

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 845 OF 2016

DISTRICT:- DHULE

Dineshkumar S/o. Budha Bagul,
Age : 42 years, Occ. Govt. Service
R/o. 57, Pramod Nagar, Sector 2,
Deopur, Dhule
Tal. and Dist. Dhule

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through it's Secretary,
Public Works Department
Mantralaya, Mumbai-400032.
(Copy to be served on Govt. Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad).
2. The Maharashtra State Public Commission,
MS, Mumbai.
3. The Chief Engineer,
P.W. Department Bandkham Bhawan,
Aurangabad. **.. RESPONDENTS.**

APPEARANCE : Ms. Angha Pandit, learned counsel
holding for Shri S.B. Talekar, learned
counsel for the applicant.

: Shri I.S. Thorat, Presenting Officer
for the respondents.

**CORAM: JUSTICE (Retd.) SHRI P.R.BORA, VICE-
CHAIRMAN**

AND

SHRI BIJAY KUMAR, MEMBER (A)

RESERVED ON : 08.04.2022

PRONOUNCED ON : 06.05.2022

ORDER

[Per : Hon'ble Shri Bijay Kumar, Member (A)]

This Original Application has been filed by one Shri Dineshkumar S/o. Budha Bagul, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby challenging alleged inaction on the part of respondent No. 1 to appoint him as Assistant Executive Engineer Grade-I under S.T. (general) category as initial appointment instead of Assistant Engineer and grant him consequential benefits.

2. The applicant has submitted that his cause of action is continuing one and therefore, within limitation of time prescribed by S.21 of the Administrative Tribunals Act, 1985. However, the Registrar of this Tribunal had recorded objection on point of Limitation vide his noting dated 30.09.2015. After giving several chances to the applicant to file Miscellaneous Application for condonation of delay, finally the same was filed as M.A. No. 163/2016 which was allowed by single judge bench of this Tribunal vide order 21.10.2016 [Coram: Hon'ble Justice (Retd) Shri A.H. Joshi , Chairman, placed before (single Bench due to non-availability of Division Bench)] relevant part of which reads as follows-

“ 3. Applicant has stated in paragraph 5 of the M.A. that seniority list has been published on 20th May, 2015. This aspect has not been dealt with in the affidavit in reply.

4. This attitude of evasive reply on the part of the respondents only proves higher skill in dishonesty than honesty. Such an attitude deserves to be abhorred and deprecated. This Tribunal is, therefore, satisfied to grant declaration in favour of the applicants prayed in clause “A” of the M.A. that there is no delay in filing the Original Application.

5. Objection of delay, if any, raised earlier is overruled. M.A. is allowed and disposed of accordingly with no order as to costs.”

3. **Facts of the matter:-** Facts as put up by the applicant, may be summed up as follows: -

(a) The applicant was selected by Maharashtra Public Service Commission (in short 'MPSC') under selection process carried out in the year 1999 for which public notice was issued by MPSC on 12.02.1999 (Annexure 'A-4', page-69 of paper book). Accordingly, the applicant was issued appointment order by Public Works Department GR No. जीएबी-२००२/प्र.क.२२/सेवा-२ मंत्रालय, मुंबई-४०० ०३२, dated 25.01.2002.

(b) On completion of 12 years' regular service as Assistant Engineer, his pay scale as on 1.4.2014, was Rs. 15600-39100, grade pay 5400, therefore, he was given benefit of Modified Assured Career Progression Scheme to pay scale of Executive Engineer of Rs. 15600-39100, grade pay Rs. 6600 w.e.f. 1.4.2014.

(c) The applicant further submits that those who had been selected and appointed as Assistant Executive Engineer initially, they had been promoted as Executive Engineer on temporary basis in May 2006 upon some posts of Executive Engineer falling vacant on 'ad-hoc basis' for reason like, regular incumbent being on leave etc. He has claimed that he too, could have got promotion to the post of Executive Engineer in the year 2006 instead of getting time bound non-functional promotion in year 2014, had he been selected as Assistant Executive Engineer instead of Assistant Engineer and so appointed in year 2002. He has claimed that initial selection as Assistant Executive Engineer was his right as elaborated in following paragraphs.

(d) The applicant has not submitted entire merit list of candidates who were selected for the post of Assistant Executive Engineers and Assistant Engineer in the three departments namely, Public Works Department, Water Resources Department and Maharashtra Jeevan Pradhikaran, instead, he appears to have made effort to substantiate his claim to the post of Assistant Executive Engineer by means of a limited analysis with reference to the merit position of the two other candidates under S.T. Category who were high in seniority as compared to his own merit position as follows: -

Sr.No.	Post for which selection made and quota	Name of candidates	Marks	Remarks
1.	Assistant Executive Engineer (ST General)	Dabe Ujjwal Jagde	377	
2.	Assistant Executive Engineer (ST Female)	Dighorikar Anita Anandrao	206	

3.	Assistant Engineer (ST general)	Parate Ravikumar Gajanan	344	
4.	Asst. Engineer (ST general)	Bagul Dinishkumar Budha	273	
5.	Asstt. Engineer (female converted to open seat (Female))	Hedaoo Namdeo Adakuji	270	

(e) The applicant has submitted that one Ms. Dighorikar Anita Anandrao was recommended by MPSC but later on during the year 2004, her caste certificate was declared as invalid by the caste verification committee vide its report issued on 30.06.2004 based on committees decision dated 31.05.2004. The applicant has further submitted that the first candidate recommended for the post of Assistant Engineer P.W,D,) Grade 1, Class 1 under ST (general) category namely, Shri Parate Ravikumar Gajanan had declined to join on the post of Assistant Engineer, therefore, he may be treated as unavailable for appointment to the post of Assistant Executive Engineer, P.W.D.

(f) Based on the above analysis, the applicant claims his first appointment as Assistant Executive Engineer, P.W.D. with effect from the date of his appointment as Assistant Engineer i.e. from year 2002. He has further claimed his promotion as Executive Engineer on temporary basis w.e.f. May 2006 along with a number of other Assistant Executive Engineers.

(g) By an additional affidavit filed on behalf of the applicant on 06.12.2016 the applicant had stated that he had been promoted to the post of Executive Engineer on pay band of 15600-39100, Grade Pay of Rs. 6600 by an order dated 30.07.2016, therefore, his grievance made under prayer clause (B) stands satisfied so far as promotion

simpliciter is concerned. Therefore, his demand for deemed date of 12.05.2006 for promotion to the post of Executive Engineer and consequential benefits remains to be contested.

4. **Relief Prayed For:** The applicant has prayed for relief in terms of prayer clause which is reproduced verbatim as follows:-

“REMEDIES SOUGHT:

In view of the above circumstances, this Hon’ble Tribunal shall be pleased under section 19 of the Administrative Tribunals Act, 1985-

- A. *To direct the respondents to appoint the applicant on the post of Assistant Executive Engineer, Grade I, and grant deemed date of seniority on the same post and grant all consequent benefits including arrears of pay and deemed date seniority with effect from 01.04.2002 to the applicant.*
- B. *To direct the respondents to promote the applicant as Executive Engineer w.e.f. 12.05.2006 in parity with the candidates selected on the post of Assistant Executive Engineer Grade I vide advertisement dated 12.02.1999, and all consequential benefits.*
- C. *To direct the respondents to consider the claim of the petitioner for grant of deemed date of seniority and arrears of pay of the post of Assistant Executive Engineer Grade I w.e.f. 01.04.2000, pending hearing and final decision of this Original Application;*

D. Any other just and equitable relief for which the applicant is found to be eligible may kindly be passed in his favour.”

5. **Pleadings and Oral Submissions Made:-**

a. Affidavit in reply on behalf of Respondent No. 1 had been filed on 09.11.2016. The respondents have submitted in reply that though submission of only Caste Verification Certificate by candidate was not necessary for selection of a candidate of ST category, it is as per G.R. issued by Tribal Development Department dated 28.4.2001 that appointment order was not issued to Smt. Anita Anandrao Dighorikar and verification report from Caste Verification Committee was called for. The Respondent No. 1 has also submitted that there was no waiting list for the post of Assistant Executive Engineer. The respondents have further argued that the O.A. had been filed in the year 2016, therefore, it would not be proper to reopen selection process of year 1999, after such a long time gap. Moreover, by reopening the selection process selection of other candidates under category of Assistant Engineer may also have to be reopened to eliminate possibility of any better claim than that of the applicant.

b. The applicant by additional affidavit dated 2.12.2021 claimed parity with a case of Mr. Dinesh Narayan Nandanwar from 1994 selection for the post of Assistant Executive Engineer in which Mr. Nandanwar who is in waiting list. He was given appointment to the post of Assistant Executive Engineer on 27.2.1996 against vacancy

created by non-joining of a candidate namely Shri Prasad Prabhakar Doiphode selected in year 1994. However, the said promotion to Shri Nandanwar was granted pending W.P. No. 3062/1993 and O.A.No. 2332/93 filed by Mr. Nandanwar challenging cancellation of his Caste Validity Certificate.

c. The applicant had also filed a short affidavit through his Advocate, dated 06.12.2016 stating that he was promoted as Executive Engineer on 30.7.2016 and, therefore, his prayer be treated as limited to giving deemed date of promotion to the post of Executive Engineer as 12.5.2006. However, his promotion was given subject to outcome of W.P. No. 2797/2015 (Maharashtra State Vs. Vijay Ghogare etc.)

6. Analysis of Facts on record and Oral Submissions Made:

a. First of all the submission made by the applicant by additional affidavit dated 06.12.2016 is being examined for its context and correctness. He has submitted as follows-

“The applicant has been promoted to the post of Executive Engineer on pay band of 15600-39100, Grade Pay of Rs. 6600 by an order dated 30.07.2016, therefore, his grievance made under prayer clause (B) stands satisfied so far as promotion simpliciter is concerned. Therefore, his demand for deemed date of 12.05.2006 for promotion to the post of Executive Engineer and consequential benefits remains to be contested.”

b. Above submission made by the applicant does not seem to have correlation with his prayer clause (A) under which the applicant has prayed for passing order for his first appointment as Assistant Executive Engineer and

based on that, promotion from the post of Assistant Executive Engineer to the post of Executive Engineer with effect from year 2006. Therefore, this submission made by the applicant is factually incorrect and misleading.

c. It is apparent that by creating confusion in the above manner, the applicant had been able to introduce an element of ambiguity about nature of the application and cause of action. True cause of action that emerges from the facts on records and oral submissions made is that the applicant challenges correctness of his initial appointment as Assistant Engineer in the year 2002 and claims that he ought have been appointed initially as Assistant Executive Engineer. By making submissions by additional affidavit dated 06.12.2016, the applicant is attempting to paint a picture as if his prayer of initial appointment as Assistant Executive Engineer followed by promotion to the post of Executive Engineer stands fulfilled and only the issue of deemed date in parity with those who had been initially appointed as Assistant Executive Engineers is to be contested along with grant of consequential benefits. If this plea is admitted then the same may result into derailment of process of adjudication and miscarriage of justice.

d. Independent of inference drawn as mentioned in preceding paras, we now proceed to examine the correctness of the process adopted by the Maharashtra Public Service Commission (in short, "MPSC"). Let us recall that it was a common selection process for three departments, namely, Public Works Department, Irrigation Department and Maharashtra Jeevan Pradhikaran. There are vacancies under cadres of Assistant Executive

Engineers Group-A, Assistant Engineer, Group-A, Class-1 and Assistant Engineer (Civil) Group-B, Class-2. Allotment of department and cadre to successful candidates is to be done based on vacancy position in each cadre of each department taking into account social and horizontal reservations, rank of a candidate in final merit list and choice/ preference indicated by the candidate at some initial or intermediate stage of selection but before making recommendations of names for appointment. Normally, candidates with higher positions in merit list get allocated to the post of Assistant Executive Engineer, Group A in one of the three departments of their choice and balance may get allocated to the post of Assistant Engineer Group-A, Class-1 or Assistant Engineer (Civil) Group-B, Class-2. In such a situation, keeping a waiting list for higher ranking cadres is not possible as rest of the candidates with immediately lower rank than the selected candidate will prefer to be allocated a junior service instead of remaining in waiting list.

e. Matrix of allocation so prepared on completion of the first round of allocation needs to be kept undisturbed by not allowing lateral or vertical movements of selected candidates against any vacancy created subsequently, more so, after process of recommending names for appointment is complete. Unless, this process is adopted, there may be unmanageable chaos in allocation process. The gravity of the problem will be multi-fold in case of selection of candidates taking into account vertical and horizontal reservations.

f. In the present matter, the applicant is seeking appointment by vertical movement from cadre of Assistant Engineer to the cadre of Assistant Executive Engineer under ST category w.e.f year 2002 whereas; there was no notified vacancy available at the time of department and cadre allocation in the year 2002.

7. **Conclusion:** After considering facts on record and oral submissions made, we are of considered opinion that there is no merit in the Original application. Moreover, condonation of delay has been obtained by the applicant from single bench by putting facts in ambiguous manner and certain adverse observations had been passed by the Tribunal against the respondents without giving opportunity to be heard. Hence, following order:

ORDER

- A. The Original Application No. 845 of 2016 is dismissed for reason of being void of merit.
- B. Observations made by Single Bench of this Tribunal in para 4 its Order dated 21.10.2016 is, hereby, recalled.
- C. No Order as to Costs.

**(BIJAY KUMAR)
MEMBER (A)**

**(P.R.BORA)
VICE CHAIRMAN**