

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATIONS NOS.166, 167 and 168/1998.

a) **Original Application No. 166/1998**

Kiran Omkar Kharat,
Aged major,
Jr. Engineer at LD Works,
Sub-Division No. 2, Bhandar,
Section Arni, Distt. Yavatmal

-----**Applicant.**

Versus

The State of Maharashtra,
Through its Principal Secretary,
Irrigation Department,
Mantralaya, Mumbai.32.

2. The Chief Engineer,
Irrigation Department,
Nagpur Division, Nagpur.
3. The Superintending Engineer,
Command Area Development Authority,
Nagpur.
4. The Maharashtra Public Service Commission,
Through its Secretary,
Mumbai.

----- **Respondents.**

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1. Shri A.S. Golegaonkar, Advocate for the applicant.
 2. Shri A.M. Ghogare, Presenting Officer for the Respondents.
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b) ORIGINAL APPLICATIONS NOS. 167 /1998.

Anil Charandas Rathod,
Aged major, Pen Takali Project, M.I.
Division No.2, Chikhali Project Circle,
Buldhana. -----**Applicant.**

Versus

The State of Maharashtra,
Through its Principal Secretary,
Irrigation Department,
Mantralaya, Mumbai.32.

2. The Chief Engineer,
Irrigation Department,
Amravati Division, Amravati.
3. The Superintending Engineer,
Command Area Development,
Authority, Nagpur.
4. The Maharashtra Public Service Commission,
Through its Secretary,
Mumbai. ----- **Respondents.**

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1. Shri A.S. Golegaonkar, Advocate for the applicant.
 2. Shri A.M. Ghogare, Presenting Officer for the Respondents No. 1 to 3.
 3. Shri A.M. Kukadey, Advocate for Respondent No. 4.
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c) **ORIGINAL APPLICATIONS NOS. 168/1998.**

Kiran Omkar Kharat Narayan Kashinath Shinde,
 Aged major,
 Jr. Engineer at Amravati ,
 Canal Sub-Division No. 2,
 Arunavati Project Division,
 Digras, Distt. Yavatmal

-----**Applicant.**

Versus

The State of Maharashtra,
 Through its Principal Secretary,
 Irrigation Department,
 Mantralaya, Mumbai.32.

2. The Chief Engineer,
 Irrigation Department,
 Amravati Division, Amravati .
3. The Superintending Engineer,
 Yavatmal Irrigation Project Circle,
 Yavatmal.
4. The Maharashtra Public Service Commission,
 Through its Secretary,
 Mumbai.

----- **Respondents.**

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1. Shri A.S. Golegaonkar, Advocate for the applicant.
 2. Shri A.M. Ghogare, Presenting Officer for the Respondents No. 1, 2 and 4.
 3. Shri P.V. Thakre, Advocate for Respondent No. 3.
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**CORAM : B. Majumdar : Vice-Chairman
&
Justice M.N. Gilani: Member (J)**
DATE : 21st August, 2015

ORDER**PER VICE-CHAIRMAN**

All the 3 O.As are disposed of through this common order as the law issues and factual matrices are similar . The applicants are aggrieved that they have not been granted the designation of Assistant Engineers w.e.f. their entry in service as Junior Engineers in term of the G.R. dtd. 16/4/1984.

2. The applicants, who are degree holding Engineers, were appointed as Jr. Engineers during November-December, 1989 in the Irrigation Department through the Regional Sub-ordinate Services Selection Board . On 16/4/1984, the Govt. issued a G.R. vide which, w.e.f. 1/4/1981 graduate Jr. Engineers as well as non-graduate Jr. Engineers were granted the status of Gazetted Officers –Class-II (Junior). In case of those other than graduates, a certain period was prescribed

for this purpose. Vide this G.R., two cadres, namely, Asstt. Engineer-Grade-II for graduate Jr. Engineers and Sectional Engineers for diploma holders and others were created with a higher and common pay scale. It also stated that in future degree holders will be directly recruited as Asstt. Engineers, Grade II and the recruitment conditions will be decided in consultation with MPSC. Vide G.R. dtd. 18/9/1984, the Coordinating Superintending Engineers were given powers to appoint Asstt. Engineers, Grade-II on a temporary/ad-hoc basis. On 7/9/1988, the Govt. in PWD directed the Superintending Engineers in that department to issue orders of appointing the graduate Jr. Engineers appointed originally as per the recruitment rules in force as Asstt. Engineers, Grade-II on the temporary establishment. On 23/2/1996, S/Shri D.S. Mange and S.R. Khakade graduate Jr. Engineers in the PWD were appointed as Asstt. Engineers by that department. On 16/9/1993, the Chief Engineer, Irrigation Department, Amravati sought guidance for granting pay scale of Asstt. Engineer to Shri A.C. Rathod, degree holder Jr.

Engineers. On 22/4/1996, he sent a list of 4 graduate Jr. Engineers including the applicants in O.As. no. 167 and 168/1998 to Govt. with reference to the G.R. dtd. 16/4.1984 for their appointment as Asstt. Engineers. It is to be noted that these 4 officers in the proposal were not appointed temporarily as Asstt. Engineers on the basis of the above G.R. The Recruitment Rules for Asstt. Engineers in the Irrigation Department were notified under proviso to Article 309 on 16/6/1997. As per these Rules, the post of Asstt. Engineer , Grade-II is to be filled up through the MPSC and a combined competitive examination. Under Rule 8 a provision was made to regularize the services of Asstt. Engineers temporarily appointed prior to 31/12/1996 through an oral or a limited competitive examination to be held by the MPSC during 1997-98.

3. On 9/6/1998, the present O.A. was dismissed by the Tribunal. The respondents filed W.P, No. 2523/1998 challenging the above order.

4. On 20/3/1999, the Govt. in Irrigation Department issued a circular by way of clarification with regard to G.R. dtd. 16/4/1984 stating therein that recruitment to the post of Asstt. Engineer, Grade-II, a Class-II Gazetted post, can take place from among candidates holding a degree or equivalent qualification through the MPSC. It further stated that in view of the above, merely having the minimum prescribed educational qualification for the post, will not entitle a Jr. Engineer for appointment as Asstt. Engineer, Grade-II.

5. Sometime in 1999, the applicants in these O.As were promoted as Sectional Engineers w.e.f. 1/4/1995.

6. On 1/3/2000, the Govt. in Irrigation Department issued a G.R. titled as “ पाटबंधारे विभाग व सार्वजनिक बांधकाम विभागातील सन १९८१ पासून सेवेत असलेल्या तदर्थ सहायक अभियंता श्रेणी – २ यांच्या सेवा नियमित करण्याबाबत.” On 8/7/2009, an amendment to the recruitment rules of 1997 was made under Article 309. Under this amendment the recruitment rule No. 8 (3) was amended prescribing a detailed procedure to be followed for

regularizing the services of graduate Jr. Engineers appointed during 2/4/1981 to 16/4/1984 as also Asstt. Engineers temporarily appointed during the period 17/4/1984 to 31/12/1996.

7. On 9/12/2014, hon'ble the High Court disposed of the W.P. No.2523/1998 by quashing the Tribunal's order dtd. 9/6/1998 . The High Court observed that once the Tribunal had considered the O.A. to be barred by limitation, it should not have gone ahead and decide the matter on merit and thus the petitioners were aggrieved by being taken in surprise, in violation of the basic principles of natural justice. The High Court issued the following order :-

“ (i) Writ Petition Nos. 2521/1998, 2522/1998,2523/1998 are partly allowed. Impugned judgment dated 9/6/1998 is (set)aside.

(ii) Proceedings of Original Application Nos. 166/1998, 167/1998, 168/1998 are remitted to the Maharashtra Administrative Tribunal, Nagpur for hearing and fresh

disposal, in accordance with law and in the light of the observations made by this Court hereinabove.

(iii) The petitioners to appear before the Maharashtra Administrative Tribunal, Nagpur on 16/1/2015 and shall abide by further orders of the Tribunal.

(iv) The Tribunal is requested to decide the original applications as early as possible and, in any event, within a period of four months from the date of appearance before it.

***Rule made absolute in the above terms.
No order as to costs.”***

8. It is the applicants' grievance that as per the G.R. dtd. 16/4/1984, the post of Jr. Engineer has been upgraded as Asstt. Engineer. Once a policy decision has been taken that in future graduate engineers should be appointed as Asstt. Engineers, Grade-II and not as Junior Engineers and since the above G.R. was effective from 1/4/1981 and they were

appointed in 1989, they were required to be treated as Asstt. Engineers from the date of appointment. They also state that some graduate engineers from the Thane Irrigation Circle had been included in the seniority list of Asstt. Engineers although they are junior to the applicants and unlike the applicants, they are not selected through the State Selection Board.

9. The respondents in their reply to the O.A. submit as follow :-

Para 5 : *“ It is stated that the minimum qualification for the post of Junior Engineer is “ a diploma from the recognized University”. Therefore, the diploma holder as good as degree holder candidates are eligible for appearing (in) the competitive examination of recruitment for the post of the Junior Engineer. After appointing before 1/4/81 the seniority list of the degree holder and diploma holder were kept separately. In, therefore, year 1984 the Government has taken a policy decision to give gazette status to Junior Engineers and two new cadres were created i.e. Assistant Engineer, Grade-II for degree holder and Section*

Engineer for diploma holder. These orders have been issued vide Government Resolution No. CPS 1582/ 158/ (215)/ E (10), dated 16/4/1984 (copy enclosed as Exh. D in the petition). The orders have given retrospective effect from 1/4/81. Therefore, the persons who were working on/or before 16/4/84 as Jr. Engineer and possess a degree have been given gazetted status and designation as Assistant Engineer, Grade-II. Since the newly created posts are gazetted posts within the purview of M.P.S.C. Therefore, the orders regarding the gazette status on the post of Assistant Engineer, Grade II and sectional Engineer are issued subject to the condition of the approval of M.P.S.C. It is stated that from 16/4/1984 the post of Assistant Engineer, Grade-II falls within the purview of M.P.S.C. and therefore it is necessary to recruit these posts through M.P.S.C., according to the Recruitment Rule of the said post. Therefore the person who (were)recruited through the State Selection Board, after 1984 and accepted the post of Junior Engineer willingly can (sic) should not be designated as Assistant Engineer, Grade-II.

Para 7 : ----- *This order issued vide G.R. dtd. 16/4/84 which gives effect from 1/4/81. Therefore the persons who were appointed up to 16/4/84 and were working on the post of Junior Engineer Degree holder were automatically elevated and designated as Assistant Engineer, Grade-II, subject to the condition of the approval of M.P.S.C. After 16/4/84 the recruitment on gazette post falls within the purview of MPSC, therefore, after 16/4/84. The persons who are appointed on class-III post by State Selection Board cannot claim for the gazette post. The petitioner has been appointed as Junior Engineer on 1/12/89 (i.e. after 16/4/84) from the State Selection Board & accepted the class III post willingly , therefore the request to absorb him on gazette post cannot be accepted, the request needs to be rejected.”*

Para 9 : *As mentioned in para 7 above, the person who are appointed on Class III post by the State Selection Board cannot be absorbed on the gazetted post. The recruitment rule for Assistant Engineer, Grade-II posts have been issued vide notification, date 16/7/97. In the*

recruitment rule, there is no provision of absorption of degree holder Junior Engineer.”

10. Shri A.S. Golegaonkar, the Id. Counsel for the applicant laid emphasis on the applicants' averment that in terms of the G.Rs. dtd. 16/4/1984 and 18/9/1984, the applicants, being graduate engineers, were required to be appointed as Asstt. Engineers by the Irrigation Department, at least for one year on an ad-hoc basis even though they were appointed as Jr. Engineers. In fact, a number of graduate Junior Engineers who were appointed along with the applicants were given such appointment as Asstt. Engineers. He then relied on the G.R. dtd. 1/3/2000 which states that the G.R. dtd. 16/4/1984 was issued to implement the announcement in the State Legislature on 10/3/1981 that degree holding Jr. Engineers would be granted the status of Asstt. Engineers, Grade-II. He specifically relied on clauses (a) to (d) of 1st para of the G.R. which state that graduates

Jr. Engineers recruited from 2/4/1981 to 16/4/1984 and from 17/4/84 to 16/6/97, including diploma holders who had acquired a degree in-service are to be absorbed as Asstt. Engineers, Grade II. The respondents cannot treat the applicants differently. He also relied on the Recruitment Rules of 1997 as well as the amended Rules of 8/7/2009 which have adequate provisions for regularizing the services of the applicants as Asstt. Engineers on the same basis as the G.R. of 2000 from the date of their appointment by holding a limited competitive departmental examination through the MPSC. As the applicants were not given any chance for appearing at such an examination, they have been unfairly denied its benefit.

11. Shri A.M. Ghogare, the Id. P.O. for the respondents reiterated the submissions of the respondents. He submitted that the G.R. of 1/3/2000 as also the amended Rule 8 of the Recruitment Rules relate to cases of those graduate Junior Engineers who were appointed during the period from 1/1/1981 to 16/4/1984 and were also granted ad-

hoc appointment as Asstt. Engineers, Grade-II in terms of the G.R. dtd. 18/9/1984. The applicants were never appointed as Asstt. Engineers even on an ad-hoc basis and hence they are not eligible for appointment as Asstt. Engineers from their original dates of employment as Jr. Engineers. He further stated that the applicants have accepted their promotion as Sectional Engineers at par with non-graduate Jr. Engineers.

12. We have heard the arguments on both sides and we have also gone through the documents placed before us. We would like to state here that the O.A. pertains to the year 1998 and it has been remanded back to the Tribunal vide hon'ble the High Court's order dtd. 2/12/2014. The original records of the O.As. being very old, are not available with the office of the Tribunal. We have therefore relied on the records which have been placed before us by the applicants as well as the respondents including those forming a part of the W.P.

13. We are not considering the issue of limitation, although this was one of the grounds on which the O.A. was

previously dismissed on 9/6/1996, for the reason that this issue has not been raised by either of the parties and also the grievance of the applicants with regard to their appointment as Asstt. Engineers from the date of their original appointment as Jr. Engineers has remained under dispute over the last so many years.

14. It is a fact that the applicants being a degree holder Jr. Engineers had applied for the post of Jr. Engineers and were appointed to these posts in 1989. The applicants have relied on the G.R. dated 16/4/1984 for grant of seniority and status as Asstt. Engineers, Grade-II from the dates of their original appointment as Jr. Engineers. The G.R. dtd. 16/4/1984, made effective from 1/4/1984, has the following silent features :-

- a) The degree holding Jr. Engineers are granted the gazetted status of Class-II. A similar status is also granted to non degree holding Jr. Engineers subject to their completion of certain prescribed periods of service;

- b) Two new cadres are created- Asstt. Engineer, Grade-II (for degree holding Jr. Engineers and Sectional Engineers) with a common pay scale which is higher than the pay of a Jr. Engineer.
- c) The posts of Asstt. Engineer , Grade-II will comprise 25% of the total cadre strength of Jr. Engineers.
- d) The Asstt. Engineers and Sectional Engineers will be recruited on the same basis as Jr. Engineers and the duties, powers and responsibilities of a Jr. Engineer will also apply to them.
- e) In future, except for the posts of Asstt. Engineer, Grade I and Asstt. Executive Engineers, graduate engineers will be directly appointed as Asstt. Engineers, Grade II.

15. Para 2 states that the number of posts to be sanctioned for the newly created cadres of Asstt. Engineers and Sectional Engineers and the terms and conditions of their

appointment will be decided separately as also the qualification to be prescribed for the post will be finalized in consultation with the MPSC.

16. On careful reading of the G.R. it will be clear that with regard to graduate engineers like the applicants, the post of Asstt. Engineer, Grade-II is a higher one to which recruitment will take place after the rules in that regard are framed with consultation of MPSC. It also states that in future graduate engineers will be appointed as Asstt. Engineer , Grade-II.

17. We also find from the documents to which we have referred to above that prior to the notification of the recruitment rules of Asstt. Engineers on 16/6/1997, the degree holding Jr. Engineers appointed before 16/4/84 were granted ad-hoc appointment as Asstt. Engineers . There is a provision under Rule 8 of the 1987 Recruitment Rules for granting regular appointment to them subject to passing an examination conducted by MPSC. These appointments came to be

regularized vide G.R. of 1/3/2000. The applicants have relied on the G.R. to make an averment that as they were recruited as graduate Jr. Engineers when the G.R. of 16/4/1884 was in force, in terms of Clause 'D' of the operative part of the G.R. they should be treated as Asstt. Engineers and the services should be regularized in that cadre from the dates of their original appointment. The above provisions of the G.R. dtd. 1/3/2000 have also been incorporated in the amended recruitment rules notified on 8/7/2009. For clarity we reproduce below the relevant extracts of the G.R. as well as the 2009 Rules.

a) Clause 'D' of the G.R. of 1/3/2000

(ड) “दिनांक १.४.१९८१ ते दिनांक १६.६.१९९७ पर्यंत म्हणजेच सेवा प्रवेश नियम अंतिम होईपर्यंत सेवेत राहून पदवी धारण केलेल्या पदवीधारक कनिष्ठ अभियंता यांची जेष्ठता शसनाच्या दि. २९.११.८४ च्या शासन निर्णयातील ३/८ सेवा जोडून दिलेल्या मानीव दिनांकापासून निश्चित करून अशा एकूण ४०० अभियंत्यांच्या सहायक अभियंता श्रेणी -२ संवर्गातील नेमणुका नियमित करण्यात येत आहेत.”

b) Rule 3 (b) of the 2009 Rules :-

Rule 3(b): “पदवीधारक कनिष्ठ अभियंता या वर्ग- ३ मधील पदावर नियमितरित्या नेमणूक झालेल्या ज्या अभियंत्यांनी शासन सेवेत असतांना ए.एम.आय.ई. (बी.ई. पदवी समकक्ष)किंवा बी.ई. पदवी प्राप्त केली आहे, त्यांना शासन निर्णय पाटबंधारे विभाग क्र. एसएलएस-२६८१/१२७३/(५००)/इएसटी-८, दि. २९.११.१९८४ मधील तरतुदीनुसार पदवीधारक अभियंता म्हणून केलेल्या एकूण सेवेपैकी ३/८ सेवेचा लाभ दि. १.४.१९८१ ते दि.१६.६.१९९७ या कालावधीत देण्यात आला आहे अशा व्यक्तींना दि. १६.४.१९८४ अन्वये निमार्ण केलेल्या सहायक अभियंता श्रेणी -२ या संवर्गात सामावेशनासाठी महाराष्ट्र लोकसेवा आयोगामार्फत सन २००९-२०१० या वर्षामध्ये किंवा त्यानंतर लगेचच घेतली जाणारी तोंडी अर्हता परीक्षा उत्तीर्ण करावी लागेल.”

18. As per the above provisions of the G.R. and the Recruitment Rules, diploma holding Jr. Engineers who, on acquiring a degree, were granted seniority of 1989, when the applicants were appointed, were granted an opportunity to be appointed as Asstt. Engineers, Grade II, whereas the

applicants were given no such consideration. We are of the clear view that the respondents could not have discriminated between these two categories of graduate Jr. Engineers sharing a common seniority in that cadre.

19. It is a fact that when the ad-hoc appointments were made as above for the post of Sectional Engineers in terms of the G.R. dtd. 18/9/1984, the applicants were not considered. As their cases were never considered for grant of ad-hoc appointment/promotion as Asstt. Engineers, regularizing their services in that cadre from the date of their appointment as Jr. Engineers as per the G.R. dtd. 1/3/2000 as well as the amended recruitment rules of 2009 was not done. We also find from the records that the applicants, having been promoted as Sectional Engineers some time in 1999, which is the promotional channel for diploma holding Jr. Engineers, had accepted the same without any demur. Be that as it may, the question still remains whether the applicants have a justifiable case for appointment as Asstt. Engineers as per GRs of 16/4/1984 and

1/3/2000 as also provisions of the 1997 Recruitment Rules and the Amended Rules of 2009.

20. In the light of the above, the applicants, having been appointed as graduate Jr. Engineers in 1989, appear to be deprived of the benefits of Rule 8 of the 1997 Rules, the G.R. of 1/3/2000 and Rule 3 of the 2009 Amended Rules for the only reason that they were not given appointment on an ad-hoc basis as Asstt. Engineers , Grade II and they did not take part in the limited oral examination held by the MPSC from 1997 onwards. At this juncture, it is relevant to note that the respondents have not denied that no such opportunity was given to the applicant.

21. The position that finally emerges is that a) graduate engineers recruited as Jr. Engineers during 2/4/1981 to 16/4/1984, b) ad-hoc Asstt. Engineers appointed up to 31/12/1996, including graduate engineers who were given such appointment after issue of the G.R. dtd. 16/4/1984 and the G.R. dtd. 18/9/1984 and non-graduate Jr. Engineers,

who passed B.E./AMIE while in service and were thereby given seniority in the cadre of Graduate Junior Engineers from 1981 to 1997 have been given an opportunity of regular appointment as Asstt. Engineers by virtue of Rule 8 of the 1997 Rules, the G.R. dtd. 1/3/2000 and Rule 3 of the 2009 Amended Rules, while the applicants have been left out only for the reason that they had applied for and were appointed as Jr. Engineers.

22. Taking all these issues into consideration we are of the clear view that the applicants have been unfairly discriminated vis-à-vis the Jr. Engineers who are covered under para 'D' of the G.R. of 1/3/2000 and Rule 3 (b) of the 2009 Recruitment Rules.

23. In conclusion we hold that the applicants are to be considered for absorption as Asstt. Engineers , Grade II as per the G.R. of 1/3/2000 and Rule 3 of the Amended Rules of 1989. We further hold that the applicants cannot be precluded from such consideration on the ground that they

have been promoted as Sectional Engineers and they have accepted it. The O.A. therefore stands disposed of in terms of the following directions :-

- a) The respondents while considered the case of the applicants for appointment as Asstt. Engineers, Grade II on the same basis and principles as similar appointment granted to non-graduate Jr. Engineers who acquired a degree or equivalent in-service in terms of Clause 'D' of the G.R. of 1/3/2000 and Rule 3 (b) of the 2009 Recruitment Rules for Assistant Engineers.
- b) On being appointed as Assistant Engineers, Grade II, the seniority of the applicants will be fixed accordingly with all consequential and monetary benefits .
- c) No order as to costs.

(Justice M.N. Gilani)
Member (J)

(B. Majumdar)
Vice-Chairman.

Skt.