

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.10 OF 2024

DISTRICT : SANGLI

1. Sevanivrutt Engineers Aashwashit Samajik)
Sanstha, Having its address as Hirkani,)
Plot No.11, 3rd Floor, Ashwini Housing Society,)
Yashwant Nagar, Kupwad, Sangli,)
Maharashtra 416416, through its President)
Mrs. Mohini Sumant Kulkarni,)
age 63 years, occ. Retired)
2. Mrs. Mohini Sumant Kulkarni,)
Age 63 years, occ. Retired,)
Madhumati Overseer Colony,)
South Shivaji Nagar, Opp. Shivshakti Maidan,)
Sangli 416 416)
3. Dattatray Dadu Indulkar,)
4. Pradip Govind Waychal,)
5. Vijay Kalgonda Patil,)
6. Avinash Shankar Chavan,)
7. Dnyanadev Ganpati Khade,)
8. Dattatray Mahadev Kumbhar,)
9. Sahebrao Zumaji Padwal,)
10. Mahadev Dada Patil,)
11. Uttamrao Laxman Salunkhe,)
12. Anil Kalyanrao Khapre,)
13. Avinash Anandrao Kambale,)
All C/o Ms. Vaidehi Pradeep, Advocate,)
MAT, Mumbai)..Applicants

Versus

1. The State of Maharashtra,)
Through its Chief Secretary,)
Mantralaya, Mumbai 400032)
2. The Additional Chief Secretary,)
Department of Water Resources,)
Mantralaya, Mumbai)
3. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Public Works Department, Mantralaya, Mumbai)
4. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Department of Energy, Mantralaya, Mumbai)
5. The State of Maharashtra,)
Through its Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai)
6. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Finance Department, Mantralaya, Mumbai)
7. The State of Maharashtra,)
Through its Additional Chief Secretary,)
Soil & Water Conservation Department,)
Mantralaya, Mumbai)..Respondents

Shri Yashodeep Deshmukh with Ms. Vaidehi Pradeep – Advocates for the Applicants

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)

RESERVED ON : 20th March, 2025

PRONOUNCED ON: 22nd April, 2025

J U D G M E N T

1. Ld. Advocate for the applicants submits that between 1970 and 1985 applicants came to be initially appointed as Junior Engineers in various departments of the Government. By GR dated 19.12.2017 the Class-II posts were named as Deputy Engineer, Assistant Engineer Class-II, Sub Divisional Engineer and Sub Divisional Officer. Initially Engineering Graduates were termed as Junior Engineer while Engineering Diploma Holders were termed as Overseer. By GR dated 6.3.1973 the Overseers were renamed as Junior Engineer (Diploma Holder).

2. Ld. Advocate submits that in 1984 a GR was issued on 16.4.1984 specifying the rights, duties, powers and responsibilities of a Junior Engineer confirming their role within the Class III, Group-C category. In 1993 another GR came to be issued on 29.7.1993 which classified the Government employee in the categories of Group 'B' and 'C'. Vide another GR dated 8.6.1995 the Time Bound Promotion Scheme (TBPS) was introduced and made operational with effect from 1.10.1994 offering promotional benefits to those employees who completed 12 years of service. He further submits that the Junior Engineers who had completed 12 years as on that date were to be given the promotional benefits.

3. Ld. Advocate further submits that by notifications dated 18.3.1998 and 18.6.1999 the benefits of TBPS were extended to eligible employees completing 12 years of service from their date of joining irrespective of their establishment. By GR dated 20.7.2001, TBPS was withdrawn and Assured Career Progression Scheme (ACPS) was introduced to benefit a larger employee base. By GR dated 2.7.2002 the Government employee posts came to be recategorised based on pay scale after implementing the 5th Pay Commission. This categorization was subsequently abandoned by the GR dated 6.3.2020. In the years 2022 and 2023 number of representations were made by the applicants before the respondents pointing out the orders passed by the Hon'ble High Court as well as by this Tribunal in cases of similarly situated employees.

4. Ld. Advocate for the applicants submits that clause 6 of the GR dated 16.4.1998 clarifies that even after upgradation to the post of Sectional Engineer, the responsibility, powers, rights and duties of the applicants remained unchanged. This position continued till 3.12.2018. By Govt. Circular dated 3.12.2018 the duties, responsibilities etc. were revised.

5. Ld. Advocate submits that the main aim of TBPS was to address to problem of stagnation in service which could have had a demoralizing effect on the employees. The scheme assured the employees, pay scale of promotional post without actual promotion to the next post till such time as the employee gets actual promotion. Also their duties and responsibilities, even after such upgradation, remain that of substantive post held by them. The ACPS was also introduced with the same aim.

6. Ld. Advocate for the applicants further submits that while the local self-governing bodies and other bodies have extended in a correct manner and in letter and spirit the TBPS, the applicants, though in Govt.

employment, are still deprived of similar treatment which amounts to discrimination and violates Article 14 and 16 of the Constitution of India.

7. Ld. Advocate for the applicants argues that in legal parlance **‘promotion’** can be to a higher position as well as to higher pay scale of the post next above in hierarchy. On the other hand **‘upgradation’** is some increase in the pay and not essentially of the higher post. Moreover, there is no post of Sectional Engineer as per the MCS Rules, 1998. The Applicants, therefore, pray that:

“a. Allow the present application for the applicants herein and similarly circumstanced members of Applicant no.1 listed at Exhibit "C";

b. Hold and Declare that the Applicants and the similarly circumstanced employees/ members of Applicant no.1 (Exhibit C) are eligible and entitled to receive the 1st TBPS benefit of promotional pay scale from the date of completion of 12 years regular service by counting the service from the respective dates of initial appointment to the post of Jr. Engineer with all consequential benefits and reliefs flowing therefrom;

c. This Hon'ble Tribunal may be pleased to direct the Respondents to extend benefits of the time bound pay scale to the Applicants and those at Exhibit C, by considering the respective date of the initial appointment on the post of the Jr. Engineer and further fix and correct their pay scale and grant all consequential reliefs/benefits flowing therefrom with retrospective effect when due including revision in the retiral benefits/ pension and release the arrears in time bound manner say 12 weeks from the date of order;

d. Be pleased to quash and set aside the impugned order / letters at Exhibit "A" and such similar letters issued to the Applicants or other similarly circumstanced members of the Applicant no.1 at Exhibit "C";

e. The Hon'ble Tribunal be pleased to direct the Respondents to allow the representations of the applicants and all its similarly circumstanced members at Exhibit "J" & "L", in view of the judgments and orders passed in O.A. No.39/2019, O.A. No.254/2020 by this Hon'ble Tribunal and the Judgment and order passed on 19/09/2022 passed in the Writ Petition No.2330 of 2021 (A'bad) (Upendra Madhavrao Kulkarni v/s The State of Maharashtra), Order dt. 02/08/2022 passed in W.P. No.8009 of 2021 (Suhash Prabhakar Rao Dharasurkar and Ors V/s The State of Maharashtra and Ors.) & Order dt.06/02/2019 passed in W.P. No. 2605 of 2017 (The Association of the Subordinate service of Engineers Maharashtra state v/s The State of Maharashtra);

f. Costs may be imposed at actuals on the Respondents for not abiding and following in letter and spirit the Judgment of the Hon'ble Apex Court in the matter of State of Uttar Pradesh v/s Arvind Kumar reported in 2015(1) SCC 347 and Order dated 14/12/2016 of this Hon'ble Tribunal in OA No.59, 61 and 90 of 2016 as also their own Circular dated 28.2.2017, time and again."

8. Ld. Advocate for the applicants has submitted copy of letter dated 20.12.2022 from Deputy Executive Engineer, Sangamner to Shri R.S. Bhagwat, Retired Sub Divisional Engineer, Ahmednagar. This letter is in response to the applicants' representation regarding TBPS and ACPS informing the applicants as follows:

“उपरोक्त संदर्भित विषयान्वये कळविण्यात येते की आपण कनिष्ठ अभियंता नियुक्ती दिनांकापासून ग्रामविकास व महाराष्ट्र जीवन प्राधिकरण येथील शाखा अभियंत्यांना न्यायनिर्णयाप्रमाणे कनिष्ठ अभियंता नियुक्ती दिनांकापासून आश्वासीत प्रगती योजनेचा लाभ दिल्याप्रमाणे आपणांस देखील कनिष्ठ अभियंता नियुक्ती दिनांकापासून आश्वासीत प्रगती योजना मिळण्यासाठी आपण आपल्या अर्जात मागणी केलेली आहे. त्यानुसार आपणांस कळविण्यात येते की सदर न्यायनिर्णय हा त्या.३ व्यक्तींकरिताच लागू आहे सदरचा न्यायनिर्णय हा शासन निर्णय नसल्याने तो संपूर्ण ग्रामविकास व महाराष्ट्र जीवन प्राधिकरणातील सर्वांना लागू करण्यात आलेला नाही. त्यानुसार तो आपणांस देखील लागू नाही. (emphasis supplied)

याबाबतीत वरीष्ठ कार्यालयाने कळविल्याप्रमाणे वरीष्ठ कार्यालयाने देखील आपणांस कनिष्ठ अभियंता नियुक्ती दिनांकापासून आश्वासीत प्रगती योजनेचा लाभ देता येणार नाही असे कळविले आहे. त्याची प्रत अवलोकनार्थ सादर करण्यात येत आहे.

महाराष्ट्र शासन जलसंपदा विभाग, मंत्रालय, मुंबई यांचे पत्र क्र. आप्रयो-२०२०/ (८२/२०२०) आ (शा.अ.) दि.१३/१०/२०२० रोजीच्या पत्रामध्ये देखील आपल्या अर्जातील मागणीप्रमाणे आश्वासीत प्रगती योजना देता येत नाही असे नमूद केलेले आहे. त्याची प्रत सोबत सादर करण्यात येत आहे.”

9. In letter dated 30.1.2023 from Sub Divisional Engineer, Nashik to another applicant, the authorities give other reason for not implementing the directions of Hon'ble High Court and this Tribunal, which reads as under:

“आपल्या पत्रातील संदर्भ क्र.२ नुसार (शासन निर्णय, पाटबंधारे विभाग सिडीएस १५८२/१५८(२१५) आ (१०) दि.१६/०४/१९८४) अन्वये कनिष्ठ अभियंता हया पदाला वर्ग-२ चा दर्जा देण्यात आलेला आहे.

तसेच संदर्भ क्र.२ अन्वये कालबद्ध पदोन्नतीचा लाभ हा केवळ वर्ग ३ व वर्ग ४ (गट क व गट ड) यांच्यासाठी रलागू आहे व संदर्भ क्र. ३ नुसार सुधारीत आश्वासित प्रगती योजना दि.०१/०८/२००१ पासून गट अ ते गट ड पर्यंत लागू करण्यात आलेली असून ही योजना रु.८०००-१३५०० व त्याहून कमी वेतनश्रेणीत वेतन घेणा-या अधिकारी/कर्मचा-यांना स्लागू आहे.

आपण दि.१९/०७/१९७६ पासून कनिष्ठ अभियंता पदावर हजर झालेले व आपणास दि.०१/०४/१९८४ रोजी शाखा अभियंता पदाची दर्जाव्रती देण्यात आलेली आहे. त्यामुळे आपण कालबद्ध पदोन्नती आपण पात्र ठरत नाही. आश्वासित प्रगती योजनेचा पहिला लाभ दि. ०१/०८/२००१ रोजी मंजुर आपणास लागू करण्यात आलेला आहे. त्यामुळे आपणास संदर्भीय शासन निर्णयानुसार नियमाप्रमाणे आश्वासित प्रगती योजनेचा लाभ देण्यात आलेला आहे.”

10. Ld. Advocate for the applicants contends that what was rightfully due to the applicants and similarly placed other Government employees, is being refused by the respondents in spite of the orders of the Hon'ble High Court and this Tribunal. However, some Government departments in some areas of the State as well as local self bodies have implemented the orders of the Hon'ble High Court and this Tribunal for similarly placed employees. It has to be noted that the Junior Engineers of Government department can be posted on deputation to local self-bodies and vice-a-

versa. Due to erroneous implementation of the TBPS and ACPS, the applicants have suffered financial loss which has in fact demoralized them, though the stated aims of TBPS and ACPS was otherwise.

11. Ld. Advocate for the applicants relies on the letter dated 30.8.2024 from Shri Mangesh Bagde, Under Secretary, Water Resources Department to all Managing Directors, Chief Engineers and Superintending Engineers. The letter clearly instructs the officers about applicability of ACPS to various ranks in the Engineering hierarchy. It also specified the chain of hierarchy as follows:

“२. स्थापत्य अभियांत्रिकी सहाय्यक या पदाच्या पदोन्नती साखळीनुसार कनिष्ठ अभियंता, उप विभागीय अधिकारी/ अभियंता व कार्यकारी अभियंता या पदावर पदोन्नती अनुज्ञेय आहे. वित्त विभाग शासन निर्णय दि.०१.०४.२०१० व दि.०२.०३.२०१९ मधील तरतुदीनुसार, स्थापत्य अभियांत्रिकी सहाय्यक यांना सुधारित सेवांतर्गत आश्वासित प्रगती योजनेनुसार पदोन्नती साखळीतील लाभ पुढीलप्रमाणे अनुज्ञेय ठरतील:

कनिष्ठ अभियंता => उप विभागीय अधिकारी/ अभियंता => कार्यकारी अभियंता”

It is clear from the above that the post of Sectional Engineer is not a part of the prescribed hierarchy.

12. Ld. Advocate for the applicants relies on the judgment and order dated 17.10.2023 passed by the Nagpur Bench of this Tribunal in **OA No.567/2023 (SB) Prakash M. Deshmukh & Ors. Vs. The State of Maharashtra & Ors.** The four applicants therein are recruited as Junior Engineer between 1982 and 1984. All the applicants came to be upgraded to the post of Sectional Engineer between 1990 and 1991. The difference of pay between a Junior Engineer and a Sectional Engineer is very

nominal. He submits that applicants in that OA were deprived of first and second TBP after they completed 12 and 24 years of service respectively as Junior Engineer. Also, the 12 and 24 years came to be computed from the date of upgradation to the post of Sectional Engineer thereby losing the benefit of service between 6 and 8 years. He contends that the present case is exactly similar.

13. On query regarding post of Sectional Engineer in the Recruitment Rules, Ld. Advocate for the applicants submits that Recruitment Rules of 1970 did not have the post of Sectional Engineer. The GR of 1984 first time spoke of the post of Sectional Engineer and it was proposed at that point of time to formulate the Recruitment Rules which came to be formulated much later in 1998.

14. He further relies on the judgment and order dated 19.9.2022 passed by the Hon'ble Bombay High Court Bench at Aurangabad in Bench of writ petitions including **W.P. No.2330/2021 Upendra M. Kulkarni Vs. The State of Maharashtra & Ors.** Paras 3, 6, 9 & 10 of the judgment reads as under:

“3. The common issue involved in the present petitions is whether the upgradation granted on the post of Sectional Engineer can be treated as a set off against the financial upgradation to be granted under the provisions of Assured Career Progression Scheme (for short ‘ACP Scheme’). The issue is no more res-integra and is squarely covered by the judgment of this Court dated 06.02.2019 in Writ Petition No. 2605 of 2017 in The Association of Subordinate Service of Engineers Maharashtra State and Ors. Vs. State of Maharashtra and Ors. In paragraph No. 42 of the judgment it is held as under :

“42. In this view of the matter, the denial of the 'second benefit' under the MACP Scheme, with reference to an exercise of cadre restructuring and the revision in pay scale, in the year 1984, appears to be legally unsustainable. We are, thus, inclined to answer the aforesaid question in the 'negative'. We hold and declare that the upgradation under GR dated 16th April, 1984 does not constitute grant of nonfunctional pay scale and cannot be treated as the 'first benefit' within the meaning of Clause 2(b)(3) of the GR dated 1st April, 2010. We are, thus, inclined to allow the petition.” (emphasis supplied)

6. For better understanding of the background in which the controversy arises, it would be necessary to deal with some factual details of the petitioner in Writ Petition No. 2330 of 2021. He was initially appointed on the post of Junior Engineer (Civil) on 28.11.1984. He was granted upgradation on the post of Sectional Engineer on 01.04.1990. His upgradation to the post of Sectional Engineer was treated as first promotion earned by him. Therefore, for the purpose of granting financial upgradation under the ACPS, the period of 12 years was computed from 01.04.1990 and he was granted the benefit of the first financial upgradation under the ACPS w.e.f. 01.04.2002. His demand is for ignorance of the upgradation granted on the post of Sectional Engineer w.e.f. 01.04.1990, in view of judgment of this Court in *The Association (Supra)*. Once the upgradation granted on the post of Sectional Engineer is ignored, the period of 12 years and 24 years for grant of first and second financial upgradation would become computable from the date of his initial appointment i.e. 28.11.1984.

9. So far as, the objection of Mr. Wasmatkar, about the exact pay scales to be extended to the petitioners, we do not express any

opinion in that regard. It is for respondent Nos. 2 and 3 to examine each case on merits and determine as to whether, the respective petitioner is eligible for grant of financial upgradation under the ACPS or not and if found so eligible, what exact pay scale is to be granted to him/her by way of financial upgradation under ACPS. We express no opinion about the same.

10. Consequently, Writ Petitions are allowed by directing respondents not to take into consideration the upgradation granted on the post of Sectional Engineer while considering the entitlement of the petitioners for grant of financial upgradation under the ACPS. In case the petitioners are found eligible for grant of such financial upgradation, the consequential benefits be extended to them within a period of four months from today. The Writ Petitions are allowed to the above extent.”

15. Ld. Advocate for the applicants submits that the above judgment was given effect by Maharashtra Jeevan Pradhikaran vide order dated 30.8.2024 and that the applicants are praying for similar benefits to be granted to them.

16. Ld. Advocate for the applicants relies on the judgment and order dated 6.2.2019 passed by the Hon'ble Bombay High Court in **W.P. No.2605 of 2017 The Association of the Sub-ordinate Service of Engineers Vs. The State of Maharashtra & Ors.** Paras 18, 38, 39, & 42 of the judgment reads as under:

“18. In OA No.233 of 2013, decided by the learned Member on 21st April, 2015, at Mumbai Bench, the applicants were Agricultural Assistants. They were denied the 'second benefit' under MACP Scheme, on the premise that vide Government Resolution dated 8th

December, 1994, their pay-scale was revised to Rs.1350-30-1440-40-1800-EB-50-2200 from the then existing pay-scale Rs.1200-30-1440-EB-30-1800, after putting in seven years regular service in the said cadre and the said revision of pay, given effect to from 1st January, 1986 amounted to the 'first benefit' under Clause 2(b)(3) of the MACP Scheme.

38. In the light of the above, we are of the considered view that the learned Tribunal had committed an error in construing that the exercise of restructuring of the cadres, without there being any consequent creation of new posts and any change in the duties and responsibilities, constituted the grant of non- functional pay-scale for the mere reason that the pay-scale of all the junior engineers was revised, as a class.

39. Another factor, which has a material bearing on the claim of the applicants is that under ACP and MACP Scheme, the basic postulate is the benefit of pay-scale of the promotional post. It is nobody's case that under the GR dated 16 th April, 1984 the applicants were given the benefit of the pay-scale of the promotional post. Mere revision of the pay-scale cannot be equated with the grant of pay-scale of the promotional post. On the contrary, it is pertinent to note that under the same GR, the Government had re-designated the next higher post as Assistant Engineers Grade-I and Assistant Executive Engineers.

42. In this view of the matter, the denial of the 'second benefit' under the MACP Scheme, with reference to an exercise of cadre restructuring and the revision in pay scale, in the year 1984, appears to be legally unsustainable. We are, thus, inclined to answer the aforesaid question in the 'negative'. We hold and declare that the upgradation under GR dated 16th April, 1984 does not constitute grant of non-functional pay- scale and cannot be treated as the 'first

benefit' within the meaning of Clause 2(b)(3) of the GR dated 1 st April, 2010. We are, thus, inclined to allow the petition."

17. He submits that since the issues are exactly identical to those dealt with in the writ petitions decided by the Hon'ble High Court and also this Tribunal, the applicant and the class of similarly placed other Government employees should get exactly the same benefits in view of the Govt. Circular of Law and Judiciary Department dated 28.2.2017.

18. The applicants have been representing to the Government in various departments to implement the orders of the Hon'ble High Court and pass on the benefits to all the Government employees who are similarly placed.

19. He placed on record some Government orders in connection with relief granted to some of the applicants.

20. Ld. Advocate for the applicants tenders copy of and relies upon para 4 of the common judgment and order dated 11.10.2023 passed by this Tribunal at Aurangabad Bench in OA No.966/2019 & other 14 OAs (Prakash V. Deshpande Vs. The State of Maharashtra & Ors.) and submits that prayers mentioned in para 4 (B) and (C) therein are exactly similar to the prayers in the present OA.

21. Ld. Advocate for the applicants also tenders copy of office order no.161 of M.M. Khairnar, the Assistant Chief Engineer, Water Resources Department, Chhatrapati Sambhajinagar dated 10.12.2024 which is issued in compliance to the said order dated 11.10.2023 passed by the Aurangabad Bench of this Tribunal in OA No.966/2019 & other 14 OAs. in favour of one of the applicants in OA No.463/2019 one Mr. Ravindra R. Hadoltikar.

22. Ld. Advocate for the applicants tenders coloured photo copy of the service book wherein revised calculation/pay fixation based on the said order dated 11.10.2023 of Aurangabad Bench of this Tribunal is mentioned.

23. Ld. Advocate for the applicants submits that this is just representative compliance order that she is submitting and she avers that similar orders have been issued in favour of all the others applicants in those OAs.

24. Ld. Advocate for the applicants submits that revised pay fixation orders in respect of similarly placed subordinate engineers in Marathwada and Vidarbha are being issued pursuant to the orders of this Tribunal at Aurangabad and Nagpur respectively. However, no such orders are forthcoming in the jurisdiction of Principal Bench of this Tribunal. She submits that prayers of the applicants in the present OA be granted.

25. Ld. PO relies on affidavit in reply dated 24.9.2024 filed by Anand Dinkarrao Vasaikar, SDO, in the office of Chief Engineer, Konkan Region, 4th Floor, HSBC Bank Building, Mumbai on behalf of respondents no.1, 2, 5 & 6 and another affidavit in reply dated 16.12.2024 filed by Rajendra Motiram Bhoyar, Dy. Executive Engineer in the office of Executive Engineer, Integrated Unit (PW) Division, Bandhkam Bhavan, Fort, Mumbai on behalf of respondents no.2, 3 & 6. She submits that the last of the applicants has already retired on 2.12.2019. There are in all 1655 applicants of various departments who seek to get benefits of the GR dated 8.9.1995. She submits that since there are a huge number of applicants, each applicant's case will have to be separately examined in terms of applicability of the GR.

26. In response to my query, Ld. PO submits, regarding formal difference in pay scale of Sectional Engineer and Junior Engineer, that the two pay scales are distinct. Ld. PO submits that there is inordinate delay by the applicants in approaching this Tribunal and submits that it is a time barred OA.

27. Ld. PO relies on the judgment and order dated 21.3.2022 passed by the Hon'ble Supreme Court in **Civil Appeal No.1985 of 2022 (State of Maharashtra Vs. Madhukar Antu Patil)** wherein it is held that, the benefits of TBPS shall be applicable when an employee has worked for twelve years in the same post and same pay scale. Ld. PO argues that the ratio of this judgment viz. earlier service of temporary/ad hoc nature should not be counted in considering the grant of TBPS and other consequential benefits is applicable to the present case. The petitioner therein appointed as Technical Assistant on work charge basis on 11.5.1982 was absorbed as Civil Engineering Assistant in 1989. He became eligible and was granted the TBPS considering his date of appointment in the year 1989 and not in 1982. The facts are hence distinguished and the above stated ratio is not applicable in the present case.

28. Ld. Advocate for the applicants again submits that the delay aspect has already been covered in the judgment and order dated 17.10.2023 passed by the Nagpur Bench of this Tribunal in **OA No.567/2023 (SB) Prakash M. Deshmukh & Ors. Vs. The State of Maharashtra & Ors.** Ld. Advocate for the applicants further submits that the pay scale issue has already been covered in the judgment and order dated 6.2.2019 passed by the Hon'ble Bombay High Court in **W.P. No.2605 of 2017 The Association of the Sub-ordinate Service of Engineers Vs. The State of Maharashtra & Ors.** In this judgment the post of Sectional Engineer was observed as non-functional pay scale and cannot be treated as first benefit

for the ACPS within the meaning of clause 2(c)(3) of the GR dated 1.4.2010. Therefore, the upgradation to the non-functional pay scale cannot be treated as first promotion.

29. The above matter was kept on 21.4.2025 for clarification of prayer clause (e) & (f) and for submission of copy of judgment and order dated 19.6.2023 passed by Nagpur Bench of this Tribunal in OA No.254/2020 and judgment and order of this Tribunal OAs. No.59. 61 & 90 of 2016.

30. By way of clarification the Ld. Advocate for the applicants submits that he is not pressing prayer clause (e). However, copy of judgment and order dated 19.6.2023 passed by the Nagpur Bench of this Tribunal in **OA No.254/2020 (Pradip N. Bhelande & Ors. Vs. The State of Maharashtra & Ors.)** which was inadvertently not attached to the OA is being tendered today.

31. Ld. Advocate for the applicants further submits that none of the replies by the respondents to the representations of the applicants (Exh.-A Colly.) have either demonstrated that the judgments of the Hon'ble High Court and this Tribunal are not applicable to the present applicants neither there is any reference to this issue in the replies filed by the respondents. Moreover, in some of the cases of which the applicants have tendered copies, these orders have been implemented.

32. Ld. Advocate for the applicants had submitted copies of orders of the concerned department implementing the orders of the Hon'ble High Court and this Tribunal in cases of S.D. Mayee (Sr. No.881), P.B. Durge (Sr. No.899) & S.P. Javade (Sr. No.943) at pages 134, 135 and 139 respectively in Exhibit C to the OA. Bases on these orders passed by the respondents, he contends that the respondents are selective in

implementing the orders of the Hon'ble High Court and this Tribunal which is violation of Articles 14 and 16 of the Constitution of India.

33. He has also submitted copy of the judgment and order passed by the Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors (2015) 1 SCC 347** and relied on para 22 of this judgment.

34. Ld. Advocate submits that respondents have not demonstrated that the specific judgment on which the applicants are relying are specific or 'in personam' and not 'in rem' or otherwise they are distinguishable. In that situation the respondents were duty bound to implement the judgment and order of the Hon'ble High Court and this Tribunal in totality.

35. Ld. Advocate for the applicants submits that costs as prayed in prayer clause (f) are deserved to be imposed on the respondents as the respondents have been unfair while implementing the stated judgments and orders.

36. Ld. PO submits that the judgment and orders of the Hon'ble High Court or this Tribunal have nowhere mentioned that they are 'in rem'. She relied on para 22.3 of the judgment in **Arvind Kumar Srivastava** (supra). While arguing on the judgment of this Tribunal in **Pradip N. Bhelande** (supra), Ld. PO submits that it is applicable to the applicants therein specifically and also if they are entitled and eligible for the benefit.

37. While arguing on the judgment and order dated 18.6.2019 passed by this Tribunal at Aurangabad Bench in **OA No.39/2019 Smt. Urmila P. Thakur & Anr. Vs. The State of Maharashtra & Ors.**, referred to in prayer clause (e) of the OA, Ld. PO relied on para 12 of the judgment and

submits that the relief is granted specifically to the applicants and it not applicable to similarly placed other employees.

38. While arguing on the judgment of the Hon'ble High Court in **W.P. No.2330/2021 Upendra M. Kulkarni** (supra), referred in prayer clause (e) of the OA, Ld. PO pointed out paras 9 and 10 and submitted that the Hon'ble High Court has neither expressed any opinion about the exact pay scales to be extended to the petitioners therein nor about the financial upgradation under the ACPS. Further the said judgment and order leaves it for the respondents to decide the eligibility of each and every petitioner.

39. While arguing on the common judgment and order dated 2.8.2022 passed by the Hon'ble Bombay High Court, Bench at Aurangabad in **WP No.8009 of 2021 (Suhash Prabhakar Rao Dharasurkar and Ors V/s The State of Maharashtra and Ors.)**, referred in prayer clause (e) of the OA, and other connected writ petitions, Ld. PO pointed out para 12 of the judgment and emphasized that the order is applicable to the 'respective petitioners' and hence this judgment and order is also not 'in rem'.

40. Ld. PO refers to the judgment in **W.P. No.2605 of 2017 The Association of the Sub-ordinate Service of Engineers** (supra) and pointed out paras 42, 43 & 44 thereof. She submits that in para 44 there is specific reference to circular dated 13.6.2016. The judgment is 'in personam' and not 'in rem'.

41. She further submits that the prayer clause (f) in which costs are prayed to be imposed, may not be granted and contends that the reliance placed by the Ld. Advocate for the applicants on circular dated 28.2.2017 is not applicable in the present case as it is only a circular.

42. Ld. Advocate for the applicants submits that even in the category of similarly placed employees, whose names are mentioned at Exhibit-C, some of them have been joined as Junior Engineers in the same years as the petitioners in the writ petitions before the Hon'ble High Court or the applicants before this Tribunal in the judgments and orders referred earlier in whose favour, orders have been passed. He therefore contends that these applicants or similarly placed employees, definitely fall in the same category as petitioners and applicants in those matters.

43. I have heard the arguments of both the sides and gone through the documents and judgments relied upon carefully. The issues in question have been squarely covered by the judgment of the Hon'ble Bombay High Court in ***W.P. No.2605 of 2017 The Association of the Sub-ordinate Service of Engineers*** (supra) and ***W.P. No.2330/2021 Upendra M. Kulkarni*** (supra).

44. Considering all the above, I have no hesitation in allowing this OA and granting the prayers of the applicants. I, therefore, pass the following order:

ORDER

A) The Original Application is partly allowed.

B) The Respondents are directed to provide the first benefit of Time Bound Promotion Scheme (TBPS) on completion of 12 years regular service by counting the service from respective dates of initial appointment to the post of Junior Engineer and provide all consequential benefits and reliefs flowing therefrom to the Applicants and similarly circumstanced employees/members of the Applicant no.1 listed at Exhibit 'C', if they are otherwise eligible.

C) The Respondents are further directed to fix and correct the pay scale of the Applicants and those at Exhibit 'C' and grant all consequential reliefs/benefits flowing therefrom with retrospective effect when due; including revision in retiral benefits/pension and release of the arrears in time bound manner.

D) The impugned orders/letters at Exhibit 'A' and such similar letters issued to the applicants or other similarly circumstanced members of the Applicant No.1 listed at Exhibit 'C' are quashed and set aside.

E) The Respondents are directed to complete this exercise and implement the orders within a period of six months from the date of this order and communicate to the applicants within a month thereafter.

F) The prayer clause (f) for imposing costs on the Respondents is rejected.

Sd/-
(A.M. Kulkarni)
Member (A)
22.4.2025

Dictation taken by: S.G. Jawalkar.