

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 116/2015**

Chandusingh Ramdas Rathod,  
Aged about 58 years,  
Sub-Divisional Engineer,  
R/o Om Shrustva Niwas,  
Datta Nagar, Lakhala, Washim,  
Distt. Washim.

-----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Jalsampada Deptt.  
Mantralaya, Mumbai.
2. The Superintending Engineer,  
Yeotmal Irrigation Circle,  
Yeotmal Near Circuit House,  
Yeotmal.
3. Ramlal Kolappa Pawar,  
Executive Engineer, Minor Irrigation,  
Zilla Parishad, Pune. ----- **Respondents.**

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1. Shri M.R. Rajgure, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondent 1.
  3. Shri S. Marotkar, Advocate holding for Shri A.M. Kukday,  
counsel for R/2.
  4. None for R/3.

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**CORAM :** **B. Majumdar : Vice Chairman**  
**and**  
**S.S. Hingne : Member ( J )**

**DATE :** **29<sup>th</sup> April, 2016**

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ORDERPER VICE-CHAIRMAN

The applicant retired as a Sub-Divisional Engineer (SDE), Irrigation Department. His grievance is that his junior was promoted as an Executive Engineer while he was not.

2. When the applicant was working as SDE, Z.P., Washim, on 15/12/2011 ~~the applicant~~ <sup>he</sup> was served with an order of departmental enquiry (DE) under Rule 8 of the Discipline and Appeal Rules. The three charges levelled against the applicant were that he had helped in misuse of 550 bags of cement, he did not complete the work in his charge even after lapse of 5 years, and due to his lack of time bound inspection of documents, the concerned Store-keeper did not maintain proper records. On 8/10/2013 the Enquiry Officer (EO) submitted his report by holding that none of the charges against the applicant has been proved. On 24/10/2013 Shri Ramlal Kolappa Pawar (R/3) was promoted as Executive Engineer. On 30/4/2014 the applicant submitted a representation to the Govt. that ~~as~~ he has been working as an


SDE for 19 years and even after completion of the DE against him in March, 2014 and hence he may be granted promotion as Executive Engineer. The applicant retired on 31/12/2014 as SDE. On 7/12/2015 the Govt. informed the Superintending Engineer, Yavatmal (R/2) that as the applicant has retired, the DE case against him is closed.

3. The applicant's grievance is that in spite of his exoneration in the DE by the EO, he has not been promoted, whereas, juniors like R/3 have been promoted. If the respondents had taken a timely decision to close the enquiry against him as the charges have not been proved in the DE, he would have been promoted prior to his retirement.

4. The Secretary, Water Resources(R/1) and the Superintending Engineer, Yeotmal (R/2) in their affidavit-in-reply concede that the applicant is senior to R/3 . They submit as follows :-

***“ Accordingly, by order dated 15/12/2011 passed by Superintending Engineer, an enquiry was started against applicant. It is submitted***

*that, meeting of Departmental Promotion Committee was held on 25/4/2013 and 26/4/2013. The Committee recommended 62 officers from the SDE cadre for the promotion to the post of Executive Engineer. The Departmental Promotion Committee after having considered pendency of Departmental Enquiry against the applicant by specifically mentioning there to take a Conscious decision with the approval of the Government in accordance with the guidelines mentioned in the Govt. circular dated 2/4/1976 issued by the GAD. Meantime order dated 24/10/2013 those officers who were recommended by DPC against whom no DE was pending promoted with the approval of Competent Authority. Since, Departmental enquiry was pending against applicant, proposal of applicant was sent to the Competent Authority for taking conscious decision, however before any such conscious decision being taken by the Competent Authority applicant stands retired by superannuation on 31/12/2014."*



5. Shri M.R. Rajgure, Id. Counsel for the applicant submitted that on perusal of the charge-sheet it will be seen that the charges relate to maintenance of records by the applicant and his subordinates and incomplete work. On both these counts the applicant alone cannot be held responsible. Besides, the charges are not at all so serious as to warrant any major punishment on completion of the DE. This is further confirmed as the EO has fully exonerated the applicant in the DE. As per the G.A.D. circular dtd. 2/4/1976 the applicant should have been promoted subject to undergoing punishment on the promotional post. In any case the respondents had sufficient time to decide the applicant's case before retirement.

6. Shri M.I. Khan, Id. P.O. for R/1 and Shri S. Marotkar, Advocate holding for Shri A.M. Kukday, Id. Counsel for R/2 mainly reiterated the submissions made by the respondents. None appeared for R/3, nor any return was filed on his behalf.

7. We find that according to the respondents the applicant was not promoted when his juniors like R/3 were promoted in 2003 for the only reason that a DE was pending against him. They have relied on the provisions of the GAD circular dtd. 2/4/1976. Paras 3 and 4 of the G.R., entitled as "Procedure to be followed in the cases of persons whose conduct is under investigation or against whom DEs are pending", are reproduced below :-

**Para 3 :** *" Interim promotion during the pendency of the proceedings.*

*If the person is found fit and his name is*

*Provisionally included in the select list ;*

*(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise such a person shall not be promoted,*

*(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges leveled whether the person should be*

*promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.*

**Para 4 :** *On conclusion of the investigations and/or departmental enquiry :*

**(a)** *If a person is completely exonerated the following consequences should follow :*

*(i) If he was provisionally promoted, his provisional promotion should be treated as regular.*

*(ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account. ”*

8. R/1 vide his communication dtd. 7/12/2015 has informed R/2 that the DE case against the applicant has been withdrawn. This decision was taken after the EO had submitted his report vide which he <sup>had</sup> held that the charges against the applicant were not proved. Under these circumstances the withdrawal of the DE against the applicant clearly amounts to his exoneration in the DE even though it was held that the applicant having retired, the DE could not be continued. Hence the applicant's case is covered by the provisions of para 4(ii) of the 1976 circular which we have cited above. Besides, the pendency of the DE was the only ground for denying him promotion as Executive Engineer and R/3 and other officers junior to the applicant could not have therefore superseded him when they were promoted in 2013. Hence in our view the applicant has a clear case for being promoted when his juniors were promoted. We therefore find considerable merit in the O.A. and we dispose of the same with the following directions :-



- a) The O.A. is partly allowed.
- b) The respondents are directed to promote the applicant as Executive Engineer with the same deemed date as his immediate junior who was promoted.
- c) The applicant' pay on promotion to the cadre of Executive Engineer will be only notional and it will count towards granting pensionary and other retiral benefits as he stood retired before he could be promoted.
- d) Necessary orders as above will be issued within 8 weeks of receipt of this order.

sd/-

**(S.S. Hingne)**  
**Member ( J )**

Skt.

sd/-

**( B. Majumdar )**  
**Vice-Chairman.**