

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.878/2016, 242/2017 AND
648/2017**

DISTRICT: JALGAON,

O.A.No.878/2016

Nitinkumar s/o. Tukaram Adhe,
Age : 50 years, Occu. : Junior Engineer,
R/o. 64, Mohannagar, Mohadi Road,
Jalgaon, District : Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai-400 032.
- 2) The Superintending Engineer,
Central Designs Organization (Gates),
Zonal Office, Dindori Road, Nashik.
- 3) The Assistant Superintending Engineer,
Jalgaon Irrigation Project Circle,
Girna Bhavan, Opp: Akashwani Kendra,
Akashwani Chowk, Jalgaon.
- 4) The Executive Engineer,
Minor Irrigation Division, Jalgaon. ...RESPONDENTS

O.A.No.242/2017

Mohan s/o. Ramdas Chaudhari,
Age : 60 years, Occu. : Jr. Engineer (Retired),
R/o. Changdeo, Taluka : Muktainagar,
District : Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai.
- 2) The Superintending Engineer and
Administrator, Command Area Development
Authority, Jalgaon.
- 3) The Executive Engineer,
Jalgaon Irrigation Division, Jalgaon.
District: Jalgaon. ...RESPONDENTS

O.A.No.648/2017

Bhaskar s/o. Sitaram Patil,
Age : 57 years, Occu. : Junior Engineer,
R/o. D-3/35, Hatnoor Vasahat,
Mahabal Road, Jalgaon. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai-400 032.
- 2) The Superintending Engineer,
Central Designs Organization (Gates),
Zonal Office, Dindori Road, Nashik.
- 3) The Superintending Engineer,
Jalgaon Irrigation Project Circle,
Girna Bhavan, Opp: Akashwani Kendra,
Akashwani Chowk, Jalgaon.
- 4) The Executive Engineer,
Minor Irrigation Division, Jalgaon. ...RESPONDENTS

APPEARANCE : Shri A. D. Sugdare Advocate for the
Applicants in all the O.As.

:Shri D.R.Patil Presenting Officer for the respondent nos.1 and 2 in O.A.No.878/16 & 648/17 and for all the respondents in O.A.No.242/17.

:Smt. S. D.Shelke Advocate holding for Shri D.R.Shelke Advocate for respondent no.3 & 4 in O.A.No.878/16 & 648/17.

CORAM : B. P. Patil, Member (J)

DATE : 30th October, 2018

C O M M O N J U D G M E N T
[Delivered on 30th day of October, 2018]

1. The facts and issues involved in all these O.As. are identical and similar, hence, the same are decided by the common order. Applicants have sought declaration that they are eligible for grant of deemed date of promotion on the post of Junior Engineer from the date of passing qualifying/professional examination and eligible to get further consequential benefits by filing these O.As.

2. Applicant in O.A.No.878/2016 Shri Nitinkumar Tukaram Adhe was appointed as Technical Assistant in the office of respondent no.3 on 28-03-1985. On abolition of post of Technical Assistant, he came to be absorbed in the post of Civil Engineering Assistant (CEA) with effect from 01-01-1989. He rendered 12 years continuous service from

the date of his appointment, and therefore, he was eligible for promotion but for want of vacancy he was given benefit of time bound promotion by order dated 01-04-1997. Thereafter, second benefit under Assured Career Progression Scheme had been given to him on 01-04-1997. It is his contention that for the purpose of getting promotion on the post of Junior Engineer passing of Professional/Qualifying examination is a condition precedent. The applicant appeared for professional/qualifying examination in December, 1990 with Seat No.302041. The result of the examination was communicated to him on 13-05-1992 and he had passed that examination.

3. It is contention of the applicant that Government issued G.R. dated 31-01-1989 creating a new cadre of CEA and abolishing the post of Technical Assistants but the rules regarding recruitment of CEA were notified on 26-02-2006. CEA became State cadre. Final seniority list of State cadre of CEA was published on 30-06-2006 and objections were invited. After considering the objection raised by several employees, the final seniority list was published on 07-09-2012. Because of the delay on the part

of the respondents for publishing the seniority list, he was not given promotion earlier. On 23-02-2012 he was promoted to the post of Junior Engineer Group-B Non-Gazetted and posted in the office of Executive Director, Tapi Khore Irrigation Development Corporation, Jalgaon. It is contention of the applicant that he was eligible for promotion on the post of Junior Engineer on passing qualifying examination but because of the lethargy on the part of the respondents, he was not promoted on the said post till the year 2012. Therefore, he had made representations dated 27-09-2012 and 28-05-2015 with the respondent no.1 for giving deemed date of promotion to him from the date of passing qualifying examination but his representations had not been decided by the respondents. It is his contention that the Principal Seat of the Tribunal at Mumbai had decided O.A.No.482/1996 and directed the respondents to prepare State level seniority of CEA in the year 1996. The Government took 10 years to comply with the directions of the Tribunal and there was no fault on the part of the applicant. The promotion was given to him belatedly because of the inaction on the part of the respondents.

4. It is contention of the applicant that one of the employees namely Shri Yogeshwar Yagnik, who had passed professional examination, was given deemed date on the post of Junior Engineer from the date of passing of professional examination by the concerned department on the post as per G.R. dated 07-06-1965 but the respondents had not considered the case of the applicant. Therefore the applicant has filed the present O.A.

5. Applicant in O.A.No.242/2017 Shri Mohan Ramdas Chaudhari was selected for training class of Technical Assistant from 24-09-1979 to 23-02-1980. He passed the course of Technical Assistant and was appointed as Technical Assistant in the office of the Executive Engineer, Irrigation Project Division, Dhule by order dated 08-10-1980. He had completed three years' continuous service on the post of Technical Assistant and passed the Sub-Overseer Departmental Examination held in the year 1987. Thereafter, he was appointed as Sub-Overseer from 01-07-1986 and thereafter absorbed on the post of CEA w.e.f. 01-12-1989. He was promoted on the post of Junior Engineer by order dated 02-07-2007. It is his contention that he was eligible for the deemed date of promotion on the

post of Junior Engineer from the date passing of professional examination. He made representation with the respondents accordingly on 17-01-2008 but his representation was not considered by the respondents. He worked on the post of Junior Engineer till his retirement i.e. till 31-05-2014. Thereafter, also he had submitted a representation dated 18-08-2015 to the respondent no.1 to consider his claim for granting deemed date of promotion on passing professional examination as Junior Engineer.

6. It is contention of the applicant that Principal Seat of this Tribunal at Mumbai had decided O.A.Nos.233/2012, 234/2012, 235/2012 and 236/2012 in the cases of **Satyavan Eknath Salunkhe & Ors. V/s. State of Maharashtra & Ors.** on 07-10-2013 who are similarly situated persons and granted them benefit of deemed date from the date of their passing qualifying examination. Therefore, he has filed the present O.A. and prayed to declare that he is eligible to get deemed date of promotion from the date of passing of professional examination on the post of Junior Engineer and consequential benefits.

7. Applicant in O.A.No.748/2017 was initially appointed as Muster Karkoon with respondent at Nandurbar.

Thereafter, he was appointed as Technical Officer (E.G.S.). He became Sub-Overseer in the year 1985 and was given deemed date on the post of Sub-Overseer on 31-12-1983. Thereafter, on absorption he was appointed as CEA from 01-11-1989.

8. On completion of 12 years continuous service from the date of appointment i.e. from 28-03-1985, he was given benefit of time bound promotion by order dated 01-04-1997. On 05-07-2007, he was promoted on the post of Junior Engineer and since then he worked on the said post. It is his contention that for the purpose of promotion on the post of Junior Engineer passing of professional examination is a condition precedent and he has passed the professional examination in December, 1987 but he was not given deemed date from the date of passing qualifying/professional examination and he was not given promotion on the post of Junior Engineer. Therefore, the applicant had submitted representation dated 01-12-2007 to the respondent no.1 through proper channel for giving deemed date of promotion from the date of passing the qualifying examination. Respondent no.1 informed respondent no.2 by letter dated 29-12-2009 to submit proposal for grant of

deemed date to the applicant along with other employees. Respondent no.3 asked the respondent no.4 to submit information in that regard by letter dated 19-03-2010 but thereafter the respondents have not taken any decision on his representation.

9. It is his contention that because of the lethargy on the part of the State Government, State level seniority list has not been maintained in due course. Therefore, the applicant was deprived from getting promotion at the proper time. It is his contention that one Shri P.R.Kachare has been granted deemed date of promotion by this Tribunal in O.A.No.181/2012 by order dated 11-12-2014 from the date of passing of professional examination. Therefore on the ground of parity, he has also claimed the same relief on the basis of G.Rs. dated 2nd November, 1964 and 16th September, 1964. Therefore, he has filed the present O.A.

10. The respondents have resisted the contentions of the applicants by filing their affidavits in reply. They have not disputed regarding the appointment of the applicants, their absorption in the post of CEA, their passing of qualifying examination and their promotion on the post of Junior

Engineer. They have admitted the fact that by G.R. dated 01-01-1989 a new cadre of CEA has been created by merging various cadres including Technical Assistant. They have not disputed the fact that the applicants have been given benefit of time bound promotion and benefit of Assured Career Progression Scheme as per rules. It is their contention that for getting promotion to the post of Junior Engineer, the eligible employees have to pass the qualifying/professional examination. It is their contention that for promotion to the post of Junior Engineer passing of professional examination was not the only condition precedent. Mere passing of qualifying/professional examination would not give right to the concerned for promotion on the post of Junior Engineer. Passing of professional examination is necessary eligibility for considering an employee for promotion on the post of Junior Engineer. For promotion to the post of Junior Engineer from the eligible CEA passing of professional examination is one of the eligibility criteria and other aspects like vacancies in the cadre, seniority of candidates, roster of reservation, Annual Confidential Reports of the candidates under consideration etc. also have to be taken into consideration. Promotions are finalized by the

Government as per requirement and vacancies in the cadre. Accordingly, applicants were promoted as per the Government guidelines and procedure. It is their contention that the applicants are not entitled to get benefits under the scheme. The applicants have been already granted all benefits as per rules. Therefore, representations made by them are baseless and without merit. It is their contention that the cases cited by the applicants are not identical to cases of the applicants, and therefore, the applicants cannot claim relief granted to other employees on the ground of parity. It is their contention that G.R. dated 16-09-1964 is related to the promotion from the post of Technical Assistant and Sub-Overseer to the post of Overseer and it is not applicable for promotion on the post of Junior Engineer. The applicants have wrongly interpreted the said G.R., and therefore, the respondents have prayed to reject their claims.

11. I have heard Shri A.D.Sugdare Advocate for the Applicants in all the O.As., Shri D.R.Patil Presenting Officer for the respondent nos.1 and 2 in O.A.No.878/16 & 648/17 and for all the respondents in O.A.No.242/17 and Smt. S.D.Shelke Advocate holding for Shri D.R.Shelke

Advocate for respondent no.3 & 4 in O.A.No.878/16 & 648/17. Perused documents placed on record by the parties.

12. Learned Advocate for the applicant has submitted that the applicants were initially working as Technical Assistants and they were absorbed in the cadre of CEA. Thereafter, they have passed the qualifying/professional examination which was necessary for their consideration for promotion on the post Junior Engineer in the year 1990, 1988 and 1987 respectively. He has submitted that in view of the G.R. dated 16th September, 1964 and 7th June, 1965, Technical Assistant/CEA previously known as Sub-Overseer or Technical Assistant would be entitled to promotion in the cadre of Overseer, now Junior Engineer, after passing the professional examination. The seniority of said Sub-Overseer (Junior Engineer) should be fixed in the Overseer's cadre according to the date of entry in the cadre on passing the professional examination. G.R. dated 07-06-1965 provides that result of examination would be declared in January of the following year and the successful Sub-Overseer/Surveyor should be absorbed in the cadre of Overseer w.e.f. 1st February of the year. He has

submitted that the applicants have passed the examination held in the year 1990, 1988 and 1987 respectively. Therefore, they should be absorbed in the cadre of Junior Engineer w.e.f. 1st February of the year when their result were declared but the respondents had not prepared seniority list for a considerable long period and therefore the applicants were not considered for promotion. But thereafter they have been promoted as Junior Engineer in the year 2012 or so but the deemed date of promotion had not been given to them from the date of passing the examination. The applicants made representations with the respondents but the respondents had not decided their representations.

13. Learned Advocate for the applicants has further argued that the similar issue was involved in the cases decided by the Principal Seat of this Tribunal at Mumbai in O.A.Nos.233/2012, 234/2012, 235/2012 and 236/2012 on 07-10-2013. Division Bench of the Tribunal had considered various aspects involved in the G.Rs. Dated 16-09-1964 and 07-06-1965 as well as the recruitment rules of Junior Engineer, 1998 and held that the applicants in those matters were eligible for promotion from the date of

passing of professional examination by its judgment dated 07-10-2013. He has submitted that during the pendency of the present OA., the respondents informed the applicants that representations cannot be decided since the Government has challenged the decision of the Tribunal in O.A.Nos.233/2012, 234/2012, 235/2012 and 236/2012 before the Hon'ble High Court of Judicature at Bombay by filing Writ Petition Nos.9266/2017, 10623/2014, and 10624/2014 and 10625/2014.

14. Learned Advocate for the applicant has submitted that the Hon'ble High Court has recently decided Writ Petition Nos.9266/2017, 10623/2014, and 10624/2014 and 10625/2014 on 17-07-2018 and dismissed the Writ Petitions and upheld the order passed by the Tribunal. He has submitted that the issue involved in the present matters has already been decided and settled by the Hon'ble High Court and therefore the present O.As. are squarely covered by the decision rendered by the Tribunal which has been upheld by the Hon'ble High Court. Therefore, he has prayed to grant reliefs as claimed by the applicants in their favour by allowing the O.A. on the ground of parity.

15. Learned P.O. has submitted that the applicants have passed professional examination in the year 1990, 1988 and 1987 respectively. Passing of professional examination was one of the eligibility criteria for considering the candidates for promotion on the post of Junior Engineer. Other aspects to be considered for promotion of candidates to the post Junior Engineer were vacancies, seniority of candidates, roster of reservation, Annual Confidential Reports of the candidates under consideration etc. Accordingly, on the basis of vacancies applicants have been promoted in the year 2012 or so, as per their seniority. He has submitted that the applicants were granted all the benefits under the time bound promotion scheme and assured career progression scheme from time to time, and therefore, they are not entitled to deemed date of promotion from the date of passing qualifying examination. He has submitted that the cases of the applicants are not identical to the cases of the applicants in O.A.Nos.233/2012, 234/2012, 235/2012 and 236/2012 decided by the Division Bench of the Tribunal on 07-10-2013. Therefore he has prayed to dismiss the O.A.

16. On perusal of the record, it reveals that new cadre of CEA was created by merging 14 cadres. Sub-Overseers and Surveyors were to be arranged in top seniority. Recruitment Rules of Junior Engineer (Civil) 1998 had been framed and there is no provision in the recruitment rules that CEA is to be promoted as Junior Engineer from the date of passing the professional examination. The promotions to the post of Overseer now called as Junior Engineer were governed by G.R. dated 16-09-1964 and 07-06-1965 till the recruitment rules for the post of Junior Engineer (Civil) were promulgated in the year 1998. Perused the G.R. dated 16th September, 1994 (paper book page 30 in O.A.No.878/2016), more particularly paragraph nos.2 and 3 are important which are reproduced as under:

“2) Government is further pleased to direct that all Sub-Overseers/Surveyors who have completed a total service of 5 years inclusive of service as Technical Assistant/Work-Inspector/shall be eligible for appearing for the professional examination qualifying for entry in to the Overseers cadre. The Sub-Overseers/Surveyors will get only 3 chances to appear for the professional examination for Overseers. They should avail of these three chances within 5 years from the date of first

professional Examination and Overseers at which the concerned Sub Overseers/ Surveyor becomes eligible to appear. In the case of those who have already been absorbed as Sub-Overseers/ Surveyors the period of 5 years should be counted from the first day of the first professional examination for Overseers to be held hereafter.

3) The seniority of the Sub-Overseers who pass the professional Examination of Overseers should be fixed in the Overseer cadre according the date of entry in to the cadre on passing the professional examination.”

17. Thereafter, the Government issued another G.R. dated 07-06-1965 which provides that professional examination for Overseer for the year should be held in the month of October or December according to the local conditions and convenience. The result of such examinations should be declared in the month of January of the following year and successful Sub-Overseers/Surveyors should be absorbed in the cadre of Overseers with effect from 1st February of the year in which result is declared.

18. Applicants have appeared for the examinations held in the year 1990, 1988 and 1987 respectively. Result of

which were declared thereafter in the next year. In view of the G.R. dated 07-06-1965 they should be absorbed in the cadre of Overseer w.e.f. 1st February of the year in which the result is declared. But they could not get promotion as Overseer/Junior Engineer after passing the professional examination as order regarding their promotion as Sub-Overseer was passed only in the year 2012. The applicants were eligible for getting promotion in the cadre of Junior Engineer on passing their professional examination. Respondents have not considered their cases at the proper time. They were given promotion in the year 2012 without giving them deemed date from the date of passing of qualifying examination. Similarly placed persons have approached Principle Seat of the Tribunal by filing O.A.Nos.233/2012, 234/2012, 235/2012 and 236/2012. The issue has been dealt with by the Tribunal and the Tribunal had accepted their contentions and granted deemed date of promotion from the date of passing professional examination by those applicants. The decision of the Tribunal had been challenged by the Government before the Hon'ble High Court of Judicature of Bombay by filing Writ Petition Nos.9266/2017, 10623/2014, and 10624/2014 and 10625/2014 but the Hon'ble High Court

had dismissed the Writ Petitions on 17-07-2018 and upheld the order of the Tribunal.

19. In my view the cases of the present applicants are squarely covered by the above said decisions of the Tribunal and the Hon'ble High Court. The decisions of the Division Bench of the Tribunal and the Hon'ble High Court are binding on this Tribunal. Therefore, in view of the settled legal principle laid down therein, the applicants are also entitled to get deemed date of promotion from 1st February of the year in which their results were declared.

20. In view of the above discussion, O.As. are allowed. The applicants are held eligible to get deemed date as 1st day of February of the year in which their results were declared and they passed the professional examination for the promotion on the post of Junior Engineer. Accordingly, they are entitled to get consequential benefits. There shall be no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad
Date : 30-10-2018.