

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 977 of 2021**  
**WITH CIVIL APPLICATION NO. 390/2021 (DB)**

Shri Amol S/o Chintaman Nasare,  
Aged about 43 years, Occ. Service,  
R/o Gurudeo Nagar, 11, Hudkeshwar Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary, Public Works Department,  
Mantralaya, Mumbai-400 032.
- 2) The Chief Engineer,  
Public Works Department,  
Nagpur Region, Nagpur.
- 3) The Superintendent Engineer,  
Public Works Department, Nagpur Region,  
Nagpur.

**Respondents.**

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**S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.**

**Shri A.M. Ghogre, P.O. for the respondents.**

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

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**Date of Reserving for Judgment : 9<sup>th</sup> March,2022.**

**Date of Pronouncement of Judgment : 23<sup>rd</sup> March,2022.**

**JUDGMENT**

**Per : Member (J).**

**(Delivered on this 23<sup>rd</sup> day of March, 2022)**

Heard Shri G.G. Bade, 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 has passed diploma in Civil Engineering in the year 2001. He came to be appointed on the post of Civil Engineer Assistant vide order dated 26/5/2008 and accordingly he joined on 26/5/2008. The Government of Maharashtra published the Rules dated 8/8/2001, wherein, Rule 13 stipulates that Civil Engineer Assistants are required to pass the departmental examination within three attempts and within four years. The applicant in pursuance of the same submitted form in the Divisional office and same was forwarded to respondent no.3 on 7/10/2009, but the same was not forwarded to the Maharashtra Engineering Training Institute, Nashik. On account of the same, applicant could not appear in the year 2009. In the year 2010, the applicant appeared, but failed (1<sup>st</sup> attempt). The examinations were not held in the year 2011. The applicant appeared in the year 2012, but failed (2<sup>nd</sup> attempt). The applicant appeared in the year 2013 and passed the examination (3<sup>rd</sup> attempt). Therefore, in the present set of circumstances, it can safely be said that the applicant has passed the departmental examination in the prescribed time and attempt as per rules dated 8/8/2001. The department has published the seniority list dated 2/1/2016, wherein, the name of

applicant was at Sr.No.1427. The respondent no.1 in contravention of Rules, published seniority list dated 11/12/2020, wherein, the applicant's name was not incorporated. There was no reason for the respondent no.1 to exclude the name of applicant, especially when the applicant has passed the examination as per the rules of 8/8/2001. The respondent no.1 has considered the claim of similarly situated employees Shri More, Shri Jogdeo, Shri Satule and Shri Gawali by incorporating their names in the seniority list by publishing the amended seniority list dated 16/9/2021. Therefore, prayed to grant the following reliefs –

*“ (i) Direct the respondent no.1 to amend the position of the applicant from 2525 to 1619-A in the seniority list dated 11/12/2020 (at annex-A12).*

*(ii) Direct the respondent no.1 to include the name of the applicant in the eligibility list for promotion to the post of Junior Engineer Assistant dated 17/9/2021 (at Annex-A-19).*

*(iii) Director the respondents to promote the applicant to the post of junior engineer”.*

3. The application is opposed by the respondents, contending that as per the rules, the applicant has not passed departmental examination in three chances within four years. The applicant appeared in the year 2013 and passed in 4<sup>th</sup> attempt. In para-6 the chart is given as under –

<b>Sr. No.</b>	<b>Year of the Exams</b>	<b>Duration of Exam</b>	<b>Applicant appear for the examination or not</b>
1.	2009	23.11.2009 to 28.11.2009	Not appear for Exam (1 <sup>st</sup> Attempt)
2.	2010	23.11.2010 to 28.11.2010	Appeared but failed (2 <sup>nd</sup> Attempt)
3.	2011	---	Exam not conducted
4.	2012	21.05.2012 to 26.05.2012	Appeared but failed (3 <sup>rd</sup> Attempt)
5.	2013	06.05.2013 to 11.05.2013	Appeared and Passed (4 <sup>th</sup> Attempt)

4. It is submitted that the applicant is not entitled for promotion as he has not passed the departmental examination as contemplated under Rule 13 of 2001. It is submitted that the seniority list was corrected as per the order of this Tribunal in O.A.No.848/2018 on 11/12/2020. The name of applicant was not included in the seniority list, because, he has not passed the departmental examination in three chances within four years. Hence, the O.A. is liable to be dismissed.

5. Heard learned counsel for the applicant Shri G.G. Bade. He has pointed out the order passed by respondent no.1 in respect of junior employees namely Shri Bharat N. More, Mrs. Archana K. Pawar, Kamble etc. and submitted that the similarly situated employees raised objection and seniority list was accordingly corrected as per the order dated 16/9/2021. Junior employees namely

Shri More, Shri Jogdeo, Shri Satule and Shri Gawali are now shown seniors to the applicant.

6. The learned counsel for the applicant pointed out the proposal sent by the Superintending Engineer dated 5/1/2021. As per the proposal, it is specifically mentioned that in the year 2009, the applicant could not appear in the examination, because, the application was not reached to the Nashik Office. In the year 2011, there was no examination. Excluding those years, the applicant has passed the departmental examination within four years and in three chances and therefore he is entitled for the seniority from the date of his appointment i.e. 26/5/2008.

7. The names of juniors were considered by the respondents who were on the same footing. Therefore, learned counsel has submitted that the applicant was not at fault eventhough he is not shown correctly in the seniority list. Junior employees namely Shri More, Shri Jogdeo, Shri Satule and Shri Gawali are now promoted, but the applicant is not promoted. Hence, prayed to allow the O.A. with specific directions.

8. The learned P.O. Shri A.M. Ghogre has strongly objected the O.A. He has submitted that the applicant has not passed the departmental examination as contemplated under Rule 13 of 2001, therefore, he is not entitled for seniority and also for promotion.

9. Perused the documents filed on record. The applicant could not appear in the departmental examination in the year 2009 as his application was not reached to the examination Office (Prabodhini, Nashik). In the year 2011, there was no examination. The applicant has passed the departmental examination in the year 2013. As per Rule 13 of 2001, the applicant has to pass the departmental examination within four years from the date of his appointment and within three chances. If the period is calculated, then applicant had to pass the departmental examination before 2012, but it is admitted fact that in the year 2009, applicant could not appear in the examination as the examination form of applicant was not reached by the department to Nashik. In the year 2010, he appeared, but failed. In the year 2011 the examinations were not held. In the year 2012, the applicant appeared, but failed. In the year 2013, applicant appeared and passed the examination. Therefore, it is clear that applicant appeared in the examination of the year 2010,2012 and 2013 and within three chances, he passed the departmental examination. The applicant was not at fault, because, examination forms were not properly submitted by the department in the year 2009 and there was no examination in the year 2011, therefore, the years 2009 and 2011 are to be excluded. Hence, it is clear that the applicant has passed the departmental examination within four years and in three chances. The

same analogy is applied by respondent no.1 to the juniors of the applicant. In case of junior Shri Bharat N. More in the remarks column, it is mentioned that the date of appointment of Shri More was 2/6/2008. He was to pass departmental examination in 2009,2010,2011 and 2012, but in 2010 his examination form was not signed by the Controlling Officer, therefore, it was rejected. In the year 2011, there was no examination. He passed departmental examination in the year 2013. Therefore, he has passed departmental examination as per Rule 13 of 2001 and he is entitled to retain his original seniority. In respect of other juniors also, the same analogy was applied by respondent no.1 and they were given seniority above the applicant. They were promoted as per the order dated 2/11/2021.

10. Without any fault on the part of applicant, the respondents have deprived the legitimate right of the applicant. Hence, the following order –

**ORDER**

- (i) The O.A. is allowed as prayed.
- (ii) The respondent no.1 is directed to amend the position of applicant from 2525 to 1619-A in the seniority list dated 11/12/2020.
- (iii) The respondent no.1 is directed to include the name of applicant in the eligibility list for promotion to the post of Junior Engineer Assistant dated 17/9/2021.

(iv) The respondents are directed to promote the applicant to the post of Junior Engineer Assistant from the date on which his juniors are promoted.

(v) The respondents are directed to grant monetary benefits, if any, to the applicant, as per rules.

(vi) The C.A. also stands disposed off.

(vii) No order as to costs.

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

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

**Dated** :- 23/03/2022.

dnk.\*



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 : 23/03/2022.

Uploaded on : 23/03/2022\*