

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 688 of 2009 (D.B.)**

Sanjay S/o Madhanrao Kesarkar,  
Aged about 48 years, Occ. Assistant Chief Engineer,  
Executive Engineer, Public Works Region, Amravati  
Permanent R/o Plot No. D-10, near Gupta  
Nursing Home, Laxminagar, Nagpur-22.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Public Works Department, Mantralaya,  
Mumbai through its Secretary (Roads).
- 2) Shri Prabhakar Yeshwantrao Deshmukh,  
Superintending Engineer – Dy. Secretary  
(Buildings) Public Works Department,  
Mantralaya, Mumbai.
- 3) Shri Dattatraya Gangaram Pawase,  
Superintending Engineer, Maharashtra State  
Road Development Corporation,  
Neapean Sea Road, Mumbai.

**Respondents.**

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**S/Shri P.C. Marpakwar, T.B. Golhar, Advocates for the applicant.**

**Shri A.M. Ghogre, learned P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J) and  
Hon'ble Shri Shree Bhagwan, Member(A).**

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**JUDGMENT**

**PER : V.C. (J).**

**(Delivered on this 22<sup>nd</sup> day of October,2018)**

None for the applicant. Heard Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant in this case is an Executive Engineer and has challenged the order dated 15/10/2008 and 29/01/2009 (Annexure-A-1 and A-2) respectively issued by respondent no.2, whereby the respondent no.3 has been promoted from the post of Executive Engineer to the post of Superintending Engineer superseding the applicant. It is requested that the said order be quashed and set aside and in the alternative the respondent no.1 be directed to consider and promote the applicant to the post of Superintending Engineer.

3. From the facts of the case it seems that the applicant has been appointed as Executive Engineer since October, 1994 and was kept under suspension from February,2000 to October,2004 and thereafter his regular increments were released. However, his suspension period was not regularised.

4. A seniority list of the Executive Engineer was circulated as on 31/03/1998 was circulated on 28/02/2000. The applicant stands at sr.no.153, whereas, the respondent no.2 stands at sr.no.160, whereas, the respondent no.3 stands at sr.no.155. The respondent nos. 2 and 3 though juniors to the applicant were

promoted to the post of Superintending Engineer and the applicant was superseded. The respondent no.2 has been promoted on 15/10/2008, whereas, the respondent no.3 has been promoted on 19/01/2009.

5. According to the applicant, the ACRs. of respondent nos. 2 and 3 were not extraordinary as against this the ACRs. of the applicant is of the standard A and A+ and no departmental inquiry is pending against the applicant. Similarly situated employee namely one Shri G.G. Mengde was also promoted vide order dated 07/07/2009 subject to the decision in departmental inquiry and one Shri G.B. Dhakane was also promoted vide order dated 26/08/2009. The applicant's case was however not considered and this amounts to favouritism and therefore this petition.

6. The respondent no.1 has filed reply-affidavit and submitted that the departmental inquiry is pending against the applicant and the applicant was kept under suspension. Subsequently, the departmental inquiry resulted in the punishment. It is stated that the departmental inquiry was against 21 delinquents including the applicant and out of these 21 delinquents one Shri M.A. Moize expired and therefore his inquiry was dropped. The Inquiry Officer submitted report on 15/01/2001 which was not agreed by the Disciplinary Authority and therefore the Disciplinary Authority

recorded findings and found applicant guilty. In such circumstances, there was no reason to promote the applicant. The applicant files rejoinder and submitted that one Shri D.B. Vibhute came to be promoted to the post of Executive Engineer from the post of Assistant Engineer though inquiry was pending against him and even before the date of passing final punishment order and therefore the respondents' action is nothing but favouritism. It is material to note that against the order of punishment in the departmental inquiry the present applicant has filed the O.A.No. 931/2012 and the said O.A. was pending in this Tribunal and it has been decided today itself. The learned counsel for the applicant argued the matter in that proceedings and submits that the result of this O.A. will be subject to outcome of O.A.No.931/2012. The O.A.No.931/2012 has been dismissed.

7. From the admitted facts on record, it is clear that in the departmental inquiry final order was passed by the Disciplinary Authority and the applicant has been dismissed from the service since the charges were found proved. Against this, the applicant has also filed appeal and the Appellate Authority has also confirmed order of dismissal. The applicant has therefore been dismissed from the service. Earlier he was not promoted due to the pendency of the departmental inquiry. It seems that one of the delinquents along with

the applicant facing the departmental inquiry was promoted during pendency of the inquiry. But in said case the punishment was minor and therefore his case was considered and this cannot be said to be discrimination at all. His annual increment was only withheld for three years and therefore the DPC might have found it as no bar to promote him. We are therefore satisfied that there is no merits in the O.A. Hence, the following order :-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(Shree Bhagwan)  
Member(A).**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

**Dated :- 22/10/2018.**

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