

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.466/2008. (S.B.)

Ramdas Pandurangji Khodkumbhe,
Aged about 40 years,
R/o 103, Krishna Heights, Near Janata Bank,
Jatharpeth Chowk, Akola.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
2. The Chief Engineer,
Public Works Department,
Amravati Division, Amravati.

Respondents.

Shri M.M. Sudame, the learned counsel for the applicant.
Smt. S.V. Kolhe, the Ld. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 7th day of November 2017).

Heard Shri M.M. Sudame, the learned counsel for
the applicant and Smt. S.V. Kolhe, the learned P.O. for the
respondents.

2. The applicant is claiming that the communication dated 21.4.20108 issued by respondent No.1 whereby his claim for deemed date of promotion w.e.f. 1.12.2000 has been rejected be quashed and set aside and it be held that the applicant is entitled to the deemed date of promotion to the post of Executive Engineer w.e.f. 1.12.2000 and consequent financial benefits which shall be given to him.

3. From the admitted facts on record, it seems that the applicant participated in the recruitment process in pursuance to the advertisement at page 9 (Annexure A-I) for the post of Assistant Engineer, Grade-II (Maharashtra Service of Engineers, Class-II). It, however, seems that it took tremendous time for the recruitment process and in the meantime, the Government took a policy decision to appoint engineers on Class-I post instead of Class-II. Ultimately, the applicant was appointed vide order dated 27.2.1996 on Class-I grade for a period of two years on probation in the pay scale of Rs.2200-75-2800-EB-100-4000. He was appointed on O.B.C post.

4. Since the Assistant Engineer, Grade-II was upgraded and the applicant was appointed as Class-I officer, he was entitled to get promotion to the post of Executive Engineer in December 2000. However, he was promoted to the post of to the post of Executive Engineer on 22.8.2007. The applicant has, therefore filed

representation on 1.12.2008 and requested that he may be granted deemed date of promotion w.e.f. 1.12.2000 instead of 22.8.2007 as Executive Engineer. His request was, however, rejected vide impugned letter dated 21.4.2008 on the following grounds:-

श्रवणं कृतं करणीया संदभाकृत पणया अनुषंगाने कळवण्यात येते की, कायकार अभयंता (स्थापय) हे पद वगळण्या टाक्यावरल पद असयामुळे द. १४.१२.१९९५ ते द. २५ मे २००४ पर्यंत या पदावर पदोन्नतीसाठी आरण लागू नहते. यामुळे सन २००० मये पी. खोकुंभे यांचा मागासवर्ग आरण पातून पदोन्नतीसाठी वचार होऊ शकत नाह तसेच सन २००० मये पी. खोकुंभे हे येठलेनुसार खुया वगातून पदोन्नतीया वचारतात येत नसयामुळे व यांचे कोणीह सेवा कळठ यांया अगोदर पदोन्नत झालेले नसयामुळे यांना द. १.१२.२००० हा कायकार अभयंता पदावरल पदोन्नतीचा मानीव दनांक देय होत नाह ह बाब पी. खोकुंभे यांना आपया तरावर कळवण्यात यावी, ह वनती.”

5. Plain reading of the aforesaid communication shows that according to the respondents, even though the applicant was appointed as Assistant Engineer Grade-I in Class-I cadre, his post was on the second step. As per rules, no reservation is applicable in the first step of promotion and, therefore, the applicant was not entitled to be considered for promotion from 14.12.1995 to 25.5.2004. The applicant was, therefore, not to be considered from reserved quota in 2000 and, therefore, he was not promoted in 2000. It is further stated that the applicant could not give even a single example to show that

any of his junior was promoted on 1.12.2000 or prior to the applicant and, therefore, there is no question of granting deemed date of promotion to him.

6. Affidavit in reply has been filed by the respondents, in which it is stated that the applicant claims that he is entitled to get promotion to the post of Executive Engineer after completion of seven years on the post of Assistant Engineer, Class-I, is incorrect. Mere completion of seven years service as Assistant Engineer, Class -I will not make him eligible. It is stated that Assistant Engineers, Class-I were appointed as Class-II earlier. But the applicant has been appointed as Assistant Engineer, Grade. I (Class-I). As per policy decision taken vide G.R. dated 14.12.1995, as per para 6.2, the applicant was not entitled for promotion to the post of Executive Engineer in December 2000. As per G.R. dated 28.1.1975, the first promotion to Class-I post is required to be given by considering the seniority and ensuring percentage of reservation for certain sections of Backward Classes. As per G.R. dated 14.12.1995, feeder cadre i.e. Deputy Engineer, Assistant Engineer, Grade. I, Sub-Divisional Engineer and Sub-Divisional Officer are the feeder cadres for promotion to the post of Executive Engineer, stage-I and thereafter the Executive Engineers post became the stage of promotion to Class-I cadre. For the first promotional stage, reservation is not applicable. It

is stated that after 14.12.1995, the post of Executive Engineer became the second stage of Class-I post and, therefore, reservation for promotion is not applicable. It is stated that the applicant has also filed earlier O.A. No.380/2005 for getting promotion to the post of Executive Engineer and the same was pending. From the record, however, it seems that the said O.A. has been dismissed on 10.4.2015. It was dismissed for want of prosecution. Record of the said O.A. was brought before this Tribunal for perusal and in the said O.A., the applicant as Assistant Engineer, Grade. I requested for directions to respondent Nos. 1 and 2 to follow the provisions of Rule 4 of the Rules, 1983 while making promotion to the post of Executive Engineer for the years 2005-2006. In the said O.A., however, the applicant has not claimed promotion to the post of Executive Engineer from December 2000.

7. The learned counsel for the applicant submits that even though the recruitment process was undertaken by M.P.S.C. in 1992, process was completed and name of the applicant was recommended by M.P.S.C. on 30.9.1994 and thereafter there was a policy decision taken by the Government to upgrade the posts of Assistant Engineer, Class. I (Grade-II) as Assistant Engineer, Class-I (Grade. I) and it is an admitted fact that the applicant was ultimately appointed as Assistant Engineer, Class-I (Grade. I), but in the year

1996. From the record, it seems that the said fact has been considered by the Government and, therefore, the Government while declaring the seniority list of Assistant Engineer, Class-I (Grade. I) in between 1.4.1990 to 31.3.2000 has considered the delay and seems to have corrected the deemed date of appointment of Assistant Engineers. The said list is placed on record alongwith a Resolution to that affect at Annexure-IX (Pages 75,76 to 80,81 (both inclusive) or 71 to 76 (both inclusive). It is material to note that, in this seniority list, name of the applicant stands at Sr No. 48 and his date of appointment though is 27.2.1996, it is shown as 1.12.1993.

8. Even for argument sake, the defence is taken into consideration that there was no reservation policy for promotion of Assistant Engineer, Class-I (Grade. I) to the post of Executive Engineer for initial stage, the applicant was not entitled to the promotional post as Executive Engineer, since he has not completed the qualifying service in the year 2000. It seems that his actual appointment order seems to have been considered for the purpose of considering the period of service and not the deemed date of his appointment, which is 1993. As per Rule 29 of the Appointment of Maharashtra Service of Engineers, Class-I and Class-II, Procedure and Rules published on 19th December 1970 (Annexure A-VIII) to be eligible for promotion as officiating Executive Engineer, the Minimum

Service Recruitment shall be four years as Assistant Engineer, Class-I (Grade. I) and, therefore, for the first promotion, the applicant should have been considered on merit after four years and thereafter as per his claim for reserved category. Had the respondents considered the deemed date of appointment of the applicant as 1.12.1993, the applicant may not have been considered for promotion immediately after completion of four years, but on merit the possibility that he might have been considered four years after the date of actual appointment i.e. 27.2.2000, if his actual date of appointment is considered as 27.1.1996.

9. In my opinion, the respondent authorities have not considered the aspect that the applicant was not given appointment of Assistant Engineer, Class-I (Grade. II), though he applied for the said post. Had he been considered for appointment as Assistant Engineer, Class-I (Grade. I), the applicant might have been eligible for the benefit of Rules. Rules 14 and 15 of the Seniority of Executive Engineers, Assistant Engineers, Deputy Engineers in the Maharashtra Service of Engineers consisting of Class-I and Class-II (hereinafter referred to as ~~the~~ Maharashtra Service of Engineers) is determined in accordance with the rules contained in the Govt. of Maharashtra, Irrigation and Power Department, Resolution No.GAB-1070-E(I), dated 19th December 1970

(hereinafter referred to as the Rules of 1970) w.e.f. the 21st December 1970).

10. It is, however, pertinent to note that the applicant was benefitted by the Government for being appointed as Assistant Engineer, Class-I (Grade. I) and not Class-I, Grade-II and the applicant never opted for such upgradation. It is material to note that in the earlier O.A., the applicant has claimed promotion on the basis of Rule 4 of Rules, 1983 of Executive Engineers and Assistant Engineers belonging to Maharashtra Service of Engineers, Class-I and Maharashtra Service of Engineers, Class-II (Regulation of Seniority and Preparation of Revision of Seniority List) Rules, 1983. But he did not pursue the said petition for the best reasons known to him. It, however, seems to be the fact that the applicant's case has not been considered properly as regards his deemed date of appointment to the post of Assistant Engineer, Grade-I. There might be some difference at that the deemed date should have been considered by the respondents.

11. The learned P.O. rightly pointed out that the applicant could not place on record any evidence to show that any of his juniors have been promoted as on 1.12.2000 i.e. prior to him and, therefore, there is no question of granting deemed date of promotion asked by the applicant. However, I am of the opinion that the representation

filed by the applicant for getting deemed date of promotion has not been considered with a proper perspective. His representation should have been considered alongwith the fact that the applicant was granted deemed date of appointment i.e. 1.12.1993 to the post of Assistant Engineer, Class-I as per the Circular dated 5.7.2001 and the seniority list annexed with the said Circular for the post of Assistant Engineer, Class-I (Grade-I) in between 1.4.1990 to 31.3.2000. It is also necessary to be considered as to whether even the Assistant Engineer, Class-I (Grade-I) is required to be first promoted to the post of Assistant Executive Engineer as per the G.R. dated 14.12.1995 (Annexure R-1). The respondents also have to consider the applicability of various G.Rs such as Notification of Irrigation Department dated 7.4.1983 (Annexure-X), G.R. dated 14.12.1995 (Annexure R-1), G.R. dated 19.12.1970 and G.R. dated 28.1.1975 (Annexure-VI). All these aspects are not considered.

12. In view of discussion in foregoing paras, I am satisfied that the impugned communication dated 21.4.2008 (Annexure-V) issued by Desk Officer (R.1) to the Chief Engineer, P.W.D., Amravati is not legal and proper. Hence, the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) Respondent No.1 is directed to consider the representation submitted by the applicant dated 5.2.2008 with a proper perspective considering all pros and cons discussed in this order.
- (iii) After considering all relevant Circulars, Rules, Regulations and G.Rs, deemed date of appointment granted to the applicant from 1.12.1993, appropriate decision shall be taken as per Rules and Regulations within a period of six months from the date of this order, without being influenced by any of the observations made in this judgment / order.
- (iv) No order as to costs.

Dt. 7.11.2017.

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

