

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO. 1035 OF 2014**

**WITH**

**ORIGINAL APPLICATION NO. 644 OF 2015**

**DISTRICT**

**ORIGINAL APPLICATION NO. 1035 OF 2014**

1. Shri Ramchandra Sakharam )  
Ghorpade, R/O. At Boriv, )  
Post Rahimatpur, )  
Tal. Koregaon, Dist. Satara. )
2. Shri Nanasaheb Kedari Bagal, )  
R/O A/P. Yeralwadi, )  
Tal. Khatav, Dist. Satara. )
3. Shri Dilip Mahadeo Kharat, )  
R/O. Government Irrigation )  
Colony, Kushalnagar, Satara. )
4. Shri Suryakant Dagadu Sanas, )  
R/O. A/P. Velang, Tal. Wai, )  
Dist. Satara. )
5. Shri Vijay Maruti Dhumal, )  
R/O. Songir Wadi, Tal. Wai, )  
Dist. Satara. )
6. Shri Jaysing Bhikoba Patane, )  
R/O. Jotiba Road, Tal. Wai, )  
Dist. Satara. )
7. Shri Ramchandra Suryaji )  
Ghadge, R/O. New MIDC Kodoli )  
Satara. )

8. Shri Tukaram Jagu Shinde, )  
R/O. A/P. Aasgaon, )  
Tal. & Dist. Satara. )
9. Shri Madhukar Genu Pol, )  
R/O. At Velang, Post Shirambe )  
Tal. Koregaon, Dist. Satara. )
10. Shri Arun Yashwant Mane, )  
R/O. Shivsagar Apt., )  
Uttekar Nagar, Sadar Bazaar, )  
Satara. )
11. Shri Pratapsinh Yuvraj Patil, )  
R/O. Raviraj, Bapuji Salunkhe )  
Nagar, Vilaspur, )  
Tal. & Dist. Satara. )
12. Shri Prabhakar Krishna Shirke )  
R/O. A/P. Aasgaon, )  
Tal. & Dist. Satara. )
13. Shri Babasaheb Laxman Pawar, )  
R/O. A/P. Dhom, Tal. Wai, )  
Dist. Satara. )
14. Shri Suresh Balawant Pol, )  
R/O. A/P. Dhom, Tal. Wai, )  
Dist. Satara. )
15. Shri Sanjay Gopal Deshmukh, )  
R/O. Gangadham Apartment, )  
Gangapuri, Navechiwadi, )  
Tal. Wai, Dist. Satara. )
16. Shri Sharad Krishna Pol, )  
R/O. Shivajinagar, )

- Songirwadi, Tal. Wai, )  
Dist. Satara. )
17. Shri Ramesh Ganpat Shinde, )  
R/O. "Aashirwad", Motibag )  
Ganapati Lane, Tal. Wai, )  
Dist. Satara. )
18. Shri Abdulrauf Abdulkarim )  
Patel, R/O. Kaji Colony, )  
Raviwar Peth, Tal. Wai, )  
Dist. Satara. )
19. Shri Chandrakant Namdeo )  
Shinde, R/O. At Chandwadi, )  
Post Jamb, Tal. Wai, )  
Dist. Satara. )
20. Shri Shantaram Mahadeo Mozar, )  
R/O. At Nhalewadi, )  
Post. Malgaon, Dist. Satara. )
21. Shri Arjun Krishna Kumbar, )  
R/O. A/P. Saygaon, )  
Tal. Jawali, Dist. Satara. )
22. Shri Ashok Krushnadeo Shinde, )  
R/O. At Aasgaon, Post Jalgaon, )  
Tal. Koregaon, Dist. Satara. )
23. Shri Narayan Maruti Navghane, )  
R/O. At Wasole, Post Wadhe, )  
Tal. & Dist. Satara. )
24. Shri Shivaji Shankar Patil, )  
R/O. A/P. Ambhi Bk, )  
Tal. Shirala, Dist. Sangli. )

25. Shri Prakash Sopanrao Phanase )  
R/O. Songirwadi, Tal. Wai, )  
Dist. Satara. )
26. Shri Ashok Shivram Shinde, )  
R/O. 346, Madhali Ali, )  
Tal. Wai, Dist. Satara. )
27. Shri Suresh Narayan Mandhare, )  
R/O. Shri Mangal CHS, )  
Dhankawadi, Pune -43. )
28. Shri Dattu Navalu Sanas, )  
R/O. 58, Samata Park, )  
Shahupuri, Dist. Satara. )
29. Shri Prakash Balwant Kadam, )  
R/O. Plot No.9, Adarsh Colony, )  
Tamjai Nagar, Karanje Tarfe, )  
Dist. Satara. )
30. Shri Manohar Bajirao Gulumkar )  
R/O. AP. Velang, Tal. Wai, )  
Dist. Satara. )
31. Shri Mohan Govinda Sanas, )  
R/O. A/P. Aasare [Aazadngar], )  
Tal. Wai, Dist. Satara. )
32. Shri Tanaji Narayan Pawar, )  
R/O. A/P. Bhilar, )  
Tal. Mahabaleshwar, )  
Dist. Satara. )
33. Shri Shrirang Kashinath )  
Gaikwad, R/O.158/A, )  
Songirwadi, Tal. Wai, )  
Dist. Satara. )

34. Shri Ramesh Dattatraya Pol, )  
R/O. A/P. Dhom, Tal. Wai, )  
Dist. Satara. )
35. Shri Ramchandra Kashinath )  
Shirke, R/O. 546, Ganapati )  
Lane, Tal. Wai, Dist. Satara. )
36. Shri Tukaram Sakharam Jarande )  
R/O. Post Aassare, )  
Tal. & Post Koregaon, Dist. Satara. )
37. Shri Sunil Shamrao Chavan, )  
R/O. Room No.3059, )  
Government Colony, )  
Krushnanagar, Tal. Satara. )  
Dist. Satara. )
38. Shri Satish Vasant Joshi, )  
R/O.1056, Brahamanshahi, )  
Wai, Dist. Satara. )
39. Shri Suresh Krishna Patane, )  
R/O. Post Velang, )  
Post Kavherkhed, )  
Tal. Koregaon, Dist. Satara. )
40. Shri Mohan Marutrao Jadhav, )  
R/O. Plot No.23, )  
Nishigandha Housing Society, )  
Sahyadri Nagar, Wai, Tal. Wai )  
Dist. Satara. )
41. Shri Uddhav Mahadeo Sodmise, )  
R/O. 594, Ganapati Lane, )  
Tal. Wai, Dist. Satara. )

42. Shri Shrihari Dagadu Jedhe, )  
 R/O.71, Samata Park, )  
 Shahupuri, Dist. Satara. )  
 The Petitioner Nos.1 to 3, )  
 5 to 10, 13 to 15, 19, 21 to 22, )  
 25 to 27, 29, 33 and 35 to 41 are )  
 Occ. Nil [Ex. Measurers], )  
 retired from different Sub Divisions )  
 and the Petitioner Nos.4, 11, 12, )  
 16 to 18, 20, 23, 24, 28, 30 to 32, )  
 34 and 42 are working as Measurers) )  
 /Canal Inspectors in different )  
 Sub Divisions and all of them )  
 being under Dhom Irrigation )  
 Division, Satara. )  
Address For Service of Notice: )  
 Shri Gaura Arvind Bandiwadekar, )  
 Shri Bhushan Arvind Bandiwadekar )  
 Shri Arvind V. Bandiwadekar, )  
 Advocates, Having office at 9, )  
 "Ram-Kripa", Lt. Dilip Gupte Marg, )  
 Mahim, Mumbai – 400 016. )...**Applicants**

**VERSUS**

1. The Executive Engineer, )  
 Dhom Irrigation Division, )  
 Having Office at Sinchan )  
 Nagar, Krishna Nagar, )  
 Satara. )
2. The State of Maharashtra, )  
 Through Principal Secretary, )  
 Water Resources Department, )  
 Having office at Mantralaya, )  
 Mumbai – 400 032. )

**WITH****ORIGINAL APPLICATION NO. 644 OF 2015**

- 1) Arun S/O. Vishnupant Joshi, )  
Age 50 years, Occ. Service )  
R/O. At Post Ashti, Tqu. Partur, )  
District Jalna. )
- 2) Dadasaheb S/o. Sonajirao Pathade, )  
Age 49 years, Occ. Service, )  
R/o. Madhav Nagar, Paithan, )  
Dist. Aurangabad. )
- 3) Ramesh S/o. Laxmanrao Thorat, )  
Age 50 years, Occ. Service, )  
R/o. Madhav Nagar, Paithan, )  
Dist. Aurangabad. )
- 4) Vilas S/o. Dattopant Saraf, )  
Age 51 years, Occ. Service, )  
R/o. Shivneri Colony, Plot No.34, )  
Near Vijay Nagar, Garkheda, )  
Auragabad. )
- 5) Durgadas s/o Bhaskarrao Pune )  
Age:58 years, Occ: Service, )  
R/o. Giriraj Apartment, Bhist Bag Road) )  
Savedi, Aurangabad. )
- 6) Dhanraj s/o. Kundanmal Gandhi )  
Age: 56 years, Occu: Service )  
R/o. Parvati Chambers, Khatod market) )  
Shivaji Raod, Shrirampur, )  
Dist. Ahmednagar. )
- 7) Raosaheb s/o. Sopanrao Kakde )  
Age: 49 years, Occu: Service, )

R/o. Rajendra Complex, )  
 Near Kalaram Mandir Shrirampur, )  
 Dist. Ahmednagar. )

8) Narayan s/o. Chaganrao Istakke )  
 Age: 52 years, Occu: Service, )  
 R/o. Northern Branch, Ward No.7, )  
 Shrirampur, Dist. Ahmednagar. )

9) Razzak s/o. Babulal Pathan )  
 Age: 58 years, Occu: Service, )  
 R/o. Nagori Complex, Mukundnagar, )  
 Ahmednagar. )

10) Shridhar s/o. Vishwanath Vetel )  
 Age: 56 years, Occu: Service, )  
 R/o. Irrigation Colony, Sangamer )  
 Road, Shrirampur, Dist. Ahmednagar.)....**Applicants**

### **VERSUS**

1) The State of Maharashtra )  
 Through the Chief Secretary, )  
 Maharashtra State, Mantralaya, )  
 Mumbai – 400 032. )

2) The Secretary, )  
 Water Resources Department, )  
 Mantralaya, )  
 Mumbai – 400 032. )

3) The Secretary, )  
 Finance Department, )  
 Mantralaya, Mumbai – 400 032. )

4) The Secretary, )  
 General Administration Department, )



Mantralaya, Mumbai – 400 032. )  
 (Respondent Nos.1 to 4 be served )  
 Through Chief Presenting Officer, )  
 M.A.T. Aurangabad) **....Respondents**

Shri A.V. Bandiwadekar, the learned Advocate for the Applicants in O.A.No.1035 of 2014.

Shri H.A. Joshi, the learned Advocate for the Applicants in O.A.No.644 of 2010 .

Smt. Savita Suryawanshi, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**  
**Shri R.B. Malik, Member (J)**

**DATE : 20.01.2017**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

### **ORDER**

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicants in O.A.No.1035 of 2014, Shri H.A. Joshi, the learned Advocate for the Applicants in O.A.No.644 of 2010 and Smt. Savita Suryawanshi, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by the same order as the issues to be decided are identical.

3. Learned Counsel for the Applicants in O.A.No.1035 of 2014 argued that the Applicants were earlier working as Canal Inspectors/ Measures/ Daftar Karkoon in the Dhom Irrigation Division, satara district. However, later on, all of them were working as Canal Inspector or Measurer. Some of the Applicants initially joined service as Peon/Patkari and then promoted as Canal Inspectors. Most of the Applicants have since retired from the Government service. Learned Counsel for the Applicants argued that the Daftar Karkoon, and Muster Karkoon (in the Irrigation Department) Recruitment Rules, 1977 provide for passing the departmental training course and an examination of Canal Inspector together with 3 years of experience in the Department for appointment to the post of Daftar Karkoon. That shows that the post of Daftar Karkoon is a promotional post for Canal Inspector. As per the Canal Inspector/ Measurer in the Irrigation Department (Recruitment) Rules, 1993 the appointment to the post of Canal Inspector/ Measurer is by selection at the limited Competitive Departmental Examination for the persons working in daily wages or work charged establishment or those working on converted Regular Temporary Establishment, who has passed S.S.C. examination and have experience of 3 years. By G.R. dated 30.7.2008, revised Recruitment Rules for the post of Canal Inspector/ Measures and Daftar Karkoon were issued which also shows that Daftar Karkoon is a promotional post for Canal Inspector. By G.R. dated 8.6.1995 a scheme called Time Bound Promotion Scheme

was introduced. The same was replaced by Assured Career Progression (A.C.P.) Scheme by G.R. dated 20.7.2001. Under both the Schemes, Government employees were eligible for financial upgradation, if they were found fit for regular promotion after 12 years of service, but couldnot be promoted for want of vacancies. The Applicants were also eligible to be given Time Bound Promotion/ benefit of A.C.P. Scheme after 12 years of service as Canal Inspector/ Measurer, in the promotional post. The Applicant were in the Pay Band of R.5200-20,000 and were granted Grade Pay of Rs.2100/- on Time Bound Promotion on the assumption that there was no channel of promotion from the post of Canal Inspector/ Measurer. The Applicants were granted second benefit under A.C.P. Scheme increasing their grade pay to Rs.2400/-. Learned Counsel for the Applicants argued that the Applicants were entitled to the grade pay of Rs.2400/- on getting first benefit of A.C.P. Scheme and Grade Pay of Rs.4200/- on getting second benefit under A.C.P. Scheme. Some of the Canal Inspectors have been promoted as Dafter Karkoon which shows that the post of Dafter Karkoon is a promotional post for Canal Inspector. Learned Counsel for the Applicant cited the case of one Shri S.P. Kulkarni and some others in this respect, who were given grade pay of Rs.4200/- on granting second benefit of A.C.P. scheme.

4. Learned Presenting Officer (P.O.) argued that the whole case of the Applicants is that a Canal Inspector/ Measurer is eligible to be promoted as Dafter Karkoon.

However, this post does not exist now, as all such posts were merged to form a new cadre of Civil Engineering Assistant long back. The Recruitment Rules relied upon by the Applicants do not disclose that there is any established channel for promotion from the post of Canal Inspector to that of Dafter Karkoon. Post of Dafter Karkoon was required to be filled by nomination only as per the Recruitment Rules. As such there is no question of this post being a promotional post from the post of Canal Inspector. The post of Canal Inspector/ Measure is an isolated post and the Applicants were accordingly given grade pay of Rs.2100 on granting first benefit of A.C.P. Scheme and Rs. 24000 on granting Second benefits. Learned P.O. argued that even if the claim of the Applicants is accepted that in some cases, higher grade pay was sanctioned to some of the Canal Inspectors, that would not be in accordance with the Rules and G.R.s and this Tribunal should not order such irregularities to be perpetuated in the case of the Applicants.

5. The Applicants have mentioned three sets of Recruitment Rules, which we now proceed to examine. The Dafter Karkoon and Muster Karkoon (in the Irrigation Department) Recruitment Rules, 1977, notified on 30.5.1977 have the following provision:-

“2. Appointment to the post of Dafter Karkoon in the Irrigation Department of the Government of Maharashtra shall be made by nomination from amongst the candidates, who:

(c) Have passed the Departmental Training Course of Canal Inspector and Measurer conducted by the Department and

(d) Have experience of not less than three years in Irrigation Management;

The Applicants have enclosed these rules (which are not complete) as Exhibit E in the O.A.

6. It is quite clear that the post of Dafter Karkoon or Muster Karkoon is not to be filled by promotion. It is to be filled by nomination only. The claim of the Applicants that this was a promotional channel from the post of Canal Inspector is clearly unfounded. Candidates working for 3 years in Irrigation Department, who had passed the Course of Canal Inspector/ Measurer and who are not more than 25 years of age can be nominated as Dafter Karkoon. Obviously, a person with 12 years of service is not likely to be less than 25 years of age and will not be eligible for such nomination. This post is definitely not a post which could be filled by promotion. The Applicant has quoted Rules notified on 27.10.1993 for appointment to the post of Canal Inspector/ Measurers. Rule 3 of the 1993 rules reads:-

“3) Appointment to the post of Canal Inspector/ Measurer in the Irrigation Department shall be made either:-

a) By selection the basis of the result of the Limited Departmental Competitive Examination held by the Irrigation Department for the persons who have put

in continuous five years service on daily rated or work charged establishment or who are working on the converted regular temporary establishment of the Irrigation Department on the post listed in the Schedule hereto and who have passed the Secondary proscribed examination shall be held in accordance with the proscribed examination rules; or

b) By nomination from amongst candidates who:-

- i) are not less than eighteen years and not more than thirty years of age.
- ii) Have passed Secondary School Certificate Examination; Part IV-A (500-11-93-)
- iii) Possess experience of three years, gained after acquiring the qualification mentioned in sub-clause (ii) in construction or repairs or maintenance of an Irrigation of Hydro Project.”

The post can be filled by the nomination and by selection on the basis of limited Departmental Examination from amongst those who were working on Daily rated/ Work charge establishments or who were on CRTE in any of the post in the Schedule. Post of Canal Inspector and Measurer are included. So under these Rules, Canal Inspector/ Measurer in these establishments (not regular establishments) can be selected on regular establishment as Canal Inspector/ Measurer. By G.R. dated 30.7.2008, modified rules for appointment to the post of Canal Inspector / Measurer and Dafter Karkoon were promulgated. Clause 3 of these rules reads:-

“३) कालवा निरिक्षक व मोजणीदार या पदासाठी नामनिर्देशन व समावेशनाद्वारे नियुक्तीचे प्रमाण ५०:५० या प्रमाणात राहिल. तर दफ्तर कारकून या पदासाठी नियुक्तीचे/भरतीचे प्रमाण सरळ सेवेने (नामनिर्देशन) १०० टक्के राहिल.”

By this G.R. also, the post of Dafter Karkoon is to be filled by nomination only. Obviously, this is not a post which can be

filled by promotion from the post of Canal Inspector/ Measurer.

7. During the course of argument, learned Counsel for the Applicants placed on record G.R. dated 198.9.1962 which are about the recruitment to the post of Dafter Karkoon etc. For Dafter Karkoon, the appointment could be made by nomination or promotion from amongst suitable sectional and Mustering Assistant. These rules were replaced by rules of 30.5.1977 which were framed under Article 309 of the Constitution. Even under these rules of 1962, Canal Inspector- Measurer were not eligible to be promoted as Dafter Karkoon. The present Applicants were all appointed from 1977 to 1980. The Rules of 1977 would apply to them as far as appointment to the post of Dafter Karkoon is concerned. They are/ were in no way eligible for promotion to the post of Dafter Karkoon.

8. The Applicants have not been able to substantiate their claim that the post of Canal Inspector/ Measurer is not an isolated post. In our opinion, they were given first and second benefits of A.C.P. scheme correctly as per relevant G.R.s.

9. The Applicants have placed on record an office order dated 36 of 1982 said to be issued by Administrator Command Area Development Authority for Kakadi and Mula Projects in Ahmednagar. The order doesnot bear any date. We are not able to ascertain whether it is an authentic document. Even if, for the sake of argument, this document

is assumed to be authentic, it is obviously issued in violation of the Recruitment Rules for the post of Daftar Karkoon. The same is the case with other orders on which the Applicants are relying. Hon'ble S.C. has held in the case of Chandigarh Administration Vs. Jagjit Singh : 1995 AIR S.C. 705 as below:-

“Generally speaking, the mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination.”

It is further held that:-

“----- it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

In view of the law laid down by Hon'ble Supreme court, we are unable to give any order to grant illegal promotion/ Time Bound Promotion to the Applicants, even if in the past some authorities might have issued such illegal orders.

10. We are unable to grant the prayers of the Applicants in 9(a) to 9(d). This O.A. is liable to be dismissed.

11. In O.A.No.644 of 2015, we had heard learned Advocate H.A. Joshi on 6.9.2016 fully. The Applicants in this O.A. are also working as Canal Inspector/ Measurers and claim that in the past they were considered for appointment to the post of Daftar Karkoon. We have examined the entire issue threadbare and held that in case of a few employees, if



illegal orders were issued, we are unable to give orders to perpetuate such illegalities. This O.A. is not maintainable.

12. Having regard to the aforesaid facts and circumstances of the case, these O.A.s are dismissed with no order as to costs.

**(R.B. MALIK)**  
**MEMBER (J)**

**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 20.01.2017**

**Place : Mumbai**

**Dictation taken by : SBA**

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