

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.169 OF 2018
WITH
ORIGINAL APPLICATION NO.432 OF 2018
WITH
ORIGINAL APPLICATION NO.640 OF 2018**

(Subject :- Deemed Date of Promotion)

ORIGINAL APPLICATION NO.169 OF 2018

DISTRICT : JALGAON

Shankar Daga Chaudhari,)
Age: 60 years,)
Occ: Service Jr. Engineer (Retired))
R/o. 84 Pavan Nagar,)
Behind Cotton Market Yard,)
Dhule, District: Dhule.)...**Applicant**

V E R S U S

1. **The State of Maharashtra**)
Secretary, Cammand Area)
Development Authority,)
Water Resources Department,)
Mantralaya, Mumbai.)
2. **The Superintending Engineer**)
Jalgaon Irrigation Project Circle,)
Jalgaon.)
3. **The Executive Engineer**)
Lower Tapi Project Division,)
Chopda, District: Jalgaon.)...**Respondents**

Shri Anant D. Sugdare, learned Advocate for the Applicant.

Shri B.S. Deokar, learned Presenting Officer for the Respondent No.1.

Shri Suresh D. Dhongde, learned Advocate for the Respondent Nos.2 & 3.

WITH
ORIGINAL APPLICATION NO.432 OF 2018

DISTRICT : JALGAON

Ajabrao Rambhau Patil,)
Age: 58 years, Occ: Junior Engineer)
R/o. Plot No.15A Sharda Colony,)
Near Mahabal Stop, Jalgaon.)...Applicant

V E R S U S

1. **The State of Maharashtra**)
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai-400 032.)
2. **The Superintending Engineer**)
Central Designs Organization (Gates),)
Zonal Office, Dindori Road, Nashik.)
3. **The Superintending Engineer,**)
Jalgaon Irrigation Project Circle,)
Girna Bhavan, Opp: Akashwani Kendra,)
Akashwani Chowk, Jalgaon.)
4. **The Executive Engineer,**)
Waghur Dam Division, Jalgaon.)...Respondents

Shri Anant D. Sugdare, learned Advocate for the Applicant.

Shri V.R. Bhumkar, learned Presenting Officer for the Respondent Nos.1 & 4.

Shri Suresh D. Dhongde, learned Advocate for the Respondent Nos.2 & 3.

WITH
ORIGINAL APPLICATION NO.640 OF 2018

DISTRICT : JALGAON

Bhimrao Ananda Patil,)
Age: 63 years,)
Occ: Service Jr. Engineer (Retired))
R/o. at and post: Parola Plot No.19,)
D.B. Sonar nagar, Kanjagaon Road, Parola)
District: Jalgaon.)...**Applicant**

V E R S U S

1. **The State of Maharashtra**)
Secretary, Water Resources Department,)
Mantralaya, Mumbai.)
2. **The Superintending Engineer**)
Jalgaon Irrigation Project Circle,)
Jalgaon.)
3. **The Executive Engineer**)
Minor Irrigation Local Sector Division)
Jalgaon.)...**Respondents**

Shri Anant D. Sugdare, learned Advocate for the Applicant.

Shri S.K. Shirse, learned Presenting Officer for the Respondent Nos.1 & 2.

Shri D.R. Shelke, learned Advocate for the Respondent No.3.

CORAM : B.P. PATIL, ACTING CHAIRMAN

DATE : 18.11.2019.

ORAL ORDER

1. The issue involved in the present Original Applications is identical. Therefore, all the Original Applications are heard simultaneously and decided by the common order.

2. The Applicant Shri Shankar Daga Chaudhari in O.A.No.169 of 2018 was appointed on the post of Technical Assistant from 02.03.1981 in the office of the Executive Engineer, Girna Canal Modernization Division, Jalgaon. He worked on the post of Technical Assistant continuously. He received annual increments and other benefits from time to time. The Applicant completed three years service on the post of Technical Assistant and thereafter he passed Sub Overseer Departmental Examination. Thereafter, he was given deemed date on the post of Sub Overseer as on 18.05.1985. Thereafter, he was given appointment on the post of Civil Engineering Assistant by order dated 09.10.1989. Accordingly, he resumed the duties of Civil Engineering Assistant on 01.11.1989 in the office Jalgaon Irrigation Project Circle, Jalgaon. On completion of 12 years satisfactory service, he was granted Time Bound Promotion on 01.10.1994 as per the G.R. dated 8th June, 1995. Thereafter, he was given second benefit after completion of 24 years service on 01.10.2006 under Assured

Career Progression Scheme as per the G.R. dated 1st April, 2010. He was promoted on the post of Junior Engineer, Group 'B' Non-Gazetted post by order dated 02.07.2007. Thereafter, he was posted in the office of Executive Engineer, Design Division Unit, Jalgaon. It is contention of the Applicant that for the purpose of promotion on the post of Junior Engineer, passing of professional examination of Overseer is condition precedent. The Applicant passed the said professional examination on 29.12.1990. It is his contention that he passed the professional examination in the month of December, 1990. At that time the post of Junior Engineer might have been vacant. But his claim had not considered by the Respondents and therefore, he was deprived of getting promotion on the post of Junior Engineer. It is his contention that he made representation dated 14.8.2007 to the Respondent No.1 and requested to consider his case for grant of deemed date of promotion on the post of Junior Engineer from the date of passing of professional examination.

3. It is his contention that the posts of Technical Assistant were abolished by G.R. dated 31.01.1989 and new cadre of Civil Engineering Assistant was created. The Recruitment Rules for Civil Engineering Assistant were notified. The cadre of Civil Engineering Assistant became State Cadre and final State Cadre

seniority list was published on 30.06.2006 and thereafter it was finalized on 07.09.2012.

4. It is contention of the Applicant that some of the employees namely P.R. Chaudhari, K.D. Khaire, B.V. Chaudhari, P.B. Patil, A.P. Choube, S.A. Dhale were promoted as Jr. Engineer and were given deemed date on the post of Jr. Engineer from the date of passing of professional examination. The Applicant has claimed the same benefit i.e. deemed date on the post of Junior Engineer from the date of passing of professional examination i.e. from 31.12.1990. But the Respondent had not considered his claim. It is contention of the Applicant that he retired from the service on attaining the age of superannuation from the post of Junior Engineer on 30.06.2015. Thereafter, he moved representation dated 01.10.2016 to the Respondent No.1 for granting deemed date of promotion but he had not considered the same.

5. The Applicant Shri Ajabrao Rambhau Patil in O.A.No.432 of 2018 belongs to Other Backward Class (OBC). He was appointed as Technical Assistant in the office of the Respondent No.3 on 11.02.1982. After abolishing the post of Technical Assistant he was absorbed on the post of Civil Engineering Assistant w.e.f. 01.01.1989. It is contention of the

Applicant that he passed the Sub Overseer promotion examination on 18.05.1985 and accordingly, he was given deemed date of promotion on the post of Sub Overseer w.e.f. 18.05.1985. He was promoted on the post of Jr. Engineer, Group 'B' Non-Gazetted post by order dated 02.07.2007 and thereafter, posted in the office of the Executive Engineer, Jalgaon Medium Project Division, Jalgaon. Thereafter, he was posted in the office of Executive Engineer, Waghur Dam Division, Jalgaon. It is his contention that he passed the professional examination for appointment on the post of Junior Engineer in the month of December, 1990. Therefore, he became eligible and qualified for appointment on the post of Junior Engineer on the date of passing of professional examination. But he was actually promoted on the post of Junior Engineer by order dated 02.07.2007. Thereafter he made representation dated 24.07.2007 to the Respondent No.1 for granting of deemed date of promotion. But his representation was not decided by the Respondent no.1. Thereafter, he approached this Tribunal by filing Original Application No.159 of 2017 before this Tribunal. This Tribunal disposed of the Original Application by order dated 23.01.2018 and directed the Respondent No.1 to decide the representation of the Applicant. The Respondent No.1 accordingly decided the representation and rejected his claim for granting of deemed date of promotion by order dated 22.3.2018. Therefore, he

filed the present Original Application and prayed to quash the order dated 22.3.2018 and also prayed to direct the Respondent No.1 to grant deemed date of promotion with effect from 1.2.1991.

6. The Applicant Shri Bhimrao Ananda Patil in O.A.No.640 of 2018 was appointed as Muster Karkoon on 20.05.1974 on work charge establishment. Thereafter, he was deputed for training of the Technical Assistant during the period from December 1980 to May 1981 for a period of five months. Thereafter, he was appointed on the post of Technical Assistant by order dated 17.12.1981. He appeared for professional examination for the post of Sub Overseer conducted in the month of May 1985. Thereafter, he was given deemed date of promotion on the post of Sub Overseer from 17.5.1985 by order dated 27.08.2004. Thereafter the post of Technical Assistant was abolished and new cadre of Civil Engineering Assistant was created by the Government. The Applicant came to be appointed on the post of Civil Engineering Assistant in the year 1989. After completion of 12 years satisfactory service and after passing of professional examination, he was eligible to get promotion on the post of Junior Engineer. The Respondent No.2 granted Time Bound Promotion on the post of Junior Engineer w.e.f. 01.10.1994 by order dated 30.06.1998. On 17.09.2004, the Applicant filed representation to the Respondent No.1 and requested to consider him for promotion

on the post of Junior Engineer from the date of passing of professional examination i.e. from the month of June 1991. It is his contention that he came to be promoted on the post of Junior Engineer by order dated 2.07.2007 and posted in the office of Respondent No.2 at Jalgaon. He worked there on the post of Junior Engineer till his retirement on superannuation. It is his contention that after promotion on the post of Junior Engineer, he submitted an application dated 21.04.2008 to the Respondent No.1 and requested to grant deemed date of promotion from June 1991 i.e. from the date of passing of professional examination. But the Respondent No.1 had not considered his case.

7. It is his contention that the posts of Technical Assistant were abolished by Government G.R. dated 31.01.1989 creating a new cadre of Civil Engineering Assistant which became State Cadre. Seniority list of the State Cadre in Civil Engineering Assistant was prepared and published on 30.06.2006 initially and it was finalized on 07.09.2012. It is his contention that some of the similarly situated persons namely P.R. Chaudhari, K.D. Khaire, B.V. Chaudhari, P.B. Patil, A.P. Choube, S.A. Dhale were promoted as Junior Engineer and they were given deemed date of promotion of Junior Engineer from the date of passing of professional examination.

8. It is contention of the Applicants that some of the similarly situated persons approached this Tribunal by filing the Original Application Nos.233/2012, 234/2012, 235/2012 and 236/2012 wherein this Tribunal has directed the Respondents to give deemed date of promotion from the date of passing of professional examination. It is their contention that their cases are squarely covered by the decision given by this Tribunal again and again. It is contention of the Applicants that similar view has also been taken by this Tribunal in O.A.No.181 of 2012 decided on 11.12.2014. Therefore, they approached this Tribunal and prayed to direct the Respondents to give deemed date of promotion from the date of passing of professional examination on the post of Junior Engineer and also prayed to grant consequential benefits by filing the present Original Application.

9. The Respondent No.1 filed affidavit-in-reply and resisted the contention of the Applicants. It is his contention that the applications are not maintainable as the same are misconceived and therefore they need to be dismissed as the Applicants cannot have any grievance at all.

10. The Respondents have admitted the fact that the Applicants joined their service in the year 1981, 1982 and 1974 respectively and they have been given promotion from time to time.

They have not disputed the fact that they have been appointed as Technical Assistant. They have also admitted the fact that the Applicants passed the Departmental Examination for the post of Sub Overseer in the year 1985 and thereafter they have been appointed on the post of Sub Overseers. They have not disputed the fact that time bound promotion was given to the Applicants as per the scheme of the Government. They have admitted the fact that the Applicants were granted promotion on the post of Junior Engineer as per their seniority. They have not disputed the fact that by G.R. dated 31.1.1989, the Government amalgamated the cadres of Technical Assistant and created a new cadre of Civil Engineering Assistants. The Applicants have been absorbed as Civil Engineering Assistant and they have been appointed accordingly. It is their contention that they have been promoted in the cadre of Junior Engineer on the basis their seniority and they retired from service on attaining the age of superannuation.

11. It is their contention that there is no merit in the representation filed by the Applicants and therefore, they cannot be granted deemed date of promotion in the cadre of Junior Engineer as claimed by them.

12. It is their contention that the decision of principal seat of this Tribunal at Mumbai in O.A.Nos.233/2012, 234/2012,

235/2012 and 236/2012 have been challenged by the Government by filing the Writ Petition Nos.10623 to 10625 of 2014 and O.A.No.9266 of 2017 and the same are pending. It is their contention that there is no illegality in granting promotion to the Applicants on the date on which they have been given promotion and they are not entitled to get deemed date of promotion from the date of passing of professional examination and therefore, they have prayed to reject the Original Applications.

13. It is their further contention that as per the provision of Rule 32 of the Maharashtra Civil Services (Pay) Rules, 1981, the Applicants were eligible for getting pay on the post of Junior Engineer from the date on which they assume the charge of the said post and therefore, the Applicant cannot claim for deemed date on the post of Junior Engineer. On this ground also the Respondents have prayed to reject the Original Application.

14. The Respondent No.2 and 3 have filed their affidavit-in-reply and resisted the contentions of the Applicants by raising the contentions similar to that of the contentions raised by the Respondent No.1 in his affidavit-in-reply and prayed to dismiss the Original Applications.

15. I have heard Shri Anant D. Sugdare, learned Advocate for the Applicants in all the O.A., Shri B.S. Deokar, learned

Presenting Officer for the Respondent No.1 in O.A.No.169 of 2018, Shri V.R. Bhumkar, learned Presenting Officer for the Respondent Nos.1 & 4 in O.A.No.432 of 2018, Shri S.K. Shirse, learned Presenting Officer for the Respondent Nos.1 & 2 in O.A.No.640 of 2018, Shri Suresh D. Dhongde, learned Advocate for the Respondent Nos.2 & 3 in O.A.No.169 of 2018 and for Respondent Nos.2 & 3 in O.A.No.432 of 2018 and Shri D.R. Shelke, learned Advocate for the Respondent No.3 in O.A.No.640 of 2018. I have perused the documents on record.

16. Admittedly, the Applicant Shri Shankar Daga Chaudhari in O.A.No.169 of 2018 joined the service as Technical Assistant on 02.03.1981. The Applicant Shri Ajabrao Rambhau Patil in O.A.No.432 of 2018 joined the service as Technical Assistant on 11.02.1982 and the Applicant Shri Bhimrao Ananda Patil in O.A.No.640 of 2018 joined the service as Muster Karkoon on 20.05.1974 and thereafter, he was appointed on the post of Technical Assistant on 17.12.1981. There is no dispute about the fact that all the Applicants passed the professional examination for the post of Sub Overseer conducted in the month of May, 1985 and thereafter they were given deemed date of promotion on the post of Sub Overseer. The post of Technical Assistant was abolished by G.R. dated 31.01.1989 creating a new cadre of Civil Engineering Assistant. Accordingly, the Applicants were absorbed in the said

cadre. The Government prepared the State Cadre seniority list of Civil Engineering Assistants on 30.06.2006 and thereafter published the final seniority list on 07.09.2012. There is no dispute about the fact that the Applicants passed the professional examination required for promotion on the post of Junior Engineer on 29.12.1990, in the month of December, 1990 and June 1991 respectively.

17. Admittedly, the Applicants moved the representations to the Respondent claiming deemed date of promotion from the date of passing of professional examination after getting promotion in the cadre of Junior Engineer. But their representations were not considered by the Respondents and the representations of the Applicants came to be rejected by the Respondent No.1.

18. Learned Advocate for the Applicants has submitted that the Applicants passed the professional examination required for promotion on the post of Junior Engineer in the month of December, 1990 and June 1991. On passing the examination, the Applicants were eligible for promotion on the post of Junior Engineer. But the Respondents had not given promotion to them from the date of passing of professional examination and they have promoted the Applicants subsequently in the year 2007. He has submitted that in view of the G.R. dated 16.09.1964 and

07.06.1965, the Respondents ought to have given deemed date of promotion to the Applicants on the post of Junior Engineer from the date of passing of the professional examination. But the Respondents had not considered the said G.R. with proper perspective and rejected the representations of the Applicants wrongly.

19. Learned Advocate for the Applicant has submitted that similar issue has been dealt with and decided by principal seat of this Tribunal at Mumbai in O.A.No.233/2012, 234/2012, 235/2012 and 236/2012 and the Tribunal directed the Respondents to give deemed date of promotion to all the Applicants in those matters from the date of passing professional examination. He has submitted that the decision rendered by the principal seat of this Tribunal in the above said case has been challenged by the State before the Hon'ble High Court of Judicature at Bombay in Writ Petition Nos.10623 to 10625 of 2014 and O.A.No.9266 of 2017. The Hon'ble High Court decided the same and dismissed the said Writ Petition on 17.07.2018 and upheld the order passed by this Tribunal. He has submitted that this tribunal has also decided the similar issue involved in case of similarly situated persons in O.A.Nos.181 & 182 of 2011, in O.A.Nos.878/2016, 242/2017 and O.A.No.648/2017 decided on 30.10.2018 and granted similar relief to the those Applicants. He has also

submitted that this Tribunal has also recently decided the **O.A.No.947 of 2018 in case of Bhagwat Trimbak Chaudhari Vs. The State of Maharashtra & Ors. on 4.11.2019** and granted similar relief to the similarly situated person. He has argued that the cases of the present Applicants are squarely covered by the decision rendered by this Tribunal on which he has placed reliance and therefore, he prayed to grant similar relief to the Applicants. Therefore, he has prayed to allow the Original Applications.

20. Learned P.Os. and learned Advocates for the Respondents have submitted that the Respondent No.1 has rightly rejected the representations of the Applicants as the Applicants were not entitled to get deemed date of promotion on the post of Junior Engineer on passing of professional examination. He has submitted that in view of the Rule 32 of the Maharashtra Civil Services (Pay) Rules, 1981, the Applicants are entitled to get pay on the promotional post on assuming charge of the said post and therefore, the Applicant cannot claim deemed date of promotion from the date of passing of professional examination. They have argued that there is no illegality in the order passed by the Respondents rejecting the claim of the Applicants and therefore, they prayed to reject the Original Application.

21. They have further submitted that the decision rendered by the principal seat of this Tribunal in O.A.Nos.233, 234, 235 and 236 all of 2012 decided on 7.10.2013 has been challenged by the Government before the Hon'ble High Court by filing the Writ Petition. The Hon'ble High Court rejected the said Writ Petition. The Respondents Government is intending to challenge the said order before the Hon'ble Supreme Court by filing the S.L.P. They have submitted that the said decision is not applicable to the Applicants' case and therefore, they prayed to reject the Original application.

22. On perusal of documents on record it reveals that the Applicants entered in the service of the Respondents in the year 1982, 1981 and 1974 respectively. They were appointed as Technical Assistant. Thereafter the cadre of Technical Assistant was absorbed in the cadre of Civil Engineering Assistant. All the Applicants passed the professional examination required for promotion on the post of Junior Engineer in the year 1990 and 1991 respectively. But they have given actual promotion on the post in the year 2007 by order dated 20.05.2007. The applicants are claiming deemed date of promotion on the post of Junior Engineer from the date of passing of qualifying examination on the basis of G.R. dated 16.09.1964 and 07.06.1965. The G.R. dated 07.06.1965 provides that the "Professional Examination for

Overseers for every year should be held any time between Oct. and Dec. according to the Local conditions and convenience and the results of such examinations should be declared in the month of January of the following year and the successful Sub-Overseers/ Surveyors should be absorbed in the cadre of overseers with effect from 1st February of the years in which result is declared, subject to the condition laid down in the Government Resolution. Irrigation and Power Department No.PER-1065/13808-E (2) dated 16th September, 1964.”

23. In the present cases, the Applicants passed the professional examination in the month of December, 1990 and June 1991. In view of the G.R. dated 07th June, 1965, they ought to have given deemed date of promotion from 1.2.1991 and 1.2.1992 respectively, as they were eligible for getting promotion on the post of Junior Engineer on passing of professional examination. The Respondents had not promoted them from the date of passing of professional examination and they were actually promoted in the year 2007. The said issue has been dealt with and decided by the principal seat of this Tribunal at Mumbai in O.A.Nos.233, 234, 235 and 236 all of 2012 on 7.10.2013 and this Tribunal granted deemed date of promotion to all the similarly situated persons from the date of passing of professional examination. The Government challenged the said decision before

the Hon'ble High Court of Judicature at Bombay in Writ Petition Nos.10623 to 10625 of 2014 and O.A.No.9266 of 2017. The Hon'ble High Court decided the said Writ Petition on 17.07.2018 and upheld the order passed by this Tribunal and dismissed the Writ Petition. The said decision has not yet challenged by the Respondents and no documents in that regard has been produced by the Respondents. The cases of the present Applicants are squarely covered by the decision rendered by principal seat of this Tribunal at Mumbai in O.A.Nos.233, 234, 235 and 236 all of 2012 on 7.10.2013 which has been upheld by the Hon'ble High Court in above said W.P.

24. Not only this, but this Tribunal has also passed the order in case of similarly situated persons in O.A.Nos.181 & 182 of 2011, in O.A.Nos.878/2016, 242/2017 and O.A.No.648/2017 and in O.A.No.947 of 2018 and granted similar relief to them. The Respondents had not considered the above said decisions rendered by this Tribunal and Hon'ble High Court while rejecting the representations of the Applicants. They have not considered the principle laid down in above said decisions with proper perspective while rejecting the claim of the Applicants. They ought to have considered the provision of G.R. dated 16.9.64 and 07.06.1965 with proper perspective and granted deemed date of promotion to the Applicants from the date of passing of professional

examination. But the Respondents have wrongly interpreted the said G.R. and rejected the claim of the Applicants illegally.

25. The Applicants are entitled to get deemed date of promotion from the date of passing of professional examination i.e. from 1.2.1991 and 1.2.1992 respectively, in view of the above said G.R. Therefore, the Applicants are entitled to get relief as claimed. Hence, the Original Applications deserve to be allowed.

26. In view of the discussion in the foregoing paragraphs, the Original Applications are allowed. The Applicants are held entitled to get deemed date of promotion on the post of Junior Engineer from 1.2.1991 and 1.2.1992 respectively. Accordingly, the Applicants are entitled to get other consequential benefits. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 18.11.2019

Sas. O.A.Nos169,432 & 640 of 2018.Deemed Date of Promotion. BPP