MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

O.A.NO. 911/2016 WITH O.A.NO. 912/2016

01. ORIGINAL APPLICATION NO. 911 OF 2016

DISTRICT: - OSMANABAD

Shri Nagnath S/o. Pandharinath Kokane,
Age – 63 years, Occu. Retired,
R/o. Murud, Tq. & Dist. Latur,
At Present Samtha Nagar, Osmanabad,
Tq. & Dist. Osmanabad **.. APPLICANT.**

V E R S U S

1. **The State of Maharashtra,**
   Through its Principal Secretary,
   Public Works Department,
   Mantralaya, Mumbai – 32.

2. **The Superintending Engineer,**
   Region Office, Public Works Department,
   Aurangabad.

3. **The Superintending Engineer,**
   Public Works Department, Circle
   Osmanabad.

4. **The Executive Engineer,**
   Public Works Department,
   Division Osmanabad,
   Tq. & Dist. Osmanabad.

5. **The Deputy Superintending Engineer,**
   Public Works Department,
   Sub-Division Osmanabad,
   Tq. & Dist. Osmanabad.

6. The Chief Account Officer,
Pay Verification Department,
Aurangabad.

7. The Account General,
Pay Verification Department,
Nagpur. **.. RESPONDENTS**

(Copy to be served on P.O. MAT Bench at Aurangabad.)

W I T H

02. ORIGINAL APPLICATION NO. 912 OF 2016

DISTRICT: - OSMANABAD

Shri. Ramakant S/o. Gopal Kulkarni,
Age – 63 years, Occu. Retired,
R/o. Samtha Nagar, Osmanabad,
Tq. & Dist. Osmanabad **.. APPLICANT.**

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai – 32.

2. The Superintending Engineer,
Region Office, Public Works Department,
Aurangabad.

3. The Superintending Engineer,
Public Works Department, Circle
Osmanabad.

4. The Executive Engineer,
Public Works Department,
Division Osmanabad,
Tq. & Dist. Osmanabad.

5. The Deputy Superintending Engineer,
Public Works Department,
Sub-Division Osmanabad,
Tq. & Dist. Osmanabad.

6. The Chief Account Officer,
Pay Verification Department,
Aurangabad.

7. The Account General,
Pay Verification Department,
Nagpur. **.. RESPONDENTS**

(Copy to be served on P.O. MAT Bench at Aurangabad.)

APPEARANCE : Shri R.V. Naiknavare – learned Advocate for the applicants in both these OAs.

: Mrs. Deepali S. Deshpande – learned Presenting Officer for the respondents in both these OAs.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 19TH SEPTEMBER, 2017.

C O M M O N O R D E R

1. The facts and issues involved in both the Original Applications are similar and identical. Therefore, both these OAs are decided by this common order.

2. The applicants have challenged the impugned order dated 15.05.2015 issued by the Superintending Engineer, Public Works Department, Circle Osmanabad and the objections dated 18.11.2014 & 10.11.2014 raised by the respondent No. 6 in both these OAs respectively granting benefit of Second Assured Progressive Scheme from 1.10.2006 to them and prayed to quash the said order and prayed to grant pay scale of Civil Engineering Assistant since 6.2.1994 to 05.02.1997 and grant the pay scale of Junior Engineer since the year 1997 on completion of 45 years of age by them with consequential benefits.

3. It is contention of the applicants that they possessed the educational qualification as H.S.C. and passed H.S.C. examination in the year 1971. It is their contention that they were appointed as Road Karkun in Public Works Department, Sub-Division Office Udgir on 5.10.1974. They completed their training of Civil Engineering Assistant in the year 1993. Accordingly, the competent authority issued certificate dated 29.5.1993 in their favour. As they completed the training required for Civil

Engineering Assistant in the year 1993 they are entitled to get pay scale of Civil Engineering Assistant i.e. Rs. 1200-1800. Both the applicants completed their age of 45 years in the year 1997. Therefore, they are entitled to get pay scale of Civil Engineering Assistant on that ground also, but the respondents had not granted the pay scale of the Civil Engineering Assistant to them.

4. In the year 1986 both the applicants completed 12 years of their service from the date of appointment. Thereafter, they had completed training course of Civil Engineering Assistant in the year 1994. Thereafter, they completed further 12 years' service in the year 2006. Therefore, they are entitled to get the promotion of Junior Engineer in view of the Civil Services (Promotion) Rules, and they are entitled to get the pay scale of Rs. 5200-9000. It is their contention that the Executive Engineer, Public Works Division Osmanabad fixed their pay scale w.e.f. 06.02.1994. After three years the pay scale of Junior Engineer also been fixed by the Executive Engineer, Public Works Division Osmanabad. The

proposal was forwarded to the Accounts Officer, Pay Scale Verification Department on 19.11.2014.

5. The Deputy Secretary, Public Works Department, Maharashtra State, issued the letter dated 12.02.2015 and directed to pay the benefits and pay scale of the post of Civil Engineering Assistant and Junior Engineer from the deemed date. It is contention of the applicants that they are retired from the Government service on 31.07.2010 after rendering the service of 35 years & 9 months without any stigma and complaint. As the applicants were entitled for time bound promotion the Sub-Division of Public Works Department fixed the pay scale and forwarded the proposal to the Pay Verification Department i.e. respondent No. 6. It is their contention that the respondents fixed their pay scale in view of the Government Resolution dated 31.07.2013, but the respondent No. 6 raised objection to the proposal and, therefore, the respondent No. 3, Superintending Engineer, Public Works Department, passed the impugned order dated 15.05.2015 without taking into consideration the

earlier proposal and the Government Resolution dated 31.07.2017 and extended the benefits of second time bound promotion to the applicants w.e.f. 1.10.2006. It is their contention that the deemed date for promotion to pay scale of the applicant is in the year 1997. They completed course of Civil Engineering Assistant and also completed the age of 45 years and, therefore, the respondents ought to have granted pay scale to them accordingly. It is their contention that the respondent No. 3 has wrongly extended the benefit of second time bound promotion to them w.e.f. 1.10.2016 and, therefore, they challenged the impugned order dated 15.5.2015 issued by the respondent No. 3, Superintending Engineer and prayed to quash the same by filing the present Original Application and also sought directions to the respondents to grant them pay scale of Civil Engineering Assistant since the year 1994 and to grant pay scale of Junior Engineer since 3.7.1997 on completion of 45 years of their age.

6. The respondents have filed affidavit in reply and resisted the contentions of the applicant. It is their

contention that the applicant Shri R.G. Kulkarni had not qualified for the examination of Maharashtra Engineering Research Institute (MERI) Nashik. It is their contention that as per the office record both the applicants completed their 45 years of age in the year 1997 and not in the year 1994. It is their contention that the applicant in O.A. No. 911/2016 viz. Shri Nagnath S/o. Pandharinath Kokane completed 12 years' service on 5.12.1986 while the applicant in O.A. No. 912/2016 viz. Shri R.G. Kulkarni completed his 12 years' service on 21.3.1987. It is their contention that on completion of 45 years of age by the applicants in the year 1997 the benefits of Government Resolution dated 18.6.1998 extended to the applicants. Then then Executive Engineer fixed their pay scale as per the Government Resolution dated 6.2.1994. It is their contention that from that date the present OAs are not within limitation and, therefore, they prayed to dismiss the same.

7. It is their further contention that the deemed date for deemed promotion have been determined as per example

No. 1 mentioned in the Circular dated 12.02.2015 issued by the Government of Maharashtra and accordingly benefits have been extended to the applicants by passing the impugned order by the respondent No. 3. It is their contention that pay scale of Assistant Civil Engineering was granted to the applicants in the year 1994, but the applicants have suppressed the said fact. It is their contention that the applicants have filed false application and, therefore, they prayed to reject the Original Application.

8. Heard Shri R.V. Naiknavare – learned Advocate for the applicants in both these cases and Mrs. Deepali S. Deshpande – learned Presenting Officer for the respondents in both these cases. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the parties.

9. Admittedly both the applicants have possessed the educational qualification as H.S.C. and they have passed H.S.C. examination in the year 1971. They were

appointed as Road Karkun in Public Works Department, Sub-Division Office Udgir on 5.10.1974. Admittedly, they have completed their training of Civil Engineering Assistant in the year 1993. Admittedly, they have completed their age of 45 years in the year 1997. Admittedly they retired w.e.f. 31.7.2010. Admittedly, the respondent No. 3 extended the benefits of second time bound promotion to both these applicants w.e.f. 1.10.2006 by passing the impugned order dated 15.05.2015.

10. Learned Advocate for the applicants has submitted that the applicant joined the service w.e.f. 5.10.1974 as Road Karkun. They completed their age of 45 years in the year 1997. Prior to that they completed their training of Civil Engineering Assistant in the year 1993. Therefore, they are entitled to get pay scale of Civil Engineering Assistant w.e.f. 6.2.1994. He has submitted that after three years' experience on the post of Civil Engineering Assistant, they would be eligible for the promotion on the post of Junior Engineer. From the year 1997 and since then they are entitled to get pay scale of Junior Engineer.

After completion of 12 years' service they are entitled to get the benefit of second time bound promotion, but the respondents have not considered the said aspect and passed the impugned order. He has submitted that the impugned order is in contravention of the Government Resolution dated 31.7.2013 and, therefore, he prayed to quash the impugned order. He has submitted that the Executive Engineer, P.W.D., Osmanabad, had sent the proposal dated 23.02.2015 (page 16-P of paper book of O.A.) to the Superintending Engineer, Public Works Circle, Osmanabad, and proposed to grant the benefit of second time bound promotion to the applicants w.e.f. 3.7.2000 & 3.5.2000 respectively, but the said proposal has not been considered by the respondent No. 3 and, therefore, they prayed to direct the respondent No. 2 to consider the proposal of the Executive Engineer, P.W.D. Osmanabad by allowing the present Original Applications.

11. Learned Presenting Officer has submitted that there is no illegality in the impugned order passed by the respondents. The impugned order has been passed by the

respondents in view of the Government Resolution dated 31st July, 2013 and letter/circular dated 12.2.2015 issued by the Government of Maharashtra. He has submitted that in view of the example No. 1 mentioned in the letter dated 12.02.2015 the benefit has been extended to the applicant. He has submitted that the date of birth of the applicant Shri Nagnath S/o. Pandharinath Kokane in O.A. No. 911/2016 is 3.7.1952 while the date of birth of the applicant Shri. Ramakant S/o. Gopal Kulkarni in O.A. No. 912/2016 is 3.5.1952. They completed their 45 years of age on 3.7.1997 and 3.5.1997 respectively. On completion of 45 years of age they will be absorbed in the cadre of Civil Engineering Assistant. They will be eligible for the post of Junior Engineer after three years i.e. on 2.3.2000. They joined the service in the year 1974. They completed 12 years' service and, therefore, in view of the Government Resolution dated 8.6.1995 they are entitled to get the benefit of first time bound promotion w.e.f. 1.10.1994. Thereafter on completion of further 12 years' service i.e. from 1.10.2006, they will be entitled to get the pay scale of the Junior Engineer, which is promotional

post. He has submitted that by relying on the said example the Superintending Engineer, P.W.D. Osmanabad passed the impugned order dated 15.05.2015. He has submitted that there is no illegality in the impugned order and the order is passed in consonance with the provisions of Government Resolution dated 31st July, 2013 and letter dated 12.2.2015 issued by the Government of Maharashtra, and therefore, he supported the impugned order.

12. I have gone through the documents placed on record. The respondent No. 3, the Superintending Engineer, P.W.D. Circle, Osmanabad, has considered the provisions of Government Resolution dated 31.7.2013 and letter dated 12.2.2015 issued by the Government. Considering the said Government Resolution and letter he passed the impugned order dated 15.05.2015. The examples are given in the letter dated 12.2.2015 while considering the cases of extending the benefit of the Government Resolution dated 31.7.2013. The example No. 1 in the

letter dated 12.2.2015 is relevant in this case and, therefore, the same is reproduced as under: -

> *"9) कर्मचारी.अ :- जन्मदिनांक २६.०२.१९५६, प्रथम नियुक्तीचे पदनाम - रोड कारकून, शासन सेवेतील नियुक्तीचा दिनांक १६.१०.१९७९. कार्यवाही काटेकोरपणे पालन करणे आवश्यक आहे. या कर्मचा-याने सदर नियमात अंतर्भूत केलेली परीक्षा उत्तीर्ण केली नसल्यास या कर्मचा-याचे वय ४५ वर्ष झाल्यानंतर त्याला प्रात्यक्षिक परिक्षेसह परीक्षा उत्तीर्ण होण्यापासून सुट देण्यात येईल. हा कर्मचारी दि. २६.०२.२००१ रोजी वयाची ४५ वर्षे पूर्ण करीत असल्यामुळे त्याचे या तारखेपर्यंत स्थापत्य अभियांत्रिकी सहायक या पदावर समावेशन झाले नसल्यास या तारखेपासून सदर पदावर समावेशन होईल व तो कनिष्ठ अभियंता पदाच्या परिक्षेसाठी दि. २६.०२.२००४ नंतर पात्र होईल. परंतु ४५ वर्षे पुर्ण झाल्यामुळे त्याला या तारखेस परीक्षा उत्तीर्ण होण्यापासून सुट देण्यात येईल. या पदधारकास १२ वर्षाच्या नियमित सेवेनंतर त्याच्या पदोन्नती साखळीतील वरच्या पदावरील वेतनश्रेणी लागु राहील. या कर्मचा-याची नियुक्ती दि. १६.१०.१९७९ ची असल्यामुळे त्याला १२ वर्षाच्या नियमित सेवेनंतर दि. ०८.०६.१९९५ च्या शासन निर्णन्वये दि. ०१ ऑक्टोबर, १९९४ पासून त्याच्या पदोन्नती साखळीतील वरच्या पदावरील वेतनश्रेणी अनुज्ञेय होईल व त्यानंतर १२ वर्षांनी म्हणजेच दि. ०१.१०.२००६ पासून दुसरा लाभ म्हणजेच कनिष्ठ अभियंता या पदाची वेतनश्रेणी अनुज्ञेय होईल."*

13. In the instant case, the applicant Shri Nagnath S/o. Pandharinath Kokane in O.A. No. 911/2016 is born on 3.7.1952 and the applicant Shri. Ramakant S/o. Gopal Kulkarni in O.A. No. 912/2016 is born on 3.5.1952. They completed their 45 years of age on 3.7.1997 and 3.5.1997

respectively. They completed the training course of Civil Engineering Assistant in the year 1993. Since, they completed 12 years' of service since the date of their appointment they will get benefit of first time bound promotion in the higher pay scale w.e.f. 1.10.1994 in view of G.R. dated 31.07.2013. After getting the pay scale of first time bound promotion, they will be entitled to get the benefit of second time bound promotion in the post of Junior Engineer after completion of 12 years' service in that cadre i.e. w.e.f. 1.10.2006. The respondent No. 3, the Superintending Engineer has rightly considered the said aspect and granted the second time bound promotion to the applicants in view of the example No. 1 mentioned in the letter dated 12.02.2005. The respondent No. 3 has rightly complied the provisions of Government Resolution dated 31.07.2013 while deciding the deemed date of promotion of the applicants and granted them pay scale of the higher post accordingly. There is no illegality in the impugned order passed by the Superintending Engineer, P.W.D. Circle Osmanabad. Therefore, no interference is called for in the impugned order dated 15.05.2015 issued

by the respondent No. 3, the Superintending Engineer, Public Works Department, Circle Osmanabad. There is no merit in both these Original Applications. Consequently, they deserve to be dismissed.

14. In view of the above, both these Original Applications stand dismissed with no order as to costs.

MEMBER (J)

O.A.NOs.911 & 912-2016(SB)-HDD-2017-deemed date