

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS NO 709 & 733 OF 2015

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO 709 OF 2015

Shri Nana Shankar Chavan)
Occ : Government service,)
R/at: Flat No. 6-A, Krishna)
Residency Apartment, P & T Colony,)
Nasik 422 005.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
2. Secretary,)
General Administration Dept,)
Mantralaya, Mumbai 400 032.)...**Respondents**

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2) ORIGINAL APPLICATION NO 733 OF 2015

Shri Nandkishor Kamalakar Misal)
Occ : Government service,)
R/at: Flat No. 8, Vyankatesh Apt.)
Gunjal Galli, Ahmednagar 414 001)...**Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
2. Secretary,)
General Administration Dept,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicants.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 05.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. The Applicants in these Original Applications were promoted as Sub-Divisional Engineers in Maharashtra Engineering Service Group 'A' from the post of Assistant Engineer (Civil), Grade-II by order dated 20.6.2015. The Applicants were working in Public Works Circle, Nasik and as per Revenue Division Allotment for appointment by nomination and promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 were allotted to Nagpur Division.

4. Learned Counsel for the Applicants argued that both the Applicants on promotion to Group 'A' post of Sub-Divisional Engineer were allotted to Nagpur division as per Divisional Allotment Rules, 2015. The impugned order dated 20.6.2015 has appendix 'A' (परिशिष्ट) containing the names of 105 persons who were promoted. At Sr. No. 22, name of one Shri Sanjay

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Maniram Nagdev is there, who was allotted to Nasik Division. Name of the Applicant in O.A no 709/2015 is at Sr. No. 50, while that of the Applicant in O.A no 733/2015 is at Sr. No. 29. Shri Nagdev, whose name appears at Sr. No. 22 had already retired from Government service on 31.5.2015, while the impugned order was issued on 20.6.2015. Learned Counsel for the Applicants contended that if the name of Shri Nagdev is removed from the list, both the Applicants would be allotted to Nasik division as per 2015 Rules. Learned Counsel for the Applicants argued that there are vacancies in the cadre of Deputy Engineer in Nasik division and the Applicants can be easily accommodated there.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that Shri Nagdev had given notice of voluntary retirement on 12.2.2015 and his case was handled in Mantralaya by the Desk dealing with establishment matter of Assistant Engineer, Grade-II. The matter regarding promotion to the post of Sub-Divisional Engineer is handled by another Desk. As Shri Nagdev had sought voluntary retirement, it was not certain that he would retire from service on 31.5.2015. He could have withdrawn his notice of voluntary retirement or his notice might not have been accepted by the Competent Authority. As such, it was not possible to withdraw the name of Shri Nagdev from the list of

candidates, who were to be promoted as Sub Divisional Engineer. If a person was to retire on superannuation, the case would have been dealt with differently. Learned Presenting Officer argued that if the name of Shri Nagdev is now deleted and divisional allotment is worked out afresh, it will affect a large number of persons. Practically the whole allotment would be required to be done afresh. Many of them approaching this Tribunal cannot be ruled out. This will lead to needless litigation. Learned Presenting Officer argued that voluntary retirement of Shri Nagdev could not be considered at the time of granting promotion and consequent allocation of divisional cadre as by its very nature, voluntary retirement is not a certainty. Learned Presenting Officer contended that whatever has happened was due to administrative exigencies and settled things may not be unsettled at this stage.

6. We find that the Applicants have not claimed that the divisional allotment order posing them to Nagpur Division suffers from any illegality or impropriety. Their claim is based on the fact that one Shri Nagdev, who was considered ~~from~~^{for} promotion and who was allotted to Nasik division, retired voluntarily on 31.5.2015, before the orders of promotion of 105 Assistant Engineers, Grade-II were issued on 20.6.2015. We agree with the contention of the Respondents that it was not possible not to consider Shri Nagdev's case for promotion.

Consequently, he was to be allotted to a division as per 2015 rules. Shri Nagdev had, no doubt, given a notice of voluntary retirement on 12.2.2015. However, a Government servant who has given notice of voluntary retirement can withdraw it during the notice period. Competent Authority may decide not to accept such a notice. It was, therefore, not possible to exclude the name of Shri Nagdev from consideration. The process of promotion to Group 'A' and divisional allotment of cadre requires consultation with various departments including the General Administration Department. It is a lengthy and time-consuming process. The Respondent no. 1 has stated in his short affidavit dated 18.11.2015 that the process of promotion was initiated on 16.3.2015, much before the retirement of Shri Nagdev. Then the concerned file was sent to various Desks/Departments and it was not possible to keep track of individuals who were being considered for promotion. As a result, Shri Nagdev was considered for promotion. It is difficult to find any fault with the Respondents in this process. The time lag between voluntary retirement of Shri Nagdev on 31.5.2015 and issuance of order of promotion on 20.6.2015 was too short to permit any mid-course correction. Now, out of 105 persons who were promoted, 63 have already joined. If the request of the Applicants is accepted at this stage, either the whole list of allotment will have to be recast or if the relief is restricted to the Applicants only, the possibility of others also making

similar request cannot be ruled out and the result would be the same, i.e. almost scrapping the present allotment. We are not inclined to interfere as there has been no hint of any mistake or illegality committed by the Respondents in the whole process.

7. Having regard to the foresaid facts and circumstances of the case, these Original Applications are dismissed with no order as to costs.


(R.B. Malik)
Member (J)


(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 05.01.2016
Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2016\Jan 2016\O.A 709 and 733.15 Promotion order challenged DB.0116.doc

5.1.2016:

After the order was pronounced, the learned Advocate Shri Chandratre, stated that though the Government has been resisting the request of the Applicant on their own, they have posted back about 605 officers to the original divisions. He requested that the dismissal of the O.A of the Applicant should not come in the way of considering their representations, if any, for being appointed back to their initial divisions.





We make it clear that we have decided these Original Applications on the basis of legal position such as we found it to be on the basis of the facts. We make it clear that the Government will be free to take an appropriate view even in the case of the Applicants, inter-alia on the ground of parity etc. In that event, this pronouncement shall not come in the way of the Applicant, and/or Government.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 05.01.2016

Dictation taken by A.K. Nair.