

O.A. No. 126/2017 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

C.A. 287/2019 -

The applicant person present. Shri H.K. Pande, Id. P.O. for R-1&4. None for R-2&3.

2. The applicant has submitted Pursis and informed that he is intending to argue his case personally. The applicant is at liberty to argue his case personally.

S.O. four weeks.

Member (J)

dnk.

O.A. No. 158/2019 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

None for the applicants. Shri S.A. Deo, Id. CPO for R-1. Await service of R-2 to 4.

Service report of R-2 to 4 is not filed.

S.O. three weeks.

Member (J)

dnk.

O.A. No. 503/2019 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Heard Shri P.P. Khaparde, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for R-1&2. Await service of R-3 to 6.

Service report is not filed.

The learned P.O. requested two weeks time to file reply on behalf of R-2.

S.O. two weeks.

Member (J)

dnk.

O.A. No. 504/2019 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

None for the applicant. Shri M.I. Khan, Id. P.O. for R-1. Await service of R-2&3.

Service report is not filed.

S.O. three weeks.

Member (J)

dnk.

O.A. No. 520/2019 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

C.A. 296/2019 -

None for the applicant. Heard Shri H.K. Pande, Id. P.O. for the respondents.

For the reasons stated in the application, the C.A. is allowed.

Necessary amendment be carried out within two weeks.

O.A. 520/2019 –

S.O. two weeks.

Member (J)

dnk.

O.A. No. 558/2019 **(SB)**

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

None for the applicant. Shri H.K. Pande, Id. P.O. for R-1. Await service of R-2 to 9.

Service report is not filed.

S.O. one week.

Member (J)

dnk.

O.A. No. 701/2015 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

None for the applicant. Heard Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The learned P.O. has produced letter dated 24/07/2019 written by the Assistant Administrative Officer office of the District Superintendent Agriculture Officer, Nanded. It is informed that the instructions are issued to Taluka Agriculture Officer, Hadgaon to submit the bill of the applicant to the Treasury. It is also submitted that the time is required for the same. The copy of letter dated 8/7/2019 is also placed on record by which similar instructions were issued to the District Superintendent Agriculture Officer, Nanded and third letter dated 20/7/2019 is produced from which It seems that the directions are given to the Taluka Agriculture Officer, Hadgaon to present the bill of the applicant to the Treasury.

3. In view of this, **S.O. four weeks.**

Member (J)

dnk.

O.A. No. 42/2017 **(SB)**

Coram : Hon. Shri A.D. Karanjkar,
Member (J).

Dated : **25.07.2019**

None for the applicant. Shri A.M.
Khadatkar, Id. P.O. for the respondents.

S.O. four weeks.

Member (J)

dnk.

O.A. No. 432/2017 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Shri S.A. Sainis, Id. P.O. for the applicant (Original respondents) and Shri Chauhan, Id. counsel holding for Shri N.D. Thombre, Id. counsel for the respondent (Original applicant).

S.O. two weeks along with other connected matters.

Member (J)

dnk.

O.A. No. 498/2017 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Shri A.M. Ghogre, Id. P.O. for the applicant (Original respondents) and Shri Chauhan, Id .counsel holding for Shri N.D. Thombre, Id. counsel for the respondent (Original applicant).

S.O. two weeks along with other connected matters.

Member (J)

dnk.

O.A. No. 799/2017 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Shri Chauhan, Id .counsel holding
for Shri N.D. Thombre, Id .counsel for the
applicant and Shri M.I. Khan, Id. P.O. for
the respondents.

S.O. two weeks along with other
connected matters.

Member (J)

dnk.

O.A. No. 375/2018 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Shri A.P. Sadavarte, Id. counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents.

The learned P.O. submitted that one week time is required to file reply of newly added respondent no.5. At his request, **S.O. one week**.

Interim relief to continue till then.

Member (J)

dnk.

O.A. No. 503/2019 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Heard Shri Nayase, Id .counsel holding for Shri G.G. Bade, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for R-1. Await service of R-2 to 6.

2. The learned counsel for the applicant submitted pursis and informed that the applicant is intending to withdraw the O.A. The applicant is permitted to do so.

3. In view thereof, the O.A. stands disposed of as withdrawn. No order as to costs.

Member (J)

dnk.

O.A. No. 827/2018 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 25.07.2019

Heard Shri S.A. Chaudhari, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. It is submitted on behalf of the applicant that merely on the basis of the report submitted by the Police Inspector, the applicant is transferred in violation of law though he was not due for transfer. It is submitted in the application that the transfer is in violation of Section 3 & 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005"). Secondly, it is contended that there was no reliable material to proceed on the report submitted by the Police Inspector for arriving to the conclusion that the applicant involved in anti social activities. It is submission of the learned counsel for the applicant that there was one

programme, it was presided over by the Superintendent of Police and at the time of that programme, the Police Inspector Shri Gulabrao Wagh was present. It is submitted that in that programme the so called person namely Gajanan Taru was present and in fact this was suggesting that the Police Inspector Shri Wagh was in close relationship with Gajanan Taru. It is submitted that there is no complaint received by the Department against the applicant and consequently his premature transfer is illegal.

3. The respondent no.2 has submitted the reply which is at page no.26. It is contended that Crime No.543/18 under Section 307 of IPC and Section 5 and 25 of the Arms Act and during the investigation, direction was given to the applicant to record statement of one of the injured person in that crime who was hospitalized. It is submitted that the injured person refused to make statement before the applicant and informed that the applicant was not reliable person, consequently, the applicant was asked to go out and thereafter statement of that person was recorded. It is also submitted that

problems were created at Chikhali due to behaviour of the applicant and about the behaviour of the applicant detailed report was submitted by Police Inspector Shri Wagh. It is contention of the respondents that this material was placed before the Police Establishment Board. It was examined by the Board and approval was given to transfer the applicant. It is submitted that the procedure laid down under Section 22N, Sub Section 2 of the Maharashtra Police Act was followed before transferring the applicant. It is submitted as there was administrative exigency, consequently, the Competent Authority was compelled to take decision to transfer the applicant. It is submitted that the application is devoid of any merits. I have perused the report submitted by the Police Inspector Shri Wagh which is at Annex-R-1. The Note sheet was placed before the District Police Establishment Board, Buldhana. The entire material was examined by the

Board and all Members of the Board came to the conclusion that the applicant was having relation with the local politicians and the persons who were engaged in the illegal activities and the applicant was using his relations with such persons for his financial gain. It is also observed by the Establishment Board that the public at Chikhli was annoyed due to his behaviour and as the Station was politically and socially sensitive, consequently, decision was taken to transfer the applicant.

4. As there is a specific provision under Section 22N, Sub Section 2 of the Maharashtra Police Act and specific procedure is laid down to transfer a Police personnel on the ground of administrative exigency and as that procedure is specifically followed, consequently, I do not see any merit in this application. Hence, the following order –

ORDER

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

Member (J)

dnk.

O.A. Nos. 530,531,532 and 533 of 2019,
O.A. Nos. 507,508,509 and 510 of 2019
and O.A. No.482/2019.

with C.A. Nos.292,293,294 & 295 of 2019 in
O.A. Nos. 507,508,509 and 510 of 2019

(D.B.)

Coram:Shri Shree Bhagwan,
Vice-Chairman and
Shri A.D. Karanjkar,
Member(J)

Dated : 25th July 2019.

Order

Per:Member(J)

Heard Shri G.B. Dharmadhikari,
the Ld. counsel for the applicants in O.A.
Nos. 292 to 295 of 2019. Shri R.V.
Shiralkar, Adv. holding for Shri S.P.
Bhandarkar, the Ld. counsel for the
applicants in Nos. 530 to 533 of 2019.
Shri A.M. Kukday, Adv. for R.2 in
O.A.Nos. 530 to 533 of 2019. Shri P.S.
Chavan, Adv. for R. 3 to 10 in O.A. Nos.
530 to 533 of 2019. Shri R.B. Dhore, Ld.
counsel for applicant in O.A. No.
482/2019. Shri N.S. Warulkar, Ld.

counsel for R. 3 to 9 in O.A. No.482/2019. Shri A.M. Kukday, Adv. for R.2 in O.A. No.482/2019 and Shri S.A. Deo, the learned C.P.O. for the respondent No.1 in all these O.As.

2. All applicants were appointed in service as Junior Engineers, their educational qualification at the time of appointments was Diploma in Engineering. The applicants are contending that by virtue of G.R. dated 17.9.2018, as the applicants have passed the graduation examination and now they are Bachelor of Engineering (B.E.), therefore, their 3/8th service be considered in the cadre of Assistant Engineer, Grade-II and they be included in the seniority list of Assistant Engineers, Grade-II maintained by the department. It is contention of all these applicants that the respondents did not consider the requests of the applicants and their

representations to include their names in the seniority list of Assistant Engineers, Grade-II; therefore, Writ Petition was filed by the applicants in O.A. Nos. 530 to 533 of 2019. In the Writ Petition, stay order was passed by the Hon'ble High Court and the respondents were restrained from proceeding on the basis of letter dated 21.2.2019 for giving promotions to the Assistant Engineers, Grade-II on the post of Sub-Divisional Engineer, Group-A. It is submitted that during the course of hearing, the Hon'ble High Court came to the conclusion that the applicants could have filed O.A. before the Maharashtra Administrative Tribunal at Nagpur and, therefore, liberty was given to the applicants to file O.A. before this Bench. In pursuance of the directions issued by the he Hon'ble High Court, the applicants in O.A. Nos. 530 to 533 of 2019 have filed O.As. Similarly, the applicants in O.A.

Nos. 507 to 510 of 2019 have also filed O.A. contending that they have also similar interest in the matter.

3. It is contention of all these applicants that initially they were appointed as Junior Engineers and later on they obtained permission from the department and passed the graduation examination and now they are degree holders in engineering. It is submitted that on 29.11.1984, G.R. was issued by the Govt. of Maharashtra, Irrigation Department and decision was taken that the diploma holders Junior Engineers on passing B.E. degree examination or AMIE examination, shall be included in the list of Assistant Engineers, Grade-II and their 3/8th service period be considered while fixing their seniority in the cadre of Assistant Engineer, Grade-II. It is submission of the applicants that, all of them have passed degree examination

and they requested the respondents to include their names in the seniority list, but instead of doing so, no action was taken by the respondents, but on the contrary, the respondents forwarded the select list of the Assistant Engineers, Grade-II dated 21.2.2019 for promoting them as Sub-Divisional Engineers, Grade-I. It is submitted that this action of the respondents is illegal.

4. The learned counsels for all the applicants have placed reliance on the G.R. dated 17.9.2018. It is submitted that vide this G.R., decision was taken to include the Diploma holder Junior Engineers in the cadre of Assistant Engineer, Grade-II after passing degree examination. It is grievance of the applicants that action of the respondents not giving benefits of this G.R. is discriminatory and arbitrary; therefore, this approach is illegal.

5. It is apprehension of the applicants that the respondents may fill the posts of Sub-Divisional Engineers issuing promotion orders and if in the event the O.As are allowed, the present applicants would not get justice, therefore, interim stay be given and the respondents be restrained from acting on the select list dated 21.2.2019.

6. It is submission of the Ld. CPO on behalf of respondent Nos. 1 and the learned counsel for the respondent No. 2 that the Govt. of Maharashtra in year 1997 framed the rules for recruitment of Assistant Engineers, Grade-II. Our attention is invited to the rules dated 16.6.1997. It is contended on behalf of respondent Nos.1 and 2 and the Interveners that on coming into force of the rules, the MPSC was the competent authority to recommend the names for filling the posts of Assistant Engineer,

Grade-II. It is further submitted that as the specific rules were framed, now it is not open to the Govt. to include the names of the applicants in the seniority list of Assistant Engineer, Grade-II, as the applicants were not appointed before coming into force of the rules or the applicants not passed the degree examination before coming into force of the rules. It is submitted that the applicants were aware that after coming into force of the rules in 1997, they had no remedy other than to appear for the examination conducted by MPSC and without facing the examination; the applicants are not entitled to claim the posts of Assistant Engineer, Grade-II.

7. It is contention of the respondent Nos. 1 and 2 and the Interveners that the G.R. dated 17.9.2018 (there are two G.Rs) are issued by the Department of Rural Development, Govt.

of Maharashtra and these G.Rs are made applicable only to the Junior Engineers in service of Zilla Parishads. It is submitted that both the G.Rs are issued by the Government in pursuance of the judgment delivered in W.P. Nos. 7361/2018 and 7366/2018, 6294/2016 and 6256/2017. It is submitted that both the G.Rs are not issued by G.A.D. or Irrigation Department, consequently, the applicants are not entitled to claim any relief on the basis of these facts. It is also contended by the respondent Nos. 1 and 2 and the Interveners that all the writ petitions were filed by the Junior Engineer diploma holders in service of the Zilla Parishad. It is submitted that the diploma holder Junior Engineers serving in Irrigation Department of the Government are not entitled for any relief, as they are not governed by the G.Rs issued on 17.9.2018 or they cannot take benefit of

directions issued in the writ petitions which are discussed above.

8. It is vehemently contended by the respondents 1 and 2 and the Interveners, who are now added as respondents Nos. 3 to 10 that the advertisements were published by MPSC for filling the posts of Assistant Engineers, Grade-II, the applicant had opportunity to apply for the posts, but the applicants never applied, consequently, now it is not open for the applicants to contend that they are governed by the G.Rs dated 17.9.2018 and their names be included in the seniority list of Assistant Engineer, Grade-II. It is submitted that after coming into force of the rules in 1997, the applicants cannot place reliance on the G.R. issued by the Govt. on 29.11.1984, therefore, there is no substance in the contention raised by the applicants. It is submitted that all these material facts

were suppressed by the applicants from the Hon'ble High Court and they secured the stay order. It is submitted that no case is made out for granting interim relief, consequently prayer for interim relief is liable to be rejected.

9. On perusal of the G.R. dated 29.11.1984, it seems that specific decision was taken by Govt. of Maharashtra, Irrigation Department to include the Junior Engineer (diploma holders) after acquiring degree of B.E. or AMIE in the seniority list of Assistant Engineer, Grade-II and to consider 3/8th service period while fixing seniority in the cadre of Assistant Engineer, Grade-II. There is no dispute about the fact that the rules are framed by the Government in the year 1997.

10. It is submitted by the respondents that on coming into force of

the rules, the applicants cannot claim any relief on the basis of G.R. dated 29.11.1984 and there is no alternative for the applicants other than to face MPSC examination.

11. We have gone through the rules. Rule No.3 is as under:-

“Appointment to the post of Assistant Engineer (Civil), Grade-II in the Maharashtra Service of Engineers, Group-B in the department shall be made on the basis of the result of a combined competitive examination for posts in Group-A and B in the Maharashtra Service of Engineers held by the Commission, from amongst the candidates who,

- (i) are not more than thirty years of age.
- (ii) possess a degree of statutory University in Civil Engineering or any other qualification declared by Govt. to be equivalent thereto.”

12. It is important to note that, Rule No.3 says that the age of candidate shall not exceed 30 years. It is important to note that it is nowhere mentioned in Rule 3 that a person who is in Govt. service in the cadre of Junior Engineer, shall also be eligible to apply for the post. After reading Rule 8, it seems that concession was given for regularization of *ad hoc* Assistant Engineers who were appointed as Assistant Engineers during the period till 31.12.1996.

13. The Ld. CPO has invited our attention to the notification dated 9.7.2009. It is submitted that vide this notification, amendment was carried out in Rule 8 and new Rule 8 came to be substituted. It is submitted that the applicants are covered under amended Rule 8, clause (b). Amended Rule 8, clause (b) is as under:-

“(b)- The diploma holder Junior Engineers regularly appointed in Class-III post and who have obtained A.M.I.E. (Equivalent to B.E. Degree) or B.E. Degree while in service have been given benefit of 3/8th of service rendered as Junior Engineer, during the period from 1st April 1981 to 16th June 1997, in the light of the provisions of G.R., Irrigation Department, No. S.L.S. 2681/1273/(500)/EST (8), dated 29.11.1984. Such persons shall have to pass viva-voce test that shall be the qualifying examination, to be held by the Commission during 2009-2010 or immediately thereafter, to enable them to be absorbed in the cadre of Assistant Engineer, Grade-II vide G.R. dated 16th April 1984.”

14. After reading the above clause 8(b) it is difficult to digest that the

applicants are covered under Rule 8, clause (b), because only Junior Engineer diploma holders regularly appointed in Class-III and who obtained AMIE or B.E. degree while in service and who have been given benefit of 3/8th of service during the period from 1.4.1991 to 16.6.1997 were eligible to appear for viva voce test conducted by MPSC. After reading Rule 8, Clause (b), we are compelled to say that the applicants are not covered in this category, because some of the applicants are regularized in service in the year 1999. It is not disputed that all the applicants have obtained Bachelor Degree in Engineering after coming into force of the rules, i.e. after 16.6.1997. Therefore, case of these applicants is not covered under Rule 8, clause (b) of the amended rules in 2009.

15. It is submission of the applicants that indifferent treatment is

being given to them by the Government. So far as the Junior Engineers on the establishment of Zilla Parishad who have obtained Bachelor Degree in Engineering are now included in the cadre of Assistant Engineers, Grade-II and the applicants, though they are fulfilling the same requirement, are not given benefit, therefore, discrimination is arbitrary, unreasonable and it is in violation of Article 14 of the Constitution of India.

16. In order to consider the controversy, it is necessary to read the G.R. dated 17.9.2018. In the first G.R. (Annexure A-3), it is specifically observed that Shri Dambhar and Shri Musale were appointed in the year 1995 and 1997 respectively, they were Junior Engineers. Both of them obtained Bachelor Degree in Engineering in the year 2006 and 2007 respectively. Shri Dambhar and Shri Musale, after obtaining Bachelor Degree

in Engineering requested the Chief Executive Officer, Zilla Parishad, Jalna to give them benefit of earlier G.R. and the relief was given to them by the Chief Executive Officer, Zilla Parishad, Jalna vide order dated 17.11.2015. As the order passed by the Chief Executive Officer, Zilla Parishad, Jalna was in violation of G.R. dated 29th May 2007, consequently vide subsequent order, Chief Executive Officer, Zilla Parishad, Jalna cancelled the said order. That order passed by the Chief Executive Officer, Zilla Parishad, Jalna was challenged in W.P.No. 7361 and 7366 of 2018. The Hon'ble High Court, Bench at Aurangabad decided both the Writ Petitions on 30.7.2018 and directed to give benefits of 3/8th service to both of them. In pursuance of directions, for giving benefit to Shri Dambhar and Shri Musale, the first G.R. (A-3) was issued

on 17.9.2018 by Department of Rural Development, Govt. of Maharashtra.

18. Annexure A-4 is the G.R. dated 17.9.2018. In this G.R., it is specifically mentioned as under:-

“यासंदर्भात असेही नमूद करण्यात येते कि, अपदवीधर कनिष्ठ अभियंत्यांनी शासन सेवेत असतांना अभियांत्रिकी मधील पदवी प्राप्त केल्यास, सदर अभियंत्यांचा नावाचा समावेश पदविधर अभियंत्यांच्या यादीत करण्याबाबतच्या प्रस्तावावर मुख्य कार्यकारी अधिकारी यांनी स्वतंत्रपणे निर्णय घेऊन शिफारशीसह शासनास प्रस्ताव सादर करावा. तदनंतर सदर शिफारशीच्या आधारे संबंधित अभियंत्यांची नावे राज्यस्तरीय भाग-१ पदवीधर अभियंत्यांच्या ज्येष्ठता सूचित समाविष्ट करण्यात येतील.”

19. After reading this clause in the G.R., it seems that in future also, benefits are extended to all Junior Engineers diploma holders who will acquire B.E. degree.

20. In view of this G.R., now one thing is clear that the Govt. of

Maharashtra is giving different treatment to the Junior Engineers diploma holders who have acquired B.E. degree during service; in service of Zilla Parishad and different treatment is being given to the Junior Engineers diploma holders who have acquired B.E. degree during in service, who are service in other departments of Govt. of Maharashtra. Naturally, issue arises whether this action of the respondent Nos. 1 and 2 not extending the benefits, which are extended to the Junior Engineer Diploma holders on the establishment of Zilla Parishad, to the Junior Engineer Diploma holders on the establishment of Irrigation Department is reasonable or it is discriminatory or arbitrary. In order to decide this issue, it is necessary to give liberty to the respondents to file their reply to the O.A., giving opportunity to produce material documents and only after

hearing all the respondents, it is possible to record the findings on the issue. Therefore, if at this stage, if summarily, interim relief is not granted to the applicants, then there would be no purpose in prosecuting the O.As and grave prejudice will cause to the applicants, if ultimately it is held that the applicants are also entitled for same relief and benefits. In view of this discussion, we are of the view that it is necessary in the interest of justice to safeguard and protect the interest of the applicants.

21. It is submission of the Ld. CPO and the Interveners that grave prejudice will cause to the department and the Interveners, if entire process of promotion is stayed and, therefore, it is not suitable in the interest of justice to grant any interim relief. In this regard, we would like to point out that interest of the applicants can be safeguarded by

issuing directions that the department would be at liberty to proceed with the process to promote the A.E.-II as Sub-Divisional Engineers, but it shall be subject to final outcome of these O.As then there would be no possibility of causing prejudice to either side.

22. C.A. Nos.292,293,294 & 295 of 2019 in O.A. Nos. 507,508,509 and 510 of 2019 are moved by the applicants, we have heard submissions of learned counsel for the applicants. In the interest of justice, C.As are allowed and leave is granted to amend the O.As.

23. In the result, we pass the following order:-

O

RDER

- (i) The respondent Nos.1 and 2 are permitted to fill the posts of Sub-Divisional Engineers by

promotion, but the respondent Nos. 1 and 2 are directed to specifically mention in the promotional order that the promotion is subject to final decision in these O.As.

- (ii) All the respondents are directed to file their reply to the O.As within three weeks.
- (iii) C.A. Nos.292,293,294 & 295 of 2019 in O.A. Nos. 507,508,509 and 510 of 2019 are allowed. Amendment be carried out within three weeks.
- (iv) S.O. **three weeks.**

Member (J)

Vice-Chairman

Dt. 25.7.2019.

*pdg.

