

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 858 of 2021 (DB)

Ashish S/o Dattatraya Kadam,
Aged about 43 years, Occ. Service,
R/o Siddhivinayak Apartment, 2nd floor,
In front of Shivaji Garden, Rathi Nagar,
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
- 2) Superintending Engineer,
Public Works Department,
Camp Road, Amravati- 444 602.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 1st April,2022

Date of Pronouncement of Judgment : 19th April,2022.

JUDGMENT

Per : Member (J).

(Delivered on this 19th day of April, 2022)

Heard Shri R.M. Fating, learned counsel for the applicant
and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as Civil Engineering Assistant on 15/04/2006. As per the departmental Examination Rules, it is mandatory on the part of Civil Engineering Assistant to pass the Departmental Qualifying Examination within three chances and within four years from the date of first examination. In the year 2008 and 2009, the applicant tried to appear in the Professional Examination through proper channel, but the Authority has not issued the Hall Ticket and even not communicated to the applicant. In the year 2010, he applied for Qualifying Examination and passed the said examination in first attempt. Further the applicant has also cleared requisite professional examination for promotional post of Junior Engineer in the year 2012 in first attempt. The applicant is fulfilling the prescribed provision of clearing all the eligibility criteria for grant of promotion, his date of seniority shall be impact as on 15/04/2006. However, the respondent no.1 without considering the representation of applicant dated 19/3/2021, abruptly issued impugned order dated 16/9/2021 confirming the seniority at Sr.No.2283 as published by order dated 11/12/2020, on the ground that applicant has not passed the Departmental Examination in prescribed chances. Hence, the present O.A. for direction to the respondents.

3. The O.A. is objected by the respondents on the ground that the applicant has not passed the departmental examination within four years and within three chances as per the Rule 13 (E) of the Civil Engineering Assistants (Qualifying examination/ Departmental examination and Training) Rules, 2001 (in short "Departmental Examination Rules, 2001"), therefore, the applicant is not entitled for any relief. Hence, the O.A. is liable to be dismissed.

4. Heard Shri R.M. Fating, learned counsel for the applicant. He has pointed out the decision of this Tribunal in O.A. No.977/2021, dated 23/03/2022. The learned counsel has pointed out the recommendation of Assistant Superintending Engineer, Public Works Department, Amravati dated 2/4/2021. The learned counsel has submitted that the applicant has joined on the post of Civil Engineering Assistant on 15/04/2006. The applicant could not appear in the examinations of the year 2008 and 2009, though he applied for the same, but those applications were filed by the Maharashtra Engineering Training Institute, Nashik. There was no examination in the year 2007. He appeared in examination of 2010 and passed in the first attempt. Therefore, he has passed the departmental examination as provided in the Rule 13 (E) of the Departmental Examination Rules, 2001. The respondents have communicated the list of seniority in which names of juniors to

the applicant were shown, though he has passed the departmental examination within a stipulated period. The applicant and others made representations and those representations were decided as per communication dated 16/9/2021. By the said communication, it is informed that as per the Departmental Examination Rules, the applicant has not passed examination within four years and within three chances and therefore seniority list dated 11/12/2020 is confirmed.

5. Heard Shri Ghogre, learned P.O. for the respondents. He has submitted that the applicant has not passed the departmental examination within four years and within three chances and therefore he is not entitled for any relief.

6. The respondents have given the benefit to the similarly situated employees. This Tribunal has observed the same in O.A. 977/2021. The applicant was not at fault. He was appointed in the year 2006. There was no examination in the year 2007. He applied in the year 2008 and 2009, but admission card was not issued. He appeared in the year 2010 and passed examination in first attempt, therefore, examinations of the year 2007,2008 & 2009 are to be excluded while calculating the period as per the Rule 13 of the Departmental Examination Rules, 2001. The applicant has cleared the

examination in the year 2010 in first attempt within four years. Hence,
the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to correct the seniority list dated 11/12/2020 by issuing necessary corrigendum by placing the applicant at Sr.No.1608.
- (iii) The communication issued by respondent no.1, dated 16/9/2021 is hereby quashed and set aside to the extent of applicant.
- (iv) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 19/04/2022.

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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. & Member (J).

Judgment signed on : 19/04/2022

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