

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 393 OF 2007**

DISTRICT: - AURANGABAD.

**Himat S/o. Baburao Patil,**

Age-49 years, Occupation : Service,

R/o. Vadigodri, Tq. Ambad,

District Jalna,

At present working at Nandur-

Madmeshwar, Division No. II,

Vaijapur, Tq. Vaijapur,

District Aurangabad.

.. APPLICANT.

**V E R S U S**

**1] The State of Maharashtra,**

Through : Secretary

Jal Sampada Department,

Mantralaya, Mumbai.

**2] The Superintending Engineer  
& Circle Office,**

Vigilance Cell, Aurangabad

**3] The Superintending Engineer,**

Aurangabad Irrigation Division,

Aurangabad.

.. RESPONDENTS.

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**APPEARANCE** : Shri. C.V. Thombre, learned Advocate  
for the applicant.

: Smt. Sanjivani Deshmukh-Ghate –  
learned Presenting Officer for the  
respondent Nos. 1 & 2.

: Shri S.D. Dhongde, learned Advocate  
for respondent No. 3.

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**CORAM** : **JUSTICE M.T. JOSHI, VICE CHAIRMAN  
AND**

: **ATUL RAJ CHADHA, MEMBER (A)**

**DATE** : **11<sup>TH</sup> DECEMBER, 2018.**

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**ORDER****[Per : Justice M.T. Joshi, Vice Chairman]**

1. Heard Shri C.V. Thombre, learned Advocate for the applicant, Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondent Nos. 1 & 2 and Shri S.D. Dhongde, learned Advocate for respondent No. 3.
2. By the present Original Application the applicant is claiming following relief: -

***C) The impugned order dated 5.8.2006 passed by respondent No. 1 rejecting the claim for granting deemed date of promotion from 26.9.1990 may kindly be quashed and set-aside and to direct the respondents to grant deemed date of promotion in pursuant to the representation submitted as per the order passed by this Hon'ble Maharashtra Administrative Tribunal, Aurangabad dated 20.3.2003."***

3. The Admitted fact on record is that the applicant was initially appointed as Civil Engineering Assistant in the year 1985. On 17.9.1990 one Shri P.M. Kulkarni, who was junior to the present applicant was promoted to

the post of Junior Engineer. Therefore, the applicant filed O.A. No. 1745/1992 in this Tribunal wherein said Shri P.M. Kulkarni was joined as respondent No. 3. This Tribunal vide order dated 20.3.2003, Exhibit 'A', page-11, directed that the applicant shall make detailed representation for grant of deemed date of promotion and the same shall be decided within a period of four months. The said representation also came to be rejected by the respondents vide the impugned order and, therefore, the present Original Application.

4. The reasons forwarded by the respondent Nos. 1 & 2 vide affidavit in reply are that Annual Confidential Report of the present applicant for the year 1986-87 and 1988-89 were "below average". The applicant has given representation for expunging these adverse CRs and the same was forwarded to the Government on 17.8.2004. The Government however, held that the said remarks cannot be expunged. As the applicant's performance was below average as per CRs of the year 1986-87 and 1988-89, he could not have been promoted on 7<sup>th</sup> September,

1990 and his junior Shri P.M. Kulkarni as detailed supra came to be promoted. For the same reason, according to the respondents, deemed date of promotion cannot be granted to the applicant.

5. In the written notes of arguments, learned Advocate for the applicant submits that adverse remarks were not communicated and opportunity to submit representation was not given. The respondent Nos. 1 & 2, however, on oath had made a statement that the representation was made by the present applicant against the adverse ACRs, but the State did not expunge the same.

The respondent No. 3 in his affidavit in reply has pointed towards the statement made by the applicant in paragraph No. 6 of the petition that in fact, adverse remarks were communicated to him though not every year, but after the decision in the earlier O.A. and thereupon the decision of not granting the deemed date of promotion was taken. The grievance of the applicant is that the ACRs were not communicated every year. It however, appears that after communication of the ACRs

and after considering the representation of the present applicant as the adverse ACRs were not removed, deemed date of promotion was not granted.

6. In the circumstances, we find no infirmity in the impugned order. The present Original Application is, therefore, dismissed without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 11<sup>TH</sup> DECEMBER, 2018.**

O.A.NO.393-2007(DB-Deem date)-HDD-2018