



**ORDER**

1. The applicant has sought declaration that he is eligible for grant of deemed date of promotion on the post of Junior Engineer from the date of passing of professional / qualifying examination and eligible to get further consequential benefits and also prayed to quash the impugned communication dtd. 30.10.2018 issued by the respondent no. 1 rejecting his claim for grant of deemed date of promotion on passing the professional examination, by filing the present Original Application.

2. The applicant was initially appointed as Technical Assistant in the office of Executive Engineer, Girna Canal Modernization Division No. 2, Jalgaon on work charged establishment on 2.3.1981 in the pay scale of Rs. 260-10-390-15-420-Ext.15-495. He was granted deemed date on the post of on the post of Sub-Overseer as on 18.5.1985 in view of communication dtd. 3.8.2004 issued by the res. no. 1 the Superintending Engineer, Ghatgar Hydraulic Project Circle, Nashik. He was absorbed as Civil Engineering Assistant in the office of the Executive Engineer, Hatnoor Waghur Project Division, Jalgaon w.e.f. 14.12.1989 by the order dtd. 9.10.1989 issued by the Nashik Irrigation Circle, Nashik. He passed the professional / qualifying examination held in the month of December, 1990. After passing the said

examination he became eligible for promotion on the post of Jr. Engineer in view of Government Resolutions dtd. 7.6.1965. The applicant was promoted on the post of Jr. Engineer vide order dtd. 2/5.7.2007 issued by the res. no. 2 and he was accordingly given posting in the office of Sub Divisional Engineer, Design Sub Division - 2, Jalgaon. It is contention of the applicant that thereafter he submitted application 6.8.2007 to the res. no. 1 through proper channel claiming deemed date of promotion. He worked on the post of Jr. Engineer till his retirement on superannuation w.e.f. 31.5.2014. Since the respondents had not decided his earlier application he moved another applications dtd. 31.5.2014 and 20.7.2015 to the respondents and requested to consider his claim for grant of deemed date of promotion from the date of passing of professional examination.

3. It is contention of the applicant that some other employees who were working as Jr. Engineers in the office of the res. no. 3 claimed deemed date of promotion after passing the professional examination by filing O.A. nos. 181/2011 and 182/2011 and sought directions from the Tribunal relied upon order passed at the Principal Seat of this Tribunal at Mumbai in the similar matters i.e. O.A. nos. 233, 234, 235 and 236 all of 2012 decided on 7.10.2013. It is his contention that the order of the principal

seat of this Tribunal at Mumbai in O.A. nos. 233 to 236/2012 dtd. 7.10.2013 has been upheld by the Hon'ble High Court of Judicature at Bombay in writ petition nos. 9266/2017, 10623/2014, 10624/2014 and 10625/2014 by the judgment dtd. 17.7.2018.

4. It is contention of the applicant that as his application dtd. 20.7.2015 for grant of deemed date of promotion has not been decided by the res. no. 1, he approached this Tribunal by filing O.A. no. 720/2017. This Tribunal disposed of the said O.A. by the order dtd. 17.4.2018 and directed the res. no. 1 to decide his representation. Accordingly, the res. no.1 decided the representations dtd. 6.8.2007 and 20.7.2015 and rejected the claim of the applicant for grant of deemed date of promotion by the impugned order dtd. 30.10.2018 on the ground that they have given seniority to the applicant on the basis of his service on the post of Sub-Overseer and Surveyor on absorption on the post of Civil Engineering Assistant. It is further informed by the res. no. 1 that the G.R. dtd. 7.7.1965 is not applicable to the applicant and he rejected his claim as his claim is 'stale claim'. It is further observed by the res. no. 1 in the said communication that the decision of the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 & 236 all of 2012 dtd. 7.10.2013 is applicable

to those who had filed the said O.As. and it is not applicable to the present applicant. It is his contention that the res. no. 1 has wrongly rejected his representations though his case is squarely covered by the decision of the Tribunal in O.A. Nos. 233, 234, 235 & 236 all of 2012. He is entitled to get the deemed date of promotion from the date of passing of the professional examination in view of G.R. dtd. 16.9.1964 and 7.6.1965, but the res. no. 1 has not considered the said aspect properly. Therefore, the applicant prayed to quash and set aside the impugned order dtd. 30.10.2018 and to hold that he is eligible to get deemed date of promotion w.e.f. 1<sup>st</sup> February after passing of the professional examination, by filing the present O.A.

5. The res. nos. 1 to 3 have filed affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant is claiming deemed date of promotion w.e.f. 1.2.1991 by filing the present O.A. in the year 2018 i.e. after lapse of 27 years. It is their contention that the claim of the applicant is a stale claim and therefore is time barred. It is their contention that the claim of the applicant is hopelessly barred by limitation. Therefore, they prayed to reject the O.A. on that count. It is their contention that the applicant was appointed as a Technical Assistant on 2.3.1981 on work charged establishment. He was

given deemed date of promotion w.e.f. 18.5.1985 of the post of Sub-Overseer. He was absorbed as a Civil Engineering Assistant w.e.f. 14.12.1989. They have admitted the fact that the applicant passed the professional examination meant for Jr. Engineer's post in December, 1990. But they have denied that the applicant became eligible for promotion on the post of Jr. Engineer after passing the professional examination. It is their contention that the applicant became eligible for promotion on the post of Jr. Engineer on the basis of seniority-cum-merit. The promotion cannot be claimed as of right. They have admitted the fact that the applicant was working as Jr. Engineer from the date of his promotion till his retirement on superannuation. They have admitted the fact that the applicant made representations to the respondents claiming deemed date of promotion. They have admitted the fact that this Tribunal passed order in O.A. no. 720/2017 directing the respondents to decide the representations of the applicant dtd. 6.8.2007 and 20.7.2015. It is their contention that they considered the representations of the applicant and found that the representations of the applicant were without substance and merit and therefore they rejected the same and communicated the decision to the applicant. The res. no. 2 took a decision on 17.4.2018 and rejected the claim of the applicant for grant of deemed date of promotion after considering

the facts & circumstances, seniority position of the applicant and provisions of G.Rs. regarding grant of promotion etc. It is their contention that the impugned order has been passed as per the provisions of G.Rs. and there is no illegality in it. The claim of the applicant is hopelessly barred by limitation. Therefore, they prayed to reject the O.A.

6. I have heard the arguments advanced by Shri A. D. Sugdare, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for the respondent no. 1 and Shri Suresh D. Dhongde, learned Advocate for respondent nos. 2 & 3. I have also gone through the documents placed on record.

7. Admittedly the applicant was initially appointed as a Technical Assistant in the office of Executive Engineer, Girna Canal Modernization Division No. 2, Jalgaon on work charged establishment on 2.3.1981 in the pay scale of Rs. 260-10-390-15-420-Ext.15-495. Admittedly, he was granted deemed date on the post of on the post of Sub-Overseer w.e.f. 18.5.1985 in view of order dtd. 3.8.2004 issued by the res. no. 1 the Superintending Engineer, Ghatgar Hydraulic Project Circle, Nashik. Admittedly, by order dtd. 9.10.1989 issued by the Nashik Irrigation Circle, Nashik he was absorbed as Civil Engineering Assistant in the office of the Executive Engineer, Hatnoor Waghur Project Division,

Jalgaon w.e.f. 14.12.1989. He passed the professional examination required for promotion on the post of Jr. Engineer held in the month of December, 1990. Admittedly the applicant has been promoted on the post of Jr. Engineer by the order dtd. 2/5.7.2007. There is no dispute about the fact that thereafter the applicant made representations on 31.5.2014 and 20.7.2015 to the respondents claiming deemed date of promotion from the date of passing of professional examination. The applicant retired on superannuation w.e.f. 31.5.2014, but his representations have not been decided. Therefore he approached this Tribunal by filing O.A. no. 720/2017, which has been disposed of by this Tribunal on 17.4.2018 with directions to the res. no. 1 to decide the representations dtd. 6.8.2007 & 20.7.2015 filed by the applicant on merits within 3 months from the date of that order and communicate the decision thereon to the applicant in writing. Accordingly the res. no. 1 decided his representations and rejected the claim of the applicant and communicated the decision to the applicant by the impugned communication dtd. 30.10.2018.

8. Learned Advocate for the applicant has submitted that the applicant passed the professional examination in the month of December, 1990 and therefore he became eligible for promotion on the post of Jr. Engineer. He has argued that the respondents



promoted the applicant on the post of Jr. Engineer w.e.f. 2/5.7.2007. He has submitted that the respondents ought to have given deemed date of promotion to the applicant on the post of Jr. Engineer from the date of passing of the professional examination in view of G.Rs. dtd. 16.9.1964 and 7.6.1965. He has argued that the said issue has been dealt with and decided by the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 & 236 all of 2012 and accordingly this Tribunal granted deemed date of promotion to those applicants from the date of passing of the professional examination. He has submitted that this decision has been challenged by the respondent State before the Hon'ble High Court of Judicature at Bombay in writ petition nos. 9266/2017, 10623/2014, 10624/2014 and 10625/2014. The said writ petitions have been dismissed by the Hon'ble High Court by the order dtd. 17.7.2018 and decision of the Tribunal has been confirmed. He has submitted that this Tribunal has again decided the issue in case of similarly situated persons in O.A. nos. 181 & 182 both of 2011. He has argued that this Tribunal has also passed an order in the group of matters i.e. in O.A. nos. 878/2016, 242/2017 and O.A. no. 648/2017 (Nitinkumar s/o Tukaram Adhe & Ors. Vs. the State of Maharashtra & Ors.) decided on 30.10.2018 and granted similar relief to the similarly situated persons. He has argued that the

case of the applicant is squarely covered by the said decisions and therefore the applicant is entitled to get the deemed date of promotion from the date of passing of the professional examination. Therefore, he prayed to allow the O.A. and quash the impugned communication dtd. 30.10.2018 and to declare that the applicant is entitled to get the deemed date from the date of passing of the professional examination.

9. Learned Presenting Officer has submitted that the applicant is claiming deemed date of promotion w.e.f. 1.2.1991 but he made representation for the first time in the year 2015. There was considerable delay. Therefore, the res. no. 1 has rightly rejected the claim of the applicant. He has submitted that the decision of the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 & 236 all of 2012 dtd. 7.10.2013 has no application in the present case and the said decision is applicable to those employees only and therefore the applicant cannot take benefit of that decision. He has submitted that the res. no. 1 has rightly rejected the claim of the applicant and therefore no interference is called for in the present O.A.

10. On perusal of the documents on record it is crystal clear that the applicant entered in the service as a Technical Assistant in the office of Executive Engineer, Girna Canal Modernization

Division No. 2, Jalgaon on work charged establishment on 2.3.1981 in the pay scale of Rs. 260-10-390-15-420-Ext.15-495. Thereafter he was granted deemed date on the post of Sub-Overseer as on 18.5.1985 in view of communication dtd. 3.8.2004 issued by the res. no. 1 the Superintending Engineer, Ghatgar Hydraulic Project Circle, Nashik. The applicant passed the professional examination required for getting promotion on the post of Jr. Engineer in the month of December, 1990. He was actually promoted on the post of Jr. Engineer by the order dtd. 2/5.7.2007. Applicant is claiming deemed date of promotion on the post of Jr. Engineer from the date of passing of qualifying examination. The claim of the applicant is based on the G.Rs. dtd. 16.9.1964 and 7.6.1965. The G.R. dtd. 7.6.1965 provides that the professional examination for Sub-overseer for any year should be held any time between October and December according to the Local conditions and convenience and the results of such examinations should be declared in the month of January of the following year and the successful Sub-overseers / Surveyors should be absorbed in the cadre of Overseers w.e.f. 1<sup>st</sup> of February of the year in which result is declared, subject to the conditions laid down in Government Resolution of Irrigation and Power Department dtd. 16.9.1964.

11. In the instant case the applicant passed the professional examination in the month of December, 1990. Therefore in view of the provisions of the G.R. dtd. 7.6.1965 he should be absorbed on the post of Sub-overseer from February, 1991 and he was eligible for getting promotion on the post of Jr. Engineer on passing of professional, but the respondents have not considered his case at the proper time. The respondents have given promotion to the applicant on 2/5.7.2007. Therefore the applicant is claiming deemed date of promotion from the date of passing of the professional examination. The said issue has been dealt with and decided by the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 and 236 all of 2012 decided on 7.10.2013 and the Tribunal granted deemed date of promotion to those similarly situated persons from the date of passing of professional examination. The said decision had been challenged by the respondent State before the Hon'ble High Court of Judicature at Bombay in writ petition nos. nos. 9266/2017, 10623/2014, 10624/2014 and 10625/2014 and the Hon'ble High Court by its judgment dtd. 17.7.2018 upheld the decision of the Tribunal and dismissed the said writ petitions. Not only this, but this Tribunal has granted relief to the similarly situated persons in O.A. nos. 878/2016, 242/2017 and O.A. no. 648/2017 (Nitinkumar s/o Tukaram Adhe & Ors. Vs. the State of

Maharashtra & Ors.) decided on 30.10.2018. The case of the present applicant is squarely covered by the above said decisions. The respondents has not considered the decision of the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 and 236 all of 2012 decided on 7.10.2013 with proper perspective. The respondents has wrongly observed that the decision of the principal seat of this Tribunal at Mumbai in O.A. nos. 233, 234, 235 and 236 all of 2012 dtd. 7.10.2013 is not applicant in the case of present applicant and the said decision was restricted to the extent of the applicants in those matters.

12. The res. no. 1 has wrongly rejected the claim of the applicant on the ground that his claim is a 'stale claim'. In fact, the applicant was promoted on the post of Jr. Engineer vide order dtd. 2/5.7.2007 issued by the res. no. 2. Immediately after the promotion he moved an application dtd. 6.8.2007 to the res. no. 1 claiming deemed date of promotion, but the res. no. 1 has not considered the said application of the applicant and therefore he approached this Tribunal by filing O.A. no. 720/2017, wherein this Tribunal has given directions to the res. no. 1 to decide his representation. Therefore it cannot be said that there was deliberate delay on the part of the applicant in claiming the deemed date of promotion. The observation made in the

impugned order in that regard is not legal one. The res. no. 1 has not considered various decisions given by the Tribunal and the decision of the Hon'ble High Court. Therefore, the impugned required to be quashed by allowing the O.A.

13. In view of the decision of the Hon'ble High Court as well as this Tribunal the applicant is entitled to get the deemed date of promotion from the date of passing of the professional examination i.e. from 1.2.1991. Therefore, the present O.A. deserves to be allowed.

14. In view of the discussion in foregoing paragraphs the O.A. is allowed. The impugned order dtd. 30.10.2018 is quashed and set aside. The applicant is held eligible to get deemed date of promotion on the post of Jr. Engineer from 1.2.1991. Accordingly the applicant is entitled to get consequential benefits. There shall be no order as to costs.

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

**Place : Aurangabad**  
**Date : 4<sup>th</sup> November, 2019**