

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR**

ORIGINAL APPLICATION NO 508 OF 2009

DISTRICT : NAGPUR

Pragatisheel Kamgar Sanghatana,)
Bearing Regn no. 3198/86, having)
Office at 282, Bagadganj, Layout,)
Nagpur, through its President,)
Shri Pradeep L. Pillewar & ors)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Department of Public Works,)
Mantralaya, Mumbai 400 032.)
2. The Public Works Department,)
Nagpur Circle, Nagpur,)
Through its Superintending)
Engineer.)...**Respondents**

Shri N.R Saboo, learned advocate for the Applicant.

Smt S.V Kolhe, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 10.03.2017

ORDER

1. Heard Shri N.R Saboo, learned advocate for the Applicant and Smt S.V Kolhe, learned Presenting Officer for the Respondents
2. This Original Application has been filed by the Association of persons who are seeking appointment to the post of Civil Engineering Assistants and consequential benefits by virtue of such appointment.
3. Learned Counsel for the Applicant argued that the Applicant is a registered Union of the employees registered under the Trade Union Act. The persons who are entitled to be appointed as Civil Engineering Assistant are its Members and their names are given in Annexure A-1 of this Original Application. These persons were initially appointed as 'Lipik', which is the same as Karkoon. As per the G.R dated 18.6.1998, Maharashtra Government has framed Recruitment Rules for the post of Civil Engineering Assistant (C.E.A). In the Schedule 'A', 13 cadres from which the persons are to be absorbed as Civil Engineering Assistants are listed. At serial no. 3 is Hajeri Lipik, while at serial no. 8 is Pramapi Karkoon,

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at serial no. 11 is Road Karkoon and at serial no. 13 is Karkoon. The Applicants were working in various offices in P.W.D in Nagpur division as Lipik. As per G.R of 2003 regarding designation as per actual work done and pay as per designation, Lipik working in P.W.D, Amravati Division were treated as Karkoon and where later on absorbed as Civil Engineering Assistant as per the Recruitment Rules dated 18.6.1998. However, in the Nagpur division, the Respondents have not treated the Applicants as Karkoon and have denied them opportunity to be absorbed as Civil Engineering Assistants. This is arbitrary and highly discriminatory. The Respondents, therefore, be directed to treat members of the Applicant Union listed in Annexure A-1 as eligible for absorption in the post of Civil Engineering Assistant and also this Tribunal may hold that entry No. 13 in Schedule-A to Notification dated 18.6.1998 includes the designation 'Lipik'.

4. Learned Presenting Officer argued that this Original Application is misconceived. The Applicants are mixing the issues. Lipik is actually the post of Junior Clerk in various Government offices who have their own channel of promotion to Senior Clerk, Head Clerk, Office Superintendent etc. Notification dated 18.6.1998 was regarding technical personnel of P.W.D who were actually working on the works and not in the offices. 13 such cadres were merged and a new cadre of Civil Engineering

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Assistant was created. Notification dated 18.6.1998 is actually Recruitment Rules for the post of Civil Engineering Assistant. The entry at serial no. 13, viz. Karkoon in Schedule-A to these rules refers to a person who is working at the site of Public Works and not in the office. These are two totally separate and distinct cadres having their own channels of promotion and as such the question of including Lipik in the Schedule-A, just does not arise. Learned Presenting Officer argued that any such order, will amount to this Tribunal amending the statutory rules framed by the Governor under proviso to Art. 309 of the Constitution of India.

5. Learned Presenting Officer stated that vide Government Resolution dated 31.1.1989 a policy decision was taken to absorb persons working in 12 posts in the field on passing necessary qualifying examination in the post of Civil Engineering Assistant. Entry of Karkoon at Serial no. 13 was added by G.R dated 28.10.1994. The post of Clerk (Lipik) is an office post like in other Government departments and they cannot be confused with the post of Karkoon or Muster Clerk. Learned Presenting Officer stated that even if it is accepted for the sake of argument that Clerks / Lipik in Amravati Division were absorbed as Civil Engineering Assistants, that is contrary to the rules and this Tribunal may not pass orders on the basis of irregularities committed by some other office.



6. The Applicants Union has not denied the fact that its Members whose names are included in Annexure A-1 were appointed to the post of Junior Clerk/Lipik. It is also a fact that Junior Clerks are required to work in almost all Government offices and they have channel of promotion to the post of Senior Clerk, Head Clerk, Office Superintendent etc. In technical department like P.W.D, Irrigation etc, various posts are created for executing public works. Such persons were actually required to work at the work sites and work related offices and not in regular office, though sometimes that may not have been strictly followed. The Applicants are relying on G.R of 2003 (which is not placed on record by either side), which was applicable to those who were appointed on daily wages and subsequently taken on Converted Regular Temporary Establishment (CRTE), after five years of service. The Government has taken a policy decision to grant designation to such persons on the basis of actual work they were doing, ~~Re~~ e.g. if a person was appointed as a Labour and was made to work as a Karkoon, as per the G.R of 2003 his designation was changed to Karkoon and he was held entitled to the pay of the post of Karkoon. It is not understood as to how a Junior Clerk appointed as such can claim the benefits of that G.R. If a person is appointed as a Clerk in an office obviously he will not be covered by the aforesaid G.R. The Applicant has placed a large number of orders said to have been issued by the Public Works Division, Amravati. However,

even if regularly appointed Clerks have been appointed as Civil Engineering Assistants, in Amravati, that would be contrary to the statutory rules notified on 18.6.1998. As has been held by the Hon'ble Supreme in a catena of judgment, this Tribunal will not be justified in directing the present Respondents to do so in this Original Application when the persons included in Annexure A-1 are definitely not entitled to be absorbed as Civil Engineering Assistants.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai Nagpur
Date : 10.03.2017
Dictation taken by : A.K. Nair.