

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 126 of 2015 (S.B.)

Rajendra S/o Marotrao Pandekar,
 Aged 39, r/o Gurukul Colony, Paratwada, Tah-Achalpur,
 Distt. Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
 Through its Secretary,
 Public Works Department, Mantralaya, Mumbai.
- 2) The Superintending Engineer,
 Public Works Circle, Amravati and Coordination
 Superintendent Engineer, Public Works Circle, Amravati.

Respondents.

Shri N.R. and Mrs. K.N. Saboo, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 189 of 2015 (S.B.)

- 1) Pradip S/o Pundlikrao Ramteke,
 Aged 42, r/o Nehru Nagar,
 Ghatanji, Distt- Yavatmal.
- 2) Sanjay S/o Ambadas Gandharwar,
 Aged 46, r/o 62, Krishi Nagar, Arni Nagar,
 Yavatmal, Distt- Yavatmal.

Applicants.

Versus

- 1) State of Maharashtra,
 through its Secretary, Public Works Department,
 Mantralaya, Mumbai.
- 2) The Superintending Engineer,
 Public Works Circle, Amravati and Coordination Superintendent
 Engineer, Public Works Circle, Amravati.
- 3) The Superintending Engineer,
 Public Works Circle, Yavatmal.

Respondents.

**Shri N.R. and Mrs. K.N. Saboo, Advocates for the applicants.
Shri V.A. Kulkarni, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 27/06/2024.

COMMON JUDGMENT

Heard Shri N.R. Saboo, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. In both the O.As., the applicants are working as a Tracer. They are claiming that they should be absorbed on the post of Civil Engineering Assistant. The facts in both the O.As are near about same. As per the contention of applicants, they are working with respondent no.2 since 1999. They are entitled as per the Government policy / G.R. 19/07/2006 for absorption. It is the contention of applicants that respondent no.2 has submitted the proposal to respondent no.1 for absorption on the post of Civil Engineering Assistant. Some of the similarly situated employees absorbed on the same post. Respondent no.1 has not taken any decision on the proposal submitted by respondent no.2 dated 23/12/2009 (P-41). Hence, the applicant approached to this Tribunal for the following reliefs –

In O.A.No.126/2015 -

“(9) (i) It is therefore prayed that this Hon’ble Tribunal may kindly be pleased to issue direction to the respondents to grant absorption to the applicant on the post of Civil Engineering Assistant with all consequential reliefs of monetary claim as well as seniority.”

In O.A.No.189/2015 -

“(9) (i) It is therefore, prayed that this Hon'ble Tribunal, may kindly be pleased to quash & set aside communication dated 07.02.15 as well as 19.01.15 issued by Respondent No.3 at Annexure- A-18 & A-19 in rejecting prayer of applicants to absorb them as Civil Engineering Assistant & further be pleased to issue direction to the respondents to grant absorption to the applicants on the post of Civil Engineer Assistant with all consequential reliefs of monetary claim as well as seniority.”

3. Both the O.As. are opposed by respondent no.2. It is submitted in para nos. 6 to 7 (in O.A.No.126/2015) as under –

“6. It is submitted that, the said qualified cadre of the post of Tracer for absorption in C.E.A. post needs the approval of the Finance Department and hence, the Respondent had sent a list of Tracers who are qualified for absorption to the Government for the grant of permission, along with the name of applicant, the proposal sent vide letter dt. 23/12/2009. The copy of proposal dt. 23/12/2009 is attached herewith as ANNEXURE R-2 But Government has not allowed the said proposal.

7. It is submitted that, previously Respondent had sent list of 7 qualified Tracer to the Government to absorb in the Cadre of Civil Engineer Assistant vide letter dt. 08/08/2008 for grant of permission to the Government. The copy of letter vide dt. 28/08/2008 attached herewith as ANNEXURE-R-3 Further that, the Government has

allowed the said proposal vide order dt. 28/08/2008 and as per this order the Respondent has absorbed 7 qualified Tracer on the post of Civil Engineer Assistant. The names of the 7 qualified Tracers are as follows.

- 1. Shri. M.D. Kale,*
- 2. Shri. S.G. Pohekar,*
- 3. Shri. M.B. Mohite,*
- 4. Shri. M.G. Wagh*
- 5. Shri. O.U. Dange*
- 6. Shri. S.P. Borkar,*
- 7. Shri. P.M. Pawalkar,*

8. It is submitted that, at the time of submission of the proposal applicant has not submitted the required qualification document as per the Admission of Service Rule 1998, in Proforma- B which was mandatory document for post of Civil Engineer Assistant. Hence, the Respondent has not recommended the name of the applicant. It is submitted that, after the completion I.T.I Draftsman (Civil) course in the year 2008 by the applicant the Respondent had recommended the name of applicant on 23/12/2009 to the Government for grant of approval.

9. It is submitted that, the applicant was absorbed on dt. 27/08/2014 from surplus Tracer to regular Tracer Post therefore there is no need to absorb them on the post of Civil Engineer Assistant. Further that, the applicant has not acquired the proper qualification and which is necessary for absorption for the post of Civil Engineer Assistant.”

4. During the course of submission, the learned counsel for applicants has pointed out the proposal submitted by respondent no.2 (P-41). As per this proposal, respondent no.2 submitted to

respondent no.1 that the applicants are working on the post of Tracer as per the G.R. dated 19/07/2006 and as per the Service Rules dated 18/06/1998.

5. The learned counsel for applicants has pointed out the Service Rules dated 18/06/1998. As per the said rules, the Tracers who have passed the departmental examination are eligible / entitled for absorption on the post of Civil Engineering Assistant.

6. The learned P.O. strongly objected the O.A. The learned P.O. has submitted that the posts are not vacant and therefore the applicants cannot be absorbed on the post of Civil Engineering Assistant.

7. From the perusal of proposal submitted by respondent no.2 it is clear that the applicants are eligible / entitled for the post of Civil Engineering Assistant. As per the submission of Id. P.O., the proposal is pending with the Finance Department. The Id. P.O. has submitted that the posts are not available. The learned counsel for applicants has pointed out the Minutes of DPC dated 30/08/2014. The material portion of the meeting is reproduced below –

“प्रस्ताव क्र 7:- स्थापत्य अभियांत्रिकी सहायकाचे पदोन्नतीचे पदे भरणे.

सदयास्थित सा.बां. परिमंडळ अमरावती अंतर्गत पदोन्नतीतील स्थापत्य अभियांत्रिकी सहायकाचे 84 पदे रिक्त आहेत. परंतु समावेशनाकरिता सदया पात्र कर्मचारी उपलब्ध नसल्याने ती पदे समावेशनाद्वारे भरणे शक्य नाही त्यामुळे हि पदे सरळसेवेद्वारे भरण्याची परवानगी शासनास मागीतली असून अद्याप पर्यंत मंजूरी अप्राप्त आहे.

शासनाकडून प्रस्तावास मान्यता प्राप्त झाल्याशिवाय सदर पदोन्नतीचे पदे भरणे शक्य नसल्याचे ठरविण्यात आले. तरी याबाबत अधीक्षकांनी शासन स्तरावर पाठपुरावा करण्याचे निर्देश देण्यात आले.”

8. As per above decision of the meeting, it appears that 84 posts of Civil Engineering Assistant are vacant, but the candidates are not available to those posts by way of promotion. Therefore, the contention of the respondents that posts are not available cannot be relied on.

9. As per the rules and G.R. issued by respondent no.1, the applicants are eligible / entitled for absorption on the post of Civil Engineering Assistant. Respondent no.2 submitted the proposal in the year 2009, since then it is pending with respondent no.1 It appears that 7 candidates / similarly situated employees like the applicants are absorbed on the post of Civil Engineering Assistant, but respondent no.1 has not absorbed to the applicants by one or other reason. It appears that the respondents have given them regular charge of Draftsman. In fact, all the applicants are working as a regular Draftsman, therefore, there was no any need to give regular charge again to the applicants. Therefore it appears that the respondents are avoiding to absorb the applicants. Hence, the following order –

ORDER

(i) The OAs. are allowed.

(ii) The respondent no.1 is directed to absorb the applicants as per the proposal submitted by respondent no.2, dated 23/12/2009 on the post of Civil Engineering Assistant within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 27/06/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/06/2024.