

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

AURANGABAD BENCH, AURANGABAD.

ORIGINAL APPLICATION NO.572/2015.

Subhash Gopinath Chavan,
Aged about 59 years,
Occ-Nil, Retired,
R/o 56, Alankar Housing Society,
(Near Essar Petrol IPump), Pundlik Nagar Road,
Garkheda Parisar, Aurangabad.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-32.
2. The Superintending Engineer,
Public Works Circle, Aurangabad.

Respondents.

Shri Ajay Deshpande, the learned counsel for the applicant.
Shri S.K. Shirse, the Ld. P.O. for the respondents.

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

Dated:- 22nd September 2017.

Order

Heard Shri Ajay Deshpande, the learned counsel for the applicant and Shri S.K. Shirse, the learned P.O. for the respondents.

2. The applicant is a diploma holder Civil Engineer since 21.3.1983. He was terminated vide order dated 31.7.1987 as there was excess staff. Vide G.R. dated 6.12.1989, (Annexure R-1), the

Government decided to absorb the diploma holder Civil Engineers on certain conditions. As per condition No.2 of the said G.R., the Civil Engineers were to be absorbed and given fresh appointment, but as per their seniority. As per condition No. 9 of the said G.R. the Civil Engineers were to join within 15 days from the date of issuance of the order and in case they did not join within 15 days from the said order, their appointment stands cancelled. As per condition No.10, those Civil Engineers who joined within 15 days from the date of the order, were entitled to retain their *inter se* seniority.

3. The applicant was appointed accordingly vide order dated 22.12.1989. One Shri Salve who was junior to the applicant was also absorbed. The applicant requested that his seniority shall be maintained as against Shri Salve who was junior to the applicant and, therefore, he requested that deemed date of joining to be given to him ahead of Shri Salve.

4. Since the applicant's name was not considered, the applicant preferred O.A. No. 18/2012 before the Tribunal at Aurangabad. His O.A. was dismissed and, therefore, being aggrieved by the said order of dismissal, he preferred W.P. No.6913/2012 before the Honble High Court. The said writ petition came to be disposed of vide order dated 17.4.2014 by the Honble High Court. Since the learned counsel for the applicant made a statement that the applicant

will submit representation and will make himself available for personal hearing before respondent No.4, respondent No.4 was, therefore, directed to decide the representation within eight weeks from the date of filing fresh representation.

5. In consequence of the said representation and in view of the order passed by the Hon'ble High Court, the Superintending Engineer (R.2), PWD, Aurangabad decided the representation vide communication dated 25.8.2014. In the said communication, the respondent authorities have admitted that Shri Salve was junior to the applicant and the specific observation in this regard is as under :-

“कपरोत तपशलावण ढी. ए. डी. साळवे हे कायवेयी ढथापनेवर ढ. १ॢ.ॡ.१ॡॢ३ पासून कायशत होते. ढयामुळे संदभअय शासन ढ. १ व २ अवये ढी. एम. सी. मोरे यांया ऐवजी ढी. ए. डी. साळवे यांची कअणठ अअयंता यापद ढनयअत अथायी अथापनेवर ढनयुती होणे आवयक होते. तथाप ढी. एम. सी. मोरे हे ढी. ए. डी. साळवे यांयापेा कअणठतम असयामुळे ढी. ए. डी. साळवे यांना ढी. एम. सी. मोरे यांया नेमणूक ढनांकाया अगोदरचा ढहणजेच ढ. २ॡ.२.१ॡॢॡ हा मानवी ढनांक मंजूर करयात येतो. सोबतया ढपात दशावयामाणे ढी. ए. डी. साळवे यांचे योय ते ढथान शासन पअपक ढ. ढयेठता-१ॡॡॡ/सी.आर.-३ॡ/भाग ढ.२-/आथापना-१ ढ. १.ॢ.२००१ मये समावट करयासाठ ढतावत करयात येते.”

6. The applicant was accordingly granted deemed date of seniority w.e.f. 27.2.1984. After getting deemed date of promotion as Junior Engineer w.e.f. 26.2.1984, the applicant filed representation on 26.12.2014 addressed to respondent No.2 and claimed that he be elevated to the post of Sectional Engineer w.e.f. 1.4.1989 and extension of first time bound promotional benefit be given to him on 1.4.2001 and the second benefit under the time bound promotional scheme be extended to him on 1.4.2013 in the cadre of Executive Engineer. He also claimed for revision of pay and pensionary benefits. Since no decision was taken in this regard, the applicant has filed the O.A. and claimed the said reliefs.

7. During the pendency of the O.A., the applicant has received communication from respondent No.1 dated 20.10.2016 which was addressed to respondent No.2 whereby the deemed date assigned to the applicant w.e.f. 25.8.2014 was cancelled. The applicant, therefore, amended the O.A. and has claimed the relief as per amended relief clause 17 (B-1) which is as under:-

The communication of respondent No.1 dated 20.10.2016 addressed to respondent No.2 age pages 53-55, thereby claiming to have cancelled the deemed date assigned to the applicant vide Annexure A-1 dated 25.8.2014 may kindly be quashed and set aside by directing the respondents to extend all

consequential benefits flowing therefrom, including difference of pay and the benefits under the Time Scale Promotion Scheme, with resultant upward revision of pension and pensionery benefits.+

8. From the facts aforesaid, it is clear that initially the applicant was granted deemed date of promotion w.e.f. 26.2.1984 i.e. the date on which applicant's junior was granted such benefit and when he claimed all the benefits from 1.4.1989 and subsequent deemed date of promotion from 1.4.2001 and 1.4.2013, earlier deemed date granted to him was cancelled, that too during the pendency of the O.A.

9. Respondent Nos. 1 and 2 have resisted the claim by filing affidavit in reply on 26.12.2016. Prior to that, preliminary objection was filed on behalf of respondent No.2 opposing admission of the O.A. on 10.8.2016. It is material to note that, both these affidavits have been sworn in by one Shri A.S. Shinde, working as Deputy Engineer in the office of Executive Engineer, Road Project Division, Jalna.

10. The learned counsel for the applicant submits that in the earlier affidavit objecting admission of the O.A., respondent No.2 has admitted all the claims of the applicant. In the said affidavit which is at page Nos. 13 to 18 (both inclusive), it is stated by respondent

No.2 that the deemed date was granted to the applicant as per the order of the Honble High Court and a proposal to grant him the post of Sectional Engineer w.e.f. 1.4.1989 was in process. In para 10 of the said affidavit, it is stated that the element of financial benefit under the Time Scale Promotion Scheme is possible only after decision of grant of post to Sectional Engineer and the same will be decided at the Government level.

11. Vide representation dated 26.12.2014 (Page Nos. 10 to 12) (both inclusive), the applicant has claimed that he has completed five years of service on 1.4.1989 and, therefore, it is necessary to appoint him as Sectional Engineer (Class-II) (Junior Scale) w.e.f. 1.4.1989. Thus, as per affidavit in reply of respondent No.2, the claim of the applicant was under consideration and it was stated that it will be decided in due course. However, instead of deciding applicant's claim as per the said representation, respondent No.1 has reviewed the earlier deemed date of promotion granted to the applicant and straightway cancelled the order dated 25.8.2014. This order dated 25.8.2014 was cancelled subsequently during the pendency of this O.A. vide communication dated 20.10.2016. The said communication is at page Nos. 53 to 55 (both inclusive). Relevant decision taken by respondent No.1 is as under:-

श्री. उच्च न्यायालयाने पी. चव्हाण यांना मानीव देणांक देण्यात यावा असे आदेश दिलेले नाहीत. तसेच, सा. नं. व्रभाग शासन जणख द. ६.६.२००२ मधील तरतुदनुसार गट-अ व गट-ब पदावरल आधकायाना मानीव देणांक देण्याबाबतचे अधिकार शासनास आहेत यानुसार प्राप्त तावाची तपासणी कर शासनाने व्रहत केले या जयमानुसार मानीव देणांक मंजूर अथवा नामंजूर करणाची कायद्याह शासनतरावण होते. ह बाब व्रचारात घेता, मा. उच्च न्यायालयाया आदेशानुसार अधक अभयंता, सा. बां. मंडळ, औरंगाबाद यांनी पी चव्हाण यांया मानीव देणांक करणी जणख घेयाकरता पप्रणताव शासन मायतव सादर करणे आवयक होते. मा तुत करणी परपरया अधक अभयंता, सा. बां. मंडळ, औरंगाबाद यांनी यांचे कायलयीन आदेश नं. ८४६ द. २५.८.२०१४ नुसार पी चव्हाण यांना द. २६.२.१०९४ हा मानीव देणांक मंजूर केला आहे. सदरची कायद्याह पूणणे चुकणी आहे. This act on the part of S.E. is ultra vires i.e. beyond his powers and hence it is invalid.

४. पी. चव्हाण यांया करणाची वतुथिती पुढाणमाणे आहे:-

(४.१) पी. एस. जी. चव्हाण यांना रो.ह.यो.अंतगस कायययी आथापनेवर काणठ अभयंता (थापय) पदावर द. २१.२.१९८३ या आदेशावये द ता व गुण जयण मंडळ, औरंगाबाद यांनी थम जयुती दल आहे. सदर जयुती ह काययेयी आथापनेवरखाया व्रशाठ कामाकरता व सदर काम संपयानंतर यांया सेवा समात करयात येतील या अटया अधीन राहून करयात आल होती. सदर पदावर पी. चव्हाण हे द. २१.३.१९८३ रोजी जू झाले.

(४.२) पी. चव्हाण यांची रो.ह.यो.अंतगस या कामाकरता जयुती करयात आल होती ते काम संपयानंतर यांया सेवेची आवयकता नसयामुळे यांया जयुतीया आदेशातील अटनुसार यांया सेवा ३०.६.१९८७ रोजी समात करयात आया. तसेच पी चव्हाण यांचे णाणेच रो.ह.यो.अंतगस कामाकरता कायययी आथापनेवर जयुत करयात आलेया अनेक अभयंयांया सेवा ३१.७.१९८७ रोजी समात करयात आया.

(४.३) प्यानंतर या अभयंयांया सेवा ३१.७.१९८७ रोजी समाप्त करण्यात आया होया अशा अभयंयांना पुनर्ज्युती देयाबाबतचा जणश शासनाने द. ६.१२.१९८९ या आदेशावये घेतला. सदर आदेशावये पुनर्ज्युती देयात आलेया अभयंयांया सेवा या पूणतया नवीन असून यांनी यापूव कायययी आथापनेवर केलेया सेवेचा लाभ देय असणार नाह अशी अट नमूद करण्यात आल आहे. सदर शासन जणशातील तरतुदनुसार अनेक अभयंयांना पुनर्ज्युती देयात आल

(४.४) कायययी आथापनेवरल अभयंयांया सेवा समाप्तकेयानंतर यांना नयाने पुनर्ज्युती देयाबाबत जगमत केलेया सा. बां. वभाग शासन जणश द. ६.१२.१९८९ मधील अट पुढलमाणे आहेत:-

अट ३:- कजठ अभयंयांया अथायी आथापनेवरल नेमणुका पूणपणे नवीन नेमणुका राहतील व यांना कायययी आथापनेवर पूव केलेया सेवेचा कोणताह लाभ जळणार नाह

५. उपरोत अट वचारात घेता पी. एस. जी. चहाण यांया सेवेतील द. ३१.७.१९८७ ते ३१.१२.१९८९ या कालावधीतील सेवाखंड मामत कन ज्युतीचा मानीव दनांक देता येणार नाह ह बाब वचारात घेता सदर पवारारे पी. एस. जी. चहाण यांना आपया द. २५.८.२०१४ या आदेशानुसार मंजूर केलेया मानीव दनांकराद करण्यात येत आहे.

उपरोत वतुथिती वचारात घेता पी. चहाण यांनी महारा शासकय यायाधकरण, औरंगाबाद येथे दाखल केलेया मूळ अज . ५७२/२०१५ या अनुषंगाने पय कायालयाकडून दाखल करण्यात आलेले शपथप देखील चुकडे असून आता वरलमाणे पी चहाण यांया मानीव दनाकाचे आदेश राद झायाने सदर बाब मा. यायाधीकरणाया जदशमास आणून पूव दाखल केलेले शपथप ताकाळ Withdraw करण्यात यावे व सुधारत शपथप दाखल करयाकरता मा. यायाधीकरणाकडून ४ आठवयांची मुदतवाढ घेयात यावी.”

12. From the aforesaid facts, it is clear that respondent No.1 seems to have interpreted the order passed by the Tribunal and the High Court and stated that the Tribunal and the High Court did not pass any order granting deemed date of promotion to Shri Chavan i.e. the applicant. This order seems to be totally contradictory to the earlier order.

13. In order to justify the order dated 20.10.2016, the respondent Nos. 1 and 2 have filed totally contradictory affidavit on 20.12.2016 i.e. on the very date on which the respondent No.1 passed the order cancelling deemed date of promotion granted to the applicant w.e.f. 25.8.2014.

14. In para 5 of the reply affidavit filed on 20.12.2012, respondent Nos. 1 and 2 have referred to the order passed in W.P. No. 6913/2012 by the Hon^{ble} High Court on 17.4.2014. Vide said order, the respondent No.4 was directed to decide the representation within eight weeks from the date of filing fresh representation. It is stated that the Superintending Engineer, Public Works Circle, Aurangabad granted deemed date w.e.f. 26.2.1984 to the applicant. However, such power is not vested in the Superintending Engineer, but it is vested in the Government and, therefore, act on the part of the Superintending

Engineer is *ultra vires* i.e. beyond its powers and hence invalid. It is stated that the applicant was re-appointed freshly on 29.12.1989 as per the condition mentioned in the G.R. dated 6.12.1989 and was wrongly granted deemed date of promotion w.e.f. 21.3.1983 vide order dated 25.8.2014 and, therefore, the order was cancelled by the Government. The respondents are, therefore, trying to submit that the Superintending Engineer was having no authority to grant deemed date of promotion. Admittedly, the Superintending Engineer is an appointing authority in case of the applicant. The learned P.O. has invited my attention to one G.R. issued by the Govt. of Maharashtra dated 15.2.1977. Copy of the said G.R. is at page Nos. 70 to 75 (both inclusive). In para 1 (vi) of the said G.R., it is stated as under:-

The deemed dates will be actually assigned by the concerned Superintending Engineers or other appointing authorities and the same intimated to the Govt. Their ranks in the State-wide seniority list, will, therefore, be fixed by Govt. on the basis of such deemed dates.

15. This clearly shows that the Superintending Engineer was assigned the powers to grant deemed date of promotion. It, therefore, cannot lie in the mouth of the respondents that the Superintending Engineer was having no authority to grant deemed

date of promotion. The learned counsel for the applicant also pointed out that earlier the order in respect of Shri Salve at page Nos. 66 & 67 (both inclusive) granting deemed date of promotion to Shri Salve by the Superintending Engineer himself and the same has been acknowledged by the Government vide letter dated 25.11.2004, a copy of which is placed at page No.69. All these facts clearly show that the Superintending Engineer has power to grant deemed date of promotion and there was absolutely no reason for respondent No.1 to review the order passed by the Superintending Engineer on 25.8.2014.

16. Now, as regards claim of the applicant which was duly granted by the Superintending Engineer is concerned, it is material to note that admittedly the applicant was appointed as Sectional Engineer on 22.12.1989. It is an admitted fact that, Shri Salve was junior to the applicant. It is also an admitted fact that, the applicant as well as Shri Salve became surplus as Sectional Engineers and were removed from service. They were re-appointed as per G.R. dated 6.12.1989 (Exh.R-1). The G.R. has been placed on record at page Nos. 34 to 36 (both inclusive). As per the material condition mentioned in the said G.R., it was decided that the Engineers who were in excess, shall be absorbed as per their seniority and even though they were to absorb on subsequent dates as per availability, while re-appointing them, their *inter se* seniority on the date of

termination of their services, was to be maintained. It was specifically mentioned in the said G.R. that those who are appointed, will have to join within 15 days and in case any of them did not join within 15 days, his / her appointment order will stand cancelled. It was also stated that in case a person joins within 15 days from the date of appointment, his *inter se* seniority will be maintained. Admittedly, the applicant was senior to Shri Salve. The applicant joined earlier to Shri Salve i.e. within 15 days from the date of order and, therefore, in all respects applicant's seniority should have maintained. It was, however, not maintained and, therefore, applicant was required to file representation and, therefore, the O.A. and ultimately got justice by the Hon'ble High Court and in view of the said order of the High Court, the Superintending Engineer was pleased to grant him deemed date of promotion earlier to Shri Salve. There was absolutely no reason to review that order. However, for no reason, respondent No.1 seems to have reviewed the order passed by the Superintending Engineer that too during the pendency of the O.A. The action taken by respondent No.1 vide impugned order dated 20.10.2016 is, therefore, absolutely illegally and is against the provisions of the G.R. dated 6.12.1989. In fact, the respondents should have considered the representation filed by the applicant with a proper perspective.

17. On a conspectus of discussion in foregoing paras, I proceed to pass the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The communication issued by respondent No.1 dated 20.10.2016 addressed to respondent No.2 (Pages 53 and 54) (both inclusive) thereby cancelling the deemed date assigned to the applicant vide Annexure A-1 dated 25.8.2014 stands quashed and set aside.
- (iii) The respondents are directed to take a decision on the representation filed by the applicant on 26.12.2014 (Pages 11 and 12) (both inclusive) **within a period of three months** from the date of this order and shall extend the benefit of first and second Time Bound Promotional Scale to the applicant, if admissible therefor and shall also consider the revised pension and pensionery benefits of the applicant, if admissible in view of the said representation.
- (iv) In view of the fact that respondent No.1 has cancelled the deemed date of promotion

assigned to the applicant (Annexure A-1) dated 25.8.2014 without any reasonable cause, respondent No.1 shall be cost of Rs. 2,000/- to the applicant.

(v) No order as to costs.

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

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