

ORDER
(Passed on 4th August, 2017)

(PER :- SHRI RAJIV AGARWAL, VICE CHAIRMAN)

1. Heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents.

2. This O.A. has been filed by the applicant challenging the communication dated 31.3.2004 from the Respondent no. 2 to the Superintending Engineer, Public Works Circle, Aurangabad informing him that the seniority of the Respondent no. 3 will be at Sr. No. 336-A below Shri Chalkhane in the list of Junior Engineers. The claim of the Applicant is that he and the Respondent no. 3 were selected by Superintending Engineer, P.W. Circle, Aurangabad at the same time and appointed by a common order dated 4.8.1980. The Applicant was at Sr. No. 2 while the Respondent no. 3 was at Sr. No. 13 in that order. The Applicant was accordingly senior to the Respondent no. 3 in the cadre of Jr. Engineer.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Jr. Engineer by order dated 4.8.1980 on Work Charged Establishment. The Applicant was absorbed on regular establishment by order dated 19.9.1980. However,

the Applicant was able to join in the new post only on 1.11.1980, as he was not relieved earlier. Learned Counsel for the Applicant argued that date of joining the regular establishment is not very relevant, and the order in which the names appear in the order dated 19.9.1980 should be relevant to determine inter se seniority. The Respondent no. 3 was also absorbed by order dated 19.9.1980 on regular establishment but he was given posting at the same headquarters, and he could join on 19.9.1980 itself. This, however, cannot disturb the inter se seniority of the Applicant *vis-a-vis* the Respondent no. 3. The Applicant has challenged the decision of the Respondent no. 2 to place the Respondent no. 3 at Sr. No. 336-A below Shri Chalkhane in the seniority list of Junior Engineers published on 31.8.2002, which has placed the Respondent no. 3 above him. The Applicant made a representation to the Respondent no. 2 on 12.2.2004, against the seniority of the Respondent no. 3 from 19.9.1980 in the cadre of Junior Engineers. The Applicant made another representation on 7.4.2005. However, no reply was received. Learned Counsel for the Applicant argued that the Respondent no. 3 was granted deemed date of appointment as 19.9.1980, without giving any opportunity of hearing to the Applicant, who was affected by the said decision. The order

dated 31.3.2004 is, therefore, issued in violation of the principles of Natural Justice and may be quashed and set aside.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent nos. 1 & 2 that by order dated 19.9.1980, issued by the Superintending Engineer, P.W. Circle, Aurangabad, the Applicant was posted to Nasik Circle on regular basis. The Applicant did not join at Nasik Circle, and his order was required to be modified on 24.10.1980 and he was posted to Aurangabad Circle, and he joined on 1.11.1980. The Respondent no. 3 was given order on 19.9.1980 to join on regular establishment at Aurangabad and he joined on the same day. The seniority list is based on the date of joining regular establishment. As the Applicant himself is responsible for not joining the regular establishment as per order dated 19.9.1980, he cannot claim that he should be assigned the seniority given to the respondent no. 3. The Applicant cannot challenge the seniority assigned to the Respondent no. 3, who joined before him in the regular post.

5. We find that the Applicant is challenging order dated 31.3.2004 (Exhibit 'G' page 33) issued by the Respondent no. 2, giving deemed date of appointment to the Respondent no. 3 in the cadre of Jr. Engineer below Shri Cholkhane, who was at Sr.

No. 336 in the seniority list published on 31.8.2002. Circular of Govt. dated 31.8.2002 regarding the final seniority list of Junior Engineers (Civil) from 1.4.1974 to 31.3.1981 is at Exhibit 'E' (page 28). In this list, the Applicant is at Sr. No. 345 while the Respondent no. 3 is at Sr. No. 347. Later, the Respondent no. 3 made representation seeking seniority on the basis of date of joining on regular establishment and that claim was accepted by the Respondent no. 2 and order dated 31.3.2004, which is impugned in this O.A., was issued. The moot question is whether the claim of the Applicant that he should have been kept above the Respondent no. 3 in the seniority list has any legal basis.

6. It appears that Superintending Engineer, P.W. Circle had issued separate orders on 19.9.1980 absorbing the Applicant and the Respondent no. 3 on regular establishment as Junior Engineers. The Applicant was posted to Public Works Circle, Nasik on regular establishment, The Applicant has stated in para 6 (iv) of the O.A. as follows :-

“(iv) Applicant says and submits that it was subsequently vide an order bearing no. ES-II/364 dtd. 19.09.1980 issued by the Superintending Engineer, P.W. Circle, Aurangabad that the applicant (alongwith

the Resp. No. 3) was drafted into the regular establishment and was transferred to the Public Work Circle Office vide an Office order No. ES-II/430 dtd. 24.10.1980. Applicant further says that pursuant to the said order he was relieved from his earlier post on 31.10.1980 (afternoon) whereupon he had immediately joined at the place of his posting on the next day i.e. on 01.11.1980.”

7. The Applicant has not placed the order dated 19.9.1980 posting him to Nasik Circle on record. He has tried to convey that he was not relieved to join his new post at Nasik. This, however, does not appear to be the whole truth. The Respondent no. 2 in para 7 of the affidavit in reply dated 4.1.2006 has stated as follows :-

“07. In reply to Para No. 6 (ix) of the application, I say and submit that it is admitted fact that as per order bearing No. ES-II/364 dated 19.9.1980 issued by Superintending Engineer, Aurangabad the applicant was drafted into the regular establishment and he has been posted to Nashik Circle from Aurangabad Circle. In that regard it is specifically submitted that he has not joined to Nashik Circle and therefore his order is modified on 24.10.1980 and joined on Regular Establishment on 1.11.1980.”

8. It is seen that the Applicant did not join at his new post pursuant to order dated 19.9.1980 and his posting was subsequently changed by order dated 24.10.1980. Even after order was issued on 24.10.1980, modifying earlier order dated 19.9.1980, the Applicant joined on the regular establishment only on 1.11.1980. The Applicant has not explained the circumstances in which he failed to join at Nasik pursuant to the order dated 19.9.1980. It appears that the Applicant himself was responsible for delay in joining as Jr. Engineer on regular establishment. The Respondent no. 2 has claimed that the inter se seniority on the work charged establishment is not relevant for determining the seniority on regular establishment. Both the Applicant and the Respondent no. 3 were given order on the same date i.e. on 19.9.1980 posting them on regular establishment. The Applicant failed to join on the regular establishment immediately and his order was required to be modified. He joined regular establishment on 1.11.1980. The Respondent no. 3 has been given seniority in the cadre of Jr. Engineer from the date of joining on the regular establishment. The Applicant joined regular establishment only on 1.11.1980 and he himself is responsible for the delay. We find nothing

improper in granting seniority from the date of joining the regular establishment to the Applicant and the Respondent no. 3.

9. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

**SD/-
MEMBER (J)**

**SD/-
VICE CHAIRMAN**