

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 07/2020****WITH CIVIL APPLICATION NO.38/2020 (D.B.)**

Naresh S/o Daulatrao Sahare,
Aged about 55 years, Occ. Service,
R/o Ambazari, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary,
Soil & Water Conservation Department,
Mantralaya, Mumbai.
- 2) Commissioner, Soil & Water Conservation,
(Walmi), Kachanwadi, Aurangabad.
- 3) Girwarsingh Charansingh Sukhmani,
Presently holding Additional charge of
Regional Water Conservation Officer,
Aurangabad.
- 4) Nitin Madhukar Dusane,
Presently Executive Engineer,
Water Conservation Officer, Dhule.

Respondents.

Shri N.R. & Smt. K.N. Saboo, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for respondent nos.1&2.

S/Shri D.M. Kakani & G.K. Bhusari, Id. Advocates for resp. nos. 3&4.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 27th February,2020.

Date of Pronouncement of Judgment : 3rd March, 2020.

JUDGMENT**Per : Anand Karanjkar : Member (J).****(Delivered on this 3rd day of March, 2020)**

Heard Shri N.R. Saboo, learned counsel for the applicant, Shri M.I. Khan, learned P.O. for respondent nos.1&2 and Shri D.M. Kakani, learned counsel for respondent nos.3&4.

2. The applicant Sub. Divisional Engineer; was promoted on ad-hoc basis as Executive Engineer by Water Resources Department vide order dated 24/10/2013. At the time of promotion, the applicant was serving as Sub Divisional Engineer and it was noticed by the Water Resources Department that for filling the post of Executive Engineer from the quota of Assistant Executive Engineers the Assistant Executive Engineers were not available, therefore, decision was taken to promote the Sub Divisional Engineers on ad-hoc basis on the post of Executive Engineers. It is contention of the applicant that later on in due course his promotion on the post of Executive Engineer was regularised by the Water Resources Department and he was serving as regular Executive Engineer.

3. The Government of Maharashtra issued G.R. dated 31/05/2017 and decided to divide the Water Resources Department into two parts, one Water Resources Department and Second the Soil

and Water Conservation Department. In the said G.R. option was given to the Staff on the establishment of Water Resources Department to remain in service of that Department or to opt for absorption in the services of Soil and Water Conservation Department permanently. As per G.R. 15/7/2017 the cut off date was fixed for submitting the options. The applicant exercised his right and he opted to join the Soil and Water Conservation Department and this option was furnished by the applicant within time. It is case of the applicant that the respondent nos.3&4 who were senior to him in the cadre of Executive Engineers did not submit their options before the cut off date and as they submitted their options after the cut off date, therefore, the applicant became senior to them.

4. The learned counsel for the applicant submitted that the seniority list from 1-1-2017 was prepared by the Water Resources Department and it was forwarded to Soil and Water Conservation Department and it was informed that names of the employees who had given options would be deleted from the seniority list. In this seniority list, the respondent no.3 was at Sr.No.85 and the respondent no.4 was at Sr.No.115 and the applicant was at Sr.No.205. According to the applicant, this seniority list was never challenged by the respondent nos.3&4 and in this seniority list it was not mentioned

against the name of the applicant that he was Executive Engineer on ad-hoc basis.

5. The Soil and Water Conservation Department prepared the provisional seniority list on 9/8/2018 from 1/1/2018. In this seniority list, the respondent no.3 was at Sr.No.3, the respondent no.4 was at Sr.no.6 and the applicant was at Sr.No.14. The said seniority list is Annex-A-4. In pursuance of the Circular dated 9/8/2018 the provisional seniority list was published and it was objected by the applicant and thereafter the said seniority list was corrected and accordingly the Circular dated 22/11/2018 was issued by the Soil and Water Conservation Department on 22/11/2018. In final seniority list Annex-A-6, the respondent no.4 was placed at Sr.no.6, the applicant was placed at Sr.no.10 and the respondent no.3 was placed at Sr.no.16. It is grievance of the applicant that on 7/12/2019 the Soil and Water Conservation Department issued the Circular along with provisional seniority list from 1/1/2019 and in this seniority list the respondent no.4 was placed at Sr.no.1, the respondent no.3 was placed at Sr.No.2 and the applicant was placed at Sr.No.6. It is submitted that reason for the variation of the seniority was that the Judgment delivered by the Hon'ble Bombay High Court quashing the Government G.R. dt/ 25-5-2004 for promoting the backward classes Government servants and pendency of the Special Leave Petition

(SLP) No.28306/2017 before the Hon'ble Apex Court. It was observed in the Circular that as the applicant and other Government servants were promoted on the basis of reservation in promotion policy, therefore, their promotions were not regularised, consequently, the applicant's seniority was disturbed and he was placed at sr.no.6.

6. The applicant thereafter raised objections and requested the Department to decide the objection, but no heed was paid by the respondent nos.1&2 and decision was taken by the respondent nos.1&2 to arrange the meeting of the Establishment Board no.2 for giving promotions to the respondent nos.3&4.

7. This action of the respondent nos.1&2 is challenged by the applicant on the ground that though there were total 9 vacant posts, decision was taken to fill only two posts by promotion after superseding the applicant and without deciding his objection regarding seniority, therefore, action of the respondent nos.1&2 was illegal.

8. It is submission of the applicant that the direction be given to the respondent nos.1&2 to decide the objection as to seniority of the applicant and then arrange the meeting of the Establishment Board for the promotion or the direction be given to the respondent nos.1&2 to consider the applicant for promotion along with the respondent nos.3&4.

9. The respondent nos.1&2 have objected the O.A. mainly on the ground that the applicant was not regularised in the cadre of Executive Engineer, the applicant was promoted on ad-hoc basis and it was necessary for the Government to regularise the applicant on the post of Executive Engineer. It is submitted that as the applicant is ad-hoc Executive Engineer, therefore, he cannot be compared with the respondent nos.3&4 and the applicant is at all not entitled for the promotion.

10. The second submission of the respondents is that the applicant was promoted on the basis of the Government G.R. issued in 2004 for providing reservation in promotions to the backward class Government servants and this G.R. issued in 2004 is cancelled by the Hon'ble High Court and the SLP is pending before the Hon'ble High Court. The respondents have submitted that after this decision delivered by the Hon'ble Bombay High Court, the GAD State of Maharashtra issued letter dated 29/12/2017 and instructed all the Principal Secretaries of all the Departments to fill the promotional vacancies on temporary basis which were available for the Open category. It was also directed by the GAD that while filling the promotional posts available for the Open category, the every administrative departments shall ensure that the candidate who is due for promotion, has not availed benefit of the G.R. dated 25/5/2004.

On the basis of this, it is contention of the respondents that in the first place the applicant was promoted purely on ad-hoc basis as the Assistant Executive Engineers were not available for the promotion and promotion of the applicant for the said reason, is not regularised by the Government. The second contention that as the applicant has availed the benefit of G.R. dated 25/5/2004, therefore, the applicant is not eligible for the promotion and there is no flaw in the action of the respondent nos.1&2.

11. The learned counsel appearing for the respondent no.3 submitted that the respondent no.3 is due for retirement and as stay is granted to the process of promotion, therefore, grave prejudice will cause to the respondent no.3. It is submitted that if in the event it is held that the applicant was entitled for promotion, then he would get the deemed date.

12. So far as the respondent no.4 is concerned, it is submitted that the respondent no.4 was senior to the applicant when he was on the establishment of the Water Resources Department and the respondent no.4 submitted his option before the cut off date, therefore, seniority of the respondent no.4 is rightly fixed. In view of this, it is submitted that the interim stay be vacated and the O.A. be dismissed.

13. In the present matter we have heard submissions at length. We have perused all the documents. On perusal of the seniority list filed along with the Circular dated 23/8/2017, it seems that this list was prepared by the Water Resources Department on 23/8/2017. In this list, admittedly the respondent no.3 was at Sr.No.85, the respondent no.4 was at Sr.no.115 and the applicant was at Sr.no.2005. The learned counsel for the applicant invited our attention to the Column no.12 of the seniority list. In the remark column against name of the Executive Engineers Sr.No.238 and onwards it is specifically mentioned that their service was fortuitous (वहकफर लक). It is submitted that against name of the applicant the remark column was left blank in this regard, but it was mentioned that option was given by the applicant to join Soil and Water Conservation Department. It is further submitted that against the names of the respondent nos.3&4, it is nowhere mentioned that option was submitted by them. It is rightly pointed out by the learned counsel appearing for the respondent nos.3&4 that the respondent no.4 submitted his option well before the cut off date and our attention was invited to the option submitted by the respondent no.4 on 3/7/2017 to the Superintending Engineer, Minor Irrigation, Water Conservation Department, Circle Nashik on 7/7/2017, therefore, so far as the respondent no.4 is concerned, we do not have any hesitation in

accepting that he submitted his option before the cut off date i.e. 15/7/2017 and as he was already senior in the cadre of Executive Engineer to the applicant, therefore his seniority is rightly fixed by the Department.

14. So far as the respondent no.3 is concerned, there is no dispute about the fact that the respondent no.3 did not submit the option before 15/7/2017 and therefore it is necessary to examine the contention of the applicant.

15. We have already discussed that in the seniority list published by the Water Resources Department in the remarks column it was not mentioned against the name of the applicant that he was not regularised in the cadre of the Executive Engineer. The learned P.O. appearing for respondent nos.1&2 could not satisfy us why it was not mentioned in the seniority list that the applicant was ad-hoc Executive Engineer. We have perused Circular dated 7/12/2019. In this Circular, it was mentioned by the Soil and Conservation Department that the applicant was promoted on the basis of G.R. dated 25/5/2004, therefore, in view of the Judgment delivered by the Hon'ble Bombay High Court on 4/8/2017 quashing the G.R. and the Special Leave Petition (SLP) No. 28306/2017 promotion of the applicant was not regularised. Here it is to be noted that it is not mentioned in this Circular that as the promotional post was not

available to regularise the applicant in the cadre of Executive Engineer to be promoted from the cadre of Sub Divisional Engineer, therefore, he was not regularised. The only reason given in this Circular was that in view of the Judgment delivered by the Hon'ble Bombay High Court quashing the G.R., the promotion of the applicant was not regularised. It is pertinent to note that there is no authentic document placed on record by the respondent nos.1&2 received from the Principal Secretary, Water Conservation Department to show that really the applicant was not regularised in the cadre of Executive Engineer, therefore, he was not eligible for the promotion. Under these circumstances, as yet the meeting of the Established Board is not held, therefore, no prejudice will cause to the respondent nos.1&2 if direction is given to consider the contention of the applicant regarding his regularisation/confirmation in the cadre of Executive Engineer before holding the meeting of Established Board No.2. In our opinion if such direction is given, no prejudice will cause to any party. In the result, we pass the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondent no.1 is directed to seek information from the Principal Secretary, Water Resources Department whether the promotion of the applicant in the cadre of Executive Engineer is

confirmed or not and if promotion of the applicant is confirmed, then the case of the applicant be placed for consideration before the Established Board No.2 along with the cases of the respondent nos.3&4 and that Board may take decision in view of the letter issued by the GAD on 29/12/2017. The interim stay is hereby vacated.

(iii) The C.A. also stands disposed of.

(iv) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 03/03/2020.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 03/03/2020.

Uploaded on : 04/03/2020.