

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.380 OF 2015**

**DISTRICT : PUNE**

Shri Sanjay Ramchandra Devgekar, )  
B-1/403, Dahanukar Colony, )  
'Dahanukar Regency', Near Kapil Abhijat, )  
Kothrud, Pune 411 038 )...**APPLICANT**

**VERSUS**

1. Chief Secretary, )  
State of Maharashtra, )  
Mantralaya, Mumbai 400 032. )
2. Additional Chief Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai 400 032 )
- ⊗ 2 A. The Principal secretary [Energy] Industries, Energy and )  
Labour Department, Mantralaya, Mumbai-32. )
3. Chief Engineer (Electrical), )  
Public Works Division, )  
Bandhkam Bhavan, Marzbaan Road, )  
Fort, Mumbai. )
4. Shri R.S. Patil, )  
Deputy Engineer (Electrical), )  
Malbar Hill Electrical Sub-Division, )  
M.S.R.D.C. Compound, Opp. Dena Bank, )  
Nepean Sea Road, Mumbai 400 036. )


⊗ Correction is  
carried out as per  
order dt:-5/7/2016


7/7/16  
Registrar

Maharashtra Administrative Tribunal  
Mumbai.

5. Shri A.H. Mujawar, )  
Assistant Electrical Inspector, )  
Bandhkaam Bhawan Campus, )  
Powai Naka Parisar, )  
Satara - 415 001. )
6. Shri V.N. Shingane, )  
Assistant Superintending Engineer )  
(Electrical), In the office of )  
Superintending Engineer (Electrical), )  
PWD Compound, Public Works Campus, )  
Opp. Ladies Club, Bungalow No.39/1, )  
Nagpur 440 001. )
7. Shri S.B. Mahajan, )  
Assistant Electrical Inspector, )  
In the office of Electrical Inspector, )  
1<sup>st</sup> floor, Mahaaxmi Chambers, )  
Opp. Takali Phata, Off N.H.3, Dwarka, )  
Nasik - 422 002. )
8. Shri F.A.M. Mulla, )  
Assistant Electrical Inspector, )  
Paga Building, Bhawani Mandap, )  
Taluka Karveer, )  
District Kolhapur 416 001. )

9. Shri C.T. Thorat, )  
Assistant Electrical Inspector, )  
Inspection Division No.1, )  
Road No.11, Wagale Industrial Estate, )  
Opp. Jost Company, Thane (W) 400 604. )
10. Shri P.D. Donde, )  
Deputy Engineer (Electrical), )  
Siren Sub-Division, Milk Dairy Campus, )  
Nehrunagar, Kurla (E), Mumbai 400 024. )
11. Shri U.P. Karanjekar, )  
Assistant Electrical Inspector, )  
Lift Inspection Division, Second Floor, )  
Rationing Compound, Ramkrishna )  
Chemburkar Marg, Chembur (E), )  
Mumbai 400 071. )
12. Shri S.V. Mishra, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
13. Shri R.R. Chavan, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )

14. Shri G.N. Suralkar, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
15. Shri H.H. Patil, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
16. Shri V.S. Pusadkar, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
17. Shri A.G. Kanase, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
18. Shri P.V. Mane, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
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19. Shri S.R. Pujari, )  
Assistant Electrical Inspector, )  
In office of Chief Engineer (Electrical), )  
3<sup>rd</sup> floor, Marzaban Street, Bandhkam )  
Bhawan, Fort, Mumbai 400 001. )
20. Smt. S.S. Survase, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
21. Shri M.N. Khilare, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
22. Shri R.S. Deokar, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
23. Shri N.D. Arjun, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )
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24. Shri K.B. Khare, )  
Assistant Electrical Inspector / )  
Deputy Engineer, )  
C/o. Public Works Department, )  
Mantralaya, Mumbai 400 032. )

**....RESPONDENTS**

Smt. Punam Mahajan, learned Counsel for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents No.1 to 3.

Ms. S.P. Manchekar, learned Counsel for Respondents No.4, 5, 7, 9, 10, 11, 13 and 19.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 16.06.2016.

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

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant, Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents No.1 to 3 and Ms. S.P. Manchekar, learned Counsel for Respondents No.4, 5, 7, 9, 10, 11, 13 and 19.

2. The Applicant in this O.A. is seeking deemed date of promotion w.e.f. 24.01.2006 to the post of Deputy Engineer (Electrical)/ Assistant Electrical Inspector. He is also seeking direction that he may be considered for promotion on that basis to the post of the Executive Engineer (Electrical). The Applicant has challenged order dated 05.05.2015 rejecting his representation seeking these reliefs.

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3. Learned Counsel for the Applicant argued that the Applicant joined Government service as Junior Engineer (Electrical) in Public Works Department (P.W.D.) on 08.07.1983. Recruitment Rules for the post of Assistant Engineer (Electrical), Grade II in P.W.D. have been notified on 16.05.2009. Before that the Irrigation Department (now Water Resources Department) has framed Recruitment Rules for the post of Assistant Engineer (Civil), Grade II which are also applicable to P.W.D. ~~also~~. However, there were no separate rules for Electrical Origination of P.W.D. The Applicant got the qualification of AMIE and, thus acquired the degree in Electrical Engineering on ~~30.04.1990~~ <sup>30.04.1999</sup>. As per the Recruitment Rules viz. the Assistant Engineers (Electrical & Mechanical) Grade II in Maharashtra Engineering Services Group 'B' (Gazetted) (Recruitment) Rules, 2013, framed by the Water Resources Department provide that Diploma Holder Junior Engineers, who have obtained AMIE degree (equivalent to B.E. Degree) or B.E. degree while in service, are to be given benefit of 3/8<sup>th</sup> of service rendered as Junior Engineering during 01.04.1981 to 31.12.1996 as per Government Resolution (G.R.) dated 29.11.1984 in the cadre of Assistant Engineers Grade II. Such persons, will, however, be required to pass viva-voce test to be absorbed in the cadre of Assistant Engineer, Grade II. The rules applicable to the Assistant Engineer (Electrical), Grade II of P.W.D. do not have a similar provision. The Applicant has already been granted benefit of 3/8<sup>th</sup> rule on the basis of G.R. dated 29.11.1984 and before these rules for Assistant Engineers (Electrical) Grade II in

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P.W.D. were notified. Learned Counsel for Applicant argued that at least 8 persons, other than the Applicant have been given benefit of 3/8<sup>th</sup> service including Shri U.K. Dhote, who passed AMIE on 30.07.1997 and Shri J.A. Thorat, who passed AMIE on <sup>25-07-1998</sup> 30.04.1999. The Applicant passed AMIE on 30.04.1999, and was given benefit of 3/8<sup>th</sup> service from 22.05.1993. The Applicant is entitled to be given deemed date of promotion as Deputy Engineer from 24.01.2006 when Shri J.A. Thorat was promoted as Deputy Engineer. The Applicant was promoted as Deputy Engineer on 07.07.2007, as the order giving him benefit of 3/8<sup>th</sup> service was issued very late on 28.08.2006. As a result, though he is <sup>similar</sup> senior to Shri Thorat, who was promoted on 24.01.2006 as D.E. as his seniority of J.E.'s cadre was not revised till 28.08.2006 he has not been promoted nor given deemed date of promotion as D.E. If the orders were passed when the Applicant had obtained degree of AMIE in 1999, he would have been promoted as D.E. along with Shri Thorat on 24.01.2006. Learned Counsel for the Applicant argued that Electrical Wing of P.W.D. has since been bifurcated into P.W.D. (Electrical) Wing and Electrical Inspectorate which is now under the Energy Department. The Applicant has chosen to come to the Inspectorate, but his deemed date is to be decided based on G.R. dated 29.11.1984 by P.W.D.

4. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents No.1 to 3 that the order dated 05.05.2015 mentions that there is no provision of absorption of Junior Engineers with AMIE qualification as Assistant

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Engineer, Grade II in the Recruitment Rules notified on 16.05.2009 for the Assistant Engineer, Grade II in Electrical Wing. However, the Recruitment Rules notified on 13.03.2013 by the Water Resources Department for Assistant Engineer (Electrical & Mechanical), Grade II, there is provision of absorption of Junior Engineer (Electrical) as Assistant Engineer, Grade II on acquiring AMIE degree, after they clear the oral test to be conducted by Maharashtra Public Service Commission. The Public Works Department is in the process of amending the Recruitment Rules for Assistant Engineer (Electrical), Grade II, after which the case of the Applicant could be considered. Learned C.P.O. argued that O.A. is premature and the Applicant should wait for amendment to the Recruitment Rules. Learned C.P.O. argued that the Applicant cannot be given deemed date of promotion in the cadre of Deputy Engineer, unless the Recruitment Rules are amended. Learned C.P.O. stated that from 26.02.2015, Electrical Inspectorate has being placed under Energy Department. However, for the time being rules of P.W.D. are applicable to Electrical Inspectorate also. Recruitment Rules notified on 16.05.2009 are applicable to Electrical Engineers in P.W.D. also. By G.R. dated 07.10.2015, Recruitment Rules applicable to Electrical Wing of P.W.D. have been made applicable to 'Electrical Inspectorate'.

5. Learned Advocate Ms. Manchekar argued on behalf of Respondent Nos.4, 5, 7, 9, 10, 11, 13 and 19 that the Applicant passed AMIE on 30.04.1999. G.R. dated 01.03.2000, provides that Junior Engineer who were

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appointed during the period from 01.04.1981 to 16.06.1997, till the Recruitment Rules were notified, and who acquired degree, will get seniority of 3/8<sup>th</sup> of their service as Junior Engineer in the cadre of Assistant Engineer, Grade II. Learned Counsel for private Respondents argued that the Junior Engineers, who acquire Engineering degree after 16.06.1997 are not eligible to get the benefit of 3/8<sup>th</sup> service. The Applicant acquired AMIE on 30.04.1999. He is not eligible to get benefit of 3/8<sup>th</sup> service as per G.R. dated 29.11.1984. In the relevant recruitment rules viz. the Assistant Engineer (Electrical), Grade II and Sectional Engineer (Electrical), Group B (Gazetted) in the Electrical Organization under the Public Works Department (Recruitment) Rules, 2009 there is no such provision.

6. The Applicant was recruited as Junior Engineer in the Electrical Organization in P.W.D. on 08.07.1983. As per G.R. dated 19.11.1984, issued by the Irrigation Department, but which was applicable to P.W.D., it is provided that :

“ शासन निर्णय, पाटबंधारे व वीज विभाग, क्रमांक एसएलएस-२६७०/१२५४९२-आ (६), दिनांक ४ फेब्रुवारी १९७५ मध्ये अंशतः फेरफार करून शासन आता असे आदेश देत आहे की,

(१) सेवेत असतांना जे पदविकाधारक कनिष्ठ अभियंते/शाखा अभियंते असो सिअट मेंबरशिप एक्झामिनेशन ऑफ दी इन्स्टीट्यूशन ऑफ इंजिनिअर्स (इंडिया) या संस्थेतून स्थापत्य, यांत्रिकी अथवा विद्युत अभियांत्रिकी विषयातील शाखा “ए” व “बी” दोन्ही उत्तीर्ण होतील अशांची ज्येष्ठता, त्यांना सहाय्यक अभियंता श्रेणी-२ समजून, ते ज्या दिवशी ही अर्हता प्राप्त करतील त्यापूर्वीच्या सेवेचा ३/८ सेवाकाल त्यांनी सहाय्यक अभियंता श्रेणी-२ म्हणून व्यतित केला आहे असे गृहीत धरून त्यांची ज्येष्ठता सहाय्यक अभियंता श्रेणी-२ च्या ज्येष्ठता सूचीत निश्चित करावी. ही ज्येष्ठता उपविभागीय अभियंता/उप अभियंता या पदांवर पदोन्नतीसाठी जमेल धरावी. अशा


प्रकारे निश्चित केलेली ज्येष्ठता दिनांक १ एप्रिल १९८१ व नंतरच्या वर्ग-२ च्या पदांवर पदेन्ततीसाठी तयार करण्यात येणाऱ्या निवडसूचीसाठी विचारात घ्यावी.”

This G.R. provides that such seniority will be given in case of promotion given on or after 01.04.1981. The provision of this rules were applied to Junior Engineers in Irrigation and Public Works Departments, including those in Electrical Organization of P.W.D. The Applicant was given benefit of this G.R. by order dated 28.08.2006 and he was given deemed date of appointment as Degree holder Junior Engineer w.e.f. 22.05.1993. This was done much after Recruitment Rules for Assistant Engineer (Civil) Grade II were notified by Irrigation Department, on 16.06.1997. These rules of 1997 were applicable to P.W.D. also. However, it seems, that P.W.D. continued to give benefit of G.R. dated 19.11.1984 to Junior Engineers working in Electrical Organization. Learned Counsel for the Private Respondent has argued that by G.R. dated 01.03.2000 issued by Irrigation Department provided for regularization of services of Assistant Engineer, Grade II, both in Irrigation Department as well as P.W.D. including Electrical Engineers. Para 1(d) of this G.R. provides that:


“ (ड) दि.१.४.१९८१ ते दि.१६.६.१९९७ पर्यंत म्हणजेच सेवाप्रवेश नियम अंतिम होइपर्यंत सेवेत राहून पदवी धारण केलेल्या पदविकाधारक कनिष्ठ अभियंता/शाखा अभियंता यांची ज्येष्ठता शासनाच्या दि.२९.११.१९८४ च्या शासननिर्णयातील ३/८ सेवा जोडून दिलेल्या मानीव दिनांकापासून निश्चित करून एकूण ४०० अभियंत्यांच्या सहाय्यक अभियंता श्रेणी-२ संवर्गातील नेमणूका नियमित करण्यात येत आहेत.”

From this, it does appear that after recruitment rules were notified on 16.06.1997, the appointment to the post of

Assistant Engineer, Grade II were to be made in accordance with those rules. However, the rules notified on 16.06.1997 were applicable to Civil Engineers only. Though the G.R. dated 01.03.2000 regularized services of all degree holder Junior Engineers, including Civil and Electrical Engineers, who acquired degree upto 16.06.1997, there were no recruitment rules for Electrical Engineers in Irrigation and P.W.D. Rules for Electrical Organization were notified by P.W.D. only on 16.05.2009 when "the Assistant Engineer (Electrical) Grade II and Sectional Engineer (Electrical), Group B (Gazetted) in the Electrical Organization under the Public Works Department (Recruitment) Rules, 2009 were formulated. Similar rules were notified by Water Resources Department on 13.03.2013 called the 'Assistant Engineers (Electrical & Mechanical), Grade II in the Maharashtra Engineering Services, Group 'B' (Gazetted), (Recruitment) Rules, 2013. It appears that G.R. dated 01.03.2000 was based on presumption that recruitment rules were notified on 16.06.1997 when Recruitment Rules for Civil Engineers were notified. These Junior Engineers who acquires degree before that date, their services were regularized. However, the question arises as to what happens to degree holder Junior Engineers in Electrical Organization of P.W.D. when no recruitment rules were notified. In 1997 rules, 3/8<sup>th</sup> service as Junior Engineer was included by amendment dated 08.07.2009. There is a similar provision in the rules of Irrigation Department for Electrical Engineers notified on 13.03.2013. This provision is not included in the Recruitment Rules for Electrical Engineers in P.W.D. notified on



16.05.2009. It is clear that strict interpretation of G.R. dated 01.03.2000 could mean that till Recruitment Rules for Assistant Engineer (Electrical), Grade II are formulated in P.W.D., G.R. dated 29.11.1984 would continue to be applicable. The Recruitment Rules have been notified on 16.05.2009. The deemed date in the cadre of Assistant Engineer (Electrical), Grade- II in P.W.D. cannot be said to be invalid till these rules were notified on 16.05.2009. As such, the deemed date of appointment/ absorption as Assistant Engineer, (Electrical), Grade II given to the Applicant by G.R. dated 28.08.2006 has to be held to be valid. In fact the Respondent Nos.1 to 3 have never stated that this deemed date was given to the Applicant by mistake or inadvertently. Once the order dated 28.08.2006 giving deemed date of appointment as Assistant Engineer, (Electrical) Grade II on 22.05.1993 to the Applicant was passed, he would be entitled to get consequential benefits. He was given this deemed date before the Recruitment Rules were notified on 16.05.2009. The applicant has claimed in paragraph 6.18 of O.A. that 9 persons including the Applicant were given benefit of 3/8<sup>th</sup> service as J.E. (Electrical) while appointing them as A.E. (Electrical) Grade II. Two of them viz. Shri U.K. Dhate and Shri J.A. Thorat passed AMIE on 30.07.1997 and 25.07.1998 respectively, after the date on which Recruitment Rules (R.R.) were notified on 16.06.1997. The Applicant passed AMIE on 30.04.1999. In the affidavit-in-reply, the Respondent No.2(A) dated 29.01.2016, this has not been denied. It is, thus clear that even after G.R. dated 01.03.2000 was issued, J.E. (Electrical) in P.W.D. continued to be given benefit of 3/8<sup>th</sup>



service even after 16.06.1997 when R.R. were notified for Civil Engineers in Electrical Wing. The Applicant in paragraph 6.19 of O.A. has claimed that 10 persons, who were given dates of appointment as A.E. Grade II after him, and therefore, are junior to him, were promoted on 24.01.2006. This is not denied by the Respondent No.2A in paragraph 18 of the affidavit-in-reply dated 29.01.2016.

7. It is quite clear that the Applicant has been given deemed date as 22.05.1993 of appointment as A.E. (Electrical), Grade II. This was done by order dated 28.08.2006. This order cannot be said to be issued in contravention of any rules e.g. R.R. notified on 16.06.1997 which are not applicable to A.E. (Electrical), Grade II or R.R. notified on 16.05.2009 for A.E. (Electrical), Grade II, which are applicable to A.E. (Electrical), Grade II but not retrospectively. It has already been held that such appointment as A.E. (Electrical) Grade II does not contravene G.R. dated 01.03.2000. Once it is held that the Applicant's appointment as A.E. Grade II from 22.05.1993 is valid, he cannot be denied consequential benefits. If the Respondents No.1 to 3 want to make any change in R.R. notified on 16.05.2009, that cannot be a ground to deny deemed date of promotion as Deputy Engineer to the Applicant, from the date from which his juniors were so promoted. If the R.R., if and when amended, would require passing viva voce test conducted by M.P.S.C., the Applicant and other similarly situated would have to do so. However, only the Applicant cannot be singled out and made to wait for amendment to rules, which may or may not

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be made, while his juniors are already promoted to higher posts.

8. The Applicant is eligible to get 24.01.2006 as deemed date of promotion as Deputy Engineer and promotion to the next post on that basis. The impugned order dated 05.05.2015 is unsustainable.

Unfortunately, the Respondent No.2 has chosen not to file any reply in this matter. As at the relevant time, the Applicant was working in Electrical Organization of P.W.D. their affidavit-in-reply from the Respondent No.2 would have been useful.

9. The Respondents No.2 and 2A are directed to take action to grant deemed date of promotion as Deputy Engineer (Electrical) <sup>Assistant Electrical Inspector</sup> to the Applicant within three months from the date of this order in the light of observations made in the body of this order. The Applicant will be entitled to be considered for next promotion, on the basis of deemed date of promotion in the cadre of Deputy Engineer. The order dated 05.05.2015 is quashed and set aside. This O.A. is allowed accordingly with no order as to costs.

(X)

(X) Correction  
is carried  
out as per  
order dt:-  
5/7/2016.

Registrar

Maharashtra Administrative Tribunal  
Mumbai.

Sd/-

(RAJIV AGARWAL)  
VICE-CHAIRMAN

Place : Mumbai  
Date : 16.06.2016  
Typed by : PRK

**05.07.2016**

**O.A No 380/2015**

Shri. S.R. Devgekar ... Applicant  
Vs.  
The State of Maharashtra & Ors... Respondents

Heard Smt Punam Mahajan, learned advocate for the applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

This application is for speaking to the minutes. Learned Advocate Mrs Mahajan stated that in the Judgment of this dated 16.6.2016, in O.A 380/2016 there are some typographical errors as mentioned from 1 to 5.

In the title Respondent no. 2A, i.e. Principal Secretary, (Energy) Industries, Energy and Labour Department, Mantralaya, Mumbai 400 032 has not been mentioned. The same may be included.

In Page No. 7, 12<sup>th</sup> line, the date should be read as 30.4.1999 in place of 30.4.1990.

On page No. 8, 5<sup>th</sup> line, the date should be read as 25.7.1998 in place of 30.4.1999.

On the same page No. 12<sup>th</sup> line the word 'senior' should be replaced by 'similar'.

On page no. 15, para 9, 3<sup>rd</sup> line Deputy Engineer (Electrical) a dash will be included Assistant Electrical Inspector will be added. Ordered accordingly.

Certified copy may be given to the Applicant and the Respondents and incorrect copy may be collected back.

**DATE:** 5/7/16

**CORAM:**

Hon'ble ~~Mr.~~ RAJIV AGARWAL  
(Vice - Chairman)

Hon'ble ~~Mr.~~ MALIK (Member)

**APPEARANCE:**

~~Smt.~~ Punam Mahajan

Advocate for the Applicant

Shri ~~Smt.~~ N.K. Rajpurohit

C.P.O. for the Respondents

Adj. order passed  
in the Tribunal's  
column.

Akn

sd/-  
Rajiv Agarwal  
(Rajiv Agarwal)  
Vice-Chairman