

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATIONS 735 OF 2015 WITH M.A 96  
OF 2016 WITH O.A 214/2016**

**DISTRICT : NASIK, NAVI  
MUMBAI, NANDED, JALNA &  
PUNE**

**ORIGINAL APPLICATION NO 735 OF 2015**

1. Shri Dileep Sopanrao Ghadge, )  
Service as A.E-II, in the office of )  
P.W Sub Division, Satana, )  
Dist-Nasik, R/o P.W Quarters, )  
Satana, Dist-Nasik. )
2. Shyam Keshavrao Jahagirdar, )  
Service as A.E-II, in the office of )  
In the office of Vigilance & Quality )  
Control Reigonal Laboratory, Turbhe )  
Navi Mumbai. )
3. Milind Shahikant Pande, )  
Service as A.E-II, in the office of )  
In the office of P.W Sub Division )  
[Building], Nanded, R/o: 87, )

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- Dnyaneshwar Nagar, Purna Road, )  
 Nanded. )
4. Vishwas Vishwambharrao Kulkarni )  
 Service as A.E-II, in the office of )  
 In P.W. Sub Division, Ambad, )  
 Dist-Jalna. )
5. Ram Pandharinath Kolhe, )  
 Service as A.E-II, in the office of )  
 In P.W Sub Division, Bhore, )  
 Dist-Pune. R/o: C-70, Suyog- )  
 Aditya Residency, Bibwewadi, )  
 Pune 411 037. )...**Applicants**

**Versus**

1. The State of Maharashtra )  
 Through the Presenting Officer, )  
 Maharashtra Administrative Tribunal )  
 Mumbai. )
2. The Principal Secretary, )  
 Public Works Department, )  
 Mantralaya, Mumbai 400 032. )
3. The Principal Secretary, )  
 General Administration Dept. )  
 Mantralaya, Mumbai 400 032. )

4. Smt Kalyani R. Gupta )  
11/13, Artist Village, Sector-8, )  
C.B.D, Belapur, Navi Mumbai. )
5. Mr Rajesh P. Bhogale, )  
A/3, 704, Siddarth Nagar, )  
Borivali (E), Mumbai – 66. )
6. Shri Shravan Misal, )  
Occ : Executive Engineer, )  
[Integrated Unit PW], Division, )  
Having office at Bandhkam Bhavan )  
2<sup>nd</sup> floor, Fort, Mumbai-1. )  
R/o: 202, Liberty Shriram, P & T )  
Colony, Sharanpur, Tryambak, )  
Link Road, Nasik 422 002. )
7. Shri Prasanna P. Kulkarni )  
Occ : Executive Engineer, )  
[Integrated Unit PW], Division, )  
Having office at Bandhkam Bhavan )  
2<sup>nd</sup> floor, Fort, Mumbai-1. )  
R/o: Dheeraj Drans, Bldg No. 4-B, )  
C.H.S, Flat No. 105, L.B.S Marg, )  
Bhandup [W], Mumbai-78. )
8. Shri Mahendra P. Kini, )  
Occ : Assistant Engineer, Grade-II, )

Having office at Deputy Engineer, )  
P.W Sub Division No. 1, Vasai, )  
Tal-Palghar, Dist-Palghar. )  
R/o: M-9/503, Rustomjee Global )  
City, Behind Yazoo Park, Virar [W], )  
Tal-Vasai, Dist-Palghar. )

9. Shri Yashwant S. Korake, )  
Occ : Assistant Engineer Grade-II, )  
Having office at P.W Division, )  
Nandurbar, R/o: Korake Nagar, )  
Malegaon Road, Behind Society )  
Pump, Dhule. )...**Respondents**

**WITH**

**MISC APPLICATION NO 96 OF 2016**

**IN**

**ORIGINAL APPLICATION NO 735 OF 2015**

1. Shri Mahendra P. Kini, )  
Occ : Assistant Engineer, Grade-II, )  
Having office at Deputy Engineer, )  
P.W Sub Division No. 1, Vasai, )  
Tal-Palghar, Dist-Palghar. )  
R/o: M-9/503, Rustomjee Global )  
City, Behind Yazoo Park, Virar [W], )  
Tal-Vasai, Dist-Palghar. )



2. Shri Yashwant S. Korake, )  
 Occ : Assistant Engineer Grade-II, )  
 Having office at P.W Division, )  
 Nandurbar, R/o: Korake Nagar, )  
 Malegaon Road, Behind Society )  
 Pump, Dhule. )

**)...Applicants**  
**(Ori Res nos 8 & 9)**

**Versus**

1. Shri Dileep Sopanrao Ghadge, )  
 Service as A.E-II, in the office of )  
 P.W Sub Division, Satana, )  
 Dist-Nasik, R/o P.W Quarters, )  
 Satana, Dist-Nasik. )
2. Shyam Keshavrao Jahagirdar, )  
 Service as A.E-II, in the office of )  
 In the office of Vigilance & Quality )  
 Control Reigonal Laboratory, Turbhe) )  
 Navi Mumbai. )
3. Milind Shahikant Pande, )  
 Service as A.E-II, in the office of )  
 In the office of P.W Sub Division )  
 [Building], Nanded, R/o: 87, )  
 Dnyaneshwar Nagar, Purna Road, )  
 Nanded. )

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4. Vishwas Vishwambharrao Kulkarni )  
Service as A.E-II, in the office of )  
In P.W. Sub Division, Ambad, )  
Dist-Jalna. )
5. Ram Pandharinath Kolhe, )  
Service as A.E-II, in the office of )  
In P.W Sub Division, Bhor, )  
Dist-Pune. R/o: C-70, Suyog- )  
Aditya Residency, Bibwewadi, )  
Pune 411 037. )
6. The State of Maharashtra )  
Through the Presenting Officer, )  
Maharashtra Administrative Tribunal )  
Mumbai. )
7. The Principal Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
8. The Principal Secretary, )  
General Administration Dept. )  
Mantralaya, Mumbai 400 032. )
9. Smt Kalyani R. Gupta )  
11/13, Artist Village, Sector-8, )  
C.B.D, Belapur, Navi Mumbai. )

10. Mr Rajesh P. Bhogale, )  
 A/3, 704, Siddarth Nagar, )  
 Borivali (E), Mumbai – 66. )

11. Shri Shravan Misal, )  
 Occ : Executive Engineer, )  
 [Integrated Unit PW], Division, )  
 Having office at Bandhkam Bhavan )  
 2<sup>nd</sup> floor, Fort, Mumbai-1. )  
 R/o: 202, Liberty Shriram, P & T )  
 Colony, Sharanpur, Tryambak, )  
 Link Road, Nasik 422 002. )

12. Shri Prasanna P. Kulkarni )  
 Occ : Executive Engineer, )  
 [Integrated Unit PW], Division, )  
 Having office at Bandhkam Bhavan )  
 2<sup>nd</sup> floor, Fort, Mumbai-1. )  
 R/o: Dheeraj Drans, Bldg No. 4-B, )  
 C.H.S, Flat No. 105, L.B.S Marg, )  
 Bhandup [W], Mumbai-78. )

**)...Respondents**  
**( Nos 1 to 5 Ori**  
**Applicants 1 to 5 and**  
**6 to 12 Ori Res. 1 to 7)**

**WITH**

**ORIGINAL APPLICATION NO 214 OF 2016**

1. Shri Keshavrao D. Dhondge, )  
 Assistant Engineer, Grade-II )  
 Office of Executive Engineer, )

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- Presidency Division, Bandhakam )  
Bhavan, Fort, Mumbai and residing )  
At P.W.D Quarters, Behind B-2 )  
Bungalow, Madam Cama Road, )  
Nariman Point, Mumbai 400 032. )
2. Shri Shivanand S. Birajdar, )  
Assistant Engineer, Grade-II )  
Office of Executive Engineer, )  
Palghar P.W Division, Head Quarter,)  
Thane [W], and residing at 205, )  
Jyotirmaya C.H S Ltd, Pawar Nagar, )  
Thane [W]. )
3. Shri Devendra Uttamrao Khirdikar, )  
Assistant Engineer, Grade-II )  
Office of Executive Engineer, )  
P.W North Division, Nasik, )  
Residing at Vatsal Vihar Apt, )  
Balaji Nagar, Untwadi, Nasik-8. )
4. Shri Anil Y. Deshmukh, )  
Assistant Engineer, Grade-II )  
Public Works Division, Nasik. )  
Trimbak Road, Nasik. )  
Residing at 'Phoenix', M.P Devre )  
Marg, Rameshwar Nagar, )  
Gangapur Road, Nasik. )



5. Shri Mahendra T. Gagalani, )  
Assistant Engineer, Grade-II, )  
P.W.D Sub Division, Panvel, )  
And residing at B-207, Sushi Garden)  
Bld, Old Panvel 410 206. )

**Versus**

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

**Appearance in O.A 735/2015**

Shri A.S Deshpande with Shri V.P Potbhare, learned advocate for the Applicants.

Smt Kranti S. Gaikwad learned Presenting Officer for the Respondents 1 to 3.

Shri Vishwanath Talkute with Shri K.R Jagdale, learned advocate for Respondent nos 4 & 5.

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Shri A.V Bandiwadekar learned advocate for Respondents no 6, 7, 8 & 9.

**Appearance in M.A 96/2016 in O.A 735/2015**

Shri A.V Bandiwadekar learned advocate for the Applicants (Ori Respondents no 8 & 9).

Mrs Kranti S. Gaikwad, learned Presenting Officer for Respondents no 6, 7 & 8.

Shri A.S Deshpande with Shri V.P. Potbhare learned advocate for Respondents no 1 to 5.

Shri Vishwanath Talkute with Shri K.R Jagdale learned advocate for Respondents no 9 & 10.

**Appearance in O.A 214/2016:**

Shri M.D Lonkar, learned advocate for the Applicants.  
Smt Kranti S. Gaikwad, learned advocate for Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

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

**DATE : 21.07.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri A.S Deshpande with Shri V.P Potbhare, learned advocate for the Applicants, Smt Kranti S. Gaikwad learned Presenting Officer for the Respondents 1 to 3, Shri Vishwanath Talkute with Shri

K.R Jagdale, learned advocate for Respondent nos 4 & 5 and Shri A.V Bandiwadekar learned advocate for Respondents no 6, 7, 8 & 9 in O.A 735/2015. Shri A.V Bandiwadekar learned advocate for the Applicants (Ori Respondents no 8 & 9), Mrs Kranti S. Gaikwad, learned Presenting Officer for Respondents no 6, 7 & 8, Shri A.S Deshpande with Shri V.P. Potbhare learned advocate for Respondents no 1 to 5 and Shri Vishwanath Talkute with Shri K.R Jagdale learned advocate for Respondents no 9 & 10 in M.A 96/2016 in O.A 735/2015. Shri M.D Lonkar, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned advocate for Respondents in O.A 214/2016.

2. Original Application no. 735/2015 has been filed by those Junior Engineers in the Public Works Division, who acquired Engineering degree or AMIE qualification while in service and were given benefit of 3/8<sup>th</sup> of their service as Junior Engineer (Diploma Holder) for seniority as degree holder J.E. They have challenged the Circular dated 21.8.2015, issued by the Public Works Department (P.W.D) of the State Government, which has cancelled the final seniority list published on 7.7.2015 and restored the final seniority list published on 6.9.2014. The Respondents are Assistant Engineers (Grade-II), selected by the Maharashtra Public Service Commission, who have been placed above the Applicants in the seniority list.

3. O.A no 214/2016 is filed by another group of Junior Engineers, who are seeking the same reliefs. The Applicants in both the Original Applications are seeking identical relief. Both these Original Applications were, therefore, heard together as the issues to be decided are identical.

4. The Applicants are working as Assistant Engineer, Grade-II (earlier known as Junior Engineer). These Junior Engineers, who have degree in Engineering or those who acquire such degree or AMIE qualification are designated as Assistant Engineer, Grade-II. The appointment to the Engineering cadre in the State was regulated by G.R dated 19.12.1970 till recruitment rules were framed under Article 309 of the Constitution of India. The Applicants were initially appointed as Junior Engineer on Work Charged Establishment from 1984 to 1986 on different dates. Services of the Applicants came to an end on 31.7.1987. It was subsequently decided to accommodate such Junior Engineers in Government service in phases, first G.R reappointing 233 Junior Engineers was issued on 6.12.1989 and another on 30.11.1993. G.R dated 30.11.1993 relaxed condition of recruitment in the cadre of A.E, Grade-II, through M.P.S.C. The appointments were to be made as per seniority of the Junior Engineers on the Work Charged Establishment. It was also stated in the G.R dated 30.11.1993 that those who join within 15 days from the

date of appointment, their inter-se seniority in the cadre of Junior Engineer would be maintained. Appointment letters of the Applicants were issued on 22.12.1993 and 27.12.1993. However, some of them received the letters in the first week of January, 1994. The Applicants' claim is that some of their colleagues joined service (one Shri Kiran Kedar Patil is mentioned) on 31.12.1993, while the Applicants could join after 1.1.1994 so the Applicants should be deemed to have joined service on 31.12.1993. This date assumes great significance due to subsequent developments. Graduate Junior Engineers were granted gazette status w.e.f 1.4.1981 and were redesignated as Assistant Engineer, Grade-II and this post came within the purview of M.P.S.C. Recruitment Rules for the post of Assistant Engineer, Grade-II were notified on 16.6.1997. These rules are called the Assistant Engineer (Civil) Grade-II in the Maharashtra Engineering Services, Group -B (Recruitment) Rules, 1997. Except Rule 8 of these rules, other rules came into force from the date of notification, while Rule 8 came into force on 1.4.1981 retrospectively. This has crucial bearing on the issues involved in these O.As. Rule 8 ibid is reproduced below:-

“8. Notwithstanding anything contained in rule 3, the temporary appointment made to the posts till the 31<sup>st</sup> December, 1996, may be regularized in the following manner:-

(a) The person who have completed minimum three years of continuous service as on 31<sup>st</sup> December 1996 and have satisfied the requirements of qualification and age limit mentioned in rule 3, at the time of their appointment, shall have to qualify in viva-voce or Limited Competitive Examination to be held by the Commission during 1997-98.

(b) Services of those persons who will qualify in such examination will be regularized.

(c) The seniority of such qualified persons shall be fixed as per the existing rules notified vide Government Notification, General Administration Department No. SRV.1076/XII, dated 21<sup>st</sup> June 1982 regarding fixation of seniority.

(d) The services of persons who do not qualify in such examination shall be terminated by the Government.

(e) The person who have been appointed to the posts on or after 1<sup>st</sup> January, 1994 but on or before 31<sup>st</sup> December, 1996 and who possess the qualification mentioned in rule 3(ii) shall, in relaxation if necessary of the age limit prescribed in rule 3(i), be required to get selected in the first attempt in the regular combined competitive

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examination to be held by the commission during 1997-98. Service of such persons who have not been selected in the above competitive examination shall be terminated by the Government, and the seniority of selected persons shall be fixed in accordance with the rules mentioned in Government Notification, dated the 21<sup>st</sup> June, 1982, mentioned in rule 8(c).

5. Learned Counsel for the Applicants in O.A no 735/2015 argued that G.R dated 30.11.1993 had clause 3, which reads:-


“३. निवड मंडळ / लोकसेवा आयोगाच्या विहित माध्यमातून सेवा भरतची अट शिथिल करण्यात आली आहे.”

Learned Counsel for the Applicants stated that the Applicants were included in the list of 427 Junior Engineers, who were appointed before August, 1986 and who were in Government service on 31.7.1987. Services of such persons were to be regularized and they were asked to join within 15 days as per clause 7(7) of this G.R. Those who joined within 15 days were to keep their inter-se seniority intact. All the Applicants joined service within 15 days of the date of reappointments, but they joined after 31.12.1993. Some of the persons joined before 31.12.1993. Subsequently, the Recruitment Rules for Assistant Engineer, Grade-II, made material changes

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from this G.R dated 30.11.1993. Those who have completed 3 years' service on 31.12.1996, were eligible to be regularized on the basis of Limited Competitive Examination which was to be held by M.P.S.C in 1997-98 which was in the nature of viva-voce. As a result, date of joining service on reappointment became important. Those who joined before 31.12.1993 would have completed 3 years' service on 31.12.1996 and their services could be regularized on the basis of Limited Examination by M.P.S.C., while those who joined after 1.1.1994, were required to compete with fresh candidate in a Competitive Examination to be conducted by M.P.S.C.

6. Learned Counsel for the Applicants also cited G.R dated 1.3.2000. This G.R has exempted some categories of Assistant Engineer, Grade-II from the purview of M.P.S.C. In short, services of all those, who were appointed from 2.4.1981 to 16.6.1997, (16.6.1997 is the date on which the recruitment rules were notified), were regularized without reference to M.P.S.C. This G.R was challenged before Hon'ble Bombay High Court in Writ Petition no 2480 of 2000 and ad interim stay to the G.R was granted. This Writ Petition was disposed of by order dated 6.3.2003. Learned Counsel for the Applicants stated that the Petitioners in Writ Petition no 2480 of 2000 had filed SLP (Civil) no. 5583 of 2003, which was dismissed by Hon'ble Supreme Court on 10.4.2003.





After the Writ Petition no 2489 of 2000 was disposed of by Hon'ble High Court on 6.3.2003, the Petitioners in Writ Petition no. 2480 filed O.A no 421 of 2003 before this Tribunal, which was decided on 11.9.2003. This Tribunal partly upheld the G.R dated 1.3.2000, while Clauses (A) & (B) of the G.R was upheld, Clauses (B) & (C) were struck down. The State Government amended the Recruitment Rules for Assistant Engineer, Grade-II dated 16.6.1997 (page 89 of the Paper Book) on 8.7.2009 and Rule 8 was further amended. These rules of 8.7.2009 were challenged by Hon'ble Bombay High Court. Learned Counsel for the Applicants contended that Hon'ble Bombay High Court in a Group of Writ Petition no 7415 of 2003 etc by judgment dated 17.3.2010 gave liberty to the Petitioners to approach this Tribunal if any of them are shown as juniors to those to be absorbed as per clause (d), (e) and (f) of the Recruitment Rules for Assistant Engineer, Grade-II as amended in 2009. Learned Counsel for the Applicants argued that on the basis of inter-se seniority, before regularization of services on the basis of G.R dated 30.11.1993, the Applicants should be treated as being regularized before 31.12.1993 and their seniority fixed accordingly. Learned Counsel for the Applicants argued that decision of this Tribunal in O.A no 421/2003 has become infructuous after Rule 8 was amended in 2009 and amended rules was upheld by Hon'ble High Court.

7. Learned Presenting Officer (P.O) on behalf of Respondents no 1 to 3 argued that these Original Applications are not maintainable at all. All the issues have already been decided by this Tribunal in O.A no 421 of 2003 by order dated 11.9.2003 and Hon'ble High Court in a group of Writ Petitions no 7415/2003 etc. (Page 101 of the Paper Book) by judgment dated 17.3.2010. The constitutional validity of the Assistant Engineers (Civil) Grade-II in the Maharashtra Service of Engineers, Group 'B' (Recruitment) (Amendment) Rules, 2009 has been upheld by Hon'ble High Court. It was held that the amended Rules do not cause any prejudice on the point of seniority to the Petitioners, (who are Respondents here). Learned Presenting Officer argued that the Applicants are claiming seniority of persons who were reappointed before them in 1983/1984. The Applicants cannot legally claim that they should be deemed to be reappointed on 31.12.1993 only to get benefit under the Recruitment Rules subsequently notified. They have not cited any rule /G.R in support of their claim that such retrospective date of appointment can be granted to them. As they were reappointed after 31.12.1993, they had not completed 3 years of service on 31.12.1996 and as per recruitment rules dated 15.6.1997, they are not eligible for regularization of their services on the basis of viva-voce which was to be conducted by M.P.S.C. They were required to appear in the Combined Competitive Examination, which was to be

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conducted by M.P.S.C. After Rule 8 of the Recruitment Rules was further amended on 8.7.2009, the Applicants have no case to claim seniority. Hon'ble High Court by judgment dated 17.3.2010 in W.P no 7415 of 2003 etc. has clearly upheld the rule, as amended and the Petitioners challenge to the rule had failed. Learned Presenting Officer argued that the Applicants have not made Shri K.K Patil and others party in this O.A, though they are claiming seniority over them. However, that is immaterial as the Applicants have to fulfil the conditions of amended Rule 8 for regularization of their service and thereafter the issue of seniority will arise.

8. Learned Advocate Shri Talkute, argued on behalf of the Respondents no 4 & 5 in O.A no 735/2015 that the judgment of Hon'ble High Court in Writ Petition no 7415/2003 can be summarized as follows:-

The Petitioners in the aforementioned Writ Petitions were direct recruits Assistant Engineer, Grade-II appointed after selection by M.P.S.C. They had challenged the amended Rule 8 of the Recruitment Rules of Assistant Engineer, Grade-II. As per 1997 Recruitment Rules, those A.E Grade-II who had completed 3 years on 31.12.1996, were required to pass viva-voce test which was to be conducted by M.P.S.C. Those appointed after 31.12.1993 up to 31.12.1996, were required to appear in the Combined Competitive Examinations. The Applicants

are admittedly appointed in January, 1994 and they were required to pass the Combined Competitive Examination conducted by M.P.S.C on 13/14 December, 1998. Now after more than 16 years, they cannot claim that they are not required to pass the Examinations to get their services regularized. Learned Advocate Shri Talkate <sup>HA</sup> stated that the Applicants had earlier filed O.A no 360/1997 before this Tribunal. A copy of the Original Application no. 360/1997 is at page 400 of the Paper Book. As per clause (B), the relief of regularization of service under G.R dated 30.11.1993 was sought. In Writ Petition no. 6619 of 1998, the Applicants sought relief of regularization of service by a Limited Competitive Examination. The Applicants failed to get this relief either before this Tribunal and in Hon'ble High Court. They cannot revive the same claim by filing the present Original Application.

9. Unamended Rule 8 remained in force till it was amended in 2009. As per unamended rule, the Applicants were required to appear for Combined Competitive Examination which was conducted by M.P.S.C in December, 1998. After Rule 8 was amended, the Applicants should have got their services regularized, as per amended Rule 8. However, they are raking issues which have already been concluded by judgment of Hon'ble High Court. Hon'ble High Court by judgment dated 17.3.2010 had given liberty to the Petitioners, who

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are respondents here, to approach this Tribunal. No liberty was granted to the Applicants, who had already exhausted all remedies. To claim that the Applicants were granted liberty by Hon'ble High Court to approach this Tribunal is not correct.

10. Learned Advocate Shri Bandiwadekar argued on behalf of the Respondents no 6 & 9 stated that these Respondents have adopted the arguments of the Respondent nos 4 & 5 as advanced by learned Advocate Shri Jagdale and Shri Talkate. The Original Application is not maintainable.

Learned Advocate Shri Lonkar on behalf of the Applicants in O.A no 214 of 2016 adopted the arguments of learned Advocate Shri Deshpande on behalf of the Applicants in O.A no 735/2015.

11. It is seen that the Applicant no. 2 Shri S.K Jahagirdar (in O.A no 735/2015) had filed O.A no 477/1997 before this Tribunal. In para 5 of the judgment dated 8.8.1997 in this Original Application and others, this Tribunal has observed that:-

“5. The Petitioners herein have approached this Tribunal praying that they should be treated as having been appointed prior to 1.1.1994 and should not be subjected to the Combined Competitive



Examination to be held by the P.S.C.”

This Tribunal has examined the claims of the present Applicant no. 2 (Shri Jahagirdar) & others in the light of Rule 8 of the Recruitment Rules notified on 16.6.1997. Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 were also invoked in that Original Application. Para 11 of the judgment reads:-

“11. The question now remains as to whether the petitioners, by virtue of their appointment orders having been issued on 22.12.1993 can be considered as having been appointed on that date, although they actually joined on or after 1.1.1994. Rule 5(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 contemplates assigning deemed dates to direct recruits in a batch on the basis of the date of joining as a junior, if he joins earlier than his senior. We have perused the waiting list that has been maintained by the State Government of the persons who were appointed as Junior Engineers in the work charge establishment. We find that both Graduates and Diploma Holders are intermixed in this waiting list since the list is maintained as per the dates of initial appointment in the work charge establishment. As already mentioned the Diploma holders in this waiting list have been or are being absorbed in Class-III posts.

Also, a large number of persons in the waiting list were already absorbed in 1999. Having regard to all these factors we do not think it is possible to treat this waiting list as one pertaining to a batch of direct recruit to a cadre. Consequently, we are of the view that the petitioners will not be entitled to any deemed date as contemplated under Rule 5(2) of the Maharashtra Civil Services (Regulations of Seniority) Rules, 1982. For what it is worth, we may also mention at this stage that the petitioner in O.A no 480/1997 cannot in any case claim that a person junior to him in the waiting list has joined the service on or before 31.12.1993.”

The judgment has categorically rejected the claim of the Applicant no. 2 in O.A no 735/2015 way back in 1997 for deemed date of appointment of 31.12.1993. This judgment was not produced before this Tribunal by the Applicants. With the additional affidavit in reply on behalf of the Respondent nos 4 & 5 dated 17.3.2016, this judgment has been placed on record as Exhibit R-4. This judgment has not been challenged directly. O.A no 421 of 2003 was filed before this Tribunal challenging G.R dated 1.3.2000, which was issued by the Government. Clause (c) of this G.R reads:-



“क) दि.१.१.९४ ते दि.३१.१२.९६ पर्यंतच्या एकूण ३९९ तदर्थ नेमणुका त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी २ संवर्गात नियमित करण्यात येत आहे.”

This provision appears to be contrary to the judgment dated 8.8.1997 of this Tribunal in O.A no 464/1997. In any case, by judgment dated 11.9.2003 in O.A no 421 of 2003 (which was filed by the direct recruits, Assistant Engineer, Grade-II) clause (B) & (C) of G.R dated 1.3.2000 were struck down. As a result, the Applicants who had admittedly been appointed in January, 1994, were held not eligible to be regularized in service without appearing for Combined Competitive Examination, which was to be conducted by M.P.S.C. (It was conducted in December, 1998). The Applicant no. 2's prayer to treat him as being appointed on 31.12.1993 was categorically rejected by this Tribunal by judgment dated 8.8.1997 in O.A no 464/1997.

12. It appears that the decision of this Tribunal in O.A no 421/2003 dated 11.9.2003 was challenged in Hon'ble High Court by way of Writ Petition no 7415/2003 and 8607/2003. By order dated 26.7.2006, O.A no. 421/2003 was remanded to this Tribunal by Hon. High Court for fresh decision. This order of Hon'ble High Court was challenged by ad hoc appointees in Hon'ble Supreme Court in SLP (Civil) no 12960/2006. Hon'ble Supreme Court set aside the order dated 26.7.2006 of Hon'ble



High Court with request to dispose of Writ Petition no 7415/2003 and 8607/2003 within three months. During the pendency of the Writ Petitions, Recruitment Rules were amended on 8.7.2009. Direct Recruits filed Civil Application no. 1887/2009 before Hon'ble High Court. Final judgment in Writ Petition no 7415/2003, 8607/2003 etc. was passed by Hon'ble High Court on 17.3.2010 and the Writ Petitions were dismissed. It is seen that the Applicant no. 2 in O.A no 735/2015 viz. Shri Shyam Jahagirdar has filed Writ Petition no 6619/1998. It appears that this Applicant/Petitioner was not represented before Hon'ble High Court. In para 1 of the judgment it is stated that:-

“1. The Petitioners challenged the judgment and order dated 11.9.2003 rendered by the Maharashtra Administrative Tribunal in O.A no 421/2003, which was filed by Mrs Sunita Daulatrao Patil & three others.”

It appears that validity of amended Rule 8 was challenged. Hon'ble High Court has observed that:-

“4. There is no dispute between the parties that the Government Resolution dated 1.3.2000 was not acted upon at any time and an amendment of the Recruitment Rules on 8.7.2009, the said G.R ceased to exist and therefore, the challenged to the said

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G.R as well as to the order passed by the Tribunal came to an end. We are, therefore, required to examine only the challenge to the amended Rule 8 of the Recruitment Rules, providing for the regularization of the ad-hoc and temporary appointed Assistant Engineer, Grade-II in this group of petitions.”

In para 6 of the aforesaid judgment, it is again mentioned that:-

“6. The Petitioners are the direct appointees through MPSC. The crux of the petitioners’ grievance is regarding their seniority and it is contended that the Amended Rule 8 is unconstitutional as under the said Rule, ad hoc appointees, who were unsuccessful in the selection by the M.P.S.C in the year 1997-98, would be ranked senior to them en-mass, as the regularization under it is sought to be made from the date of initial appointment on ad hoc basis.”

From this, it appears that Hon’ble High Court has treated direct recruits as Petitioners (though Shri Jahagirdar was a Petitioner in W.P no 6619/1998). Hon’ble High Court in para 15 has observed as follows:-



“15..... Obviously, as of now, there is no reason to believe that any different provision other than Rule 4(1) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 will be followed by the Government in respect of the engineers covered under clause (e) and (f) are bound to be shown juniors to those who are covered under clause (d) and there is no material to believe that the Government will deviate from this presumption as of now. Hence, in our considered opinion, there is no material before us presently to even prima facie believe that the underlined portion of clause (g) of the new Rule 8 is likely to act to the detrimental to the Petitioners in respect of their seniority and if their seniority is not going to be affected by the regularization so proposed under the new Rule 8, there is no reason to entertain the challenge to the said rule.”

Further in para 16, Hon'ble High Court observed that:-

“16..... At the same time, the uncertainty about the validity of the amended Rule ought to be settled at the earliest possible and in any case, as we have noted earlier, as and when the State Government draws the Seniority List, based on the amended Rule 8 and if the Petitioners are aggrieved by the same, they have to take recourse to file an

application under the Administrative Tribunals Act at the first instance and we cannot presume, at this stage, that the State Government will act contrary to amended Rule 8 and show Petitioners junior to the engineers who are sought to be regularized under clause (d) to (f) of the said Rule.”

The Writ Petitions were dismissed and liberty was given to the ‘Petitioners’ to approach this Tribunal if the engineers to be absorbed in clause (d), (e) and (f) of the said rules were shown as senior to the Petitioners.


13. From the aforesaid judgment of the Hon’ble High Court, it is clear that liberty to approach this Tribunal was given to ‘direct recruits’, if they were shown junior to the engineers to be absorbed in terms of clause (d), (e) & (f) of Rule 8. Obviously, the present Applicants are not covered by that liberty. The claim of the Applicants that they have filed present O.As by virtue of the liberty granted to them is not correct. It is also clear that Hon’ble High Court has held that those engineers, whose services are regularized under clauses (d), (e) and (f) of Rule 8 (as amended in 2009) will be junior to the direct recruits, who were recruited in 2001 through M.P.S.C and who are respondents in O.A no 735/2015. These clauses are reproduced below:-

“(d) The persons appointed during this period from 17<sup>th</sup> April 1984 to 31<sup>st</sup> December 1996, and not qualified in the above said viva-voce test or Combined Competitive Examination as the case may be held by the Commission shall have to pass in the viva voce test to be held by the Commission during the period 2009-2010 or immediately thereafter, to enable them to get regularized in the cadre of Asstt. Engineer, Grade-II.

(e) Persons who do not pass in such viva-voce test shall be given second opportunity to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularized in the cadre of Assistant Engineer, Grade-II.

(f) The persons who do not pass in the second attempt shall be given one more opportunity by way of last chance to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularized in the cadre of Assistant Engineer, Grade-II.”

There is no doubt that the present Applicants were appointed in January, 1994. They are not covered by any of the clause (a), (b) and (c). It is not clear whether the



Applicants are covered by clauses (d), (e), (f) or they are covered by clause (h). Even if they are covered by clause (d), (e) or (f), they cannot claim seniority over direct recruits, who are the Respondents in the present Original Application. The claim of the Applicants that they should be treated as being appointed on 31.12.1993 has already been rejected by this Tribunal by judgment dated 8.8.1997 in O.A no 464/1997. The Applicants have relied on judgment dated 15.9.2014 of this Tribunal in O.A no 1038/2013, which is upheld by Hon'ble High Court. However, that judgment was given in the context of an engineer, who could not join before 31.12.1993 as his appointment letter dated 21.12.1993 mentioned his name wrongly and he could not join before 31.12.1993, as time was spent in getting his name corrected in the appointment letter. That judgment has no bearing in the present case as ultimately the seniority in the cadre of A.E. Grade-II will depend on the regularization of service first <sup>under</sup> ~~and~~ Rule 8 as amended.

14. We do not find any reason to interfere with the circular dated 21.8.2015, which has cancelled the seniority list dated 7.7.2015, which was prepared in contravention of Rule 8 of the Recruitment Rules. These Original Applications are accordingly dismissed with no order as to costs.

15. Misc Application No. 96/2016 in O.A 735/2015 has been filed by Shri A.V Bandiwadekar, learned advocate for the Applicants (Ori Respondents no 8 & 9 in O.A 735/2015) for vacating the interim relief dated 6.10.2015 and 21.1.2016 passed by this Tribunal in the aforesaid Original Application. As Original Application No. 735/2015 is dismissed, nothing survives in Misc Application as the same has become infructuous and is disposed of accordingly.

✓

Sd/-  
**(R.B. Malik)** 21-7-16  
**Member (J)**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 21.07.2016**  
**Dictation taken by : A.K. Nair.**