

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABA**

**ORIGINAL APPLICATION NO. 13 OF 2016
(Subject- Time Bound Promotion)**

DISTRICT: AURANGABAD

Shri Laxman S/o Radhakrushna Kulkarni,

Age: 74 years, Occu. : Retired (Pensioner),

R/o Shri Shukleshwar Mandir,

Fazalpura, Ujwal Niwas,

House No. 2/8/13, Near Collectorate,

Aurangabad. ..

APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Though its Secretary,
Public Works Department,
Mantralaya, Mumbai-400 032.
- 2) **The Superintending Engineer,**
Public Works Circle,
Bandhkam Bhavan,
Adalat Road, Aurangabad.
- 3) **The Executive Engineer,**
Public Works Circle,
Bandhkam Bhawan,
Adalat Road, Aurangabad.

(Copy for respondents to be served
on the Presenting Officer, Maharashtra
Administrative Tribunal, Bombay,
Bench at Aurangabad.) ..

RESPONDENTS

APPEARANCE : Shri V.P. Golewar, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for the
Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

O R A L O R D E R

(Delivered on this 06th day of September, 2017.)

1. Heard Shri V.P. Golewar, Advocate for the Applicant and Shri I.S. Thorat, Presenting Officer for the Respondents.

2. The applicant has challenged the impugned order dated 15.09.2015 issued by the respondent No. 2 by which he was not absorbed on the post of Civil Engineering Assistant.

3. The applicant was appointed as a Road Karkoon on the Work Charged Establishment w.e.f. 22.6.1965 in the pay scale of Rs. 72-2-108, which was revised from time to time. On 14.03.1989, the Government of Maharashtra issued Government Resolution and resolved to create the Cadre of Civil Engineering Assistant and 24,00 posts of Civil Engineering Assistants were created with a direction to fill up the posts in 6 phases from 1.1.1989. The said G.R. was issued on the basis of earlier G.R. dated 31.1.1989, where the employees worked under work charge or converted temporary establishment on different posts such as Surveyor, Technical Assistant, Muster Karkoon, Laboratory Assistant, Mistry etc. were to be brought under one Cadre of Civil

Engineering Assistant and such employees were to be absorbed phase wise. In order to absorb those employees on different posts, certain guidelines were prescribed including the qualification and passing of qualifying examination. It is contention of the applicant that on 31.03.2013, the Government of Maharashtra decided to grant exemption from acquiring necessary qualification and qualifying examination on attaining age of 45 years by the concerned employee who is to be absorbed on the post of Civil Engineering Assistant. It is contention of the applicant that the respondents had not extended the said benefit to the applicant. Some of the employees like the present applicant approached to the Tribunal and the Tribunal directed the respondents to extend the benefit of time bound promotion /assured promotion to those employees. It is contention of the applicant that on 1.11.2013, the respondent No. 1 has issued Circular in respect of procedure to be followed for grant of benefit of time bound promotion/assured promotion on attaining the age of 45 years of the concerned employee. Again the respondent No. 1 issued another Circular dated 5.4.2014 regarding procedure to be followed for grant of benefit of time bound promotion/assured promotion to the employees on attaining the age of 45 years.

4. It is the contention of the applicant that as per the Scheme of granting benefits of time bound promotion/assured promotion, he is entitled to get benefit under the said scheme and therefore, he made request to the respondents by filing application dated 20.05.2015. The respondent No. 3 recommended the case of the applicant and sent proposal to extend benefit of time bound promotion to him to the respondent No. 2, but the respondent No. 2 rejected the proposal sent by the respondent No. 3 by issuing letter dated 15.09.2015 on the ground that the applicant is not entitled to get benefit as he has not been absorbed on the post of Civil Engineering Assistant. He approached this Tribunal by filing the present O.A. and prayed to quash the impugned order dated 15.09.2015 issued by the respondent No. 2 and prayed to absorb him on the post of Civil Engineering Assistant w.e.f. 4.12.1986 and further prayed to give him promotion on the post of Junior Engineer from 4.12.1989 and to extend the financial benefits accordingly.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. It is their contention that the applicant was appointed on the post of Road Karkon on Work Charged Establishment on 22.6.1965 in the office of Executive Engineer, Aurangabad. At the time of his

appointment, his educational qualification was non-matric, as he was not passed the S.S.C. examination. It is their contention that as per G.R. dated 31.01.1989, the cadre of Civil Engineering Assistant had been created and it was made applicable to the Public Works Department vide G.R. dated 14.03.1989. It is their contention that in view of the provisions of G.R. dated 31.01.1989, the person holding the post of Road Karkoon is entitled for the absorption in the cadre of Civil Engineering Assistant, after fulfilling the requisite criteria mentioned in the said G.R. The applicant was holding the post of Road Karkoon at the time of issuance of G.R., but he had not complied requisite criteria for absorption in Civil Engineering Assistant. The paragraph 5 of sub para (8)(a) of the G.R. dated 31.01.1989 provides reproduced as follows:-

“The employees mentioned in Exhibit A, which are presently working in the department and passed the S.S.C. examination with subjects English, Mathematics, Physics and Chemistry having 45% or more marks as well as who passed the Civil Engineering Assistant Examination, will be eligible for absorption in the cadre of CEA and will be absorbed in CEA cadre as mentioned in Para 8(A) step by step per year.”

6. It is their further contention that, as the applicant had not passed SSC examination, the applicant was not eligible for absorbing him in the cadre of Civil Engineering Assistant and therefore, he was retired as Road Karkoon.

7. It is their further contention that as per Recruitment Rules for the post of Civil Engineering Assistant, Group-C issued on 18.06.1998, a person can be appointed as Civil Engineering Assistant, Group-C if he possess one of the qualification mentioned in Schedule B on 1.1.1989, on the basis of seniority subject to fitness from amongst the person who have passed the Civil Engineering Assistants' qualifying examination conducted by the Maharashtra Engineering College, Nashik of the Government or person who are in Government service in the Public Works Department as on 1.1.1989 and who have passed the Civil Engineering Assistants' one year course examination conducted by the Government Technical Institute or the Technical Education Department of Government. It is their contention that the applicant has not complied any of the above requisite criteria and therefore, he had not been absorbed on the post of Civil Engineering Assistant. It is their contention that in view of the G.R. dated 8.8.2001, the exemption from passing qualifying examination for the post of Civil Engineering Assistant has been

given. It is their contention that the G.R. dated 31.07.2013 gives exemption to the Civil Engineering Assistant from passing examination for promotion to the post of Junior Engineer after attaining the age of 45 years. It is their further contention that the Superintending Engineer, Public Works Circle, Aurangabad has rightly rejected the proposal of the respondent No. 3 to extend the benefit of time bound promotion /assured promotion to the applicant after considering the above said G.Rs, by his communication dated 15.09.2015, as the applicant had not fulfilled requisite criteria mentioned in the G.R. dated 31.01.1989. It is their contention that, as the applicant was not eligible for absorption on the post of Civil Engineering Assistant, he is not entitled to get further promotion on the post of Junior Engineer. It is their contention that there is no illegality in the impugned order passed by the respondent No. 2. It is their contention that one Shri Shaikh Nuruddin Zarifoddin, was appointed as Road Karkoon in P.W.D. on 24.04.1965 and he produced the School Leaving Certificate issued by the Head Master of Government Municipal High School, Jalna, showing that he passed the S.S.C. examination and therefore, he was absorbed on the post of Civil Engineering Assistant on the basis of G.R. dated 31.01.1989. It is their contention that in case, any illegality is found in extending the benefit to the said employee, it will be cancelled after due

enquiry. It is their contention that the applicant cannot claim the said benefit, as he is not qualified for absorption on the post of Civil Engineering Assistant and therefore, the request of the applicant was rightly rejected by the respondent No. 2. Therefore, they prayed to reject the Original Application.

8. Learned Advocate for the applicant has submitted that the applicant has appointed as a Road Karkoon on Work Charged Establishment on 22.06.1965. He has submitted that in the year 1989, the Government of Maharashtra issued G.Rs. dated 14.03.1989 and 31.01.1989 and created the cadre of Civil Engineering Assistant. He has submitted that in view of the said G.Rs., some criteria has been laid down for absorbing employees working on the different posts like Surveyor, Technical Assistant, Muster Karkoon, Laboratory Assistant, Mistry etc. in the cadre of Civil Engineering Assistant. He has submitted that thereafter, different G.Rs. have been issued by the Government of Maharashtra and conditions mentioned in the earlier G.Rs. had been relaxed. He has submitted that the applicant has not passed the S.S.C. examination, but the said criteria has been relaxed by the Government in the subsequent G.R., as he has attained the age of 45 years. He has submitted that on the basis of said G.R., the applicant ought to have been absorbed in the

cadre of Civil Engineering Assistant and after completion of three years' service in that cadre; he ought to have been provided on the promotional post of Junior Engineer. He has submitted that the applicant has made representation after retirement for absorbing him in the cadre of Civil Engineering Assistant and then to promote on the post of Junior Engineer. But his grievance has not been considered by the respondent No. 2, though proposal has been sent by the respondent No. 3 along with recommendation. He has submitted that the impugned order passed by the respondent No. 2 on 15.09.2015 is against the Government Resolutions and therefore, he prayed to allow the present Original Application by quashing impugned order dated 15.09.2015 issued by the respondent No. 2.

9. Learned Presenting Officer has submitted that certain criteria has been laid down in the G.R. dated 14.03.1989, which was specifically made applicable to the employees worked in the P.W.D. by G.R. dated 31.01.1989. He has attracted my attention towards the G.R. dated 31.01.1989, which provides that the employees who were working on the post of Surveyor, Technical Assistant, Muster Karkoon, Laboratory Assistant, Mistry etc. and who passed the S.S.C. examination securing 45% along with subjects English, Mathematics, Physics and Chemistry are eligible

for absorption in the cadre of Civil Engineering Assistant. He has submitted that the said requirement has not been fulfilled by the applicant and therefore, he was not absorbed in the cadre of Civil Engineering Assistant. He has further submitted that the recruitment Rules for the post of Civil Engineering Assistant, Group-C dated 18.06.1989 provides that the persons who has to be appointed on the post of Civil Engineering Assistant, Group-C has to possess one of the qualification mentioned in the Schedule-A. He has submitted that the applicant is not satisfying the educational qualification and therefore, he had not been absorbed on the post of Civil Engineering Assistant. He has submitted that the respondent No. 2 has rightly considered the provisions and rejected the proposal of the respondent No. 3 for absorption of the applicant on the post of Civil Engineering Assistant, as the applicant had not possessed the requisite qualification. Therefore, he prayed to reject the present Original Application.

10. On perusal of the record, it reveals that by G.R. dated 31.01.1989, the Government has resolved to create the cadre of Civil Engineering Assistant and decided to absorb the employees working on the posts of Surveyor, Technical Assistant, Muster Karkoon, Laboratory Assistant, Mistry etc. in phases wise manner. As per the G.R., procedure to be followed for absorbing

the said employees in the cadre of Civil Engineering Assistant has been laid down. The provisions of paragraph No. 8 are material and therefore, the same is reproduced as follows:-

“आ. परिशिष्ट “अ” मधील जे सध्याचे खात्यात असलेले कर्मचारी इंग्रजी, गणीत, भौतिकशास्त्र व रसायनशास्त्र हे विषय घेऊन माध्यमिक शालांत प्रमाणपत्र परीक्षा ४५ % किंवा त्यापेक्षा जास्त गुणानी उत्तीर्ण झालेले असून शिवाय स्थापत्य अभियांत्रिकी सहाय्यक परीक्षा उत्तीर्ण होतील, त्यांना स्थापत्य अभियांत्रिकी सहाय्यक संवर्गात वरील मर्यादित वरील परिच्छेद C-अ प्रमाणे टप्प्याटप्प्याने प्रतिवर्षी सामावून घ्यावे.”

The applicant had not passed S.S.C. examination. The minimum requirement for absorbing the above said employees in the cadre of Civil Engineering Assistant, is that the concerned employees has to pass S.S.C. by securing 45% marks with subjects English, Mathematics, Physics and Chemistry. The applicant has not passed the S.S.C. examination and fulfilled the eligibility criteria and therefore, he has not been absorbed in the cadre of Civil Engineering Assistant. Not only this, but as per the Recruitment Rules for the post of Civil Engineering Assistant, Group-C cadre had been framed on 18.06.1998. The same quoted by the respondents in their affidavit. The said Rule is reproduced as under:-

“ Appointment to the Civil Engineering Assistant Group C in the P.W.D. shall be made either –

A) By absorption of –

- (i) A suitable person from the cadres mentioned in schedule A and possessing any one of the qualification mentioned in Schedule B on the 01.01.1989; or**
- (ii) A suitable person from the cadre mentioned in schedule A on the basis of seniority subject to fitness from amongst the person who have passed the Civil Engineering Assistants' qualifying examination conducted Maharashtra Engineering College, Nashik of the Government ; or**
- (iii) Person who are in Government service in the Public Works Department as on 01.01.1989, and who have passed the Civil Engineering Assistant's one year course examination conducted by the Government Technical Institute the Technical Education Department of Government ; shall be absorbed as Civil Engineering Assistants', if they are willing to work as Civil Engineering Assistant's irrespective of their cadre and post in the Public Work Department."**

11. On considering the said Rule also it is crystal clear that the applicant has not fulfilled the said requirement and therefore, he is not eligible for absorption on the post of Civil Engineering Assistant, as he has not passed the Civil Engineering

Assistants' qualifying examination conducted by the Maharashtra Engineering College, Nashik of the Government or Civil Engineering Assistant's one year Course examination conducted by the Government Technical Institute or the Technical Education Department of Government. Not only this, but the applicant has not undergone requisite training for the post of Civil Engineering Assistant as mentioned in the various G.Rs.. The applicant is not fulfilling any of the required criteria for absorbing him on the post of Civil Engineering Assistant and therefore, he is not eligible to be absorbed on the post of Civil Engineering Assistant. The respondent No. 2 has rightly considered the said G.R. and rejected the request of the applicant, as well as, proposal sent by the respondent No. 3 in that regard. There is no illegality in the impugned order passed by the respondent No. 2 on 15.09.2015. Therefore, no interference is called for in the impugned order. There is no merit in the present O.A. Consequently, it deserves to be dismissed.

12. In view the above said discussion, the Original Application stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)