

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.187 OF 2021

DISTRICT : PUNE

Shri Dattatraya Namdeo Shinde)
Age 52 years, R/o Ward No.2, Ghule Colony, Nira,)
Taluka Purandar, District Pune)..Applicant

Versus

1. The State of Maharashtra,)
The Secretary, Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The Superintending Engineer,)
Directorate Irrigation Research & Development &)
Zonal Officer, Pune Zone, 8, Moleldina Path,)
Pune 411 001)
3. The Superintending Engineer,)
Pune Irrigation Circle, Sinchan Bhavan,)
Barne Road, Mangalwar Peth, Pune-11)
4. The Executive Engineer,)
Pune Irrigation Division, New Administrative)
Building, Front of Council Hall, Pune-1)
5. Shri A.N. Chavan,)
Sub-Divisional Engineer, Nira Irrigation Sub-Div.)
Nira, Taluka Purandar, District Pune 412102)..Respondents

Shri D.B. Khaire – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 16th February, 2023

PRONOUNCED ON: 20th March, 2023

PER : Smt. Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. The applicant who is working as Mistry in Water Resources Department as Group-C employee since 20.2.1989 prays that he be absorbed in the cadre of Civil Engineering Assistant (CEA) and he be granted pay scale of Junior Engineer which is promotional post for the post of CEA. Earlier the applicant has filed OA No.649 of 2016 for similar directions and the Tribunal had disposed off the said OA by order dated 22.1.2018 directing the respondents to take decision within stipulated time. The applicant is exempted from passing the departmental examination as he has completed 45 years of age. In this OA the applicant prays to quash and set aside the order dated 10.9.2020 passed by respondent no.1 by which the respondents rejected the prayer of the applicant for his absorption and appointment to the post of CEA. Ld. Advocate for the applicant has submitted that the applicant is eligible for absorption in the cadre of CEA. On 1.7.1986 he was appointed as Chowkidar, Group-D in Water Resources Department. Thereafter on 20.2.1989 he was appointed in the same department as Mistry, Group-C employee. On 31.1.1989 the Government of Maharashtra has issued GR by which new cadre of CEAs was created by clubbing and merging all technical posts mentioned in the GR which are below rank of Junior

Engineer. The post of Mistry was mentioned in Annexure-A of the said GR. For absorption as per GR on completion of 5 months training a Class-III employee would be permitted to work on the post of Technical Assistant for a period of one and half year and thereafter such employee would be provided an opportunity to appear for the examination conducted by Technical Education Department. The applicant was selected for training programme on 12.6.1990 and the applicant completed said training course. Hence, the applicant is entitled for absorption and to be appointed as CEA.

2. Ld. Advocate for the applicant submitted that a communication dated 20.4.2018 has been sent by Superintending Engineer, Irrigation Department to the Secretary, Irrigation Department requesting to consider the proposal of applicant for promotion to the post of CEA along with Shri Dyandeo Narhari Kale as the facts are similar in both the cases. The case of the applicant is distinguished as other employees similarly situated like applicant have been absorbed on the post of CEA. The applicant has mentioned the names of Shri Dhende, Shri Dube, Shri Dhokare, Shri Avghade & Shri Kejale.

3. Ld. Advocate for the applicant submits that case of the applicant falls under Rule 8(e) of GR dated 31.1.1989. He was neither holding degree and nor cleared the examination of Civil Engineering Assistant (CEA). However, he has completed the five months training programme from 2.7.1990 to 30.11.1990. Ld. Advocate for the applicant raised a point of Technical Assistant. This post is not defined anywhere in the rules. Ld. Advocate for the applicant submits that Shri Prakash Dadasaheb Shevale was appointed as Mistry on 21.3.1986. The applicant has challenged letter dated 10.9.2020 rejecting the claim of the applicant for absorption on the post of CEA.

4. Ld. Advocate for the applicant submits that the posts which were not mentioned in Annexure-A of GR dated 31.1.1989 were subsequently added specially Mukadam, Pump Operator, Record Keeper, Majdoor, Wireless Operator, Junior Clerk, Tracer, Mustering Assistant, Helper, Karkoon & Peon.

5. Ld. PO while opposing the OA has relied on GR dated 31.1.1989 and also affidavit in reply dated 4.10.2021 filed by Rajendra Ganpatrao Dhodapkar, Executive Engineer, Pune Irrigation Division, Pune on behalf of respondents no.1 to 5. Ld. PO has submitted that as per GR dated 31.1.1989 the persons were eligible who have been working as Mistry. However, the period of work of Mistry was considered up to 31.12.1988. The applicant was appointed as Mistry on 20.12.1989 and he was earlier working as Chowkidar from 1.7.1986 and therefore he was not eligible.

6. Ld. PO submits that Shri Harishchandra Gundal, Shri Bhivsen Gundal and Shri Sudam Sawant have completed their training of Technical Assistant of 2 years course from Industrial Training Institute (ITI) before 2005 and they were given benefit of Recruitment Rules of 26.2.2006. Ld. PO pointed out that post of Technical Assistant is defined in Rules of 26.2.2002.

7. Ld. PO has accepted the fact that by letter dated 4.1.2019 the Assistant Superintending Engineer of Pune Irrigation Department has sent a positive proposal for absorption to the Government. However, Government by letter dated 25.7.2019 has informed that the applicant has not taken 5 months training so also not having the experience at the time when GR was issued and applicant was working as Chowkidar earlier and thereafter working as Mojnidar (Surveyor) since 2002 and the said post of Mojnidar is not mentioned in Annexure-A of the said GR dated 31.1.1989.

8. We have perused earlier orders in OA No.649/2016 and the record. We have gone through the GR dated 31.1.1989 and specially clauses 3, 5 & 8. Clause 8(e) which is also relied by the Ld. Advocate for the applicant states the eligibility to the post of CEA and also states that employees who are not otherwise eligible should have completed training of 5 months and thereafter should have worked for one and half year (1 ½ year) as a Technical Assistant, then the concerned government servant is eligible to appear for examination for CEA. The applicant was working as Chowkidar till 19.2.1989 and thereafter he was working as Mistry and therefore we are of the view that the applicant does not hold the requisite experience and the Government has rightly rejected his proposal by distinguishing the case of other government employees who were claimed by the applicant as similarly situated. Ld. PO has clarified that they were already in the cadre of Mistry and they have taken the requisite experience as Technical Assistant and their cases cannot be taken into account for parity. Thus, there is no substance in this OA and the same deserves to be dismissed.

9. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
20.3.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
20.3.2023

Dictation taken by: S.G. Jawalkar.