

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 702/2016 (S.B.)

- APPLICANTS:**
- 1) Dipak S/o. Shankarrao Phule,
Occ.: Retired employee, R/o. 163,
Gomkale Wada, C/o. Shri V.S.
Bahurupi, DipakPhuleMahalkothi
Road, Near New Primary School.
 - 2) M.B. Chaurasiya,
Occ.: Retired employee, R/o. Mahohar
Chaurasiya, 274, Khalasi Lane, Mohan
Nagar, Near Orange City Hospital,
Nagpur.
 - 3) I.B. Parihar,
Occ.: Retired employee, R/o. Ishwar
Singh BalsinghParihar, Shridhar
Complex, Rajendra Nagar, Opposite
Hingna Naka, Nagpur.
 - 4) S.K. Pimpalgaonkar,
Occ.: Retired employee, R/o. 54, Sant
Kesharmana Nagar, Hudkeshwar Road,
Nagpur.
 - 5) RavindraRamchandraTanksale,
Occ.: Retired employee, R/o. 85, Kannamwar
Nagar, Opposite Sonegaon Police Station,
Wardha Road, Nagpur.
 - 6) S.C. Makarande,
Occ.: Retired employee, R/o. P.W.D.
Quarter (Block No. 28), Quarter No.
235, Katol Road Colony, Nagpur.

- 7) D.N. Ispade,
Occ.: Retired employee, R/o.Bhujbal
Layout, Plot No. 23, Trimurti Nagar,
Nagpur.
- 8) S.A. Nandurkar,
Occ.: Retired employee, R/o.
Kamlanagar, Amravati Road, Nagpur.
- 9) R.S. Shende,
Occ.: Retired employee, R/o. Holi
Maidan, Katol, Tq. Katol.
- 10) Anees Ahmed Khan,
Occ.: Retired employee, R/o. Behind
Solanki Hospital, Quazipura,
Ganjipeth, Nagpur.
- 11) TilakraoNarayanswamiNayadu,
Occ.: Retired employee, R/o. House
No. 311, Azad Chowk, Sadar, Nagpur.
- 12) Xavier J. Saloman,
Occ.: Retired employee, R/o. A-15,
Martin Nagar, Jaripatka Ring Road,
Nagpur.
- 13) W.N. Sawarkar,
Occ.: Retired employee, R/o.Gurukul
Nagar ParsodaRamtek, New Bus
Stand, Ramtek.

- 14) M.T. Wankhede,
Occ.: Retired employee, R/o. "Aai Niwas", Plot No. 03, New Diamond Nagar, HasangaghJyoti Branch Road, C/o. Shivshakti Medicos, Nagpur.
- 15) R.M. Halmare,
Occ.: Retired employee, R/o. "Santkrupa", Plot No. 64, Popular Housing Society, Amravati Road, Nagpur.
- 16) M.C. Motghare,
Occ.: Retired employee, R/o. MotghareMohalla, Hansapuri, Beside Gitanjali Talkies, Central Avenue Road, Nagpur.
- 17) DipakJogeshwarKole,
Occ.: Retired employee, R/o. 34, Rajiv Nagar, Wardha Road, Nagpur.
- 18) K.K. Wadodkar,
Occ.: Retired employee, R/o. 50/B, Yashada Nagar-2, Behind Saint Joseph High School, Jaitala Road, Nagpur.
- 19) Late G.M.Lendhe through his L.R's Vijay GandhijiLende,
R/o.NalsahebChowk, Near Abhilasha Convent, Beside LalDagad, Timki Road, Hansapuri, Nagpur.

- 20) UmakantMarotraoMandavgade,
Occ.: Retired employee, R/o. Adarsha
Nagar Wadi, Plot No. 46, Behind
Hanuman Mandir, Tq. &Distt.
Nagpur.
- 21) Shantaram G. Datarkar,
Occ. Retied, Plot No.179, Vitthal Vadi,
Hudkeshwar Road, Nagpur-34.

-VERSUS-

RESPONDENTS:1) The State of Maharashtra, through
its Department of Public Works, Mantralaya,
Mumbai-32.

2) Chief Engineer, P.W. Region, Nagpur.

3) Superintending Engineer, P.W. Circle Nagpur.

S/Shri N.R. Saboo & Mrs. K.N.Saboo, Advs for the applicants.

Shri P.N. Warjurkar, P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman.**

Date of Reserving for Judgment : 30th March, 2021.

Date of Pronouncement of Judgment : 8th April,2021.

JUDGMENT

(Delivered on this 8th day of April,2021)

Heard Shri N.R. Saboo, Id. Counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicants while working on the post of Civil Engineering Assistant, completed their age of superannuation and retired from service. The applicants are deprived for revised pay scale of Junior Engineers after attaining the age of 45 years. The applicants submit that the State of Maharashtra vide Govt. Resolution dated 08.06.95 promulgated the benefit of time bound promotion after completion of 12 years service. It is submitted that vide G.R. dated 20.07.01, the State of Maharashtra also promulgated scheme of Assured Progress Scheme. It is submitted that the second scheme as promulgated by G.R. dated 20.07.01 is substitute of first scheme however, in both the schemes the nature and conditions for benefits are the same. The applicants submit that as per scheme as promulgated by G.R. dated 20.07.01, the second time bound promotion is required to be provided to the Govt. employees after completing 24 years of service.

3) The applicants submit that as per Govt. G.R. dated 31.07.13 which reiterates order passed by this Hon'ble Tribunal which

is confirmed by Apex Court & provided exemption from passing professional examination for the promotional post of Junior Engineer after completion of age of 45 years, they are entitled for revised pay scale of Junior Engineers.

4) The applicants submit that in the respondent-PWD Department various cadres of lower grade technical employees were in existence which includes post of Technical Assistant, Mistry, Muster Clerk, Road Karkoon, etc. Initially the State of Maharashtra Department of Irrigation, vide GR dated 31.01.89 created a new cadre of Civil Engineering Assistant of merging various cadres of various lower grade technical employees. The respondent-PWD Department vide GR dated 14.03.89 adopted GR dated 31.01.89 passed by Irrigation Department and also created new cadre of Civil Engineering Assistant by merging various 13 cadres of lower grade technical employees which includes post of Muster Clerk .

5) The applicants submit that vide Govt. Resolution dated 18.06.98 (A-3,P-30), Irrigation Department issued Circular for grant of time bound promotion pay scale to the Civil Engineering Assistant after 12 years irrespective of the fact that they were brought on establishment of Civil engineering Assistant later on. It is submitted that the said Circular further provides that 12 years for grant of time

bound promotion pay scale are to be considered from the date of appointment of lower grade technical post i.e. Technical Assistant/Mistry/Karkoon/Muster Clerk, etc. The applicants further submit that even Circular dated 18.06.98 issued by Irrigation Department is adopted by respondent-PWD Department vide Circular dated 05.08.98 (A-4,P-31).

6) It is submitted that the respondent-PWD Department vide communication dated 03.03.06 informed the Superintending Engineer P.W. Circle, Pune that the Circular dated 18.06.98 issued by Irrigation Department is adopted by the said Department and without considering the date of bringing concerned employees as Civil Engineering Assistant, all those lower grade technical employees will be entitled for revised pay of post of Jr. Engineer from the date of completion of 12 year from their original appointment as Technical Assistant/Mistry/Karkoon/Muster Clerk etc. The Superintending Engineer, PWD Circle, Nashik Circle, & Circle Superintending Engineer, Nashik accordingly on 14.08.06 issued direction to all the Superintending Engineer to adopt Circular dated 03.03.06 issued by State of Maharashtra. A copy of Circular dated 03.03.06 issued by PWD Department as well as Circular dated 14.08.06 issued by Superintending Engineer, P.W. Circle Nashik and Circle Superintending Engineer, Nashik.

7) The applicants submit that vide Circular dated 21.05.08, the respondent-PWD Department reiterated entitlement of the Civil Engineering Assistant for grant of time bound promotion pay scale as per GR dated 08.06.95 as well as 20.07.01 issued by GAD. The applicants submit that admittedly their initial employment in the respondent-Department was amongst lower grade technical post i.e. post of Muster Clerk and as per policy of the Department, the said post was merged into Civil Engineering Assistant. The applicant submits that the respondent-Department however, did not grant benefit of time bound promotion pay scale despite their entitlement after completion of 12 years service on the pretext that they have not passed professional examination for the post of Junior Engineer. The applicants submit that vide G.R. dated 31.07.13, the respondent-PWD Department in compliance of order passed by this Hon'ble Tribunal held that after completion of 45 year age, such technical employee will be entitled for exemption from passing professional examination to claim time bound promotion pay scale as per GR dated 08.06.95 as well as 20.07.01 issued by GAD.

8) The applicant submit that despite aforesaid position, the respondent-Department did not grant benefit of time bound promotion pay scale after completion of 12 years from the date of appointment as Muster Clerk. The respondent-PWD Department from time to time

interpreted this Circular in different manner which can be apparent from the fact that earlier while office order dated 17.04.14 the respondent-Superintending Engineer although accepted that as per Column No. 8, the applicants have completed age of 45 years however, for granting exemption from passing professional examination for the purpose of Junior Engineer granted exemption after 3 years from the date of completion of age of 45 years. Thus, the order passed by Superintending Engineer is not in conformity with the interpretation as made by Hon'ble High Court. The applicants further submit that vide order dated 16.09.15 the same Superintending Engineer interpreted that on the date of completion of age of 45 years, the applicants are eligible for pay scale for the post of Junior. By impugned order dated 07.06.16, the same Superintending Engineer now again changed the interpretation of granting exemption from passing professional examination after 3 year from the date of actual absorption as Civil Engineering Assistant. Thus, by this impugned communication, the respondent-Department adopted totally different interpretation as compared to interpretation by other two Departments of the Govt. wherein 12 years is counted from the date of appointment on lower grade technical post i.e. Muster Clerk.

9) The applicants submit that the issue of granting exemption from passing professional examination after completion of 45 years

was decided by this Hon'ble Tribunal in OA No. 963/10. The said decision was also subject matter of challenge before Hon'ble High Court as well as Apex Court and it is only thereafter the respondent no. 1 issued Govt. GR dated 01.07.13 holding that such Civil Engineering Assistant are entitled for exemption from passing professional examination after completion of age 45 years.

10) Applicant submits that Govt. G.R. dated 31.07.13, the respondent-State vide communication dated 21.11.14 as well as 12.02.15 issued instructions to the Department to grant exemption from passing professional examination to those Civil Engineering Assistant who have crossed age of 45 years. It appears that the respondent-State vide Circular dated 28.10.15 cancelled communication dated 21.11.14 as well as 12.02.15 and issued instructions as per communication dated 31.10.15. It is submitted that the said communication reiterate the entitlement of Civil Engineering Assistant to avail benefit of time bound promotion pay scale as per Govt. G.R. dated 08.09.95 as well as 20.07.01 however adopted totally illegal approach is interpreting purport of Govt. Policy.

11) The applicants submit that admittedly when they entered into the service of the respondent-P.W. Department, they were working on the post of Muster Clerk. The applicants submit that the

impugned order dated 07.06.16 clearly show their initial date of appointment on the post of Muster Clerk was ignored. It is submitted that this post of Muster Clerk was abolished and the services of the applicants were absorbed on the post of Civil Engineering Assistant. It is submitted that although in the Rural Development Department and other Departments where identical scheme of absorption of technical personnel into Civil Engineering Assistant were adopted by the State of Maharashtra apart from granting exemption to such Civil Engineering Assistant from passing professional examination on the post of Junior Engineer after having crossed age 45 years, 12 years service were calculated from the date of entry in to service.

12) The applicants submit that after having adopted this policy, the respondent-Department ought to have calculated 12 years service from the date of initial appointment on the post of Muster Clerk. It is submitted that the respondents however, did not release such benefit. In the meantime the applicants have completed age of superannuation and presently they are retired employee.

13) The applicants submit that perusal of the Column No. 9 and 10 of impugned order, it is apparent that the respondent-Department while calculating 12 years service , adopted totally erroneous approach. The net result was that the applicants who are

entitled for time promotional pay scale, are deprived of getting such benefits.

14) The applicants submit that in spite of completion of 12 years service since they are not given benefit of time bound promotion scheme promulgated by Scheme dated 08.06.95 or Assured Progress Scheme as promulgated by G.R. dated 20.08.01, they made repeated representations. The applicants submit that the Association of the Civil Engineering Assistant to which the applicants also belong as member also made repeated representations as well as correspondences with the respondent-Department. Vide notice dated 06.06.01 even Union of the applicants called upon the respondent-Superintending Engineer to release the benefits of Govt. G.R. dated 08.06.95 as well as 20.07.01 which inter alia provides revised pay scale.

15) The applicants submit that the respondent-Superintending Engineer, by calculating 15years service from the date of absorption as Civil Engineering Assistant, thus deprived them for release of revised pay of the post of Jn. Engineer which otherwise the applicants could have procured after completion of 12 years service from the date of appointment as Muster Clerk. The applicants herewith

annexes a copy of details as to how they are entitled for time bound promotion pay scale as per G.R. dated 08.06.95 as well as 20.07.01.

Name of the applicant.	Dt. Of Entry in the service as Muster Clerk.	Dt. Of Completion of age 45 years.	Dt. of absorption as CEA.	Claim for release of benefit as per G.R. 08.06.95	Claim for release of benefit as per G.R.20.07.01
Dipak S/o. Shankarrao Phule	16-5-78	20-8-94	1-4-05	20-8-94	20-8-06
M.B. Chaurasiya	2-3-74	26-12-94	1-4-05	26-12-94	26-12-06
I.B. Parihar	1-4-73	1-1-95	1-4-05	1-1-95	1-1-07
S.K. Pimpalgaonkar	27-2-74	6-3-95	1-4-05	6-3-95	6-3-07
Ravindra Ramchandra Tanksale	31-10-92	28-10-92	1-4-05	28-10-92	28-10-04
S.C. Makarande	8-7-80	2-4-96	1-4-05	2-4-96	2-4-08
D.N. Ispade	20-10-78	7-6-94	1-4-05	7-6-94	7-6-06
S.A. Nandurkar	24-4-83	20-6-99	1-4-05	20-6-99	20-6-11
R.S. Shende	4-2-88	6-12-95	1-4-05	6-12-95	6-12-07
Anees Ahmed Khan	1-4-82	30-12-90	31-12-93	30-12-90	30-12-02
Tilakrao Narayans wami Nayadu	1-4-82	30-12-90	30-12-02	30-12-90	30-12-02
Xavier J. Saloman	1-1-78/27-2-03	17-4-99	23-7-08	17-4-99	17-4-99
W.N. Sawarkar	18-11-77	31-7-93	1-4-05	31-7-93	31-7-93

M.T. Wankhede	13-8-72	1-4-97	15-4-05	1-4-97	1-4-97
R.M. Halmare	10-4-85	6-7-98	12-4-05	6-7-98	6-7-98
M.C. Motghare	27-1-81	1-7-96	1-4-05	1-7-96	1-7-96
DipakJogeshwar Kole	27-4-86	21-1-98	13-4-05	21-1-98	21-1-98
K.K. Wadodkar	4-11-72	12-4-98	1-10-94	12-4-98	12-4-98
Late.G.M.Lende Through L.R's. V.G.Lendhe	1-1-73/15- 3-82	15-8-92	15-8-04	15-8-92	15-8-92
UmakantMarotrao Mandavgade	1-7-88	1-11-97	11-4-05	1-11-97	1-11-97

16) The applicants submit that despite their entitlement, they are not granted benefit of both the Govt. G.R. dated 18.06.95 as well as 20.06.01 till impugned order dated 07.06.16. In Column No. 8 of the impugned order, the respondent-Superintending Engineer referred about date of absorption and in Column No. 9 of the said order shown that the applicants will be qualified for the post of Junior Engineer after completion of 3 years service. The applicants submit that because of this arbitrary act of respondent-Superintending Engineer, they could not avail the benefits of time bound promotion pay scale. The applicants thus, having no other recourse is constrained to approach before this Hon'ble Tribunal and seek direction to release benefit of

time bound promotion pay scale after completion of 12 years service from the date of appointment as Muster Clerk.

17. During course of pleading on 30/3/2021 in para-2 following observations have been made –

“2. The Id. counsel for the applicant has filed MAT Mumbai Bench Judgment in Review Application No. 21 of 2019 in O.A. No. 238 of 2016 with R.A. No. 09 of 2020 with O.A. Nos. 536 to 538 of 2018 with R.A. No. 13 of 2020 in O.A. Nos. 539 & 540 of 2018 and O.A. Nos. 775 to 777 of 2018 and O.A. Nos. 1084 of 2018 delivered by the Tribunal on 08.02.2021. As pointed out by the Id. counsel for the applicant in para nos. 5, 11, 14 & 15 of the Judgment; it has been mentioned that while deciding O.A. No. 617/2014 decided on 02.12.2015 and in para nos. 5, 11, 14 & 15 following observations have been made:-

“5. Learned Special Counsel argued on behalf of the Respondents that, the case of the applicants hinges on the Govt. letter dated 18.03.1998 and 18.06.1998, in which it was stated that in consultation with the Finance Department, it was decided to consider services rendered in Work-Charged Establishment for Time Bound Promotion. Learned Special Counsel contended that, these letters are not authentic. There is no file on the record of the Water Resources Department from which these letters were issue. No entries are available to show that the file was submitted and received back from the Finance Department. Learned Special Counsel stated that, these letters are contrary to the provisions of G.R. dated 08.06.1995 regarding Time Bound Promotion and have to be disregarded.

11. *It is clear that a person can be given Time Bound Promotion, if he has rendered 12 years of regular service and was eligible to be promoted to the higher post. A circular dated 01.11.1995 was issued clarifying various issues raised by different department while implementing the provisions of G.R. dated 08.06.1995”.*

18. Similar issue has been decided in O.A.No. 617/2014 by the M.A.T., Aurangabad Bench order delivered on 2nd December,2015. During pleading in the same O.A. similar questions were raised regarding letter dated 18/3/1998 and 18/6/1998. In the said Judgment para-11,12 &13 (P-152) following observations are made –

“ (11) It is clear that a person can be given time bound promotion, if he has rendered 12 years of regular service and was eligible to be promoted to the higher post. A Circular dated 1/11/1995 was issued clarifying various issues raised by different department while implementing the provisions of G.R. dated 8/6/1995. In point no.2, the following clarification is given –

*^ fnukad 8-6-95 P; k 'kkI u fu.kz kr Li "V dY; kud kj i n/kkj d kph i nkojhy 12 o"kkph fu; fer I ok glsks vko'; d vkgs jkst mkjhojhy I ok gh fu; fer I ok ul Y; kus jkst mkjhojhy fu; DrtP; k@ i Eke fu; DrtP; k fnukadki kl u 12 o"kkP; k dkyko/th x.k.ksvfHki r ukgh.***

(12) In point no.11, it is stated that -

^ i phz /kkj.k dsyY; k eiG inkph Jskhok >ky; koj deþk&; kl Jskhok inkoy fu; Þrh feGkyh vl Y; kl R; k Jskhok >kyY; k inkoyhy 12 o"kkP; k fu; fer l surj fnukad 8-6-95 P; k 'kkI u fu.kz krhy brj vVho 'kRkZud kj ofj" B oruJskh vuKs gkbZy-**

(13) *From these clarifications, it is crystal clear that the service on daily wages, or before regularization could not be counted for T.B.P. Similarly for the persons appointed as C.E.A. were given upgradation in pay scale (Jskhok<) they were not eligible to be given T.B.P., unless they had completed 12 years as C.E.A."*

19. In para-18 it is observed that learned special counsel for the respondents has relied on the Judgment of Hon'ble Supreme Court in the case of Jgjiwan Ram (supra). In para-21 it is observed by the Hon'ble Supreme Court that

"21. For the reasons mentioned above, we hold that the respondents were not entitled to the benefit of time bound promotional scales / promotional increment on a date prior to completion of 19/16/23 years' regular service and the High Court committed serious error by directing the appellants to give them benefits of the scheme by counting their work charged service." (emphasis supplied)

20. *In para-22 of the Judgment, it is observed that –*

“(22) The order passed by this Court in Ravinder Kumar case is clearly distinguishable. In that case, counsel appearing for the State conceded that the period during which an employee had worked on work-charged basis is counted for the purpose of grant of increment as well as computation of qualifying service for pension. In view of his statement, the Court held that there was no reason why such service should not be counted for the purpose of giving additional increment on completion 8/12 years’ service and higher scale on completion of 10/20 years’ service. The order does not contain any discussion on the issue whether the work charged service can be equated or clubbed with regular service for grant of service benefit admissible to regular employees. Therefore, the same cannot be treated as laying down any proposition of law which can be treated as precedent for other cases.”

21. *In para 23, it is stated that –*

“in any case, the view expressed by the High Court in Satbir Singh case cannot be made the basis for granting relief to the respondents by ignoring the law laid down by this Court in the Judgments referred to hereinabove.”

From the judgment of Hon'ble Supreme Court, it is clear that Hon'ble Supreme Court has laid down the law that work-charge service cannot be counted for Time Bound promotion.

22. The applicants have failed to show that the impugned order dated 7/6/2016 (A-9,P-40) issued by the respondent no.3 suffers from any illegality. In fact, it is in conformity with the law laid down by Hon'ble Supreme Court and in consonance with the G.R. dated 8/6/1995 and Circular dated 1/11/1995. So, this Original Application is required to be dismissed. Hence, the following order –

ORDER

The O.A. stands dismissed. No order as to costs,

Dated :- 08/04/2021.

dnk...

**(Shree Bhagwan)
Vice-Chairman.**

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 Vice-Chairman.

Judgment signed on : 08/04/2021.
and pronounced on

Uploaded on : 08/04/2021.