

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 843 of 2014 (S.B.)**

Diwakar Wasudeorao Dehankar,  
Aged about years, Occ. Service,  
R/o Jawahar Nagar, Manewada Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Rural Development, Mantralaya, Mumbai.
- 1)A) Public Works Department,  
Mantralaya, Mumbai.
- 2) Shri C.T. Naik,  
Deputy Engineer,  
P.W.D. Sub Division no.2, Haveli,  
Jail Road, Opp. Talkies, Tq. Haveli,  
Yerwada, Pune-411 006.
- 3) V.G. Nalhe,  
P.W.D. Campus, Civil Lines,  
R.P. Sub Division no.2,  
Yavatmal.
- 4) A.G. Karape,  
Deputy Engineer,  
P.W.D. Sub Division, Pen,  
Dist. Raigad.
- 5) M.D. Patil,  
Deputy Engineer, P.W.D. North,  
Sub Division Karad,  
Dist. Satara.

**Respondents**

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**Shri N.R. Saboo, Smt. K.N. Saboo, Advocates for the applicant.**  
**Shri S.A. Sainis, learned P.O. for the respondent nos.1&1A.**  
**None for respondent nos. 2 to 5.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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### **JUDGMENT**

**(Delivered on this 28<sup>th</sup> day of February,2018)**

Heard Shri N.R. Saboo, Id. Counsel for the applicant and Shri S.A. Sainis, Id. P.O. for respondent nos. 1& 1A. None for respondent nos. 2 to 5.

2. In this O.A. the applicant has challenged the impugned order dated 15/01/2008 issued by respondent no.1 (Annex-A-7) whereby the deemed date of promotion to the post of Deputy Engineer has been rejected on the ground that the applicant has not cleared a requisite professional examination and therefore was not eligible. The applicant has also claimed a direction to respondent no.1 for grant of deemed date of promotion to the applicant in the cadre of Deputy Engineer w.e.f. 5/9/2001, the date on which the respondent no.3, Shri V.G. Nalhe, who was junior to the applicant has been promoted.

3. From the admitted facts on record it seems that the applicant and Shri Nalhe were appointed as Assistant Engineer and in the seniority list dated 20/06/2000 which was valid as on 30/12/1998 the applicant was shown at sr.no.86, whereas, the respondent no.3 was shown at sr.no.83.

Thereafter corrigendum was issued on 03/01/2001 thereby the seniority list was corrected and the applicant has been shown at sr.no.83, whereas Shri Nalhe was shown at sr.no.98. Admittedly said seniority has not been challenged till today.

4. The respondent no.3 Shri Nalhe was promoted to the post of Dy. Engineer vide order dated 5/9/2001. The applicant, though senior to Shri Nalhe was not promoted. The applicant therefore filed Writ Petition no. 3670/2001 before the High Court of Judicature at Bombay, Bench at Nagpur. The said petition came to be disposed of vide order dated 10/06/2003 and following relevant order was passed in the said petition.

*“Rule. Expedited. All the orders of promotions to the posts of Dy. Engineers will be subject to the final outcome of this W.P. Respondents waive service. The respondents shall consider the claim and case of the petitioner as and when next promotion would be due and would be considered for the post of Dy. Engineers. Respondents waive service.”*

5. The learned counsel for the applicant submits that the order passed by the Hon'ble High Court in the aforesaid Writ Petition clearly shows that the respondents were obliged to consider the applicant's case for deemed date of promotion. It is further stated that the reason given for rejection of the applicant's claim for deemed date is also not correct as the respondents have admitted that the applicant has cleared the qualifying examination. The learned counsel for the applicant invited my attention to the list at Schedule-A at page no.18 part of Annex-2 which clearly shows

that the applicant has cleared the qualifying examination in August, 2000 and therefore on the date of promotion of the respondent no.3, the applicant has already cleared the qualifying examination.

6. The learned P.O. submits that even though the applicant has cleared the examination, he cleared qualifying examination in August, 2000, whereas the respondent no.3 has cleared that examination in December, 1990 itself and therefore the applicant was not eligible on the date of promotion granted to the respondent no.3

7. On perusal of the record, it seems that admittedly the applicant is senior to Shri Nalhe, i.e., respondent no.3. There is nothing on the record to show that the applicant has not cleared the qualifying examination within stipulated chances and within given time limit as per the rules and therefore in such circumstances merely because the applicant has cleared the examination after respondent no.3 cleared, cannot be a ground to deny opportunity to the applicant for being considered for promotion.

8. The learned P.O. has further invited my attention to the fact that the meeting of the DPC was already held in 1999 and at that time the applicant has not cleared the examination. It is however material to note that the promotion has been given in the year 2001 and there is nothing on the record to show that any subsequent meeting was held for considering the promotions of the Officers in 2000-2001. Had it been a fact that the DPC was held in 2000-2001, the applicant should have been considered for promotion. Considering all these aspects and in addition to the fact that the

applicant is senior to the respondent no.3, the applicant should have been promoted earlier in time. The applicant has been promoted to the post of Deputy Engineer vide order dated 27/07/2004, but with effect from 2004, i.e., from the date of order. In the Writ Petition no.3670/2001 it was clearly stated that the applicant's claimed for promotion was kept open and therefore the applicant should have been considered for promotion since the date on which the respondent no.3 has been promoted. In view thereof, the following order :-

**ORDER**

The O.A. is allowed in terms clause nos. (i) & (ii). No order as to costs.

**Dated :- 28 /02/2018.**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

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