

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 375 of 2022 (S.B.)**

Niyazuddin Sharfuddin Kazi,
aged about 60 years, Occupation: Retired Karkoon,
resident of behind Safe Way Motors,
Old Mankapur, Chhindwara Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra, through its Secretary,
Public Works Department Mantralaya, Mumbai-400 032.
- 2) The Superintending Engineer,
Public Works Circle, Civil Lines, Nagpur.
- 3) The Executive Engineer,
Public Works Department, Division No.1, Sadar, Nagpur.

Respondents.

**S/Shri Bharat Kulkarni, Sunil Pande, Advocates for the applicant.
Shri H.K. Pande, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 11th October,2023.

Date of Pronouncement of Judgment : 19th October,2023.

JUDGMENT

(Delivered on this 19th day of October,2023)

Heard Shri Bharat Kulkarni, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as a daily wager in the year 1980. Thereafter, he was brought on C.R.T.E. in the year 1985. The applicant was appointed as a Clerk in the year 2003. The applicant had completed 45 years of age in the year 2006. He was entitled for being exempted from undergoing training for being absorbed as a Civil Engineering Assistant. He was not sent for training meant for the purpose. The applicant retired as a Clerk on 31/05/2019. The applicant if had been absorbed as Civil Engineering Assistant in 2006 would have been benefitted monetarily and since it was not done till his retirement. Therefore, he approached to this Tribunal for the following reliefs –

“(A) Direct the respondents to treat the applicant to have been absorbed as Civil Engineering Assistant from 2006 when he completed the age of 45 years (by granting him exemption from undergoing training) and further direct respondents to grant him consequential monetary benefits, in the interest of justice.”

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was not qualified for the post of Civil Engineering Assistant and therefore he was not sent for training and not absorbed on the said post.

4. During the course of submission, the learned counsel for applicant Shri Bharat Kulkarni has submitted that the applicant had completed 45 years of age, therefore, his name was recommended for

training, but he was not selected for training. Juniors to the applicant namely S.J. Kokate, V.N.Talekar etc. were selected for training. The applicant was entitled for exemption for the said training. Hence, he should have been absorbed on the post of Civil Engineering Assistant. The applicant is retired on 31/05/2019. Therefore prayed that the respondents be directed to absorb him with back date and give the monetary benefits to him.

5. The learned P.O. has pointed out Recruitment Rules for absorption to the post of Civil Engineering Assistant dated 18/06/1998. As per this rule, the person as on 01/01/1989, who was holding the cadre specified in Scheduled A of Rule 3 (1) and possessing requisite qualification as mentioned in Scheduled 13 of the same rules are only eligible for absorption on the post of Civil Engineering Assistant. The applicant was appointed on the post of Labour on daily wages basis w.e.f. 05/07/1980. After five years of service on daily wages, his service/post was converted to Regular Temporary Establishment in the year 1985, i.e., from 05/07/1985.

6. The learned P.O. has submitted that as per the G.R. of 1989 the applicant was not qualified and therefore he was not selected for training. The applicant was not qualified for the post of Civil Engineering Assistant, therefore, he is not absorbed.

7. The learned P.O. has pointed out the Judgment of this Tribunal in O.A.No.758/2013 with connected O.As., decided on 18/01/2018 and submitted that similarly situated employees approached to this Tribunal for the same relief. This Tribunal rejected all the O.As. on the ground that those employees were not qualified. Granting of exemption after 45 years is not a Rule to absorb the employee on the post of Civil Engineering Assistant. They should have the requisite qualification as per the Schedule B of the Rules of 1998. At last, submitted that the O.A. is liable to be dismissed.

8. The learned counsel for the applicant Shri Bharat Kulkarni has submitted that the applicant had completed 45 years of age in the year 2006, therefore, as per the rules, he is exempted from passing the departmental examination. He should have been absorbed on the post of Civil Engineering Assistant. Therefore, the applicant is entitled for the relief for direction to absorb him on the post of Civil Engineering Assistant.

9. The issue raised in this O.A. is already decided by this Tribunal in O.A.No.758/2013 with connected O.As. Similarly situated employees approached to this Tribunal for the same relief. This Tribunal has held as under –

“10. The learned counsel for the applicants submits that the impugned order rejecting the applicants' claim i.e. order dated 7.3.2011 is illegal. It is

stated that similarly situated employees have been absorbed. But the applicants have not been considered. The learned counsel for the applicants has invited my attention to the orders whereby three persons were absorbed vide order dated 16.2.2006 and four were absorbed vide order dated 31.7.2006. Before considering the fact as to whether similarly situated persons like the applicants have been absorbed or not or whether the applicants have been discriminated or not, it is necessary to consider the applicants' case on merit. The learned P.O. has invited my attention to the Recruitment Rules. The said Recruitment Rules are placed on record at page No.106 in O.A. No. 758/2013. These rules are called, "Civil Engineering Assistant, Group-C in Public Works Department (Recruitment) Rules, 1998". Rule 3 is material so far as the cases of the applicants are concerned. The said rule says that the appointment to the post of Civil Engineering Assistant, Group-C in Public Works Department shall be made by. (i) absorption and ((ii) by nomination. Admittedly, all the applicants are claiming the post of Civil Engineering Assistant by absorption and not by nomination and, therefore, Rule 3 (1) (i) (ii) and (iii) is relevant. The said relevant rule reads as under:-

"Appointment to the post of Civil Engineering Assistant, Group-C. in Public Works Department shall be made either:-

(a) by absorption of –

(i) a suitable person from the cadres mentioned in Schedule-A and possessing any of the qualifications mentioned in Schedule-B on the 1st January 1989, or

(ii) a suitable person from the cadres mentioned in Schedule-A on the basis of seniority subject to fitness from amongst the persons who have passed the Civil Engineering Assistant's qualifying examination conducted by the Maharashtra Engineering College, Nashik, of the Government.

(iii) persons who are in the Govt. service, in the Public Works Department as on the 1st January 1989, and who have passed the Civil Engineering Assistant's one year course examination conducted by the Govt. Technical Institute of Technical Education Department of Govt.; shall be absorbed as

Civil Engineering Assistant, if they are willing to work as Civil Engineering Assistant irrespective of their cadre and post in the Public Works Department."

11. *The aforesaid Rule 3 for absorption clearly shows that only suitable persons from the category mentioned in Schedule-A possessing any of the qualifications mentioned in Schedule-B as on 1.1.1989 can be absorbed or a suitable person from the cadres mentioned in Schedule-A on the basis of seniority from amongst the persons who have passed Civil Engineering Assistant's qualifying examination conducted by Maharashtra Engineering College, Nashik of the Government, can be absorbed, or persons who are in Government service in P.W.D. as on 1.1.1989 and who have passed Civil Engineering Assistant one year course examination conducted by Govt. Technical Institute of Technical and Education Department of Govt., can be absorbed, provided they are willing to work as Civil Engineering Assistant. Thus for absorption on the post of Civil Engineering Assistant, either of aforesaid three conditions was necessary.*

12. *According to the applicants, they were working in the department and though, they were doing the work of Clerk, they were being paid a labourers, since the post of Clerk was not available and, therefore, by virtue of G.R. dated 29.9.2003, they have been given the pay scale of Clerk. The learned counsel for the applicants, therefore, submits that the applicants can be treated as Clerks from the date of their initial appointment. However, such analogy cannot be applied for the simple reason that the applicants have been granted benefit of G.R. dated 29.9.2003 w.e.f. 20.2.2004 as per Annexure A-2. In condition No.2 of the said order, it is clearly mentioned that the G.R. will be applicable from the date of issuance of the order i.e. from 20.2.2004 and, therefore, applicants' case cannot fall under Rule 3 (a) (i) of the Rules. Even otherwise, it is necessary to see as to whether the applicants have acquired requisite qualification as mentioned in Schedule-B of the Rules of 1998.*

13. *As per Schedule-B, persons to be absorbed as Civil Engineering Assistant must have acquired the qualification as under :-*

- (i) Have passed Civil Engineering Assistant's Course examination conducted by Govt. Technical Institute.*
- (ii) have passed professional examination of Sub- Overseer.*
- (iii) have passed Civil Engineering Assistant's qualifying examination.*
- (iv) have passed diploma in Civil Engineering.*
- (v) have passed two years Draftsman (Civil) course examination of Industrial Training Institute.*
- (vi) have passed Surveyor's course examination of Industrial Training Institute.*
- (vii) have passed Civil Engineering Contracting Course examination of Industrial Training Institute.*

14. It is, therefore, necessary to see as to whether the applicants have acquired this qualification. The learned P.O. has invited my attention to the impugned letter whereby the applicants' claim has been rejected. The said letter is at Annexure A-7 at Page No.72 in O.A. No. 758/2013. In the said letter, it has been mentioned that the person to be absorbed as Civil Engineering Assistant has to acquire qualification as per Schedule-B or has to pass one year examination as required under Rule 3 (a) (iii) of the Rules. It is stated that since the applicants have not acquired requisite qualification, they are not entitled to be absorbed.

15. The learned counsel for the applicants submits that the applicants have been exempted from appearing the qualifying examination required for Civil Engineering Assistant, since they have attained the age of 45 years. However, the Recruitment Rules nowhere show any provision for granting such exemption. In such circumstances, even for argument sake, it is accepted that such exemption was granted to some persons including the applicants, that itself will not qualify the applicants for the post of Civil Engineering Assistant by absorption. As per the Recruitment Rules, a person has to acquire requisite qualification by passing requisite examination mentioned in Schedule-B. Admittedly, the applicants have not passed such examination.

16. The learned counsel for the applicants submitted that all the applicants have undergone five months' training required under the Rules

and, therefore, they are entitled to be absorbed as Civil Engineering Assistant. Perusal of Rule 3 (i) and (iii) of the Rules shows that the person has to pass Civil Engineering Assistant's qualifying examination conducted by Maharashtra Engineering College, Nashik, so also they must have passed Civil Engineering Assistant's one year course examination conducted by Govt. Technical Institute of Technical Education Department of Govt. of Maharashtra. Even for argument sake, it is accepted that the applicants have undergone five months' training as stated by the learned counsel for the applicants. There is nothing on record to show that they have undergone one year's course examination as stated under Rule 3 (iii) of the Rules and, therefore, the applicants have not acquired the qualification as required under Rules 3 (i) (ii) and (iii) of the Rules of 1998. The applicants have not placed on record any documentary evidence to show that they have acquired either of these qualifications as required under Rule 3 (a) of the Rules of 1998.

17. *The applicants have filed rejoinder and submitted that on 24.8.1998, the Superintending Engineer, P.W. Circle, Amravati made communication to the Dy. Secretary, Govt. of Maharashtra and thereby informed that certain employees, whose details were not forwarded on earlier occasions and, therefore, separate list was being sent to the Government. It is stated that in the said list, it has been stated that the applicant in O.A. No.758/2013 Satish Devidasrao Choudhari was carrying out the working of Clerk from 10.8.1982. In the additional affidavit filed in O.A. No. 761/2013, it is stated by the applicant Pradeep Tulshiramji Sonkusre that the applicant came to know about that final gradation list of Civil Engineering Assistants from 1.1.1989 to 31.12.2004 and in the said list, identical persons like the applicants who were appointed on the post of Muster Clerk on C.R.T.E. basis, have been given the status of Civil Engineering Assistants. Perusal of the G.R. dated 2.1.2016 filed in O.A.No.761/2013 shows that the Government has modified the list of employees to be absorbed as Civil Engineering Assistants.*

18. *The respondents, however, filed reply affidavit to the rejoinder-affidavit filed by the applicants. Similar rejoinder affidavit has been filed in O.A. No. 762/2013 also.*

19. *In these three O.As, the respondents have filed reply affidavit to the rejoinder filed by the applicants and denied that the employees who have been absorbed as Civil Engineering Assistants subsequently vide G.R. dated 2.1.2016, are similarly situated persons like the applicants. In para 4 of the said reply affidavit, it has been stated that the provision of exemption from passing qualifying examination is applicable only to the employees who hold the requisite qualification for the post of Civil Engineering Assistants and since the applicants do not possess requisite qualification, even if they are exempted from passing the said examination, they will not be entitled to absorption to the post of Civil Engineering Assistants.*

20. *The learned counsel for the applicants has invited my attention to one notification dated 8.8.2001 which is filed at page: No.42 in O.A. No. 758/2013. This notification is nothing but rules of conduction of requisite qualifying examination and known as, "Civil Engineering Assistants Qualifying Examination (Departmental Examination and Training) Rules, 2001". The learned counsel for the applicants has invited my attention to Rule 10 (2) which reads as under :-*

१०. सूट. - (२) एखाद्या कर्मचा-याला किंवा स्थापत्य अभियांत्रिकी सहायकाला प्रात्यक्षिक परीक्षेस परीक्षा उत्तीर्ण होण्यातून सूट देण्यात येईल जर -

(क) तो स्थापत्य अभियांत्रिकी सहायक या पदावर आधीच कायम असेल तर

" किंवा " "

(ख) त्याचे वय ४५ वर्षे झाले असेल तर

परंतु अशी सूट मिळाल्यानंतर, नियम ९ च्या तरतुदीनुसार त्याने गमावलेली ज्येष्ठता त्याला पुन्हा मिळणार नाही.

21. *The learned counsel for the applicants submits that this rule says about the provision of granting exemption from passing requisite qualifying examination. Plain reading of the aforesaid rule, however, clearly shows that the said exemption is applicable / practical examination only for subsequent examination provided the examinee got more than 50% marks*

in one of the papers. Said rule is not applicable at all to the cases of the applicants.

22. *The learned counsel for the applicants also invited my attention to the G.R. dated 1.7.2008 whereby exemption have been granted to the employees from passing qualifying examination. Similar exemption has been granted again as per Annexure A-9 in O.A. No. 758/2013. The said letter, however, shows that the persons mentioned in the said letter have completed their training and thereafter crossed the age of 45 years. It, therefore, cannot be said that the cases of those persons are similar to that of the present applicants.*

23. *In the impugned order rejecting the claim of the applicants, respondent No. 1 has clearly stated that the applicants are not eligible, since they have not passed the qualifying examination as required as per Rules of 1998 and secondly they cannot be exempted and absorbed only on the basis of exemption from passing the said examination. Even for argument sake, it is accepted that some of the employees were absorbed, though they did not pass the qualifying examination, but because they were exempted from passing such examination on account of attaining the age of 45 years. It will not give any legal right to the applicants to claim absorption, since they are wrongly exempted. Since the applicants are not eligible as per the recruitment rules for being absorbed, they cannot claim absorption.*

24. *On a conspectus of discussion in foregoing paras, I am, therefore, satisfied that the applicants had failed to prove that they are qualified for being absorbed as Civil Engineering Assistants as per the recruitment rules and, therefore, applicants' claim has no merits. I, therefore, proceed to pass the following order-*

ORDER

The O.As. stand dismissed with no order as to costs."

10. In view of the Judgment of this Tribunal in O.A.No.758/2013 with connected O.As., similarly situated employees

were not granted any relief. The applicant is claiming for the same relief. The applicant was not qualified for the post of Civil Engineering Assistant and therefore he cannot claim for the said post. Hence, the following order-

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 19/10/2023.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 19/10/2023.

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