. It is their contention that the impugned communications are as per the rules and G.Rs. issued by the Government and there is no illegality in it. Therefore, they have prayed to dismiss the present Original Application.

10. I have heard Shri J.B. Choudhary, learned Advocate for the applicants in both the O.As. and Smt. M.S. Patni, learned Presenting Officer for the respondents in both the O.As. I have perused the documents placed on record by both the parties.

11. Admitted, the applicants joined the service with the respondents as Sub-Overseer/Surveyor between the years 1979-84. They have passed the professional examination while serving

as Surveyor/sub-Overseer for getting the promotion on the post of Junior Engineer. Admittedly, in the year 1989, the State of Maharashtra has merged all the cadre of Class-3 (Technical Posts) and created one cadre of Civil Engineering Assistant by the G.R. dated 31.01.1989. The recruitment rules for the post of Civil Engineering Assistant were notified. The cadre of Civil Engineering Assistant became State cadre and the final seniority of the said cadre was published accordingly. The applicants have passed the professional examination during the years 1981-1990, as mentioned in the above said chart. Admittedly, the applicants were promoted on the post of Junior Engineer in the year 1995 to 2000. Admittedly, their seniority was fixed in the cadre of Civil Engineering Assistant as per their entry in the cadre of Junior Engineer. There is no dispute about the fact that the applicants made several representations before the respondents claiming deemed date of promotion in the cadre of Junior Engineer from the date of passing the qualifying/professional examination on the basis of the G.Rs. dated 16.09.1964 and 07.06.1965. Admittedly, their request has not been considered by the respondents and therefore, they have filed O.A. No. 147/2014 and O.A. No. 745/2013 before this Tribunal and this Tribunal quashed and set aside the impugned communication and directed the respondent No. 3 i.e. the

Superintending Engineer (Zonal), P.W.D. Circle, Aurangabad to submit fresh proposal to the Secretary, Public Works Department, Mantralaya, Mumbai for granting deemed date of promotion from the date of passing of professional examination within two months from the date of order and further directed the State of Maharashtra through its Secretary in P.W.D., Mantralaya, Mumbai to take a decision on such proposal within three months from the date of receipt of such proposal. The respondent No. 3 accordingly sent proposal, but the respondent No. 1 rejected the same by the impugned communications. After rejection of the said the proposal, the applicants have filed the representation with the respondents, but the respondents had not decided the said representation.

12. Learned Advocate for the applicants has submitted that in view of the provisions of G.R. dated 16.09.1964 and 07.06.1965, the professional examination for Overseers for any year should be held any time between October and December according to the local condition/convenience. The results of such examination should be declared in the month of January of the following year and successful sub-overseer/surveyors should be absorbed in the cadre of Overseers with effect from 1<sup>st</sup> of February of the year in which the result is declared. He has

submitted that the applicants have passed the professional examination required for the promotion of Junior Engineer during the year 1981-90 on different dates. They were promoted thereafter in the cadre of Junior Engineer from the date of their joining. He has submitted that the respondents ought to have given deemed date of promotion to the applicants from the date of passing the professional examination. Though they have passed the said examination prior to that the respondents have given them promotion subsequently. He has submitted that on passing the professional examination, the applicants were eligible for promotion on the post of Junior Engineer and numbers of posts were vacant and available in the cadre of Junior Engineer, but they had not been promoted at that time, but they have been promoted subsequently. He has submitted that the respondent No. 1 ought to have given deemed date to the applicants on the post of Junior Engineer from the date of passing the professional examination. But they had given promotion from the date of their entry in the cadre of Junior Engineer, which is in contraventions of the provisions of the G.Rs. 16.09.1964 and 07.06.1965. He has submitted that the respondent Nos. 1 and 3 have not considered the provisions of the G.Rs. dated 16.09.1964 and 07.06.1965 with proper perspective and wrongly rejected the proposal forwarded by the respondent No. 3 in that regard.

13. He has submitted that the similarly situated persons in Irrigation Department had been given deemed date from the date of passing the professional examination. Not only this, but the Public Works Department, Nagpur Division had also given deemed date of promotion to the similarly situated employees from the date of passing the professional examination. But the respondents have not considered the said aspect while rejecting their claim. He has further argued that the similarly situated persons had filed complaint before the Industrial Court and the Industrial Court directed the respondents to give them the deemed date of promotion from the date of passing the professional examination. The said decision was upheld by the Hon'ble High Court.

14. Learned Advocate for the applicant has submitted that the principal seat of this Tribunal at Mumbai dealt with and decided the similar issue in case of similarly situated persons in O.A. Nos. 233/2012, 234/2012, 235/2012 and 236/2012 and directed the respondents to give deemed date of promotion to those applicants from the date of passing the professional examination. He has submitted that the said decision has been challenged by the State before the Hon'ble High Court of Judicature at Bombay in W.P. Nos. 10623 to 10625 of 2014 and

W.P. No. 9266/2017. The Hon'ble High Court dismissed the said W.Ps. on 17.07.2018 and upheld the order passed by this Tribunal. He has submitted that the said decision has not been challenged by the Government and therefore, the said decision is conclusive and the same is binding on the respondents. He has submitted that the cases of the applicants are squarely covered by the said decisions. Therefore, the applicants are entitled to get the same relief, which was granted to the applicants in those O.As.

15. Learned Advocate for the applicant has further submitted that this Tribunal has also decided the similar issue involved in case of similarly situated persons in O.A. Nos. 181 and 182 of 2011, O.A. Nos. 878/2016, 242/2017 and 648/2017 decided on 30.10.2018 and granted similar relief to those applicants. He has also submitted that this Tribunal has also recently decided the O.A. No. 947 of 2018 in case of **Bhagwat Trimbak Chaudhari Vs. The State of Maharashtra & Ors.** on 04.11.2019 and granted similar relief to the similarly situated person. He has argued that the cases of the present Applicants are squarely covered by the decisions rendered by this Tribunal and therefore, he has prayed to grant similar relief to the

Applicants. He has therefore, prayed to allow the present Original Applications.

16. Learned Presenting Officer has submitted that the respondents have rightly rejected the representation of the applicants, as the applicants were not entitled to get the deemed date on the post of Junior Engineer on passing the professional examination. He has submitted that the applicants are entitled to get the promotion on assuming the charge of the post and therefore, they were not entitled to get the deemed date from the date of passing the professional examination. She has further submitted that the G.Rs. dated 16.09.1964 and 07.06.1965 have not been properly interpreted by the learned Advocate for the applicants. She has submitted that as per the provisions of paragraph No. 3 of the G.R. dated 16.09.1994, "the seniority of the sub-overseers who passed the professional Examination of Overseers should be fixed in the overseer cadre according the date of entry in to the cadre on passing the professional examination." She has submitted that the said provision shows that the seniority should be fixed according to the date of entry in the cadre and not from the date of passing the professional examination. She has submitted that the respondents have rightly considered the said aspect and denied to grant the

deemed date of promotion to the applicants from the date of passing the professional examination. She has submitted that the decision given by the respondents is in accordance with the provisions of the said G.Rs. and there is no illegality in it. Therefore, she has justified the impugned orders and prayed to dismiss the present Original Applications.

17. On perusal of the record, it reveals that the applicants were serving with the respondents as Sub-overseer/Surveyor. When they are serving as Sub-overseer/Surveyor, they have passed the professional examination required for the promotion on the post of Junior Engineer. In the year 1989, more particularly on 31.01.1989, the State of Maharashtra has merged Class-3 cadres (Technical Posts) and new cadre of Civil Engineering Assistant was created. The recruitment rules of Civil Engineering Assistant were notified and the cadre of Civil Engineering Assistant cadre is become State cadre. After merger of cadre of Sub-overseer/Surveyor in to the cadre of Civil Engineering Assistant, the applicants were eligible for promotion on the post of Junior Engineer. The applicants had passed the professional examination required for promotion on the post of Junior Engineer during the year 1981-90, but they were actually promoted on the post of Junior Engineer in the year 1995-2000.

Therefore, their seniority in the cadre of Junior Engineer has been fixed from the date of entry in the cadre of Junior Engineer. The applicants are claiming deemed date of promotion from the date of passing the qualifying examination in view of the G.Rs. dated 16.09.1964 and 07.06.1965. The G.R. dated 07.06.1965, provides that the professional examination for overseers for any year should be held any time between October and December according to the local condition/convenience. The results of such examination should be declared in the month of January of the following year and successful sub-overseer/surveyors should be absorbed in the cadre of Overseers with effect from 1<sup>st</sup> of February of the year, in which the result is declared, subject to the condition laid down in the G.R. of the Irrigation and Power Department No. PER-1065/13808-E (2) dated 16.09.1964. After passing the professional examination, the applicants ought to have been absorbed from the cadre of sub-overseer/surveyors to the cadre of Junior Engineer w.e.f. 1<sup>st</sup> February of the following year, in which the result is declared i.e. in the next year of the professional examination. But they have not been absorbed in the cadre of Junior Engineer in view of the provisions of the said G.R. The respondents ought to have absorbed them in the cadre of Overseer w.e.f. 1<sup>st</sup> February of the following year in which they were passed the professional examination, but they have not

followed the said provisions strictly. The respondents had not promoted them in the cadre of Junior Engineer from the date of passing the professional examination in view of the said provisions, though there were vacancies. The respondents promoted them subsequently.

18. The said issue has been dealt with and decided by the principal seat of this Tribunal at Mumbai in case of similarly situated persons in O.A. Nos. 233/2012, 234/2012, 235/2012 and 236/2012 and directed the respondents to give deemed date of promotion to those applicants from the date of passing the professional examination. The said decision has been challenged by the Government before the Hon'ble High Court of Judicature at Bombay in W.P. Nos. 10623 to 10625 of 2014 and W.P. No. 9266/2017. The Hon'ble High Court dismissed the said W.Ps. on 17.07.2018 and upheld the order passed by this Tribunal. The said decision has not been challenged by the respondents/ Government till today. The cases of the present applicants are squarely covered by the above said decisions. Not only this, but this Tribunal has also decided the similar issue involved in case of similarly situated persons in O.A. Nos. 181 and 182 of 2011, O.A. Nos. 878/2016, 242/2017 and 648/2017 decided on 30.10.2018 and O.A. No. 947/2018 decided on 04.11.2019 and

granted similar relief to those applicants. The respondents had not considered the decision given by this Tribunal with proper perspective while rejecting the claim of the applicant. They had not considered the provisions of G.Rs. dated 16.09.1964 and 07.06.1965 with proper perspective and wrongly rejected the claim of the applicants. They ought to have granted the deemed date of promotion to the applicants from the date of passing the professional examination in view of the above said G.Rs., but they have wrongly interpreted the G.Rs. and rejected the claim of the applicants. Therefore, the impugned orders dated 13.01.2017 (O.A. No. 704/2017) and 23.03.2017 (O.A. No. 749/2017) issued by the respondent No. 1 rejecting the claim of the applicants is not legal and proper and not in accordance with the provisions of G.Rs. dated 16.09.1964 and 07.06.1965. Hence, it require to be quashed and set aside by allowing the present O.As. The applicants are entitled to get the deemed date of promotion from the date of passing the professional examination in view of the above said G.Rs. Therefore, they are entitled to get the relief as claimed for.

19. In view of the discussions in the foregoing paragraphs, the Original Application Nos. 704/2017 and 749/2017 are allowed. The impugned orders dated 13.01.2017

(O.A. No. 704/2017) and 23.03.2017 (O.A. No. 749/2017) are hereby quashed and set aside. The applicants are held entitled to get the deemed date of promotion on the post of Junior Engineer when they have passed the professional examination. Accordingly, the applicants are entitled to get other consequential benefits. There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 18.12.2019.**

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**KPB** S.B. O.A. No. 704 & 749 both of 2017 BPP 2019 Deemed Date of Promotion