

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 439 OF 2024**

**Dinesh S/o Jagannath Khonde,** )  
 Age 54 years, Occu. Service )  
 R/o Daga Sapphire, C-604, )  
 Camp Road, Near IMA Hall, Amravati, )  
 Dist. Amravati – 444 601. ).. **APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,** )  
 Through its Principal Secretary, )  
 Energy, Industries & Labour Department, )  
 Mantralaya, Mumbai – 32. )
- 2) Sandip Arvind Patil,** )  
 Chief Engineer (Electric), )  
 Public Works Department, Mumbai. ).. **RESPONDENTS**

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APPEARANCE : Shri Avinash S. Deshmukh, learned Advocate for the applicant.

: Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities.

: Shri Abhijit Namde, learned counsel for respondent no. 02.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

**RESERVED ON** : **28.06.2024**  
**PRONOUNCED ON** : **21.10.2024**

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**ORDER**

*[Vinay Kargaonkar, Member (A)]*

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant, Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities and Smt. Yugandhara Namde, learned counsel holding for Shri Abhijit Namde, learned counsel for respondent no. 02.

2. **Pleadings and arguments of the Applicant:**

(i) The applicant, entered government service in 1990 as a Junior Engineer and progressed through several roles. His promotions included Assistant Engineer (1996), Assistant Electrical Inspector (2000), Electrical Inspector (2007) and Superintending Engineer (2011), each achieved through competitive selection by the Maharashtra Public Service Commission (MPSC).

(ii) Applicant holds a Master's in Electrical Engineering (Power System) and has maintained a clean service record. Applicant belongs to the Scheduled Caste category.

(iii) Departmental Bifurcation : In 2015, Maharashtra Government bifurcated the Public Works Department (PWD) Electrical Wing into separate entities. This change reassigned engineers, including the applicant, to the Industry, Energy, and Labour Department. Following this bifurcation, a seniority list published on January 1, 2015, placed Applicant at the top, making him the prime

candidate for Chief Electrical Inspector (CEI). The applicant relied on this list as validation of his eligibility for promotion.

(iv) Shri S.R. Bagde, a junior officer, contested the seniority list in Original Application No. 235 and 314/2014. The Principal Seat of this Tribunal dismissed Original application in February 2017, affirming the seniority list where Applicant was ranked higher. Shri Bagade appealed to the High Court.

(v) In February 2017, Applicant began formally representing his case, urging the department to publish a final seniority list and create a Chief Electrical Inspector (CEI) post. Additional representations were made in March 2017 but did not receive responses from the competent authority.

In August 2018, a government resolution officially created the CEI post, with a clear job description and pay scale. Despite this, Applicant's request for promotion to the role went unaddressed, despite his repeated applications highlighting his seniority.

(vi) After further delays, Applicant approached the Nagpur Bench of this Tribunal, seeking immediate promotion being the senior-most Superintending Engineer. He requested the state to publish an updated seniority list and promote the seniormost engineer. The Nagpur Bench of this Tribunal issued orders in April and August 2019 directing the state to act, but no compliance followed. Consequently, further orders were passed on 9<sup>th</sup>

October 2019 by the Nagpur Bench of the Tribunal, warning the state of contempt for continued non-compliance.

(vii) The state challenged the Tribunal's orders by filing Writ Petition No. 7263/2019. The High Court allowed the petition in November 2019. Applicant filed Special Leave Petition No 6382/2020 before the Hon'ble Apex Court of India which he withdrew subsequently on 03/01/2022.

While the Applicant awaited promotion, he was temporarily given additional charge of Chief Electrical Inspector stationed in Mumbai. This assignment led him to withdraw his Special Leave Petition filed with the Supreme Court.

(viii) The state published another seniority list in July 2022, again Applicant was the only eligible Superintendent Engineer for consideration for the post Chief Electrical Inspector. Based on this list, Applicant filed Original Application No 26/2019 & Civil Application No. 369/2022, requesting a final promotion decision. Nagpur Bench of Tribunal disposed of OA No 26/2019 and Civil Application No. 369/2022 of 16/09/2022. State assailed the order of the Nagpur Bench of High court by filing Writ Petition No 421/2023. Hon'ble High Court Bench at Nagpur allowed the Writ Petition No 421/2022 and set aside the order passed by the Nagpur Bench of this Tribunal. However Hon'ble High court observed that :-

*"It is clarified that the parties would continue to be governed by the order dated 23/04/2020 by which*

*additional charge of the post of Chief electrical Inspector was granted to the respondent until further orders”*

This decision implied that Applicant should retain the additional role until a permanent appointment.

(ix) Contrary to the High Court’s directive, the state issued an urgent order on February 3, 2023, reassigning the additional charge of Chief Electrical Inspector to another officer. This action was taken hastily on the same day, raising concerns of administrative bias.

(x) Learned counsel for the applicant argued that the High Court’s February 2 ruling required that Applicant should hold the additional charge role until further orders. The state’s actions on February 3 contradicted this ruling. Applicant highlights that the February 3 reassignment, conducted within hours, demonstrates a disregard for procedural norms and suggests an intentional bias to appoint another officer.

(xi) Applicant requests the Tribunal to quash the February 3 orders relieving him of additional charge of Chief Electrical Inspector and transferring it to another officer, arguing these are "illegal and bad in law."

(xii) Based on the 2022 seniority list and his long standing service, Applicant seeks formal acknowledgment as the only eligible candidate for promotion to the post of Chief Electrical Inspector.

(xiii) Applicant contends that the state's recent actions demonstrate an abuse of administrative discretion, prioritizing certain officers for Chief Electrical Inspector responsibility contrary to seniority rules. Applicant maintains that the state's urgency to reassign the charge of Chief Electrical Inspector to another officer violates established procedural and legal norms.

3. **Case of the Respondents:**

(i) The applicant has contended that he has a clean and unblemished service record and, therefore, is entitled to be given the charge of the post of Chief Electrical Inspector. However, in the entire application, the applicant has not cited any legal provision granting him such a right. In the absence of any legal right to claim the additional charge, the applicant's case has no merit. Further, the applicant has failed to demonstrate any legal infirmity in the Government Order dated 03.02.2023 (page 166), which assigned the additional charge of the post of Chief Electrical Inspector to respondent No. 02.

(ii) It is submitted that the applicant's claim of having a clean and unblemished service record is incorrect. On 05.09.2022, the State Government constituted a Committee to investigate complaints received from various sources against the applicant. The said Committee has submitted its report, finding merit in charges 2 and 4, which it deemed serious in nature. The Committee has recommended further inquiry. In light of the Inquiry Committee's report, a departmental inquiry is

contemplated against the applicant. Respondent no. 1 has already placed these facts on record in the petition and rejoinder filed before the Hon'ble High Court.

(iii) It is further submitted that respondent no. 2 has consistently demonstrated hard work, zeal, and commitment throughout his service. Upon the recommendation of the Maharashtra Public Service Commission ("MPSC"), respondent no. 2 was appointed as Assistant Engineer (Electrical), Grade-2 (Class-2) by an appointment order dated 24.08.1994. Subsequently, on the MPSC's recommendation, respondent no. 2 was appointed as Deputy Engineer (Electrical) / Assistant Electrical Inspector, Class 1, Public Works Department, Mumbai, by order dated 29.04.2000. Later, respondent no. 2 was promoted on an ad-hoc basis to the post of Executive Engineer (Electrical), Ahmednagar, by Government Order dated 29.04.2006. On the recommendation of the MPSC, respondent no. 2 was appointed as Superintending Engineer, Regional Electrical Circle, Mumbai. Further, by Government Order dated 16.06.2015, respondent no. 2 was promoted to the post of Chief Engineer (Electrical), Public Works Department, Mumbai, on an ad-hoc basis.

(iv) It is evident from these facts that, based on the respondent no. 2's hard work, dedication, and unblemished service record, he has been promoted regularly and has been entrusted with the additional charge of the post of Chief Electrical Inspector.

(v) It is further submitted that while serving as Chief Engineer in the Public Works Department, respondent no. 2 has received several commendations and appreciations from various authorities.

(vi) The applicant has relied upon the Circular dated 05.09.2018. However, this Circular is not applicable to the present case. Respondent no. 1 constituted a committee by Government Resolution dated 09.09.2019 to examine the applicability of the Circular dated 05.09.2018 to the post of Chief Electrical Inspector. After considering the issue, the committee found that it would not be appropriate to apply the provisions of the Circular dated 05.09.2018 to the post of Chief Electrical Inspector. Upon reviewing the committee's report, respondent no. 1 concluded that the provisions of the Circular dated 05.09.2018 cannot be applied to the Energy Department.

(vii) After due consideration of the available officers, including the applicant, for the assignment of the additional charge of Chief Electrical Inspector, respondent no. 1 concluded that it would not serve the interest of the State Government to hand over the charge of Chief Electrical Inspector to the current officers in the cadre of Superintending Engineers, including the applicant. This decision of the State Government was upheld by the Hon'ble High Court in Writ Petition No. 7263/2019 through its order dated 18.11.2019. The applicant has not challenged the committee's report or the State Government's decision. Moreover, the applicant withdrew the petition for special leave to appeal against the order

passed by the Hon'ble High Court in Writ Petition No. 7263/2019. Hence, the applicant's reliance on the said Circular lacks merit.

(viii) The applicant has relied upon the judgment dated 04.04.2019 in the case of \*Shri S.R. Bagde Vs. State of Maharashtra and others\*, OA No. 38/2019. It is submitted that the said judgment was based on the Circular dated 05.09.2018, which has lost its relevance in the present matter due to the order dated 18.11.2019 passed by the Hon'ble Bombay High Court in Writ Petition No. 7263/2019.

(ix) The present Original Application is without merit in light of the judgments dated 18.11.2019 and 02.02.2023 of the Hon'ble High Court in Writ Petition No. 7263/2019 and Writ Petition No. 421/2023, respectively. In both judgments, the Hon'ble High Court has held that the applicant has no right to be given the additional charge.

(x) The relevant portions of both judgments are quoted as follows:-

Paragraph 7 of the judgment dated 18.11.2019 in Writ Petition No. 7263/2019:-

*"7] After hearing the learned counsels appearing for the parties and after going through the record, we are of the firm view that it was not a case to pass any sort of interim order. In making adhoc arrangement, the administrative convenience has to be looked into. It does not confer any legal right upon any person...."*

After quoting the above-stated observations, the Hon'ble High Court in its judgment dated 02.02.2023 in Writ Petition No. 421/2023 has observed as follows:-

*“This Court having held in the earlier round of litigation between the same parties that administrative convenience had to be considered while making ad-hoc arrangement and same did not confer any legal right on any person, it was expected that the Tribunal would take into consideration the said observations.....”*

In view of the aforesaid finding recorded and reiterated by the Hon'ble High Court in the case of the applicant himself, the applicant is barred in law to raise the same issue. The aforesaid finding operates as res-judicata.

(xi) In light of the above-quoted portions of the judgments delivered by the Hon'ble High Court, the present application filed by the applicant is not tenable in law and is, therefore, liable to be dismissed.

4. **Reasoning & Conclusions :-**

(i) The dispute in question revolves around the applicant's claim for being assigned the additional charge of Chief Electrical Inspector. The applicant contends that he is entitled to this additional responsibility on the basis of his service record, which he claims is clean and unblemished. However, upon scrutiny of the record and in light of the facts presented, it becomes apparent that the applicant's claim lacks merit.

(ii) Departmental Inquiry and the Applicant's Service Record:-

It has been established that the applicant's service record is not entirely unblemished. A Departmental Inquiry has been contemplated against him based on complaints received from various sources. The State Government constituted an Inquiry Committee on 05.09.2022 to investigate these complaints, and the Committee found merit in charges 2 and 4, deeming them serious in nature. It further recommended that a detailed inquiry be conducted against the applicant. In light of these findings, it is clear that the applicant does not possess the clean record he claims, and any contention based on this premise is unsustainable.

(iii) As per well-established principles in service law, employees facing disciplinary proceedings or inquiries are generally not considered for key appointments or additional charges due to the potential risks involved. Assigning such responsibilities to an officer under investigation could undermine the integrity of the office in question and raise questions about the fairness of the decision-making process.

(iv) Role of Administrative Exigency in the Assignment of Additional Charge:-

In matters of assigning additional charges, particularly for a post as significant as Chief Electrical Inspector, the decision is driven by administrative exigency. It is the prerogative of the competent authority to assess the needs of the department and allocate responsibilities accordingly. The nature of additional charges is such that they are not a matter of right for any

individual, but rather a matter of necessity for the efficient functioning of the department.

(v) In the present case, the Government Order dated 03.02.2023 assigned the additional charge of Chief Electrical Inspector to respondent no. 2. This decision was made after due consideration of all relevant factors, including the available officers for the assignment. It is important to note that the applicant failed to demonstrate any legal right or entitlement to claim this additional charge. Moreover, no procedural or legal infirmity has been pointed out in the Government's decision to assign the charge to respondent no. 2.

(vi) It is well-settled that courts generally do not interfere with the decisions made by administrative authorities unless there is clear evidence of arbitrariness, malice, or violation of legal rights. In the present case, none of these factors have been demonstrated by the applicant.

(vii) Further, in **Union of India v. S.L. Abbas, (1993) 4 SCC 357**, the Supreme Court emphasized that administrative exigencies are paramount in deciding transfers and assignments of charges. The Court clarified that unless there is a clear violation of statutory provisions, such decisions are within the domain of the executive, and courts should refrain from substituting their judgment for that of the competent authority.

(viii) In the present case, the applicant's claim to the additional charge of Chief Electrical Inspector is not legally tenable. His service record is under scrutiny, and a

Departmental Inquiry is being contemplated against him. This alone would be sufficient to disqualify him from holding any additional charge, particularly a key post such as Chief Electrical Inspector. Furthermore, the decision to assign the additional charge to respondent no. 2 was made by the competent authority based on administrative exigency, and there is no evidence to suggest that this decision was arbitrary or discriminatory.

5. In view of the facts and the legal principles, it is clear that the applicant has no enforceable right to claim the additional charge. The matter of assigning additional responsibilities lies within the purview of the competent administrative authority, and their decision should be respected unless there is a clear violation of law or procedure, which has not been demonstrated in this case. Therefore, the present application is without merit and needs be dismissed. The competent authority's decision to assign the additional charge to respondent no. 2 is valid, lawful, and in the best interest of the department. Hence, the following order:-

### **ORDER**

The Original Application stands dismissed, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 21.10.2024**

ARJ O.A. NO. 439 OF 2024 PROMOTION