

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**MUMBAI**  
**ORIGINAL APPLICATION NO.912 & 53 OF 2015**

1. Shri Suresh Gopalrao Deshpande )  
Executive Engineer, P.W Division, )  
Hingoli. )
2. Shri Deepak N. Tupekar, )  
Executive Engineer, )  
M.S.R.D, Camp Office, Pune 411001)
3. Shri Durgadas V. Pisolkar, )  
Executive Engineer, )  
PMGSY, Solapur. )
4. Dr N.P Tongaonkar, )  
Executive Engineer, P.W. Division, )  
Mulund, Mumbai. )
5. Shri Kishore P. Patil, )  
Executive Engineer, )  
Mumbai Road Design and )  
Development Division, Bandra, )  
Mumbai. )
6. Shri Shrikant V. Jadhav, )  
Executive Engineer, )  
MSRDC, KC Road, Bandra [W], )  
Mumbai. )
7. Shri Naresh Y. Wadetwar, )  
Executive Engineer, )  
World Bank Project, Bandhkam )  
Bhavan, 39/1., Opp Ladies Club, )  
Civil Lines, Lineo, Nagpur. )

8. Shri Dayanand B. Vibhute, )  
Executive Engineer, P.W. Division, )  
Aurangabad Road, Ahmednagar. )
9. Shri Yogesh Balkrishna Kulkarni, )  
Executive Engineer, )  
Zilla Parishad, Works Division, )  
Jalgaon. )
10. Shri Bappa N. Bahir, )  
Executive Engineer, )  
Public Works Division [West], Satara. )
11. Shri Niranjan Telang, )  
Executive Engineer, )  
Public Works (Bldg), Division, )  
Pune. )
12. Shri Surendra A. Kankarej, )  
Executive Engineer, )  
Public Works Region, Nasik. )
13. Shri Suhas Vasant Wani, )  
Executive Engineer, )  
National Highway Division, )  
Public Works Department, )  
Opp. Sagar Plaza Hotel, Camp, )  
Pune. )
14. Shri V.M. Mishra, )  
Executive Engineer, )  
Public Works Division No. 1, )  
Public Works Department, Sadar, )  
Nagpur. )
15. Shri K.P Janbandhu, )  
Executive Engineer, )  
Public Works Department, )

P.A to S.J Minister, )  
 Executive Engineer, )  
 PMGSY, Akola. )..Applicants

Versus

1. The State of Maharashtra & Ors. )  
 Through the Chief Secretary, )  
 Mantralaya, Mumbai 400 032. )
2. The Principal Secretary, )  
 Public Works Department, )  
 Mantralaya, Mumbai 400 032. )
3. The Additional Chief Secretary, )  
 General Administration Department,) )  
 Mantralaya, Mumbai 400 032. )
4. Shri C.B Patil, )  
 Under Secretary, )  
 Public Works Department, )  
 4<sup>th</sup> floor, Mantralaya, )  
 Mumbai 400 032. )
5. Shri G.S Dali, )  
 Executive Engineer, )  
 Building Design Division, )  
 P.W.D, Opp Sagar Plaza Hotel, )  
 Camp, Pune 411 001. )
6. Shri S.T Kolikar, )  
 Superintending Engineer, )  
 P.W.D, Mantralaya, )  
 Mumbai 400 032. )
7. Shri S.M Lolage, )  
 Executive Engineer, )  
 Vigilance & Quality Control Circle, )  
 Bandhkam Bhavan, Trimbak Road, )

- Nasik 422 002. )
8. Shri S.M Chikhlikar, )  
Executive Engineer, )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
9. Shri S.R Bhutada, )  
Executive Engineer, )  
Road Project Division, )  
P.W.D Compound, Court Road, )  
Camp, Amravati. )
10. Shri V.P Ramgude, )  
Executive Engineer, )  
Harbour Division (P.W.D), )  
4<sup>th</sup> floor, Konkan Bhavan, )  
Navi Mumbai. )
11. Shri R.B Patil, )  
Superintending Engineer, )  
P.W Circle, P.W.D, Solapur. )
12. Shri A.P Nagargoje, )  
Superintending Engineer, )  
Public Works Circle, P.W.D, )  
Ahmednagar. )
13. Shri G.V. Joshi, )  
Executive Engineer, )  
Vigilance and Quality Control Circle,) )  
P.W.D, Court Road, Camp, Amravati.) )
14. Shri B.S Pandhare, )  
Executive Engineer, )  
Bridge Design Division, P.W.D, )  
Opp. Hotel Sagar Plaza, Camp, Pune.) )

15. Shri R.T Gaikwad, )  
Superintending Engineer, )  
Public Works Circle, P.W.D, )  
Potegaon Road, Gadchiroli. )
16. Shri C.P Jawale, )  
Executive Engineer, )  
Pimpri Chinchwad Pradhikaran, )  
Dist-Pune. )
17. Shri S.G Shelar, )  
Executive Engineer, P.W.D, )  
PMGSY, Bandhkam Bhavan, )  
Trimbak Road, Nasik. )
18. Shri R.P Nighot, )  
Deputy Secretary, P.W.D, Mantralaya )  
Mumbai 400 032. )
19. Shri P.S Auti. )  
Superintending Engineer, )  
MSRDC, Opp. Bandra Reclamation )  
Bus Depot, K.C Marg, Bandra [W], )  
Mumbai. )
20. Shri R.N Rajbhoj, )  
Executive Engineer, )  
Vigilance & Quality Control Circle, )  
P.W.D, Opp. Sagar Plaza Hotel, )  
Camp, Pune. )
21. Shri R.S Rahane, )  
Executive Engineer, )  
Road Project Division, P.W.D, )  
Bandhkam Bhavan, Aurangabad Rd,)  
Ahmednagar. )

22. Shri A.B Chavan, )  
Superintending Engineer, )  
Mumbai Circle, P.W.D )  
Badhkham Bhavan, Marzaban Street)  
Fort, Mumbai. )
23. Shri P.R Khavale, )  
Superintending Engineer, )  
MSRDC, Opp, Bandra Reclamation )  
Bus Depot, K.C Marg, )  
Bandra [W], Mumbai. )
24. Shri R.R Hande, )  
Executive Engineer, Presidency Div. )  
P.W.D, Bandhkam Bhavan, )  
Marzaban Street, Fort, Mumbai. )
25. Shri A.M Bhalkar, )  
Executive Engineer, )  
Public Works Department, Mantralaya)  
Mumbai 400 032. )
26. Shri D.G Sontakke, )  
Executive Engineer, )  
Vigilance & Quality Control Circle, )  
Bandhkam Bhavan, 39/1, )  
Opp. Ladies Club, Civil Lines, )  
Nagpur. )
27. Smt R.M Pathan, (Shaikh), )  
Executive Engineer, )  
Pune Municipal Corporation, )  
Shivajinagar, Pune 411 005. )
28. Shri J.E Sukhdeve, )  
Executive Engineer, )  
MSRDC, Opp. Bandra Reclamation )

- Bus Depot, K.C Marg, )  
K.C Marg, Bandra [W], Mumbai. )
29. Smt N.H Kanoje, )  
Executive Engineer, )  
PMGSY, Zilla Parishad, Fulchur Rd, )  
Gondia. )
30. Shri S.N Mane, )  
Superintending Engineer, )  
P.W.D, P.W Circle, Satara. )
31. Smt Jyoti Kulkarni [Deshmukh], )  
Executive Engineer, YASHADA, )  
Baner Road, Pune. )
32. Shri D.M Chamalwar, )  
Superintending Engineer, )  
Vigilance Squad, P.W.D, Mantralaya,) )  
Mumbai. )
33. Smt S.J Jaiswal, )  
Executive Engineer, )  
EGS (PW) Division, P.W.D Compound,) )  
Opp. Sanjay Gandhi Market, )  
Chandrapur 442 401. )
34. Shri S.L Tople, )  
Superintending Engineer )  
Building Design Circle, 4<sup>th</sup> floor, )  
Konkan Bhavan, )  
Navi Mumbai. )
35. Smt C.M Pujari, )  
Asst. Executive Engineer, )  
PW Sub Division no.1, )  
P.W.D Compound, )  
Opp. Municipal Council, Jaistambh,)

- Ratnagiri 415 612. )
36. Shri V.U Sawant, )  
P.W.D, Mantralaya, Mumbai 400032.)
37. Shri A.T Dhongade, )  
Executive Engineer, )  
P.W [East] Division, )  
Central Bldg, Camp, Pune. )
38. Shri P.P Sonawane, )  
Executive Engineer, P.W. Division, )  
Opp. Collector Office, Zilla Peth, )  
Jalgaon. )
39. Shri V.C Navale, )  
Executive Engineer, P.W.D, )  
PW East Division, Bandhkam Bhavan )  
Trimbak Road, Nasik. )
40. Shri V.L Kamble, )  
Executive Engineer, )  
P.W Division, Alibaug, )  
Dist-Raigad. )
41. Shri U.J Dabe, )  
Superintending Engineer, )  
MSRDC, Near MSEB Sub Station, )  
Variety Square, Sitabuldi, Nagpur. )
42. Smt R.T Raul, )  
Executive Engineer, )  
P.W Division, Amalner, )  
Dheku Road, Tal-Amalner, )  
Dist-Jalgaon. )
43. Smt S.V Devanpalli, )  
P.W.D, Mantralaya, Mumbai-32. )



44. Smt P.S Walke, )  
Executive Engineer, )  
P.W (North) Division, )  
Near Administrative Bldg, )  
Near Bhavan College, Andheri [W], )  
Mumbai. )
45. Smt D.M Devdhare, )  
P.W.D, Mantralaya, Mumbai 400032)
46. Smt A.M Sharma, )  
Executive Engineer, )  
Assistant Chief Engineer, )  
P.W Region, P.W.D, Adalat Road, )  
Aurangabad. )
47. Smt S.C Bondre Sakharwarde, )  
Executive Engineer, )  
Integrated Unit Division, P.W.D, )  
Near T.B Ward, Govt., Medical College) )  
Nagpur. )
48. Shri S.P Andhale, )  
P.W.D, Mantralaya, Mumbai 400 032.)
49. Shri R.M Gosavi, )  
Superintending Engineer, )  
P.W.D, Mantralaya, Mumbai 400032.)
50. Smt V.M Nanoti, )  
P.W.D, Mantralaya, Mumbai 400032)
51. Smt S.A Gadkar, )  
P.W.D, Mantralaya, Mumbai 400032)
52. Smt L.N Upadhye (Nagdeve), )  
Asst. Chief Engineer, )  
P.W Region, Badhkam Bhavan, )  
P.W.D, Opp Ladies Club, )

- 39/1, Civil Lines, Nagpur. )
53. Smt A.N Dhotre, )  
P.W.D, Mantralaya, Mumbai 400 032.)
54. Smt R.P Lonare, )  
Executive Engineer, )  
Road Project Division, Bandhkam )  
Bhavan, 39/1, Opp. Ladies Club, )  
Civil Lines, Nagpur. )
55. Shri A.S Gadegone, )  
Executive Engineer, P.W.D No. 1, )  
Opp. Sanjay Gandhi Market, )  
Civil Lines, Chandrapur 442 401. )
56. Smt Trupti Brijlal Nag, )  
Executive Engineer, NH Division, )  
Thane. )
57. Smt Pallavi R. Sonawane, )  
Executive Engineer, NH PWD, )  
Aurangabad. )
58. Shri Tushas A. Burud, )  
Executive Engineer, Road Project Div.)  
Ratnagiri. )
59. Shri Siddharath A. Tambe, )  
Executive Engineer, PWD, Nasik. )
60. Smt Sonali R. Chavan, )  
Executive Engineer, )  
PWD, Nagpur. )...Respondents

**2) ORIGINAL APPLICATIO NO 53 OF 2015**

1. Shri Dilip G.Deshmukh, )  
A-1, Shumbhankar Apartment, )

- D.P Road, Bhelke Nagar Chowk, )  
Near Telephone Exchange, Kothrud, )  
Pune 411 038. )
2. Shri R.N Hotwani, )  
Public Works Department Campus )  
Yeotmal. )
3. Shri Anupkumar V. Dixit, )  
Executive Engineer, )  
Construction Division, [North], )  
Zilla Parishad, Satara. )
4. Shri Kishor P. Mali, )  
301, Jai Maharashtra Vastu Vikas )  
Society, Gulmohar Cross Rd No. 5, )  
Vile Parle [W], Mumbai 400 049. )
5. Shri D.K Balpande, )  
D-10, Laxminagar, )  
Nagpur 22. )
6. Shri V.L Dube, )  
Row House No. A3, Mutiyan Residency)  
Deepnagar, Darga Road, Aurangabad)
7. Shri Ashok Shankarrao Khaire, )  
Rutubarsha, Third Land, Anand Park)  
Aundh, Pune 411 007. )
8. Shri V.B Salave, )  
G-6, Laxminagar, Nagpur-22. )
9. Shri B.D Theng, )  
Executive Engineer, )  
Public Works Division, )  
Buldhana. )...Applicants

Vs.

1. The State of Maharashtra, )

- Through Chief Secretary, )  
Mantralaya, Mumbai 400 032. )
2. The Principal Secretary, )  
Public Works Department, )  
State of Maharashtra, )  
Mantralaya, Mumbai 400 032 )
3. The Principal Secretary, )  
General Administration Department,) )  
Mantralaya, Mumbai 400 032. )
4. Shri M.M Siddhiki, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
5. Shri Prashant D. Naoghare, )  
Executive Engineer, )  
P.W Division No. 1, Nagpur. )
6. Shri Sadashiv S. Salunkhe, )  
Executive Engineer, )  
Special Project P.W Division, )  
Central Bldg Camp, Pune-1. )
7. Shri Khanderao T. Patil, )  
Executive Engineer, Road Project )  
Division, 2<sup>nd</sup> floor, )  
Bandhakam Bhavan, )  
Sneh Nagar, Nanded 431 602. )
8. Shri S.S Murade, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
9. Shri S.S Bhondge, )  
Notice to be served through )

- Public Works Department, )  
Mantralaya, Mumbai 400 032. )
10. Shri S.R Katkade, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
11. Shri P.V Bhosale, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
12. Shri S.D Dashpute, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
13. Shri D.D Ukirde, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
14. Shri P.K Ingole, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
15. Shri P.R Janbandhu, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
16. Shri M.K Bharsat, )  
Notice to be served through )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )

17. Shri N.M Nagpal, )  
 Notice to be served through )  
 Public Works Department, )  
 Mantralaya, Mumbai 400 032. )...**Respondents**

A.Y. Sakhare, Senior Counsel with Joel Carlos and K.R. Jagdale – Advocate for the Applicants.

D.B. Khaire, Special Counsel with Smt. K.S. Gaikwad – Presenting Officer for Respondents.

Suhas Oak with Pranil K. Sonawane, learned counsel for Respondents no 59 and 60.

U.V. Bhosle – Advocate for Respondent No.19.

R.S Apte learned Senior counsel with B.A. Bandiwadekar – Advocate for Respondent No.38.

Uday Warunjikar, learned counsel for Respondent no. 24.

**CORAM** : **Smt. Justice Mridula Bhatkar, (Chairperson)**  
**Smt. Medha Gadgil, Member (A)**

**RESERVED ON** : **01.02.2023**

**PRONOUNCED ON:** **17.02.2023**

**PER** : **Smt. Justice Mridula Bhatkar, (Chairperson)**

### **J U D G E M E N T**

1. In O.A 912/2015 & O.A 53/2015, the applicants challenge the seniority list dated 20.5.2015 of the cadre of Executive Engineer (Civil) and declare the final seniority list dated 20.5.2015 and 29.1.2015 respectively as illegal and bad in law.

2. We clarify that on 14.9.2022, this Tribunal directed the Respondent-State not to proceed in respect of giving promotions to the post of Superintending Engineer from the cadre of Executive Engineer till the matters are finally decided. Being aggrieved by this order, the intervenors have approached the Hon'ble Bombay High Court and the Hon'ble Bombay High Court in order to avoid multiplicity of litigation, allowed their prayer to intervene in these matters. The private Respondents were added and they were heard in January 2023. The names of the added private Respondents are included in the seniority list dated 17.8.2015 and that is not challenged before this Tribunal.

3. The applicants aspire to be promoted to the post of Superintending Engineer. The applicants initially were appointed as Assistant Engineer, Grade-I and promoted to the post of Executive Engineer in excess of their quota. The dispute in this case is about the seniority between originally appointed Assistant Executive Engineer and Assistant Engineer, Grade-I, S.D.O and S.D.E during the period of 1998 and 2010. The familiar controversy of giving seniority on the basis of continuous officiation has a checkered history though the law laid is down in a catena of judgments however, due to the inconsistent policy with the existing rules adopted at administrative level, the same issue of seniority crops up time and again. The dispute of seniority at the time of merger amongst who are appointed from two different sources in the cadre of Executive Engineers in P.W.D and Irrigation Department was earlier decided in the landmark cases, however, yet it is still kept burning. Thus, the arguments are mainly based on the following judgments:-

1. **S.B. Patwardhan & Ors. Vs. State of Maharashtra & Ors., AIR 1977 SC 2051.**
2. **Direct Recruit Class II Engineering Officers' Association & Ors. Vs. State of Maharashtra and Ors. AIR 1990 SC 1607**

**3. Keshav Chandra Joshi Vs. Union of India & Ors, AIR 1991 S.C 284.**

This dispute was addressed by this Tribunal by order dated **10.5.2013 in O.A 246, 258, 272 & 292/2012, Shri Vishnu N. Ashtapure & Ors Vs. Government of Maharashtra & Ors**, which pertains to the P.W.D like the present cases, wherein the Tribunal held that the seniority is to be decided from the date of appointment to a particular post/cadre.

4. It is necessary to reproduce Rule 4 of the Executive Engineers and Assistant Engineers belonging to the Maharashtra Service of Engineers, Class-I and the Maharashtra Service of Engineers, Class-II (Regulation of seniority and preparation and revision of seniority lists) Rules, 1983 in the beginning.

**4. Determination of strength of cadre of Executive Engineers and allocation of vacancies in that cadre for promotion of Assistant Engineers, Class I and officers belonging to Maharashtra service of Engineers, Class II –**

(1) As far as possible within 60 days from the date of publication of these rules in the official Gazette, the relevant Department shall determine and declare the strength of the cadre of Executive Engineers for the fractional year and for each of years during the period commencing on the 1<sup>st</sup> day of April 1971 and ending on the 31<sup>st</sup> March, 1982 and thereafter as far as possible within 60 days from the commencement of every year, the relevant Department shall determine and declare the strength of the cadre of Executive Engineers for that year.

(2) Out of the total number of vacancies in the cadre of Executive Engineers as determined under sub-rule (1) for the fractional year or for any particular year, the first 40 per cent, of



the vacancies shall be allocated for filling by promotions of Assistant Engineers, Class-1, who have completed not less than four years continuous service in that capacity. The subsequent remaining 60 per cent vacancies in the fractional year or, as the case may be, in the said particular year shall be allocated appointed for filling by promotions of Deputy Engineers who are not fortuitously appointed as such and who have completed not less than seven years continuous service in that capacity, and if any vacancies remain to be filled after promoting Deputy Engineers those vacancies or if no Deputy Engineer eligible for promoted remains to be promoted then all the subsequent 60 per cent vacancies referred to above shall be allocated for filling by promotions of officers belonging to other cadres in Maharashtra Service of Engineers, Class-II in the following ratio and order namely :-

- (i) 25 per cent for Assistant Engineers, Grade I who have completed not less than seven years continuous service in that capacity,
- (ii) 25 per cent for Sub divisional Engineers who are not fortuitously appointed as such and who have completed not less than Seven years continuous service in that capacity.
- (iii) 10 per cent for Sub Divisional Officers who are not fortuitously appointed as such and who have completed not less than ten years continuous service in that capacity.” (emphasis supplied)

It is informed though for Assistant Engineer, Grade-I are required to have experience of 7 years' service, practically period of 11 to 16 years is consumed to get the opportunity for promotion to the post of Executive Engineer.

5. Learned Senior Counsel Mr Sakhare for the applicants has argued that though the quota of 40% is reserved for the Assistant Executive Engineer for promotion to the post of Executive Engineer, the said 40% quota is never filled up on account of unavailability of the Assistant Executive Engineer. It is a history that the remaining seats from that 40% quota are always filled up from the available Assistant Engineers Grade-I, Sub-Divisional Officer and Sub-Divisional Engineer. Learned Senior Counsel submitted that his case is squarely covered by the judgment of this Tribunal dated **10.5.2013 in Ashtapure's case (supra)**. He also relied on the judgment of the Hon'ble Supreme Court in the case of **S.B. Patwardhan & Ors (supra)** and **Direct Recruit; case (supra)**. Learned Senior Counsel for the applicants pointed out the chart showing the number of total vacancies from 1990 onwards till 1997. Learned Senior Counsel Shri Sakhare referred to the final seniority list dated 28.2.2012 and pointed out the table of analysis.

**CHART NO. 1**

Sr No.	Total Number of vacancies as on	Quota for AEE	Actual representation of AEE.
1.	1.4.1990 - 72	29	Nil
2.	1.4.1991 - 42	17	08
3.	1.4.1992 - 36	14	Nil
4.	1.4.1993 - 54	22	06
5.	1.4.1994 - 22	09	Nil
6.	1.4.1995 - 31	12	Nil
7.	1.4.1996 - --	--	--
8.	1.4.1997 - 50	49	15

Final seniority list of 28.2.2012 has been analyzed in the chart given below:-

**CHART NO. 2**

Sr. No.	Period	AEE 40%	AE-I 25%	SED 25%	SDO 10%	Total
1.	1.4.1990 to 31.3.1991	0 (0%)	11 (29%)	16 (41%)	11 (29%)	39 (1 Dy Engineer)
2.	1.4.1991 to 31.3.1992	8 (24%)	5 (15%)	16 (48%)	4 (12%)	33
3.	1,4,1992 to 31.3.1993	0 (0%)	13 (42%)	14 (45%)	4 (13%)	31

4.	1.4.1993 to 31.3.1994	6 (18%)	9 (26%)	14 (41%)	5 (15%)	34
5.	1.4.1994 to 31.3.1995	0 (0%)	3 (30%)	5 (50%)	2 (20%)	10
6.	1.4.1995 to 31.3.1996	0 (0%)	6 (46%)	4 (30%)	3 (23%)	13
7.	1.4.1996 to 31.3.1997	0	0	0	0	0
8.	1.4.1997 to 31.3.1998	15 (84%)	0 (0%)	0 (0%)	1 (16%)	16
	<b>TOTAL</b>	<b>29 (16.5%)</b>	<b>46 (27%)</b>	<b>69 (39.5%)</b>	<b>30 (17%)</b>	<b>176</b>

Learned Counsel has pointed out from this chart it is evident that during the period of 1.4.1990 to 31.3.1998, only 16.5% promotions (or names in the seniority list – which is based on regular promotion) were from AEE category against quota of 40%. For AE-I, the figures are 27% which are near their quota of 25%, SDE have 39.5% representation against quota of 25%, while SDO have 17% names in seniority list against quota of 10%. These facts have some significance vis-à-vis quota rule.

Learned Senior Counsel has further submitted that the quota rule itself has broken down and today also the 40% Assistant Executive Engineers are not available to fill up the posts of Executive Engineers. He relied on Rule 4(1) of the 1983 Rules stating that the Respondent-State to declare the cadre strength of Executive Engineers every year and as per the definition of cadre it includes both temporary and permanent posts. However, the Public Works Department has never followed this Rule 4(1), except it was declared once in the year 1997 and the strength was shown 262 posts. Thus, the applicants, Assistant Engineer Grade-I have been promoted in large number to fill up the remaining seats of 40% quota available for Assistant Executive Engineer and they have worked for many years as Executive Engineers in their respective posts. Hence, their seniority is to be considered from the date of their initial appointment in the cadre of Executive Engineer. They were appointed throughout by following the Rules and they have served in that cadre. Therefore, due to their continuous officiation in the said post for years together, their services cannot be

treated as fortuitous and their seniority is to be counted from the date of their appointment as Executive Engineer, may be overreaching the quota of 40% of Assistant Executive Engineer. Hence, the seniority list dated 20.5.2015 which is under challenge be revised treating the applicants' senior as per their date of appointment to the post of Executive Engineer. On break down of quota rule Mr Sakhare, learned Senior Counsel relied on the following case laws:-

1. **Direct Recruits Class II Vs. State of Maharashtra, AIR 1990 SC 1607.**
2. **S.B Patwardhan Vs. State of Maharashtra, AIR 1977 SC 2051,**
3. **A. Janardhana Vs. Union of India & Ors, AIR 1983 SC 769,**
4. **O.P Singla Vs. Union of India, AIR 1984 SC 1395.**
5. **G.S Lamba Vs., Union of India, AIR 1985 SC 1019.**
6. **Rudra Kumar Sain & Ors Vs. Union of India & Ors AIR 2000 SC 2808.**
7. **Narender Chadha & Ors Vs. Union of India & Ors, (1986) 2 SCC 157.**

6. Learned Senior Counsel Shri Sakhare, relied on the chart to demonstrate the placement of the applicants in the seniority list though they were appointed earlier to the Respondents AEE.

### **CHART NO. 3**

Pet No.	Name of Petitioner	Actual date of promotion	Deemed date given	Sr No. As per Seniority List dated 20.5.2015.	
				Shown in 20.5.2015	Correct No. should be
1.	Shri S.G Deshpande	9.7.1999	12.5.2006	199	62
2.	Shri D.N Tupekar	8.3.2000	12.5.2006	201	67
3.	Shri D.V Pisolkar	5.8.2000	5.4.2007	231	79
4.	Shri N.P Tongaokar	4.6.2001	22.4.20089	250	99
5.	Shri K.P Patil	31.1.2003	14.6.2010	296	154
6.	Shri S.V Jadhav	31.1.2003	Not shown	-	155
7.	Shri N.Y Wadetwar	4.9.2003	Not shown	-	176

8.	Shri D.B Vibhute	11.8.2005	Not shown	-	232
9.	Shri Y.B Kulkarni	4.9.2003	Not shown	-	177
10.	Shri B.N Bahir	11.9.2003	Not shown	-	179
11.	Shri N.A Telang	21.8.2004	Not shown	-	208
12.	Shri S.A Kankarej	21.8.2004	Not shown	-	211
13.	Shri S.V Wani	21.8.2004	Not shown	-	213
14.	Shri V.M Mishra	21.8.2004	Not shown	-	214
15.	Shri K.P Janbandhu	21.5.2007	Not shown	-	288
16.	Shri V.P Adchule	21.8.2004	Not shown	-	212

7. Shri D.B Khaire, learned counsel with Mrs K.S Gaikwad, learned Presenting Officer for the Respondent-State, learned Senior Counsel Shri R.S Apte with Shri B.A Bandiwadekar, Shri Uday Warunjikar, learned counsel and Shri U.V Bhosle, learned counsel for Respondents, while opposing the contentions of the applicants have argued that the decision in **Ashtapure's case (supra)** is not applicable and it is a misplaced reliance. Learned counsel Shri Khaire has submitted that the Government has followed the Rules of 1983 and especially as per Rules 3 & 4 of the said rules, the Respondent-State has prepared the seniority list dated 20.5.2015 by considering the quota rule. Giving preference in seniority to A.E.E to the other three categories, i.e., A.E. Grade-I, S.D.E and S.D.O is consistent with the rules. Shri Warunjikar, learned counsel has submitted that the scope of this application is very narrow in view of the prayer made by the applicants. The applicants have not fully challenged the seniority list of 2015 and no further consequential relief are prayed. The relief (a) is half hearted prayer. The Respondents relied on the affidavit in reply dated 22.2.2016 of Shri Anand N. Bhondve, Under Secretary, Public Works Department, Mantralaya, Mumbai, and has submitted that the controversy in this matter is narrowed down in view of the stand taken by the Respondent-State. Learned counsel Mr Warunjikar has specifically argued that the judgment in **Ashtapure's case (supra)** is challenged before the Hon'ble Bombay High Court and in view of the order dated 5.12.2013 in Misc

Civil Application (Review) No. 1188/2013, the Respondent-State has prepared the present seniority list in accordance with law. He pointed out that the Respondent-State has stated that there is no evidence in para 12.1 of the said affidavit in reply that the suitable candidates were not available for the direct recruitment however the non-availability cannot be a valid reason for break down of quota. It is factually and legally incorrect argument. 87% of the quota of direct recruits was filled up in the year 2010. Learned counsel Shri Warunjikar, has submitted that the applicants have pleaded malice in law in para 6.13 and also prayed malice in fact without giving the specific particulars. Learned counsel has submitted that there is a admission given on the part of the applicants in para 6.17 wherein they have admitted that there is only one irregularity that the applicants were promoted in excess of the quota as 40% vacancies allotted to the Assistant Executive Engineers could not be filled in due to non-availability of the eligible Assistant Executive Engineers. Learned counsel Mr Warunjikar & Mr Warunjikar in support of his submissions relied on the following judgments:-

1. **M.S.L Patil, Assistant Conservator of Forest, Solapur, (Maharashtra) & Ors Vs. State of Maharashtra & Ors, (1996) 11 SCC 361.**
2. **Dinkar Anna Patil & Anr Vs. State of Maharashtra & Ors, (1991) 1 SCC 354.**
3. **Dattatraya G. Wankar & Ors Vs. State of Maharashtra & Ors, (2007) 6 Bom CR 813.**
4. **U.P. Secretary, UPA Association Versus State of U.P., (1999) 1 SCC 278.**

8. Learned counsel Shri D.B Khaire with Smt K.S Gaikwad for the Respondent-State has submitted that in the case of **D. Ganesh Rao Patnaik Vs. State of Jharkhand (2005) 8 SCC 454**, the Hon'ble Supreme Court held that despite 12 long years gap between the

appointment of two direct recruits, it was not indicative of break down of the quota rule. Shri Khaire, learned Special Counsel has reiterated his submissions that mere inaction in not making recruitment in conformity with the allotted quota will not lead to the inference of break down of the quota rule. Shri Khaire has submitted that the Government has sent the requisition from time to time to M.P.S.C during the period 1998 to 2010 to fill up the posts of Assistant Executive Engineer and thus the quota rule was never broken down.

9. Considered the submissions of the learned counsel. On maintainability on the ground of non-joinder of parties, who are going to be affected, i.e., the direct recruits, they all should be made parties, learned counsel for the applicants relied on the judgment of the Hon'ble Supreme Court in **A. JANARDHANA Vs. UNION OF INDIA & ORS, AIR 1983 S.C 769** and submitted that the other persons are proper but not necessary parties and on this ground the petition does not suffer from non-joinder of parties. We accept these arguments as correct.

10. In the case of **S.B. Patwardhan Versus State of Maharashtra reported in (1977) 3 SCC** the seniority and promotions between Departmental Promotees and Direct Recruits appointed as Deputy Engineers in the Engineering services of the Government of Maharashtra and Gujarat was the issue. It was contested by the promotees. The Civil Appeals were filed by the promotees and also direct recruits before the Hon'ble Supreme Court from the State of Maharashtra and Gujarat. The Civil Appeals of the promotees were allowed and the appeals filed by the direct recruits were dismissed. The Hon'ble Supreme Court rejected the contention that the direct recruits must be given weightage on the ground that engineering services require the infusion of new blood. It further held that:-

*“There is no intelligible ground for this differentiation bearing nexus with efficiency in public services. Confirmation, after all, is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. It is on record the officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. Confirmation does not conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government.”*

Though the promotees and direct recruits are drawn from two different sources they constitute a single integrated cadre. They discharge identical functions, bear responsibilities and acquire an equal amount of experience in their respective assignments. There is no intelligible ground for treating direct recruits and promotees bearing nexus with efficiency in public services. Thus, the Hon'ble Supreme Court held that the fortuitous circumstance of confirmation of promotees cannot be a decisive factor for seniority when all other factors are equal between direct recruits and promotees. In the present case the Applicants who are working as Assistant Executive Engineer and Assistant Engineers (Grade-I), both are selected through M.P.S.C. under a common examination. The candidates who have higher marks those 40% meritorious candidates are selected and appointed as Assistant Executive Engineers. The candidates who have cleared the examination but could not reach upto that particular cut-off of 40% are appointed as Assistant Engineer (Grade-I). Thus, in the present case the source of recruitment is one for and the same for A.E.E and A.E, Grade-I and all other service conditions and responsibilities are also same. However, A.E.E being meritorious persons can run faster in the race of promotion because by giving advantage of eligibility criterion of



4 years are put ahead of giving advantage of three years to Assistant Engineers (Grade-I). The Applicants who are working as Assistant Engineers (Grade-I) are required to put in 7 years in the said feeder cadre to be treated as eligible to compete for promotion to the post of Executive Engineer. There is no dispute or challenge in fixing the different criterion of the experience of eligibility. The S.D.E and S.D.O are the posts from promotion and not from M.P.S.C. The challenge is given to the preparation of the seniority list by pushing down the applicants who were appointed in excess to their quota of 25% & 10% thereby consuming the quota of A.E.E.

11. The judgment of the Constitutional Bench of Five judges in **Direct Recruits' case (supra)** is the valuable commentary on the quota system. It is held that where quota Rule is broken down the appointments made on one source in excess of the quota if adhering the interest and the Rules, then seniority of such promotees is to be reckoned from the date of such appointment and not from the date when the vacancy within the quota is available. The Hon'ble Supreme Court further held that pushing down procedure is not to be adopted in such cases and the promotees cannot be treated as junior to direct recruits if their circumstances are equal. While deciding the *inter se* seniority between direct recruits and promotees they are to be treated equal. In the present case more meritorious persons are appointed as A.E.E and Rule 4 specifically excludes fortuitous service.

12. In **Dinkar Anna Patil's case (supra)**, the Hon'ble Supreme Court held that if the promotions are made contrary to the recruitment rules, then they are to be treated in excess of the prescribed quota and they are not entitled to benefits of such promotions being fortuitous.

13. In **Dattatraya G. Wankar's cases (supra)**, 62 Civil Engineering Graduates working as Sub Divisional Engineers has moved before this Tribunal for declaration of Rule 4(2) of the Maharashtra Service of Engineers Class-I and the Maharashtra Service of Engineers Class-II (Regulation of Seniority and Preparation and Revision of Seniority Lists) Rules, 1983 as unconstitutional. The Hon'ble Bombay High Court dismissed the petitions.

14. In the judgment in **V.N Ashtaputre & Ors, O.A 246/2012 & Ors**, decided on 10.5.2013, the final seniority list dated 28.2.2012 in respect of Executive Engineer (Civil) of Public Works Department for the period 1.4.1990 to 31.3.1998 was challenged. Shri Astapure and others and the present applicants are similarly situated as they are from the cadre of Assistant Engineers, Grade-I and the Respondents are the Assistant Executive Engineers and it is dispute between the direct recruits having the same cadre, but placed differently on the basis of merit, i.e., their performance in the M.P.S.C. The Division Bench of this Tribunal quashed and set aside the final seniority list prepared by the Respondent-State wherein the Assistant Engineers, Grade-I wherein the seniority on the basis of continuous service on the basis of Executive Engineer. The said list was quashed and set aside mainly on the ground that the quota rule which is laid down in the 1970 and 1983 Rules had broken down during the period 1.4.1990 to 31.3.1998 while promoting the Assistant Executive Engineers and Assistant Engineers, Grade-I to the grade of Executive Engineers in Public Works Department. It was held that as the quota rule has broken down and the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of **Direct Recruits (supra)** is applicable while preparing the seniority list of Executive Engineers for the said period. Thus, the seniority of the Executive Engineer, especially of the Assistant Engineers, Grade-I was counted from the date of appointment by applying the principle of continuous officiation as an Executive Engineer. The said order is challenged before the Hon'ble Bombay High Court in Writ Petition No. 2773/2013 by the Respondents who were appointed to the post of Executive Engineer from the feeder cadre of Assistant Executive Engineers. The

said Writ Petition is still pending. Thereafter, the Respondent-State again prepared the seniority list of the cadre of Executive Engineer on 20.5.2015 for the period 1.4.1998 to 31.12.2010, as the seniority list is to be prepared every year, when the judgment in the case of Ashtapure was against the Assistant Executive Engineers and no stay was granted to the said order. In the said Civil Appeals (W) No. 2415/2013 in W.P 2773/2013, the Division Bench of the Hon'ble Bombay High Court by order dated 24.10.2013, directed the State Government to consider the claim of the Petitioners in accordance with the seniority list as directed to be prepared as per order of M.A.T. So, it was supposed to be prepared on the basis of continuous officiation as Executive Engineers. However, Misc Civil Application (Review) 1188/2013 in W.P 2773/2013 was filed praying for review of the order dated 24.10.2013. The Division Bench of the Hon'ble Bombay High Court by order dated 5.12.2013 modified and reviewed the earlier order dated 24.10.2013. It is necessary to reproduce the major portion of the said order:-

*“The counsel for the review petitioner argued that the error is apparent since the direction issued by MAT to prepare the seniority list in a particular manner is under challenge in this petition, and if the error is not corrected then there remains no point in prosecuting the petition. Per contra, the Counsel for the respondents opposed the application and argued that it was the review petitioner who invited the said order.....*

*We think there is error in mentioning in accordance with the seniority list as directed to be prepared by the MAT, because the said direction of MAT is under challenge in the instant petition. At any rate since there is a move to consolidate all the matters at one Bench, we make the following order:-*

### **ORDER**

*The words in accordance with the seniority as directed to be prepared by the learned MAT appearing in paras 3 and 4 of the order under review dated 24.10.2013 of this Court be replaced by the words in accordance with law.”*

Thus, in the place of “as per directions of MAT” the words “in accordance with law” were substituted. In accordance with law means existing Rules. The understanding of the Respondent-State in accordance with law is again as per the manner in which the earlier seniority list of the year 2012 was prepared by the Respondent-State. Thus, by maintaining the same stand consistent with the rules, the Respondent-State has published the present seniority list of the year 2015 for the period 1.4.1998 to 31.12.2010, wherein the seniority list of the Assistant Executive Engineers and the Assistant Engineers, Grade-I who were promoted to the post of Executive Engineers was decided on the basis of not the continuous officiation but availability of the permanent posts in that cadre as per the allocated quota in the vacancies to both the cadres. Thus, it appears that though there is no specific order of stay to the order of M.A.T, the Hon’ble High Court by way of order in review has given choice and freedom to the Respondent-State to prepare the seniority list but in accordance with law. Thus, by way of order in review, in fact the Hon’ble High Court has stayed the implementation of the order of the Tribunal. The order passed in Review Application by the Hon’ble High Court has facilitated the Respondent-State further to prepare the seniority list for the period 1.4.1998 to 31.12.2010. The vacancies fall in every year and similarly the quota is also filled up every year. Thus, it is an on-going process. The situation does not remain static and the number of vacancies fluctuates every year. Thus, the observations of the Division Bench of the Tribunal in Ashtapure’s case that there was break down of the quota rule and therefore the rule regarding continuous officiation is to be followed was pertaining to the concerned period 1.4.1990 to 31.3.1998.

15. Though the word 'stay' is not mentioned in the order, the Hon'ble High Court has virtually stayed the order, by substituting the words, in accordance with law, it means as per the Rules. Naturally, as the State has challenged the earlier order of cancelling the seniority, according to the Respondent-State, the seniority cannot be fixed between the Assistant Executive Engineer and Assistant Engineer, Grade-I on the basis of continuous officiation of the Assistant Engineer, Grade-I. Therefore, the Respondent-State while fixing the seniority of the further years, i.e., from 1.4.1998 to 31.12.2010, applied the quota Rule as per 1983 Rules. Thus, it is clear that in the absence of order in review passed by the Hon'ble High Court, the Respondent-State could not have finalized the seniority list as per the procedure followed earlier for the preparation of the seniority list for the period from 1.4.1990 to 31.3.1998. In the absence of order in review the order of the Tribunal was binding on the Respondent-State and they should have followed it without hesitation by adhering to the principle of law of precedence. The order passed in review is however worded in different manner. We highlight three points.

1. The Hon'ble High Court has given the leeway to the Government to decide the seniority list may not be as per Ashatputre's order, but in accordance with law.
2. Secondly, as we have stated earlier that preparation of the seniority list is an yearly process and therefore, when the earlier seniority list of 1998 was stayed, it is necessary for the Respondent-State to go on preparing the further seniority list. Mere pendency of the Writ Petition cannot stall the administration and deprive the employees of the chances of promotion for years together. Moreover, the Hon'ble High Court considering the dynamics of the administration has allowed the

Respondent-State to proceed with the further seniority list. Therefore, the number of vacancies and filling up the quota of each year is to be considered independently.

3. Thirdly, in the case of **Ashtapure**, as mentioned earlier, the breakdown of quota and non-filling up of the vacancies of Executive Engineers from the feeder cadre of Assistant Executive Engineer for a long period is a major determinant. We have gone through minutely the following cases which were referred by the learned counsel for the applicants mainly on the ground of continuous officiation and breakdown of the quota rule.

We have not come across a specific observation or directions of the Hon'ble Supreme Court or the Hon'ble High Court directing as to when, i.e., not filling up the posts upto certain percentage is to be treated as breakdown of quota. There is no bench mark to declare that there is break down of quota. On the contrary, we have come across the judgment in the case of **M.S. Patil (supra)**, wherein the Hon'ble Supreme Court despite not filling the quota from a particular feeder cadre, has held that there is no break down of the quota. Therefore, we gave a fresh look to the filling up the vacancies in the cadre of Executive Engineers from Assistant Executive Engineers from 1998 till 2010.

16. While assessing this point, we advert to the amended Recruitment Rules dated 7.4.1983, i.e., The Executive Engineers and Assistant Engineers belonging to the Maharashtra Service of Engineers, Class-I and the Maharashtra Service of Engineers, Class-II (Regulation of seniority and preparation and revision of seniority lists) Rules, 1983. Rule 3 specifies the quota while filling up the vacancies in the cadre of Executive Engineers. So, the Assistant Executive Engineers, Class-I who have put in service of 4 years and the Assistant Engineers, Grade-I

who have completed not less than 7 years continuous service in that capacity are eligible for promotion to the post of Executive Engineers. It is pertinent to note the applicants did not challenge the rules and the different treatments given to these two direct recruits on the point of eligibility criterion of 4 years and 7 years for the promotion after their appointments. Thus, the candidates who have secured more marks and have a meritorious performance than the other candidates, are always placed at higher level and they are given the cadre of Assistant Executive Engineers and the candidates who have secured lesser marks were placed in the cadre of Assistant Engineer, Grade-I. This rule itself underlines the distinction between these two cadres based on the merit, i.e., depending on a better performance. Though there is a provision of filling up the vacant posts in excess of the quota by way of fortuitous appointment if the candidates from either of the feeder cadres are not available, most of the time, it is observed that no requisition is sent by the Government to fill up the post of Assistant Executive Engineers. The request was made only for filling up the vacancies of Assistant Engineer, Grade-I. Thus, from the beginning, “deliberately” the vacancies in the cadre of Executive Engineers are created, not filled up so that the candidates from the cadre of Assistant Engineer, Grade-I, S.D.E and S.D.O can be accommodated in the post of Executive Engineers. The rule makers appear to have contemplated this situation and in order to maintain the merit the rules are made accordingly. The relevant provisions of 1983 rules are reproduced below:-

“2 (g) ‘Fortuitously appointed’ means appointed in any vacancy which, according to rule 4 or rule 12 is not allocated or assigned for the class of officers to which the person appointed in that vacancy belongs or appointed in contravention of any of the recruitment rules”.

3. Fixation of seniority and preparation and revision of seniority. Lists of Executive Engineers and Assistant Engineers belonging to Maharashtra Service of Engineers, Class 0I and of officers belonging to Maharashtra Service of Engineers, Class-II to be regulated by these rules from 21<sup>st</sup> December, 1970. Notwithstanding anything contained in any other rules, orders or instruments, the fixation of seniority of Executive Engineers and Assistant Engineers belonging to the Maharashtra Service of Engineers, Class-I shall be regulated by these rules from the 21<sup>st</sup> December, 1970 and accordingly the relevant Department of Government shall prepare and revise such lists and take such other action as may be necessary under these rules.”

4. Determination of strength of cadre of Executive Engineers and allocation of vacancies in that cadre for promotion of Assistant Engineers, Class-I and officers belonging to Maharashtra service of Engineers, Class-II.

(2). Explanation II. For the purpose of determining continuous service of an officer under this rule, the period during which he is appointed fortuitously shall be excluded.” (emphasis placed).

The Chart No. 1 showing the total number of vacancies from 1990 till 1997 in the cadre of Executive Engineers. It shows that in the year 1990 not a single post from the cadre of Assistant Executive Engineer was filled up while 29 posts were available. In the year 1991, as per 40% quota, 17 posts were available, only 8 posts were filled.

17. The Respondent-State has produced following chart of persons working as Assistant Executive Engineer to the cadre of Executive Engineers during the period 1998 to 2007 and 2010.

**CHART NO. 4**

Year	Working in AEE cadre	New appointment of AEE	Total	Remark
1998	29	0	29	
1999	29	13	42	
2000	42	19	61	
2001/2?	61	17	78	
2003	78	-8	70	8 promoted as SE



2005	70	-6	64	6 promoted as SE
2007	64	28	92	
2010	92	12	104	

In 1998-2010 total 104 officers working in AEE cadre out of 120 posts assigned for them.

18. Mr Sakhare, learned Senior Counsel and the Respondent-State have produced the charts on the point of filling up the posts from AEE and AE-I. We do not want to refer to the chart placed on record by Mr Sakhare because it shows how the applicants are senior to the Respondents on the basis of their date of appointment and continuous officiation. The appointments of A.E.E and A.E. Grade-I are based on different criteria.

However, the chart produced by the Respondent-State about the cadre strength, vacancies and occupation of the post by these two cadres is found very useful to throw light which are marked as Exh. 'X' and 'X1'.

#### **CHART NO. 5**

##### **Requisition Position of Assistant Executive Engineer (AEE)**

<b>Sr No.</b>	<b>year</b>	<b>earlier Pending Requisition</b>	<b>Requisition sent</b>	<b>Recommendation received from MPSC with date</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1.	2003	NIL	31	31 dt.04.12.2006
2.	2004	31	NIL	NIL
3.	2005	31	NIL	NIL
4.	2006	31 (received on dt.04.12.2006)	12	12 dt.08.02.2010
5.	2007	12	NIL	NIL

**CHART NO. 6**  
**Requisition Position of Assistant Engineer Grade-1 (AE-1)**

<b>Sr No.</b>	<b>year</b>	<b>earlier Pending Requisition</b>	<b>Requisition sent</b>	<b>Recommendation received from MPSC with date</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1.	2003	NIL	84	84 dt.04.12.2006
2.	2004	84	NIL	NIL
3.	2005	84	NIL	NIL
4.	2006	84 (received on dt.04.12.2006)	88	88 dt.08.02.2010
5.	2007	88	NIL	NIL

19. We wanted to find out the exact position of the cadre strength, occupied posts, vacant posts and percentage of occupied posts with respect to the quota in all the four feeder cadre. We insisted the Respondents to provide us correct information in this format to get the correct and exact idea at a glance. The Respondent-State has prepared giving all these details under the heads of the Executive Engineer cadre. We mark this Chart as Chart No. 7, page 34-A, which is part of the judgment. Page no 34-B is blank. However, this Chart is lengthy and therefore, it is required to be typed horizontally. It discloses for e.g. in the year 2009 the total strength of Executive Engineer was 321. Out of that 307 post was occupied. Cadre strength of A.E.E was 129, out of that occupied post, 67 was filled up. Thus in 2009, 62 posts were vacant in the cadre of A.E.E. Thus, the percentage of occupied post in the cadre of A.E.E was 20.87 was occupied by A.E.E. The cadre strength of A.E. Grade-I and S.D.E as per 25% is 80-80-32 and S.D.O 10% was 32 posts. Total occupied posts in the cadre of A.E-I, 131 posts, i.e., 51 posts were excess. S.D.E -77 posts and S.D.O-77 posts, 32 in excess of the quota. Thus, the percentage of the occupied posts of A.E, Grade-I is 40.80%, S.D.E-23.99% and S.D.O-9.97%.

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### CHART NO 7

O.A. No.912 /2015 in the Executive Engineer Cadre Year wise Cadre Strangth Occupied posts & Vacant Position

Year	Cadre Strangth of executive Engineer	Cadre Strangth				Occupied posts												Vacant Posts					Percentage of Occupied post with respect to there quota				
		Assistant Executive Engineer	Assistant Engineer Grade 1	Sub Divisional Engineer	Sub Divisional Officer	Assistant Executive Engineer (Regular)	Assistant Executive Engineer (Adhoc)	Total AEE	Assistant Engineer Grade 1 (Regular)	Assistant Engineer Grade 1 (Adhoc)	Total AE1	Sub Divisional Engineer (Regular)	Sub Divisional Engineer (Adhoc)	Total SDE	Sub Divisional Officer (Regular)	Sub Divisional Officer (Adhoc)	Total SDO	Total Occupied post	Assistant Executive Engineer	Assistant Engineer Grade 1	Sub Divisional Engineer	Sub Divisional Officer	Total Vacant posts	Assistant Executive Engineer	Assistant Engineer Grade 1	Sub Divisional Engineer	Sub Divisional Officer
01.04.1998	281	112	70	70	28	46	0	46	70	23	93	70	39	109	18	0	18	266	66	-23	-39	10	15	16.37	33.10	38.79	6.41
01.04.1999	299	120	75	74	30	55	0	55	75	40	115	74	31	105	21	0	21	296	65	-40	-31	9	3	18.39	38.46	35.12	7.02
01.04.2000	302	121	76	75	30	49	0	49	76	43	119	75	29	104	22	0	22	294	72	-43	-29	8	8	16.23	39.40	34.44	7.28
01.04.2001	297	119	75	74	29	39	0	39	75	49	124	74	28	102	29	0	29	294	80	-49	-28	0	3	13.13	41.75	34.34	9.76
01.04.2002	305	122	76	76	31	41	0	41	76	51	127	76	10	86	21	0	21	275	81	-51	-10	10	30	13.44	41.64	28.20	6.89
01.04.2003	314	126	79	78	31	32	0	32	79	48	127	78	0	78	25	0	25	262	94	-48	0	6	52	10.19	40.45	24.84	7.96
01.04.2004	311	124	78	78	31	45	0	45	78	50	128	72	0	72	24	0	24	269	79	-50	6	7	42	14.47	41.16	23.15	7.72
01.04.2005	305	122	76	76	31	48	0	48	76	53	129	57	0	57	31	1	32	266	74	-53	19	-1	39	15.74	42.30	18.69	10.49
01.04.2006	312	125	78	78	31	64	0	64	78	59	137	67	0	67	28	0	28	296	61	-59	11	3	16	20.51	43.91	21.47	8.97
01.04.2007	321	129	80	80	32	64	0	64	80	58	138	64	0	64	30	0	30	296	65	-58	16	2	25	19.94	42.99	19.94	9.35
01.04.2009	321	129	80	80	32	67	0	67	80	51	131	77	0	77	32	0	32	307	62	-51	3	0	14	20.87	40.81	23.99	9.97

Note :- 1) As per the direction given on 23.01.2023 by the Hon'ble Tribunal the above information is submitted .

2) This vacancy position and cadre strangth is taken from the file of Promotion of Executive Engineer in concern year.

3) This position is regarding regular promotion and adhoc promotion in Executive Engineer Cadre.

4) As per the Seniority Rules of 1983 Rule 4, Explanation II officer appointed fortuitously shall be excluded for the purpose of determining continious service of an officer.

5) Recruitment in any cadre has to be done as per recrutement rule in this case as per Recrutement Rules dt.19.12.1970.

6) Seniority Rules are only for the purpose of arrangement of officer promoted in specific sequence in particular year.

20. On the break down of the quota, we didn't come across any guiding principles at what percentage the quota is broken down. Moreover, the quota which is accepted by our earlier bench has broken down, i.e., for a particular period from 1991 to 1998. In respect of the break down of the quota, the factual status of the recruitment and the vacancies in the post of A.E.E, A.E-I, S.D.E and S.D.O is to be examined. We, therefore, gave directions to the Respondent-State to give us a correct information in respect of the cadre strength, occupied posts, vacant posts and also the pending and occupied posts with respective quota. The Respondent-State has provided a chart for the period 1998 to 2009 which is a subject matter of the present Original Application. In order to fill up the posts in Government service the first step is to be taken by the Government is to send the requisition of the particular post and the number of posts required to be filled up. In absence of such requisition, the posts cannot be filled up. As per Rule 4 of the Recruitment Rules of 1983 (supra), the quota is to be filled up of all the four posts on the basis of year wise vacancies available.

21. We have a deep thought over the submissions of Mr Sakhare that the appointment of the applicants from their respective dates should not be held fortuitous or stop gap and their seniority is not to be counted on the basis of the availability of the quota. In the case of **O.P Singla (supra)**, the similar issue of the seniority between the direct recruits and the promotees, i.e., coming from the different sources in the Judicial service was before their Lordships. It was held that cadre includes permanent as well as temporary posts. The Hon'ble Supreme Court while considering the Delhi Higher Judicial Service Rules of 1970 has held that inter se seniority between the direct recruits and the promotees appointed under Rules 16 and 17 should be on the basis of continuous officiation. Therefore, no distinction can be made between these two cadres while fixing their placement in the seniority list. It held that the effect of creation of the temporary posts is to expand the area of membership of the service. No quota rule is applicable with regard to the

temporary posts. The Hon'ble Supreme Court in the said case has taken a note of this perennial chaos while deciding the seniority thereby causing injustice to the persons from either of the groups and as highlighted the root cause of this controversy as follows:-

“89. The interpretation indicated above and the principles mentioned hereinbefore in adjusting the rights between the promotees and direct recruits in the background of the rules prevailing in the instant case are appropriate and rational. One should insist that Government must abolish this system of making appointments from two different sources in ad hoc manner. If appointments have to be made from two different sources, then the authorities should so plan that the recruits come from two different sources in time and officers from one source are not required to function substantively and effectively in the jobs which are intended to be performed by recruits of other source and face the prospect of being either pushed back or thrown out. Nothing more need to be said.”

It is a sorry state of affairs that no requisition to fill up adequate posts in A.E.E were sent despite these observations by the Hon'ble Supreme Court.

22. In the case of **Rudra Kumar Sain's case (supra)** the issue of ad hoc, stop gap and fortuitous appointment was dealt with by the Constitution Bench. It was again related to the Delhi Higher Judicial Services based on the ratio laid down in the case of O.P Singla and again getting continuous officiation under Rules 16 and 17 of the Delhi Higher Judicial Services was decided. The word stop gap, ad hoc and fortuitous was not defined under these rules. However, in the present case, the word fortuitous is defined and we need to borrow the same meaning and not the meaning contemplated in the Oxford dictionary.

23. In the case of **S.N Dingara (supra)**, it was again Rule 16 of the Delhi Higher Judicial Services and it was reiterated that “the continuous length of service of the promotees right from their appointment to the higher judicial service should be on the basis of their seniority.”

24. In the case of **Narender Chadha's (supra)**, the Hon'ble Supreme Court held that if ad hoc promotees are allowed to continue for long years without being reverted or challenged, they would be deemed to have been regularized. It is also considered that when there is deliberate massive departure from quota rule and Rules confer relaxation power on Government, it may be assumed that quota rule has been relaxed.

25. On the point of break down of the quota, we came across the ratio laid down in the case of **M.S Patil, Assistant Conservator of Forest, Solapur and Ors Vs. State of Maharashtra & Ors, (1996) 1 SCC 361**, the promotee, has raised five contentions before the Hon'ble Supreme Court, mainly based on the proposition that seniority as per continuous officiation, the direct recruits cannot scale a march over the promotees. The quota rule has broken down between the direct recruits and the promotees. Similarly, the Government has not acted upon rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. While dismissing the Petition, the Hon'ble Supreme Court held:-

“In several judgments of this Court, it is now firmly settled that merely because of the fact that the State Government could not make direct recruitment due to its inaction, it cannot be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and the seniority determined as per the rules within the respective quota. Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this Court stated in *Keshav Chandra Joshi Vs. Union of India* through a Bench of three Hon'ble Judges that the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available.

The same decision was followed and reiterated in A.N Sehgal Vs. Raje Ram Sheoran.”

26. On the point of break down of quota, while going through the case of **M.S Patil (supra)**, we came across the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra & Anr Vs. Sanjay Thakre & Ors 1995 Supp (2) SCC 407**. In the said case, the direct recruits have approached the M.A.T, Nagpur Bench making grievance about their seniority qua some promotees in the cadre of Assistant Conservator of Forest. In the said judgment, the Hon'ble Supreme Court has referred to the landmark judgment in the case of **Direct Recruits case & K.C Joshi's case (supra)**. It is stated that in both the cases dealt with the promotion given to the concerned persons in excess of the quota because of which it was stated that the promotions were not according to the rules. The Hon'ble Supreme Court has observed that the seniority could not be counted from the date of fortuitous promotions. It was observed as under:-

“These cases voiced the feeling of the Court that the State having made the rules, should implement them in letter and spirit; any justification for dereliction in implementation should not be countenanced; it should really be snubbed.”

Considering the chart given it is clear that the Government did not send the requisition for appointment on the post of A.E.E, but went on filling up the posts of A.E Grade-I in excess from the beginning so that there will be non-availability of the candidates for adequate appointment to the post of Assistant Executive Engineer. In view of the judgment in the case of Sanjay Thakre (supra), it is made clear that the Government cannot deviate from its own rules while filling up the quota. Thus, it is an artificial inadequacy created with an ulterior motive to facilitate the promotions of the promotees. Thus, we cannot say that there is a break down of the quota.

27. The ratio laid down in the judgment of **Keshav Chandra Joshi Vs. Union of India & Ors, AIR 1991 S.C 284**, has considered specifically the earlier judgment in the case of Direct Recruits and the Hon'ble Supreme Court held that:-

*“24. It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution. This Court interpreted that equity is an integral part of Article 14. So every attempt would be made to minimize, as far as possible, inequity. Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A*



*feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees.”*

28. Learned counsel Mr Suhas Oak for the private Respondents 56 to 60 has submitted that the issue of seniority list dated 20.5.2015 and 29.1.2015 is involved in these matters. However, the names of the added private Respondents are appearing in the seniority list dated 17.8.2015 and therefore, the promotions of the added private Respondents whose name are mentioned in the seniority list dated 17.8.2015 are not to be stalled. Learned counsel has argued that the applicants have not challenged the seniority list dated 17.8.2015 in the Original Application by way of amending the prayer at any time during the pendency of the Original Applications though they had the opportunity to do so.

29. The submissions of learned counsel are correct that the seniority list dated 17.8.2015 is not challenged by the applicants in these Original Applications, though the applicants were aware of the said seniority list. The submissions of Mr Sakhare that the applicants are going to be affected if the promotions are given to the private Respondents may be true, however, the said list is not the subject matter of these Original Applications. Hence, the order of stay granted on 14.9.2022 is hereby vacated.

30. In view of the above, we find no merit in the Original Applications and they stand dismissed. Interim relief granted by this Tribunal on 14.9.2022 stands vacated.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**17.02.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**17.02.2023**