

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.157/2008.**

**AND**

**CIVIL APPLICATION NO.459/2017**

**(D.B.)**

Dhiren Chhabilal Ramteke,  
Aged about 41 years,  
Occ-Service,  
R/o 191, Milindnagar, Near NIT Office,  
Nagpur-17.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Water Resources,  
Mantralaya, Mumbai-32.
2. The Chief Engineer (Mechanical),  
Water Resources Department,  
Trimbak Road, Nasik-2.
3. The Superintending Engineer,  
Mechanical Circle, (C.P.),  
Nagpur.
4. The Executive Engineer,  
Mechanical Division, Nagpur.
5. Shri Nitin Dinkar Pote,  
Office of the Executive Engineer,  
Mechanical Division, Nanded.  
Near Mechanical Building, Workshop Area, Nanded.
6. Shri Rajendra Hari Chauhan,  
Executive Engineer, Hoist Design and  
Manufacturing Division, Dapodi, Pune.

**Respondents**

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Shri S.P. Palshikar, the learned counsel for the applicant.  
Shri P.N. Warjekar, the Ld. P.O. for respondent Nos. 1 to 4.  
None appeared for respondent Nos. 5 and 6.

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

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### **JUDGMENT**

(Delivered on this 10<sup>th</sup> day of November 2017).

Heard Shri S.P. Palshikar, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for respondent Nos. 1 to 4. None appeared for respondent Nos. 5 and 6.

2. The applicant in this case has prayed that the provisional seniority list dated 7.1.2005 of Assistant Engineers-II (Mechanical), Irrigation Department (Annexure-E) to the extent it relates to the seniority of respondent Nos. 5 and 6, be quashed and set aside. The applicant has also claimed that the promotion order dated 7.3.2008 issued by respondent No.1, thereby promoting respondent No. 5 to the post of Executive Engineer (Annexure A-1), be quashed and set aside and it be declared that the applicant is senior to respondent Nos. 5 and 6 in the light of Clause-4 of the combined appointment order dated 12.10.1995 issued by respondent No.1 and the applicant be kept on the top in the seniority list above respondent Nos. 5 and 6. He is also claiming deemed date of promotion to the post of Deputy Engineer

prior to the date on which respondent Nos. 5 and 6 have been promoted to the said post and grant him promotion to the post of Executive Engineer on the basis of such deemed date of promotion.

3. From the admitted facts on record, it seems that the applicant and respondent Nos. 5 and 6 came to be appointed as Assistant Engineers-II vide order dated 12.10.1995. The said appointment order is at page Nos.21 to 25 (both inclusive) of the O.A. As per original appointment order and as per the recommendation of MPSC, the applicant stands at Sr. No.16 whereas respondent Nos. 5 and 6 stand at Sr. Nos. 17 and 21 respectively. All newly appointed Assistant Engineers-II were to join within one month.

4. The applicant was working in Maharashtra State Electricity Board (MSEB) at the time of appointment and, therefore, he made an application and claimed two months' time for joining. Applicant was allowed to join after two months and accordingly he joined on 29.1.1996. Applicant was allowed to join as Assistant Engineer-II by the respondent authority on 17.1.1996 and immediately thereafter the applicant was relieved from MSEB and he joined as Assistant Engineer-II on 29.1.1996 and was posted at Wardha.

5. According to the learned counsel for the applicant, seniority list for the post of Assistant Engineers was first published on 7.1.2005 and in the said list, the applicant was shown at Sr. No.110 whereas

respondent No.5 was shown at Sr. No.103 and respondent No.6 was shown at Sr. No.97. In fact, as per appointment order and the recommendation of the MPSC, the applicant was senior to respondent Nos. 5 and 6, as already stated. In the meantime, though the applicant was due for promotion to the post of Deputy Engineer in 2002, he was not promoted. As against this, respondent Nos. 5 and 6 were promoted as Deputy Engineer on 12.1.2000, though they were junior to the applicant. Respondent Nos. 5 and 6 thereafter were promoted as Executive Engineer on 7.3.2008. These promotions were illegal and the applicant was not considered, even though he was senior to respondent Nos. 5 and 6 and even though he was permitted to join late.

6. It is submitted by the applicant that, he has passed qualifying examination for the post of Deputy Engineer in 2000. But he was appointed as Deputy Engineer and thereafter was promoted as Executive Engineer in 2014. It is stated that the next promotion for which the applicant and respondent Nos. 5 and 6 are due, is for the post of Superintending Engineer and if the applicant's seniority is not properly considered, the respondent authorities may promote the respondent Nos. 5 and 6 to the post of Superintending Engineer and, therefore, the applicant has also filed Civil Application No.459/2017 whereby he has claimed directions to respondent No.1 not to grant

further promotion as Superintending Engineer to either of respondent No.5 or respondent No.6 during the pendency of this O.A. and that the respondent No.1 be directed to consider applicant's representation within a time frame limit. With the consent of learned counsel for the applicant as well as the respondents, it was decided to consider the C.A. and the O.A. on merits.

7. The learned P.O. has invited my attention to the reply affidavit filed by the respondents. It is the case of the respondents that, the applicant was expected to join within one month on the post of Assistant Engineer-II. But he did not join within prescribed time limit and, therefore, he was kept below respondent Nos. 5 and 6 in the seniority list. It is stated that as per Rule 4 (2) (a) of the Maharashtra Civil Services (Seniority) Rules, 1982, the applicant was given appropriate placement in the seniority list and the said seniority list was never challenged by the applicant. The seniority list of Deputy Engineers (Mechanical) was published on 6.8.1999.

8. So far as the applicant's claim, it is stated that the applicant did not disclose the fact that he was employed in the MSEB. It is stated that as per Rule 4 (2) (a) of the M.C.S. (Seniority) Rules, 1982, *inter se* seniority of direct recruits selected in one batch of appointment to any post, cadre or service shall be determined according to their rank in the order of preference arranged by the Commission. However for

that purpose, a person recruited, has to join within 30 days. The Department published temporary seniority list of Assistant Engineers-II for the year 1999 vide circular dated 6.8.1999 and even though the applicant was kept at the bottom in his batch, the applicant never objected for such placement. On the basis of seniority list dated 6.8.1999, respondent Nos. 5 and 6 were promoted and their promotions have not been challenged by the applicant in this O.A. It is stated that at that time also, name of the applicant was considered for promotional post. But only three posts were available for Scheduled Tribe category and the applicant was juniormost and therefore, he was not selected for promotion.

9. According to the respondents, applicant's claim for deemed date of promotion has already been rejected by the Government vide letter dated 10.7.2008.

10. So far as applicant's claim for promotion as Deputy Engineer and Executive Engineer, it is stated that the Recruitment Rules have been published on 19.12.1970 for Maharashtra Engineering Cadre and separate rules for the post of Deputy Engineer (Mechanical) are published on 24.3.1980. As per Rule 5 of the said rules, appointment to the post of Deputy Engineer is to be made by promotion and by nomination in the ratio of 2 : 2, provided that vacancy

in the promotional quota shall be divided equally between Graduate Junior Engineer (Mechanical) and others.

11. It is stated by the respondents that, the applicant has directly applied for the post of Deputy Engineer under nomination quota. He was, therefore, appointed to the post of Deputy Engineer from nomination quota and not from promotional quota, whereas respondent Nos. 5 and 6 have been promoted from the quota of promotees. Respondent Nos. 5 and 6 were already promoted as Deputy Engineer vide order dated 1.12.1999 and they accordingly resumed their duties and as per seniority, they have been promoted as Executive Engineer. As already stated, their promotions have never been challenged by the applicant, as the applicant has left the service of Assistant Engineer-II and was relieved from the post of Assistant Engineer-II (Mechanical) on 31.10.2000. Thereafter he was appointed on nomination quota to the post of Deputy Engineer and this appointment of the applicant to the post of Deputy Engineer was fresh appointment.

12. The learned counsel for the applicant invited my attention to the appointment order which is at Page No.21 in respect of the applicant and respondent Nos. 5 and 6. From the said appointment order, it is clear that as many as 22 persons were appointed as Assistant Engineer-II including the applicant and respondent Nos. 5

and 6 and as per recommendation of the MPSC, the applicant stands at Sr. No.16 whereas respondent Nos. 5 and 6 stand at Sr. Nos. 16 and 21 respectively. The learned counsel for the applicant invited my attention to the application filed by the applicant dated 4.11.1995, a copy of which is at page No.32, from which it seems that the applicant requested the Superintending Engineer that he was unable to join within one month due to some certain unavoidable circumstances and, therefore, he requested two months time to join as Assistant Engineer.

13. The Assistant Superintending Engineer vide his letter dated 4.12.1995 forwarded the said letter to the Secretary, Irrigation Department, Mantralaya, Mumbai with intimation that the applicant was being allowed to join and accordingly the applicant resumed his duty on 29.10.1996. The applicant could not place on record the exact letter of permission whereby he was allowed by the Government to join late. However, it seems that the applicant was allowed to join under intimation to the Government. However, that itself will not mean that the applicant was allowed to join keeping intact his seniority.

14. Even for argument sake, it is accepted that the Superintending Engineer allowed the applicant to join the post of Assistant Engineer-II, fact remains that in the seniority list, the applicant was shown junior to respondent Nos. 5 and 6 in the year



1999. Not only that the respondent Nos. 5 and 6 were promoted to the post of Deputy Engineer in 2000 i.e. on 12.10.2000. In spite of said fact, the applicant neither challenged the seniority list of 1999 nor he has challenged the promotion orders of respondent Nos. 5 and 6 to the post of Deputy Engineer on 12.10.2000. In such circumstances, even if it is accepted that the applicant was allowed to join late and thereby his seniority should have been protected as against respondent Nos. 5 and 6, the applicant never challenged the seniority list of 1999 and the promotions of respondent Nos. 5 and 6 to the post of Deputy Engineer and, therefore, for the first time in 2008 the applicant cannot be allowed to challenge the promotion of respondent Nos. 5 and 6 to the post of Executive Engineer, since the seniority of respondent Nos. 5 and 6 in the seniority list of Assistant Engineers in 1999 and thereafter their promotion to the post of Deputy Engineer vide order dated 12.10.2000 was never challenged by the applicant.

15. So far as the promotion of respondent Nos. 5 and 6 to the post of Executive Engineer is concerned (dated 7.3.2008), it is material to note that the applicant has left his service as Assistant Engineer (Mechanical) prior to his appointment as Deputy Engineer. The applicant directly contested for the post of Deputy Engineer from nomination quota and he was appointed as Deputy Engineer and this appointment order was fresh order. The said order dated 12.10.2000

has been placed on record at Annexure-D at page Nos. 39 to 43 of the O.A. (both inclusive). Vide this order, as many as 33 persons were directly appointed to the post of Deputy Engineer, which includes the applicant. Thus, once the applicant has opted for direct recruitment from nomination quota to the post of Deputy Engineer, he cannot claim seniority on the basis of his appointment as Assistant Engineer. He has directly come from nomination quota and, therefore, he has no *locus standi* to challenge the promotion order of respondent Nos. 5 and 6 to the post of Executive Engineer dated 7.3.2008. Respondent Nos. 5 and 6 have been promoted to the post of Executive Engineer as per their seniority from the list of Deputy Engineers from the quota of promotes.

16. The learned P.O. has invited my attention to a detailed office note in this regard which is marked %%+ for the purpose of identification, it is dated 11.8.2011. In the said office note, all pros and cons of applicant's appointment as Deputy Engineer as well as the seniority of respondent Nos. 5 and 6 and that all the applicants have been considered and it was observed by the competent authority that since the applicant was directly appointed as Deputy Engineer from nomination quota, the rules of promotion from nomination quota are applicable to the applicant and, therefore, the applicant cannot claim deemed date of promotion to any of the posts as against the

promotion granted to respondent Nos. 5 and 6. I do not find any illegality in the promotion given to respondent Nos. 5 and 6 from promotional quota and for not considering applicant's case from the promotional quota.

17. The Recruitment Rules have been placed on record at Annexure A-2. These rules are called, %Executive Engineer (Mechanical) in the Maharashtra Service of Mechanical Engineers, Class-I (Irrigation Department) Rules, 1981. As per Rule 3, the appointment as Executive Engineer (Mechanical) shall be made by promotion of a suitable persons from amongst Deputy Engineers (Mechanical) in Maharashtra Service of Mechanical Engineers, Class-II of Irrigation Department who, (a) have put in not less than seven years non-fortuitous continuous service as the Deputy Engineer (Graduate) and ten years as the Deputy Engineer (non-graduate); (b) have passed the prescribed professional examination of Deputy Engineer (Mechanical) unless he has been exempted from passing that examination or the time to pass examination has been extended. Rule 4 says that the appointment to the post of Executive Engineer (Mechanical) from amongst the Deputy Engineers (Graduate) and from amongst the Deputy Engineer (non-graduate) shall be made in the ratio of 2 : 1. Since the applicant has opted for direct recruitment as Deputy Engineer, he cannot claim the seniority over respondent Nos. 5 and 6

for the post of Executive Engineer, since respondent Nos. 5 and 6 have been promoted from promotional quota.

18. Civil Application No. 459/2017 for direction as claimed by the applicant has no merit and hence it is rejected and stands disposed of accordingly.

19. On a conspectus of discussion in foregoing paras, I, therefore, do not find any merit in the case of the applicant. Hence, the following order:-

**ORDER**

- (i) O.A. as well as the C.A. stand dismissed with no order as to costs.

Dt. 10.11.2017.

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