

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1201 OF 2016

DISTRICT : NASIK

Shri Anil Dharmaraj Jadhav,)
Executive Engineer, Traffic Engg. Unit,)
Additional D.G of Police [Traffic],)
D.D Bldg, 4th floor, Old Customs House,)
Fort, Mumbai and having residential)
Address at 5/5, Siddha Gautam CHS Ltd,)
Dwarka, Nasik, Dist-Nasik.)...**Applicant**

Versus

1. The Government of Maharashtra)
Through Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
2. Chief Engineer,)
Public Works Regional Office,)
Nasik, Dist-Nasik.)
3. Superintending Engineer,)
P.W Circle, Nasik, Dist-Nasik.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 07.06.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant who retired as Executive Engineer in February, 2017, challenges the order dated 4.1.2016, issued by Respondent no. 1 refusing to grant him status of Sectional Engineer w.e.f 1.4.1987.

2. The facts of the case are as follows:-

The applicant has joined the service as Junior Engineer on 10.9.1981. He was given the status of Sectional Engineer by communication dated 11.8.2010 w.e.f 1.4.1990. In order to acquire the status of Sectional Engineer one has to spend minimum of 3 years as a Junior Engineer and he should have satisfactory record of his Confidential Reports of preceding three years. The case of the applicant was considered for giving him status w.e.f 1.4.1987 on the ground that the applicants C.Rs were not satisfactory. The applicant has submitted representation to Respondent no. 1 to consider his case for grant of status of Sectional Engineer w.e.f 1.4.1987. However, his representation was rejected by Respondent no. 1, by the impugned order dated 4.11.2016. The applicant, therefore, prays that the impugned order dated 4.11.2016 issued by Respondent no. 1 be quashed and set aside and he be given the status of Sectional Engineer from 1.4.1987 along with consequential service benefits.

3. Affidavit in reply dated 11.4.2017 is filed on behalf of Respondents no 1 to 3 by Ranjit R. Hande, working as Superintending Engineer, Public Works Circle, Nasik, in which the

stand taken by the Government was defended and the allegations and contentions raised in the application are denied.

4. Learned counsel for the applicant argued that the case of the applicant stands on merit. He pointed out that Misc Application No. 301/2016 was filed seeking condonation of delay and the delay was condoned by the Division Bench of the Tribunal by order dated 30.9.2016. The applicant had earlier filed Original Application No. 1055/2014, in which he has sought directions that the representation dated 17.7.2010 filed by the applicant be decided expeditiously. The Tribunal while condoning the delay by order dated 30.9.2016 gave directions to the Respondents to take decision on the communication dated 11.8.2010. It appears that the Government took decision and the representation was rejected by communication dated 4.11.2016.

5. Learned counsel for the applicant Mr Lonkar has submitted that while communicating the rejection of the representation of the applicant, the Respondent has informed that due to the adverse report in the C.Rs of the applicant for the period 1984-85, 1985-86 and 1986-87, he was not given the status of Sectional Engineer. Learned counsel for the applicant submitted that the Respondent has taken a stand in the said letter that the Respondent State is not bound to communicate the adverse remarks/comments to the Government servants if the case is prior to 1st February, 1996, when specific Government Resolution in respect of communicating adverse remarks was issued by the Government. According to the learned counsel for the applicant the Respondent-State has illegally relied on the earlier G.R dated 4.8.1969. Learned counsel for the applicant further referring to the G.R of 1969 argued that it was the duty of the Respondent no. 2 to communicate the adverse remarks to the applicant which were against him noted in his C.Rs

Though it was allegedly claimed that by letter added 5.4.1988 the adverse remarks for the year 1986-87 were communicated to the applicant, learned counsel for the applicant submitted that the applicant was not aware of such adverse remarks against him. Further he was denied opportunity to give explanation which is against the principles of natural justice.

6. Learned Presenting Officer relied on the affidavit in reply filed by the Respondents and submitted that the performance of the applicant in the preceding three years, i.e. 1984-85, 1985-86 and 1986-87, out of which for 2 years the C.R discloses not satisfactory and for one year the remark reveals that he was very poor in technical knowledge and supervision of the work. The learned P.O further argued that the applicant though has completed the requisite 3 years of service to get the status of Sectional Engineer, his C.Rs of the preceding three years were not upto the mark and therefore, his name was not considered in the D.P.C meeting. However, he was given the status of Sectional Engineer from 1.4.1990 and his claim for granting the said status from 1.4.1987 was rejected.

7. This Original Application involves a short point for consideration based on the policy decision taken by the Government in two G.Rs in respect of communication of the adverse remarks if written in the Confidential Reports of the Government servants. By G.R dated 4.8.1969 the Government issued specific guidelines in respect of writing of C.Rs in respect of Government servants. Clause 15 of the G.R pertains to communication of the adverse remarks. It states as follows:-

“A Government servant should at no time be kept informed the Reporting Officers opinion that his service is considered not satisfactory”.

Clause 16 of the G.R states about the procedure how the adverse remarks should be communicated, i.e, orally, however, whenever adverse remarks are serious in nature, then they should be communicated in writing. This G.R was in force in the year 1984 and thereafter till 1st February 1996. The G.R dated 1st February, 1996 is also in respect of writing and maintenance of confidential reports of Government servants. In the said G.R, the earlier G.R of 4.8.1969 is referred along with the suggestions given from time to time by the different Committees in respect of improving the procedure of writing and maintaining of C.Rs.

8. Our attention was drawn to clauses 39, 40 and 41 of the G.R of 1996, which state about the communication of the adverse remarks to the Government servants. Clause 39 clearly states that the Civil servant is to be informed if adverse remarks are passed and clause 40 states about sending adverse remarks by Registered Post. Thus, the Government has laid down specific Rules and the procedure in respect of communicating the adverse remarks to the Civil Servants and the communication should not be a paper communication. However, the Civil Servant should be properly served and in the Court of law the service is required to be proved. Our attention was also drawn to the letter dated 12.10.2001 written by Superintending Engineer to the Sectional Engineer, P.W.D, Mantralaya, Mumbai, by which it is informed that the C.Rs for the period 1984 to 1985 were obtained in the year 1997 by contacting retired Executive Engineer and Deputy Engineer and thereafter they were handed under letter dated 17.12.1997 to the concerned office. Thus, it clearly shows that the C.Rs were not

available till 1997. Hence it was not possible for the Government to communicate this adverse remarks in the year 1998 or at least in the year 1999. Unfortunately no opportunity was given to the applicant to explain this adverse remarks which is violative of principles of natural justice.

9. We have perused the minutes of the meeting dated 17.10.2016, wherein the case of the applicant and his representation was considered and rejected. In the said meeting, the officers have relied on the G.R dated 1.2.1996 and held that the said G.R is not applicable retrospectively and therefore the Government is not bound to communicate the adverse remarks to the applicant. A decision was taken that as his C.Rs for preceding three years were adverse, the status of Sectional Engineer could not be given to the applicant. Admittedly the C.Rs for the year 1984 to 1987 were not satisfactory. However, as we have held that the said C.Rs were not communicated to the applicant and he was not given opportunity to explain those adverse remarks the Committee should not have considered these adverse C.Rs due to the condition of communication and opportunity to explain to the applicant.

10, The Committee has failed and ignored the earlier G.R dated 4.8.1969 which was very much in force and the Respondents were bound by its own policy of communicating the adverse comments/remarks to the Government servant, i.e. the applicant.

11. In view of the above, we pass the following order.

- (a) The Original Application is allowed.
- (b) The applicant is to be accorded the status of Sectional Engineer from 1.4.1987.

- (c) The applicant is entitled to all pecuniary benefits and other consequential service benefits, if any, as per law.
- (d) The Respondents are directed to comply with the above directions on or before 10th August, 2022.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 07.06.2022
Dictation taken by : A.K. Nair.

D:\Anil Nair\Judgments.01.06.2022\O.A 1201.16, Status of Sectional Engineer, DB. Chairperson and Member, A.