

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO. 928 OF 2015

DISTRICT :PUNE

1. Shri. Hanumant Bhagwant Konde)
Age-61 Years,)
Residing at Solanki Plaza, Hadco Road,))
(Sachin Sports), Saswad,)
Taluka Purandar, District- Pune.)

2. Shri. Balasaheb Parvati Poman)
Age-59 Years,)
Residing at post Pimpale,)
Taluka Purandar, District- Pune.)

3. Shri Sharad Raghunath Bhagwat)
Age-61 Years,)
Residing at Post Ambegaon B.K.,)
S.No.36,)
Aamrai, Taluka Haveli, District-Pune.)

4. Shri Ramdas Vishnu Jadhav)
Age-62 Years,)
Residing at Venkatesh Apartment,)
Building C/03, Near S.T. Stand,)
Saswad, Taluka Purandar,)
District Pune.)

5. Shri Ankush Sawalaram Kudale)
Age-61 Years,)
Residing at post Wadaki, 10th Mile,)
Near Abhiruchi Garden Dhaba,)
Taluka Haveli, District- Pune.)

6. Shri Balu Maruti Landage)
Age-65 Years,)
Residing at Landage Ali, Saswad,)
Taluka Purandar, District-Pune.)
7. Shri Suresh Dashrath Mhaske)
Age-59 Years,)
Residing at Post Saswad,)
Near New Police Line, Landage Ali,)
Taluka Purandar, District Pune.)
8. Shri Uttam Ramchandra Nale)
Age-59 Years,)
Residing at Jadhavwadi,)
Post Vikhale Wadhar Station,)
Taluka Koregaon, District Satara.)
9. Shri Vasant Baburao Godase)
Age-60 Years,)
Residing at Irrigation Bungalow,)
Kolaki, Taluka Phaltan, District Satara)
10. Shri Tulshidas Gangaram Dhamal)
Age-59 Years,)
Residing at post Asawali,)
Taluka Khandala, District Satara.)
11. Shri Bhagwan Dagadu Nagargoje)
Age-59 Years,)
Residing at Sai-Chatra Society,)
Building H/3, Sonori Road,)
Taluka Purandar,)
District Pune-412301)
12. Shri Vinayak Khandu Jadhav)
Age-59 Years,)
Residing at Karati, Taluka Baramati,)
District Pune.)

13. Shri Ikbal Yasin Kazi)
 Age-59 Years,)
 Residing at Post Taluka Malshiras,)
 Shah Dharashi Plot,)
 District Solapur – 413107.)
14. Shri Balwant Narayan Khalipe)
 Age-67 Years,)
 Residing at Post Tondoli,)
 Taluka kadegaon, District Sangali.)
15. Shri Shivaji Parvati Saste)
 Age-65 Years,)
 Residing at Post Sakurde,)
 Taluka Purandar, District Pune.)
16. Shri Sambhaji Sampatrao Mohite)
 Age-59 Years,)
 Residing at Post Sakharwadi,)
 Taluka Phaltan, District Satara.)...**Applicants**

VERSUS

1. State of Maharashtra,)
 Through Chief Secretary,)
 Mantralaya, Mumbai – 400 032.)
2. The Principal Secretary,)
 Water Resources Department,)
 State of Maharashtra,)
 Mantralaya, Mumbai – 400 032.)
3. The Principal Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai – 400 032.)

4. Superintending Engineer,)
 Pune Irrigation Circle,)
 Water Resources, Sinchan Bhavan,)
 Barne Road, Mangalwar Peth,)
 Pune – 411 011.)....**Respondents**

Smt. Punam Mahajan, the learned Advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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

DATE : 27.01.2017

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants' who are claiming that they are entitled to be exempted from passing the departmental examination for absorption to the post of Civil Engineering Assistant (C.E.A.) on reaching the age of 45 years and they should be deemed

to be appointed as C.E.A. on reaching that age and given Time Bound Promotion accordingly.

3. Learned Counsel for the Applicants argued that the Applicants were appointed from 1973 to 1989 in the posts like Mistry, Muster Karkoon etc. in Water Resources Department (Irrigation Department). The State Government took a policy decision to merge the subordinate posts in Irrigation and Public Works Departments and create a cadre of Civil Engineering Assistants (C.E.A.) by G.R. dated 31.11.1989. Persons working in sub-ordinate cadres were to be absorbed as C.E.A. subject to certain conditions. The Applicants were however not absorbed as C.E.A. and continued to work in their original posts. As per G.R. dated 8.6.1995 dealing with Time Bound Promotion, the Applicants were not given the pay scale of Civil Engineering Assistant, but were treated as occupying isolated posts and given Time Bound Promotion on that basis. In 1998, Recruitment Rules for the post of Civil Engineering Assistant were notified. On 8.8.2001, the Public Works Department notified the Civil Engineering Assistants (Qualifying Examination/ Departmental Examination and Training) Rules, 2001. Learned Counsel for the Applicants argued that the employees working as Mistry, Muster Karkoon etc. are eligible to be exempted from passing professional examination on completion of 45 years of age as per the G.R. dated 1.11.1977. It has been held by Aurangabad Bench of this Tribunal in O.A.Nos.712 of 2009, 960 of 2009 and 963 of 2010 that the Civil Engineering Assistants are exempted from

passing professional examination on reaching the age of 45 years. Aurangabad Bench of Hon'ble H.C. in Writ Petition No.6212 of 2011, 1126 of 2011, 1110 of 2011 and 8428 of 2011 confirmed the judgment of this Tribunal. P.W.D. has issued G.R. dated 31.7.2013 clarifying that Civil Engineering Assistant are exempted from passing professional examination on reaching 45 years. P.W.D. has also issued a letter on 1.11.2013 stating that employees working as Mistry, Muster Karkoon, Dafter Karkoon etc. will be entitled for absorption in the cadre of Civil Engineering Assistant on reaching the age of 45 years and after 3 years of absorption, will be eligible for promotion to the post of Junior Engineer. Off course, they will stand exempted from passing the qualifying examination for Junior Engineer as they had already reached the age of 45 years. Learned Counsel for the Applicants argued that the Water Resources Department is refusing to extend the same facilities to the similarly situated persons working in that department. Learned Counsel for the Applicants argued that Aurangabad Bench of Hon'ble H.C. has held that decision of the General Administration Department in service matters would be binding on all the Department of the State Government. G.R. dated 1.11.1977 as also the rules and instructions continued in letter dated 1.11.2013, are therefore binding on the Water Resources Department and the Applicants are exempted from passing examination to be absorbed as C.E.A. on reaching the age of 45 years and thereafter, are eligible to be promoted as Junior Engineers.

4. Learned Presenting Officer (C.P.O.) argued on behalf of the Respondents that the Applicants are not eligible to be absorbed as Civil Engineering Assistant as per the Rules notified on 26.2.2002 by the Respondent No.2. Even for those who are qualified to be absorbed as C.E.A., the absorption is not automatic as only 50% of the posts of C.E.A. are to be filled by absorption and balance by direct recruitment. Learned P.O. argued that the Recruitment Rules provide for absorption of Lower Cadres as C.E.A. only if they pass the qualifying examination. Learned P.O. argued that Water Resources Department has promulgated another set of Rules by notification dated 19.9.2002 which are applicable to both who are working as C.E.A. and those working in Lower Cadres, who can be absorbed as C.E.A. provided they fulfill conditions as per Rules of 26.2.2002. These Rules are called the Civil Engineering Assistant (Qualifying Examination, Departmental Examination and Training) Rules, 2002. These Rules are applicable to lower cadres and C.E.A. appointed by nomination. As per Rule 7(2) (b), a person is eligible to be given exemption from passing the Departmental Examination on reaching age of 45 years. As per Rule 11, those who are not able to pass the examination within 4 years of first examination and within 3 chances, will lose seniority, which will not be restored after reaching the age of 45 years. As per rules of 26.2.2002, absorption as C.E.A. was to be based on seniority cum fitness. The Applicants have not placed any material on record to show that any person junior to them was absorbed before them. Another relevant fact is that the Applicants could have

been absorbed only if there were vacancies available to absorb them. Learned P.O. argued that the Applicants crossed the age of 45 years from 1993 to 2002. They have made representation only after their retirement. On that ground alone the Applicants in this O.A. are not eligible to get any relief. Learned P.O. argued that G.A.D. by circular dated 13.9.2012 has given certain clarifications regarding exemptions from passing departmental examinations on reaching age of 45 years and the Applicants do not fulfill such conditions. Learned P.O. argued that the judgments cited by the Applicants are not applicable in the facts of the present case.

5. The Applicants in this O.A. were working in subordinate cadres in the posts like Mistry, Muster Clerk etc. (in the Rules of 19.9.2002, they are referred to as 'Karmacharis/employees') in the Water Resources Department. By G.R. dated 31.1.1989, a cadre of Civil Engineering Assistants was created for Irrigation and Public Works Departments. Schedule 'A' of this G.R. listed 14 posts, out of which employees working on posts of Sub-Overseers and Surveyor were to be directly absorbed as C.E.A. Those employees who had passed the qualifying examination for the post of C.E.A. and those who had passed professional examination of Sub-Overseers were also eligible for direct absorption. Employees working in 12 cadres, were eligible for absorption on completion of training and other conditions, subject to availability of posts. It appears that

the Public Works Department notified the Civil Engineering Assistant, Group 'C' in the Public Works Department (Recruitment) Rules, 1998 on 18.6.1998 and the Civil Engineering Assistants (Qualifying examination/ Departmental Examinations and Training) Rules, 2001 on 8.8.2001. Similar rules were notified by the Water Resources Department viz. the Civil Engineering Assistant, Group 'C' in the Irrigation Department (Recruitment) Rules, 2002 notified on 26.2.2002 (called Recruitment Rules, hereinafter) and the Civil Engineering Assistants (Qualifying Examination/ Departmental Examinations and Training) Rules, 2002 notified on 19.9.2002 (called the Examination Rules). As separate and distinct rules for the Water Resources Department have been notified, we need not consider the Rules of the Public Works Department.

6. Rule 3 of the recruitment rules provides for appointment to the post of Civil Engineering Assistant (C.E.A.) by absorption or by nomination. The ratio is 50:50 till all eligible and suitable candidates from the sub-ordinate cadres in schedule 'A' of the rules are absorbed. Thereafter appointments to the post of C.E.A. will be by nomination only. For absorption, the following conditions are provided, viz:

- (i) A suitable person from the cadres mentioned in Schedule -A and possessing any one of the qualification 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, Nasik, of the Government ; or
- (iii) Persons who are in the Government service, in the Irrigation Department as on the 1st Jaunary 1989, and who have passed the Civil Engineering Assistant's one year's Course examination conducted by the Government, 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 Irrigation Department;

From this rule, it is clear that a person working in a post in a Sub-ordinate Cadre, was to be absorbed as C.E.A.-

- (i) On the basis of seniority subject to fitness and
- (ii) From amongst the persons who have passed the Civil Engineering Assistants' qualifying examination conducted by the Maharashtra Engineering College, Nasik of the Government;

All the Applicants are undoubtedly covered by this rule. The rules regarding passing of the qualifying examinations (Examination Rules) were notified on 19.9.2002. Rule 2(e) covers the Applicant in the definition of an 'employee' (we have been referring to such persons as working in sub-ordinate cadres), 'Examination' means the Qualifying Examination or the Departmental Examination for the post of C.E.A.

7. Rule 7(2) of Examination Rules reads:-

“(2) An employee or a Civil Engineering Assistant shall on an application being made in that behalf, be exempted by the concerned Superintending Engineer from passing the examination, if he,-

(b) has attained the age of forty-five years:
Provided that the loss of seniority of such candidate, if any, in accordance with the provisions of rule 11, shall not restore on account of such exemption.”

Rule 11 deals with the effect of failure to pass the examination within the prescribed period.

11(1) reads:

“(1) An employee who fails to pass the examination within the period and number of chances prescribed in rule 10, shall not be eligible to be absorbed to the post of Civil Engineering Assistant.”

In the present O.A, we are concerned with Rule 11(1) only as it applies to the Applicants. Reading the Recruitment Rules and Examination Rules together, an ‘employee’ would become eligible to be absorbed as C.E.A. on reaching the age of 45 years, only on the basis of seniority, as fitness was linked to passing the examination, which an employee is exempted from passing on reaching the age of 45 years. It may be noted that Rule 7(2) of the Recruitment Rules provides that an employee has to make any application for exemption from passing the examination on reaching the age of 45 years. Also Rule 3(a) *ibid* provides that 50% of the

Sanctioned posts are to be filled by absorption of employees (and not by promotion).

8. The Applicants claim that as per G.R. dated 8.6.1995 they were eligible to be given the pay scale of the post of C.E.A. on completion of 12 years of service as employee. Para 2 of this G.R. reads:

“ २. पदोन्नतीची तपशीलवार योजना खालीलप्रमाणे आहे:-

गट ‘क’ व ‘ड’ (पूर्वीचे वर्ग ३ व ४) मधील पदधारकांना १२ वर्षांच्या नियमित सेवेनंतर पदोन्नती साखळीतील वरच्या पदावरील वेतनश्रेणी देण्यात येईल. ज्या कर्मचा-यांना पदोन्नती साखळीतील पदांवर पदोन्नतीसाठी पद अस्तित्वात नाही अशा कर्मचा-यांना या निर्णयासोबत परिशिष्टामध्ये दर्शविण्यात आल्यानुसार वरिष्ठ वेतनश्रेणी देण्यात येईल.”

Plain reading of this will mean that the Applicants were eligible to get the pay scale of the promotional posts from the posts in sub-ordinate cadres. It is quite clear that the claim of the Applicants that they were eligible to get the pay scale of the post of C.E.A. after 12 years of service in the sub-ordinate cadres as ‘employees’ is clearly not tenable. Such ‘employees’ obviously had no channel of promotion and they were occupying isolated posts. Such employees were eligible to be given benefit of ‘Time Bound Promotion’ applicable to employees occupying isolated posts. The Applicants were accordingly not eligible to be given pay scale of ‘Junior Engineer’ on getting second benefit of Assured Career Progression Scheme. Their case would be covered by G.R. dated 5.7.2010 and not G.R. dated 1.4.2010.

9. The Applicants have relied on the judgment dated 4.2.2011 of this Tribunal (Aurangabad Bench) dated

4.2.2011 in O.A.No.963 of 2010. This O.A. was filed by the Union/Association of Civil Engineering Assistants working in P.W.D. The Applicant has challenged the decision of P.W.D. that C.E.A. cannot be granted exemption from passing the professional examination on reaching the age of 45 years. This Tribunal held that C.E.A. are eligible to get exemption from passing professional examination on attaining the age of 45 years, and accordingly eligible to be considered for promotion/Time Bound Promotion to the next higher post of Junior Engineer. There is no doubt that a C.E.A. is eligible to be promoted to the post of Junior Engineer, subject to the conditions in the Recruitment Rules. The same is not the case of the 'employees' in Water Resources Department, as the post of C.E.A.is not a promotional post. This judgment is clearly distinguishable. The judgment of Hon'ble H.C. (Aurangabad Bench) dated 9.11.2011 in a group of Writ Petition no.6212 of 2011 etc. confirms that aforesaid judgment of this Tribunal. P.W.D. issued letter dated 22.7.2013, which is also about Time Bound Promotion to the C.E.A.'s G.R.s dated 31.7.2013 and 24.9.2013 also deals with exemption to C.E.As from passing qualifying examination for Promotion/ Time Bound Promotion to the post of Junior Engineer on reaching the age of 45 years.

10. The Applicants have relied on the letter dated 1.11.2013, 5.4.2014 and 12.2.2015 of P.W.D. mentioned in paras no. 6.23, 6.24 and 6.25 of this O.A. Letter dated 1.11.2013 (Annexure A-15) provides in para 4(3) as follows:-

“ ४ (३) जर एखादा कर्मचारी दि.१.१.१९८९ रोजी १४ संवर्गापैकी कोणत्याही एका पदावर कार्यरत असेल व त्याचे वयाच्या ४५ वर्षांपर्यंत स्थापत्य अभियांत्रिकी सहाय्यक या पदावर समावेश झाले नसेल तर अशा कर्मचा-यास, तो ज्या दिवशी वयाची ४५ वर्षे पूर्ण करील त्या तारखेपासून त्याचे स्थापत्य अभियांत्रिकी सहाय्यक या पदावर समावेशन करून त्यानंतर ३ वर्षांची सेवा झाल्यानंतर त्याला कनिष्ठ अभियंता या पदावरील पदोन्नतीसाठी आवश्यक असलेल्या अर्हता परीक्षेतून सूट द्यावी.”

11. In letter dated 5.4.2014, it is clarified that:

“पाटबंधारे विभागाच्या धर्तीवर सा.बां. विभागाने दिनांक १४/३/१९८९ च्या शासन निर्णयाअन्वये सन १९८९ पासून १९९४ पर्यंत दरवर्षी ४०० याप्रमाणे २४०० पदांची निर्मिती केली. त्यामुळे जे जे कर्मचारी जसे जसे पात्र झाले, त्यांना स्थापत्य अभियांत्रिकी सहाय्यक या पदावर सामावून घेणे कमप्राप्त होते. त्यामुळे दि.२५ नोव्हेंबर २००४ नंतरच या कर्मचा-यांना सामावून घेता येईल ही धारणा बरोबर नाही. सदर कर्मचा-यांनी ज्या ज्या वेळी प्रशिक्षण घेतले अथवा तांत्रिक अर्हता प्राप्त केली त्या त्या वेळी सन १९८९ पासूनच त्या कर्मचा-याचे समावेशन करणे आवश्यक होते. दरम्यान दिनांक २५/११/२००४ पूर्वीच एखादा कर्मचारी ४५ वर्षे पूर्ण करित असेल तर त्याला अर्हता परीक्षा पास होण्यापासून सूट देवून त्याचे स्था.अ.स. या पदावर समावेशन करावे.”

From this letter it is clear that the ‘employees’ were held eligible for absorption as C.E.A. in the vacancies available and on reaching the age of 45 years or earlier, if they had passed the qualifying examination.

By letter dated 12.2.2015, the following example is given:-

“ १) कर्मचारी -अ :- जन्मदिनांक २६.०२.१९५६, प्रथम नियुक्तीचे पदनाम-रोड कारकून, शासन सेवेतील नियुक्तीचा दिनांक १६.१०.१९७९, कार्यवाही काटेकोरपणे पालन करणे आवश्यक आहे. या कर्मचा-याने सदर नियमात अंतर्भूत केलेली परीक्षा उत्तीर्ण केली नसल्यास या कर्मचा-याचे वय ४५ वर्षे झाल्यानंतर त्याला प्रात्यक्षिक परिक्षेसह परीक्षा उत्तीर्ण होण्यापासून सुट देण्यात येईल. हा कर्मचारी दि.२६.०२.२००१ रोजी वयाची ४५ वर्षे पूर्ण करित असल्यामुळे त्याचे या तारखेपर्यंत स्थापत्य अभियांत्रिकी सहाय्यक या पदावर समावेशन झाले नसल्यास या तारखेपासून सदर पदावर समावेशन होईल व तो कनिष्ठ अभियंता पदाच्या परिक्षेसाठी दि.२६.०२.२००४ नंतर पात्र होईल. परंतू ४५ वर्षे पूर्ण झाल्यामुळे त्याला या तारखेस परीक्षा उत्तीर्ण होण्यापासून सुट देण्यात येईल. या पदधारकास १२ वर्षांच्या नियमित सेवेनंतर त्याच्या पदोन्नती साखळीतील वरच्या पदावरील वेतनश्रेणी लागू राहिल. या कर्मचा-याची नियुक्ती दि.१६.१०.१९७९ ची असल्यामुळे त्याला १२ वर्षांच्या नियमित सेवेनंतर दि.०८.०६.१९९५ च्या शासन निर्णयान्वे दि.०१ ऑक्टोबर, १९९४ पासून त्याच्या पदोन्नती साखळीतील वरच्या पदावरील

वेतनश्रेणी अनुज्ञेय होईल व त्यांनतर १२ वर्षांनी म्हणजेच दि.०१.१०.२००६ पासून दुसरा लाभ म्हणजेच कनिष्ठ अभियंता या पदाची वेतनश्रेणी अनुज्ञेय होईल.’’

This example cannot be read in isolation. It has to be read with other letters of the Government. This example will be applicable to those employees who were held eligible to be absorbed as C.E.A. either as no examination was held or on reaching the age of 45 years, when they were exempted from passing examination. However, such absorption would be possible only if the vacancies were available from 50% quota for absorption. An employee would be eligible to be absorbed as C.E.A. subject to seniority and fitness as provided in the rules and vacancies should also be available from absorption quota. If in the past, eligible employees were not absorbed though vacancies were available for absorption quota, such employees could be absorbed as C.E.A. with retrospective effect. This is the import of letter of P.W.D. referred to above. However, we are unable to accept the argument that employees would be eligible to be absorbed as C.E.A. on reaching the age of 45 years, without these conditions being satisfied and that they were eligible to be given Time Bound Promotion to the post of Junior Engineer, presuming that they were absorbed as C.E.A. on reaching the age of 45 years. Another issue to be considered is that letter dated 12.2.2015 (and other letters dated 1.11.2013 and 5.4.2014) have not been issued in consultation with the General Administration Department. The Respondents have claimed that these letters are not applicable to the Water Resources Department, who have their separate and distinct rules for recruitment and examination for the post of C.E.A. This

contention may be correct, but not germane to the issues involved in this O.A. The Applicants could have been absorbed as C.E.A. on attaining the age of 45 years depending upon their seniority and availability of posts from 50% absorption quota. They have not taken a stand that 50% quota remained unfilled. In fact, that quota was over utilized as can be seen from various O.A.s filed before this Tribunal. The Applicants have not been able to make out a case, that they were not absorbed as C.E.A. on reaching the age of 45 years or any time thereafter though the vacancies were available from their quota. Unless they were eligible for absorption as C.E.A., the question of considering them for Time Bound Promotion to the post of Junior Engineer, would not arise. All the judgments cited by the Applicants would come to their rescue only if they were eligible to be absorbed as C.E.A. in vacancies from 50% quota, and they were not absorbed. The Applicants have not made out such a case. Their claim is that on reaching the age of 45 years, they should have been deemed to be absorbed as C.E.As. This cannot be accepted.

12. The Applicants have failed to make out a case that they were eligible to be appointed as C.E.A. on attaining the age of 45 years, as the vacancies from 50% quota were available and even then the Applicants were not absorbed. As the Applicants have failed to establish that they were eligible to be absorbed as C.E.A. from absorption quota, they cannot be held eligible to be given Time Bound Promotion to

the post of Junior Engineer. They were rightly given Time Bound Promotion, treating their posts as isolated.

13. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

(R.B. MALIK)
MEMBER (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 27.01.2017

Place : Mumbai

Dictation taken by : SBA

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