

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.314/2014**

DISTRICT-LATUR

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Maharashtra State Civil Engineering  
Assistant Employees Association,  
A Recognized Registered Association,  
Through its President,  
Shri Deelip s/o Rangnathrao Nalwad,  
having its Registered Office at  
"Shivrang Niwas" Behind Amar Hotel,  
Barshi Road, Tq. & Dist. Latur.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra  
(Copy to be served on the  
Presenting Officer, M.A.T.,  
Mumbai Bench at Aurangabad)
- 2) The Secretary,  
General Administration Department,  
Mantralaya, Mumbai-32.
- 3) The Secretary,  
Finance Department,  
Mantralaya, Mumbai-32.
- 4) The Secretary,  
Water Resources Department,  
Mantralaya, Mumbai-32.

...RESPONDENTS

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APPEARANCE :Shri S.D.Joshi learned Advocate for the  
applicant.

:Shri N.U.Yadav learned Presenting Officer for  
the respondents.

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CORAM: HON'BLE SHRI J.D.KULKARNI, MEMBER (J)  
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**DATE: 1<sup>st</sup> December, , 2016.**

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**J U D G M E N T**

**[Delivered on 1<sup>st</sup> December, 2016]**

The applicant is an Association of the employees working in the cadre of Civil Engineering Assistant (CEA) in the State of Maharashtra which is recognized by the State of Maharashtra. The Association has filed this O.A. through its President and has claimed the relief as under:

*“B) By issue of an appropriate order or direction, the respondent nos.1 to 4 may kindly be directed to confer the pay-scale of the post of Sub-Divisional Officer as a second benefit under Assured Career Progressive Scheme to the members of the applicant-association.*

*C) By issue of an appropriate order or direction, for the purpose of grant of the pay-scale of the post of Sub- Divisional Officer, to quash and set aside the decision taken vide subject no.2 in the meeting dated 24/10/2013 communicated under the letter dated 13/11/2013.”*

2. According to the applicants vide resolution dated 31-01-1989, 13 different cadres were unified and one single cadre

of Civil Engineering Assistant (CEA) was brought into existence and the members of the applicant Association got absorbed as CEA as per the said resolution. With the aim and object of removing stagnancy on one hand, considering posts to which promotional avenues were not available, the Government took policy decision to introduce the scheme known as Time Scale Promotion by G.R. dated 08-06-1995. Members of the applicant Association were conferred with benefit of said scheme of time scale promotion on completion of 12 years' service of the respective members.

3. According to the applicant promotional post to the post of CEA is of Junior Engineer and further promotion is of Sub-Divisional Officer/Deputy Engineer and thereafter to the Class-I post of Executive Engineer. On 20-07-2001, scheme dated 08-06-1995 was closed and fresh scheme i.e. Assured Career Progressive Scheme was brought in w.e.f. 01.08.2001. Thereafter, vide G.R. dated 01-04-2010, the Government introduced second benefit of time bound scale promotion on completion of another 12 years' service subject to conditions mentioned therein. As per that scheme the employees are eligible to pay band of the post of promotion for maximum of two times. It is stated that members of the Association are, in fact, entitled to

the pay scale of the post of Sub-Divisional Officer as per G.R. dated 01.04.2010 but the respondents are giving the pay scale of the post of Sectional Engineer. Government issued resolution on 09-07-2010 and clarified that the post of Sectional Engineer is not a promotional post but the same is upgraded post and it has no independent cadre.

4. Applicant Association made detailed representation on 19-09-2013 and claimed pay scale of the post of Sub-Divisional Officer in the light of G.R. dated 01-04-2010 for its members. However, their demand was turned down by the Principal Secretary, in the meeting dated 13-11-2013. The applicant, Association therefore, filed another representation on 05-05-2013 but in vain. Since its claim was not considered the Association has filed this O.A.

5. Respondent nos.3 and 4 have filed reply affidavit and denied the applicant's claim. It is admitted that 13 cadres of lower grade technical employees, such as Sub Overseer, Surveyor, Technical Assistant, Mestry, Clerks, Lab Assistant etc., working under Junior Engineers in the Water Resources Department (then Irrigation Department) such employees were absorbed as CEA in the pay scale of Rs.1200-30-1440-EB-30-1800 of Fourth Pay

Commission; 4000-6000 of Fifth Pay Commission and 5200-20200 + Grade Pay of 2400 of Sixth Pay Commission.

6. Respondents further stated that vide Government notification dated 01-01-1998 recruitment rules for Junior Engineer (Civil) Group B non gazetted in the Public Works Department and Irrigation Department (Recruitment) Rules, 1998 are notified. As per provision under rule 3(a), CEA who have passed the qualifying examination for the post of Junior Engineer conducted by the Engineering Staff College, Nashik having rendered not less than 3 years of regular service in that post, is eligible for being promoted to the post of Junior Engineer. Such posts are to be filled in the ratio of 10:90 for promotion and nomination, respectively. Further it is submitted that said rules were amended vide Government Notification dated 09-11-1998 whereby persons holding post of CEA and possessing a Part Time or Distance Learning Diploma have been held eligible for the post of Junior Engineer in the same ratio. Said ratio was amended as 10:5:85 and it is further amended as 20:5:75 vide Government Notification dated 29-03-2006.

7. It is further stated that in the cadre of Junior Engineer, there are 3 categories; 1) Junior Engineers holding Diploma and or higher qualification, 2) Junior Engineers holding 2 years Diploma,

and 3) Junior Engineers appointed other than Sr.No.1 & 2 above. Promotional hierarchy including non-functional promotion of the members of the applicant union is as follows (page 46):

*“The promotional hierarchy including non functional promotional post for the members of Applicant’s union is as follows:*

*Civil Engineering Asstt.: PB Rs.5200-20,200  
GP-2400*

*Junior Engineer : PB Rs.9300-34800 GP-4300*

*Sectional Engineer : PB Rs.9300-34800 (Non  
functional Pay Structure) GP-4400*

*Sub divisional officer : PB Rs.15600-39100  
GP-5400*

*From the above hierarchy the incumbent on the post of Civil Engineering Asstt. is supposed to get second benefit of Modified Assured Career Progression Scheme (MACPS) in the pay band of Rs.9300-34800 & GP-4400 of the post of Sectional Engineer, as per the provision of para 2(c)(1) of Govt. Resolution, Finance dept. dt. 1/4/2010. Whereas the directly recruited Junior Engineer (PB Rs.9300-34800, GP-4300) is supposed to get the second benefit in PB Rs.15600-39100 & GP-5400.”*

8. It is further stated that in view of recommendation of Hakim Committee, respondent no.3 has rightly issued Government Resolution in its Finance Department dated 01-04-2010 making

provision in paragraph 2(c)(1) to treat as second benefit, the non-functional pay structure sanctioned to the incumbent as a result of rendering certain years of service without increase in duties and responsibilities. Therefore, members of the applicant union prior to their absorption as CEA were occupying post like Technical Assistant, Mestry, Muster, Clerk, Sub Oversee, Surveyor, Time Keeper etc., were not qualified for being treated as Junior Engineer. Therefore, members of the applicant Association cannot be considered for the pay scale of Sub Divisional Officer.

9. In paragraph 8 of the reply (paper book page 48) it is further stated as under:

*“As mentioned in para 6 above, as per GR dtd 16/4/1984 & 9/2/2000, the Junior Engineers are further upgraded as Sectional Engineer (Rs.9300-34800 GP 4400) in following manner*

- 1. Junior Engineers holding Diploma and or higher qualification – After 5 years of service as JE*
- 2. Junior Engineers holding 2 years Diploma – After 7 years of service as JE*
- 3. Junior Engineers appointed except from 1 & 2 – After 10 years of service as JE.*

*As they get upgraded they also get upgraded pay scale and as mentioned in clause 2 (b) (3) of*

*GR dtd 1/4/2010- after completion of certain period, if non functional pay scale (~~vdh/ Med oruJskh~~) is granted it will be treated as benefit under Assured Progressive Assured Scheme Accordingly the Junior Engineers are granted pay scale of Sectional Engineer as second benefit under Assured Career Progressive Scheme.”*

10. In paragraph 14 of the reply affidavit (paper book page 51) respondents have states as under:

“14. Grounds (i) : I say and submit that, it is not true. The employees absorbed as Civil Engineering Assistant have immediate promotional post as Junior Engineer and for the second benefit under Assured Career Progressive Schemes, the non-functional promotional pay scale for the post of Sectional Engineer as per para 2(6)(3) of Govt. Resolution Finance Department dtd.1/4/2010 is being considered. This has been confirmed by the Finance Department and hence the letter dtd. 19.03.2011 has been issued by Water Resources Dept.”

11. Applicant has filed rejoinder and re-iterated that Government Resolution dated 01-04-2010 clearly speaks about grant of second Assured Progression Scheme. It is further stated that all the Junior Engineers, directly recruited as well as incumbent appointed as Junior Engineer from the post as CEA,



are required to undergo examination conducted by MERI Nashik and this aspect is required to be taken into consideration. It is further stated that this Tribunal in O.A.No.421/1993 has rendered a judgment on 17-08-1995 and has ruled that, "since the Junior Engineers have been given the upgradation as Gazetted Class-II, their subsequent appointment as A.E. Grade-II or Sectional Engineer does not change the nature of their duty and responsibility.

12. Heard Shri S.D.Joshi learned Advocate for the applicant Association and Shri N.U.Yadav learned Presenting Officer for the respondents. Perused memo of O.A., affidavit/s in reply, affidavit in rejoinder, reply to rejoinder as well as various documents placed on record by the parties.

13. Material point to be considered is whether the members of the applicant Association are entitled to be conferred pay scale of Sub Division Officer as second benefit under Assured Progressions Scheme ?

14. Vide communication dated 13-11-2013, respondent no.1 has sent a copy of the minutes of the meeting held between Joint Secretary (Services), Water Resources Department and the members of the applicant association (paper book page 32, A-5).

Minutes of the meeting reveal that the claim of the applicant Association was rejected with following reasons (page 32):

“2½ LFki R; vfHk; ká=dh I gk; d I ðxlíhy deþk&; kæk I ðMjr I ðkaxí v'okl r íxrh ; kstuxí nq jk ykHk Eg.ku mi foHkxh; vf/kdkjh ; k ínkph oruJs kh feG. ; kckr-

LFki R; vfHk; ká=dh I gk; dkauk I ðkkfjr I ðkaxí v'okl r íxrh ; kstuxí nq jk ykHk Eg.ku mi foHkxh; vf/kdkjh ; k ínkph oruJs kh ns ; kph ekx.kh I nj I ðkVuþ; k írfu/khauh dsyh vI rk] LFki R; k vfHk; ká=dh I gk; dkauk í Eke dfu”B vfHk; ark o R; kuarj ‘kk [kk vfHk; ark ; k nksu ínkP; k oruJs kh feGr vI Y; keG s R; kph ojhy fourh ekU; djrk ; s ukgh- rI p ; kckr foRr foHkxkugh í”Bh dsydh vkgs vI s I g I fpo ¼I ðk½ ; kauh I ðkVuþ; k írfu/khauk I káxrys ”

15. From the aforesaid communication, it is clear that members of the applicant Association who are appointed as CEA have been rejected pay scale of Sub Divisional Engineer on the ground that they have been already granted pay scale of Junior Engineer, and thereafter, Section Engineer. Therefore, they are not entitled to the further upgraded pay scale of the post of Sub Divisional Officer.

16. As already discussed above, respondents have stated in the affidavit about the promotional hierarchy including non-

functional promotional post for the members of the applicant Association, and the same is as under (page 46):

*“Civil Engineering Asstt.: PB Rs.5200-20200  
GP-2400*

*Junior Engineer : PB Rs.9300-34800 GP-4300*

*Sectional Engineer : PB Rs.9300-34800 (Non  
functional Pay Structure) GP-4400*

*Sub divisional officer : PB Rs.15600-39100  
GP-5400”*

17. It is an admitted fact that first and second time bound promotions have been given to the members of the applicant Association. Accordingly CEA are getting pay scale of Sectional Engineer of non-functional pay structure in the pay scale of Rs.9300-34800 + Grade Pay 4400 in view of the second time bound promotion scheme. Applicants are however claiming pay scale of Sub Divisional Officer, which is a totally independent and different cadre and which is in fact, promotional cadre under different pay bands.

18. Respondents have placed on record one judgment delivered in O.A.No.1137/2010 wherein the applicant was non-qualified Junior Engineer claiming promotion to the post of Sub Divisional Officer. This Tribunal vide order dated 07-07-2015 in the said O.A. (Shri Maruti Dnyandeo Padule V/s. State of

Maharashtra & Ors.) dismissed his claim. It is held that applicant is clearly ineligible to be promoted to the post of Sub Divisional Engineer in view of the provisions contained in the G.R. dated 19-12-1970 and 25-01-1972.

19. Learned P.O. has placed reliance on the decision of the Hon'ble the Apex Court in the case of **State of Haryana V/s. Civil Secretariat Personal Staff Association** reported in [(2002) (6) **SCC 72**] and **Union of India V/s. Makhan Chandra Roy [1977 AIR SC 2391]**. Both these cases have been referred to in reply affidavit itself and observations made by Hon'ble the Apex Court have been quoted, which are as under (page 50):

“The equation of posts or equation of pay must be left to the executive Govt. It must be determined by expert bodies like pay Commission. They would be the best judges to evaluate the nature of duties & responsibilities of posts. If there is any such determination by a commission or committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

20. Learned P.O., therefore, submits that decision taken by the Government is administrative one, and therefore, Tribunal shall go slow in interfering the same.

21. Admittedly, members of the Association are not directly recruited Junior Engineers but they have been absorbed in the cadre of CEA. All the members of the Association were working under the Junior Engineer prior to their absorption and they are not qualified engineers. Posts of Junior Engineer as well as the Superintending Engineer, Sub Divisional Officer are to be filled up amongst the members who are qualified to be appointed or promoted on the said posts. The members of the applicant are entitled to claim first time bound promotion as well as the second time bound promotion as per hierarchy already discussed above. First time bound promotion pay scale is restricted to the pay scale of Junior Engineer and the second time bound promotion is restricted to the pay scale of Sectional Engineer. The first time bound promotion pay band is 9300-34800 + Grade Pay 4300 whereas Sectional Engineer's pay band is 9300-34800 + Grade Pay 4400 non-functional pay. Therefore, these 2 pay scales have been given to the members of the Association as per the G.R. Promotion to the post of Sub Divisional Officer can be granted

from qualified Junior Engineers and the pay band is also different which is 15600-39100 with Grade Pay Rs.5400/-.

22. Therefore, it will not be in the interest of justice to interfere with the decision taken by the Government in rejecting the claim of the Association. Hence, following order:

**ORDER**

O.A. stands dismissed with no order as to costs.

**MEMBER (J)**