

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.787 OF 2023

DISTRICT : SOLAPUR
SUBJECT : SENIORITY LIST

Shri Ankush Rama Deokar.)
Age : 51 years, Working as Sectional)
Engineer, PW Division No. 2, Solapur,)
Residing at- 48/2 Old Santosh Nagar,)
Jule Solapur, District : Solapur – 413004.)...**Applicant**

Versus

1. State of Maharashtra,)
Through Principal Secretary,)
PWD Mantralaya, Mumbai – 400032.)
2. Shri Suryakant G. Kumbhar)
Working as Deputy Engineer)
Working at- P.W.Project (Privatization))
Sub-Division, Pune – 411014.)
3. Shri Shripad M. Balshetwar)
Working as Deputy Engineer)
Working at- P. W. Sub-Division-4,)
Pune – 411004.)...**Respondents**

Shri D.B. Khaire, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent No.1.

Shri S.S. Dere, Advocate for Respondent Nos.2 & 3.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member-A

Reserved on: 12.06.2024

Pronounced
on : 11.11.2024

PER : Shri Debashish Chakrabarty, Member-A

JUDGEMENT

1. The Applicant who is working in the cadre of 'Sectional Engineer, PWD' at Solapur has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act, 1985' to challenge the provisional 'Final Seniority List' of cadre of 'Junior Engineers (Civil) PWD' published on 15.06.2023 and also seeks promotion to cadre of 'Sub-Divisional Officer, PWD' along with 'Deemed Date'; as he stands superseded by few juniors in particular 'Respondent No.2' and 'Respondent No.3'.
2. The learned Advocate for Applicant stated that Applicant belongs to 'NT(A) Category'. The Applicant came to be appointed in 1996 along with '810 Junior Engineers (Civil)' on 'Contract Basis' by 'Revenue & Forest Department' under 'Earthquake Rehabilitation Programme' for 'Construction of Houses' which had been destroyed in Latur, Osmanabad & Solapur Districts.
3. The learned Advocate for Applicant then stated that as per terms and conditions in 'Revenue & Forest Department GR dated 14.07.1998'; all '810 Junior Engineers (Civil)' including Applicant were appointed on 'Contract Basis' under 'Earthquake Rehabilitation Programme'; but later they came to be absorbed on cadre posts of 'Junior Engineers (Civil)' in (i) 'PWD', (ii) 'Irrigation Department' and (iii) 'Water Supply & Sanitation Department'.
4. The learned Advocate for Applicant thereupon mentioned that Applicant came to be appointed on cadre post of 'Junior Engineer (Civil), PWD' by 'Appointment Order' dated 16.06.1999. The 'Date of Joining' of Applicant on cadre post of 'Junior Engineer (Civil) PWD' was 17.06.1999 had been incorporated in 'Final Seniority List' of 'Junior Engineers (Civil) PWD' which was published on 24.08.2006. The Applicant was shown to have joined on 17.06.1999 on cadre post of 'Junior Engineer (Civil) PWD' based on 'Appointment Order' dated 16.06.1999.

5. The learned Advocate for Applicant further submitted that the 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' which was published on 24.05.2005 had included all those who had joined during the period of 01.04.1996 to 31.03.2003. Subsequently, it was finalized on 24.08.2006 after inviting Objections & Claims from all those serving in cadre posts of 'Junior Engineers (Civil) PWD'. The placement of Applicant was shown at 'Sr. No.423' in this 'Final Seniority List' published on 24.08.2006 which was based on 'Appointment Order' dated 16.06.1999 and his joining on cadre post of 'Junior Engineer (Civil) PWD' on 17.06.1999. Hence, placement of Applicant in 'Final Seniority List' published on 24.08.2006 was based on 'Date of Joining' in cadre post of 'Junior Engineer (Civil) PWD' on 17.06.1999.

6. The learned Advocate thereupon submitted that thereafter no other 'Seniority List' of 'Junior Engineers (Civil) PWD' came to be published and thus, placement of Applicant had remained at 'Sr. No.423' till belated publication of provisional 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' on 13.07.2022. Thereafter, considering this revised provisional 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' published on 13.07.2022; necessary details were obtained on 12.08.2022 & 23.08.2022 from all 'Regional Offices' of PWD about 'Junior Engineers (Civil) PWD' who were to be included in 'Zone of Consideration' for promotion to cadre of 'Sub-Divisional Officer, PWD'. The name of Applicant was accordingly included at 'Serial No.21' in 'Zone of Consideration' and thus, it was expected that Applicant will get promoted to cadre of 'Sub-Divisional Officer PWD'.

7. The learned Advocate for Applicant then proceeded to highlight specific facts relating to supersession of Applicant at time of promotion to cadre of 'Sub-Divisional Officer, PWD' by highlighting that office of 'Chief Engineer, PWD; Pune' had submitted requisite information to 'Principal Secretary, PWD' wherein name of Applicant was included as per placement shown at 'Sr.No.423' in provisional 'Draft Seniority List' of

‘Junior Engineers (Civil) PWD’ published on 13.07.2022. However, surprisingly Applicant was not promoted and few other ‘Junior Engineers’ (Civil)’ who were placed below Applicant in this provisional ‘Draft Seniority List’ published on 13.07.2022 came to be promoted to cadre of ‘Sub-Divisional Officer, PWD’.

8. The learned Advocate then contented that while provisional ‘Draft Seniority List’ of ‘Junior Engineer (Civil) PWD’ was published on 13.07.2022, the respective placements should have been based on ‘Date of Joining’ in cadre posts of ‘Junior Engineers (Civil) PWD’, but instead especially in respect of Respondent No.2 and Respondent No.3, it was selectively done based on their ‘Dates of Appointment Order’ and not their ‘Date of Joining’. Thereafter; Respondent No.2 and Respondent No.3 were even promoted to cadre of ‘Sub-Divisional Officer, PWD’ by ‘Government Order’ dated 16.12.2022 of PWD. After giving promotions to Respondent No.2 and Respondent No.3, the ‘Principal Secretary, PWD’ again published revised provisional ‘Draft Seniority List’ on 03.02.2023 of ‘Junior Engineers (Civil) PWD’. In this revised provisional ‘Draft Seniority List’ published on 03.02.2023 by PWD, the placement of Applicant was brought down to ‘Sr.No.688’. The ‘Date of Joining’ of Applicant was also changed from 17.06.1999 to 01.03.1999, when Applicant had not even been appointed on cadre post of ‘Junior Engineer (Civil) PWD’ as is evident from the fact that ‘Appointment Order’ had been issued to Applicant on 16.06.1999 and then he had joined on 17.06.1999. So also in respect of many others who had not even received their ‘Appointment Orders’ for appointment to cadre post of ‘Junior Engineer (Civil) PWD’, for all of them ‘Date of Joining’ came to be shown as 01.03.1999.

9. The learned Advocate for Applicant emphasized that Applicant had thereupon made representation on 06.02.2023 to ‘Principal Secretary, PWD’ pointing out these factual errors and inherent deficiencies in revised provisional ‘Draft Seniority List’ of ‘Junior Engineers (Civil) PWD’

published on 03.02.2023. However, the representation of Applicants submitted on 06.02.2023 has still not been decided by 'Principal Secretary, PWD'.

10. The learned Advocate for Applicant contended that name of Applicant had been initially included at 'Sr.No.21' in 'Zone of Consideration' for promotion to cadre of 'Sub-Divisional Officers, PWD' yet 'Principal Secretary, PWD' did not consider Applicant to be eligible for promotion to cadre of 'Sub-Divisional Officer, PWD' because in provisional 'Draft Seniority List' published on 13.07.2022, the position of Applicant was surreptitiously changed to detriment thus depriving him of promotion to cadre of 'Sub-Divisional Officer, PWD'. The 'Principal Secretary, PWD' had shown the placements of Respondent Nos.2 & Respondent No.3 in provisional 'Draft Seniority List' published on 13.07.2022 to be respectively at 'Sr. No.650' and 'Sr. No.690' but within period of some days, their placements came to be modified and Respondent No.2 and Respondent No.3 were shown at 'Sr.No.569-A' and 'Sr.No.570-A'. Thereafter, the 'Principal Secretary, PWD' quickly conducted 'DPC' to even promote Respondent No.2 and Respondent No.3 to cadre of 'Sub-Divisional Officer, PWD' whereas case of Applicant was not considered although he was all along senior to 'Respondent No.2' and 'Respondent No.3' in cadre post of 'Junior Engineer (Civil) PWD' based on 'Date of Joining' which was 17.06.1999 and 'Final Seniority List' published on 24.08.2006. Further, in provisional 'Final Seniority List' published on 15.06.2023 by PWD, the 'Date of Seniority' of Applicant even stood changed to 01.03.1999 when actual 'Date of Joining' of Applicant in cadre post of 'Junior Engineer (Civil) PWD' was 17.06.1999.

11. The learned Advocate for Applicant thereupon relied on 'Clause 8', 'Clause 9' and 'Clause 11' of PWD GR dated 15.05.2019 which reads as follows :-

“८. विनंतीवरून कायमस्वरूपी समावेशन हा संबंधित कर्मचा-याचा हक्क नाही. प्रशासनाचे हित, सार्वजनिक सेवेचे हित विचारात घेऊन, संबंधित कर्मचा-याच्या विनंतीवरून त्याचे अन्य कार्यालयात कायमस्वरूपी समावेशन करण्यास परवानगी/मंजूरी द्यावी किंवा कसे याचा आणि कायमस्वरूपी समावेशनाद्वारे संबंधित कर्मचा-यास त्यांच्या कार्यालयात घ्यावे किंवा कसे याचा निर्णय घेण्याचा पूर्ण अधिकार संबंधित नियुक्ती प्राधिका-यांना राहिल.”

९. संबंधित कर्मचा-याचे कायमस्वरूपी समावेशन झाल्यानंतर, समावेशनाच्या पदावरील ज्येष्ठता तो त्या पदावरून झाल्याच्या दिनांकास निश्चित होईल. त्याला मूळ कार्यालयातील पदाच्या ज्येष्ठतेचे कोणतेही लाभ अनुज्ञेय राहणार नाहीत. संबंधित कर्मचारी, समावेशनाच्या कार्यालयातील त्याच्या अगोदरच नियुक्त झालेल्या कर्मचा-यांना कनिष्ठ समजण्यात यावा. तसेच, पूर्वीच्या सेवेचा लाभ, वेतननिश्चिती, रजा याकरीता वित्त विभागाच्या संबंधित नियमातील तरतूदी अनुज्ञेय होतील.

११. या शासन निर्णयातील कोणत्याही अटी शिथिल केल्या जाणार नाहीत.”

12. The learned Advocate further referred to ‘Para 3(2)(A)’ and ‘Para 4(A)’ of GAD GR dated 21.10.2011 which are about comprehensive ‘Policy Guidelines’ regarding preparation and publication of ‘Seniority Lists’ of ‘Government Servants’ and reads as under :-

“३(२)(अ) आधीच्या वर्षी प्रसिध्द झालेली अंतिम (Final) ज्येष्ठतासूची पुढील वर्षी पूर्ण नव्याने तात्पूरती (Provisional) ज्येष्ठतासूची तयार करताना विचारात घेऊ नये व प्रसिध्द करण्यात येऊ नये. केवळ त्या संबंधित वर्षात नियमित पदेवृत्ती, सरळसेवा, वा अन्य विहित मार्गाने नियुक्त अधिकारी/कर्मचा-यांचा समावेश असलेली तात्पूरती अतिरिक्त (Provisional Additional) ज्येष्ठतासूची तयार करून प्रसिध्द करावी.

“४(अ) ज्या ज्येष्ठतासूचीबाबत न्यायालयीन प्रकरण सुरु असेल त्यांच्याबाबतीत न्यायालयीन निर्णयानुसार कार्यवाही करावी व त्यापुढील ज्येष्ठतासूचीसंदर्भात यथास्थिती वरील ३(अ)/(ब)/(क)/(ड) नुसार उचित कार्यवाही करावी.”

13. The learned Advocate for Applicant then relied on contents of ‘Affidavit-in-Reply’ dated 29.08.2023 filed on behalf of ‘Principal Secretary, PWD’ and specifically referred to ‘Rule 2(c)’ and ‘Rule 3(1)’ of ‘Maharashtra Civil Services (Regulation of Seniority) Rules 1982’, which are as reproduced below:-

“2(c). “batch” means the list sent by the Commission or Selection Committee to the appointing authority by a single recommendation letter in proportion to the number of posts requisitioned for direct recruitment or nomination to make appointment on that post, cadre or service.

Explanation : Recommendation made by a single recommendation letter shall be treated as one batch and recommendation made by an another recommendation letter shall be treated as second batch.

3. General principles of seniority –

(1) Provided also that, in accordance with the provisions made regarding permanent absorption, if any Government Servant, on his own request, is permanently absorbed in another post, cadre

or service governed by another appointing authority, other than the post, cadre or service governed by original appointing authority, then earlier service of such Government Servant shall not be reckoned as a continuous service for the purpose of seniority in the absorbed post, cadre or service. The seniority of such Government Servant shall be determined on the date from which he is appointed by absorption to another post, cadre or service.”

13. The learned Advocate for Applicant also relied to contents of GR of ‘Revenue & Forest Department (Earthquake Rehabilitation Cell) dated 14.07.1998’ regarding absorption of 810 ‘Junior Engineers (Civil)’ who had been appointed on ‘Contract Basis’ under ‘Earthquake Rehabilitation Programme’ to cadre posts of ‘Junior Engineers (Civil)’ in (i) ‘PWD’, (ii) ‘Irrigation Department’ and (iii) ‘Water Supply & Sanitation Department’.

14. The learned Advocate for Respondent Nos. 2 & Respondent No.3 on the other hand stated that after taking into due consideration ‘Objections’ & ‘Claims’ regarding revised provisional ‘Draft Seniority List’ published on 03.02.2023 by PWD and in accordance with the terms and condition of Government Resolution dated 14.07.1998 of ‘Revenue and Forest Department (Earthquake Rehabilitation Cell)’ as also common ‘Seniority List’ of ‘Junior Engineers (Civil)’ published by Government Circular dated 23.09.1998 of ‘Revenue and Forest Department (Earthquake Rehabilitation Cell)’ the provisional ‘Final Seniority List’ of ‘Junior Engineers (Civil)’ came to be published by Government Circular dated 15.06.2023 of PWD.

15. The learned Advocate for Respondent No.2 and Respondent No.3 further submitted that they could not take objection earlier about their placements in ‘Draft Seniority List’ of ‘Junior Engineers (Civil) PWD’ which was published on 24.05.2005 in respect of those who had joined from 01.04.1996 to 31.03.2003 based on which ‘Final Seniority List’ had been published on 24.08.2006 by PWD. So, since that time fixing of seniority of Respondent Nos.2 & Respondent No.3 had remained under consideration of PWD as it was pending with GAD who did not take any

final decision about fixing seniority of Respondent No.2 & Respondent No.3. Hence, Respondent No.2 & Respondent No.3 as well 'Association of Junior Engineers (Civil) PWD' had submitted various representations in 2014 in this regard to 'Principal Secretary, PWD'. However, as 'Principal Secretary, PWD' had not taken any definitive action in consultation with GAD; the Respondent No.2 and Respondent No.3 had to file Original Application No.1051 of 2015; wherein by Judgment dated 06.08.2019 the 'Principal Secretary, PWD' was directed to decide within 'Four Months' the pending representations of 'Respondent No.2' and 'Respondent No.3'.

16. The learned Advocate for 'Respondent No.2' and 'Respondent No.3' then stressed that while preparing 'Select List' for promotion to cadre of 'Sub-Divisional Engineers, PWD', the provisional 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' published on 13.07.2022 was considered by 'Principal Secretary, PWD' wherein the revised placements of 'Respondent No.2' and 'Respondent No.3' had been shown at 'Serial No.569-A' and 'Serial No.570-A'. Hence, contention of Applicant about being superseded is out rightly denied being factually incorrect as he was not senior to 'Respondent No.2' and 'Respondent No.3' at the time of promotion to cadre of 'Sub-Divisional Officer, PWD'.

17. The learned CPO per contra submitted it was in view of increasing number of representations received from '810 Junior Engineers (Civil)' who had initially been appointed on 'Contract Basis' under 'Earthquake Relief Programme' by Revenue & Forest Department about re-fixation of their seniority upon absorption in cadre posts of 'Junior Engineer (Civil) PWD' based on terms and conditions of the 'Revenue and Forest Department (Earthquake Rehabilitation Cell) Government Resolution dated 14.07.1998' and common 'Seniority List' published vide Revenue and Forest Department Government Circular dated 23.09.1998; the 'Principal Secretary, PWD' decided to obtain requisite information by Letters dated 12.08.2022 and 23.08.2022 from all 'Regional Offices' of

PWD in prescribed format of all those who were serving in cadre post of 'Junior Engineers (Civil) PWD' of PWD. Accordingly, information of all those from '810 Junior Engineer (Civil)' who had subsequently joined upon absorption in cadre posts of 'Junior Engineers (Civil) PWD' were received from 'Regional Offices' of PWD as also individuals Objections & Claims about provisional 'Draft Seniority List' published on 13.07.2022 from several 'Junior Engineers (Civil) PWD' who were appointed earlier on 'Contract Basis' under the 'Earthquake Rehabilitation Programme' by Revenue & Forest Department. So, after due scrutiny of all such Objections & Claims, the revised provisional 'Draft Seniority List' of cadre of 'Junior Engineers (Civil) PWD' came to be published by Government Circular dated 03.02.2023 of PWD.

18. The learned CPO clarified that although Applicant had joined in cadre post of 'Junior Engineer (Civil) PWD' on 17.06.1999 as per the provisions of 'Rule 3' & 'Rule 4' of 'Maharashtra Civil Services (Regulation of Seniority) Rules 2021', the seniority of Applicant has now been fixed as 01.03.1999.

19. The learned CPO in this regard drew attention to provisions of the 'MCS (Regulation of Seniority) Rules 2021', especially 'Rules 4(2)(a)' and 'Rule 4(4)(a)' which reads as follows :-

"Rule 4(2)(a) : Original Recommendation List – Where the direct recruits selected as per the Original Recommendation List in the same batch, report for duty on different dates and if the actual dates on which they are joined are not chronologically in conformity with their inter se seniority as provided in para (i) of sub clause (I) of clause (b) of sub-rule (2) of rule (3), the recruit higher in rank but joining for duty later than his junior shall be assigned with a deemed date of appointment, the date on which the recruit lower in rank joins for duty. However, the recruit higher in rank shall join the duty within the prescribed time-limit, as appointment to the post of direct recruitment is not admissible, after a prescribed time limit of joining."

"Rule 4(4) (a) : Where tow or more Government Servants who are eligible for promotion to any higher posts, cadre or service according to the concerned Select List are promoted to such higher post, cadre or service and if the actual dates on which such, Government servants join for duty in such higher posts, cadres or service are not chronologically in

conformity with their inter-se seniority as provided in sub-clause (II) of clause (b) of sub-rule (2) of Rule 3, the senior person, who joins for duty later than his junior within prescribed time-limit, shall be assigned, the date on which the junior joins for duty, as a deemed date of appointment.”

20. The learned CPO finally submitted that as ‘Date of Joining’ of Applicant and others in cadres posts of ‘Junior Engineers (Civil) PWD’ was different; therefore a common ‘Date of Joining’ has now been assigned to many ‘Junior Engineers (Civil) PWD’ as per these provisions of ‘MCS (Regulation of Seniority) Rules 2021’.

Assessment

21. The case of Applicant thus delicately balances on legal validity of terms and conditions specified in ‘Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998’ regarding fixation of seniority of ‘810 Junior Engineers (Civil)’ upon their absorption in cadre posts of ‘Junior Engineers (Civil) PWD’. The Applicant as well as Respondent No. 2 & Respondent No. 3 share the common legacy of having worked earlier on ‘Contract Basis’ under ‘Earthquake Rehabilitation Programme’ of Revenue & Forest Department but before joining on cadre posts of ‘Junior Engineers (Civil) PWD’.

22. The terms and conditions about absorption of Applicant as well as Respondent No.2 and Respondent No.3 in cadre posts of ‘Junior Engineers (Civil) PWD’ was outcome of an executive decision which was incorporated in ‘Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998’ and included (a) ‘Exemption from Written Examination’ (b) ‘Relaxation of Age Limits’, etc. as they were already serving on ‘Contract Basis’ under ‘Earthquake Rehabilitation Programme’ of Revenue & Forest Department. The relaxation of major terms and conditions for absorption of these ‘810 Junior Engineers (Civil)’ as included in ‘Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998’ are reproduced below :-

“(१) भूकंप पुनर्नर्शन कार्यक्रमात कंत्राटी तत्वावर नेमलेल्या सर्व कनिष्ठ अभियंत्यांना महाराष्ट्र शासनाच्या कायम स्वरूपाी सेवेत घेण्यासाठी २-३ वर्षांपर्यंत वयोमर्यादा शिथिल करण्यात यावी.

(२) भूकंप पुनर्वसन कार्यक्रमांतर्गत कंत्राटी तत्वावर कार्यरत असलेल्या ८१० कनिष्ठ अभियंत्यांना स्पर्धात्मक परीक्षेस बसण्याच्या अटीतूनू यूट देण्यात यावी

(३) या सर्व कंत्राटी कनिष्ठ अभियंत्यांना त्यांच्या ज्येष्ठतेनुसार पाटबंधारे, सार्वजनिक बांधकाम विभाग, पाणी पुरवठा व स्वच्छता विभाग आणि इतर रिक्त होणा-या पदांवर नियुक्ती देण्यात यावी.

या निर्णयाच्या अनुषंगाने सदरहू कनिष्ठ अभियंत्यांना शासकीय सेवेत सामावून घेण्याकरिता खालीलप्रमाणे कार्यवाही करण्यात यावी :-

(१) सदर कनिष्ठ अभियंत्यांची ज्येष्ठता सूची तयार करण्यात येईल व ती सूची पाटबंधारे, सार्वजनिक विभाग व पाणी पुरवठा व स्वच्छता विभाग तसेच महाराष्ट्र शासनाच्या अधिपत्याखाली कार्यरत असलेली महामंडळे (उदा. महाराष्ट्र कृष्ण खोरे विकास महामंडळ) यांना पाठविण्यांत येईल. या ज्येष्ठते सूचीप्रमाणे सर्व संबंधित विभाग या कनिष्ठ अभियंत्यांना त्यांच्याकडे उपलब्ध रिक्त पदांवर नेमणुका करतील. वरीलप्रमाणे तयार केलेली निवड यादी संपल्यानंतर इतर उमेदवारांचा विचार करावा.

(२) शासनाने विहित केलेल्या वेगवेगळ्या दुर्बल व मागास वर्गासाठी आरक्षणाच्या नियमाप्रमाणे बिंदू नामावलीस (रोस्टर) अनुसरून सदर नेमणुका करण्यांत याव्यात. अशा नेमणुका देताना प्रत्येक घटकांसाठी उपलब्ध असलेली जेष्ठता सूची विचारात घ्यावी.

(३) सदर कनिष्ठ अभियंत्यांच्या आस्थापनेवरील नेमणुका पूर्णपणे नवीन नेमणुका राहतील, त्यांना कार्यव्ययी आस्थापनेवर पूर्वी केलेल्या सेवेचा कोणताही लाभ मिळणार नाही.

(४) या सर्व कनिष्ठ अभियंत्यांना विहित माध्यमातून नेमणुका देण्याच्या अटी या शासन निर्णयाद्वारे शिथिल करण्यात येत आहेत. वरीलप्रमाणे नेमणुका करताना नेमणुकीच्या आदेशाच्या दिनांकापासून १५ दिवसांत संवर्धितांना हजर होण्याची अट घालावी. जे १५ दिवसांत हजर होणार नाहीत, त्यांच्या नेमणुका रद्द करण्यात येतील, असे आदेशात स्पष्ट करण्यात यावे. १५ दिवसांच्या विहित मुदतीत हजर होणा-यांची आपापसातील ज्येष्ठता कायम राहिल.

(५) वयोमर्यादी अट ठरविताना दिनांक १३ मे, १९९७ रोजी असलेले त्यांचे वय गृहित धरण्यात यावे. काही कंत्राटी कनिष्ठ अभियंते वयोमर्यादेत बसत नसल्यास, त्यांची भूकंप पुनर्वसन कार्यक्रमांतर्गत झालेली सेवा एवढ्या कालावधीपर्यंत वयोमर्यादेत शिथिलीकरण करण्यात यावे.”

23. The staggered process of absorption of 810 ‘Junior Engineers (Civil)’ who had been earlier appointed on ‘Contract Basis’ under ‘Earthquake Rehabilitation Programme’ of ‘Revenue & Forest Department’ was expected to be completed by (i) ‘PWD’, (ii) ‘Irrigation Department’ & (iii) ‘Water Supply & Sanitation Department’ by placing reliance on common ‘Seniority List’ published by ‘Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998’ although it had included only basic details such as (1) Sr.No. (ii) Name (iii) Date of Birth, (iv) Date of Joining, (v) Backward Class Category relating to earlier service rendered by these ‘810 Junior Engineers (Civil)’ appointed under ‘Earthquake Rehabilitation Programme’ of ‘Revenue & Forest Department’.

24. The common 'Seniority List' published by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998' was thus intended to be used only as reference document at the time of completion of staggered process of absorption of '810 Junior Engineers (Civil) PWD' on cadre posts of 'Junior Engineers (Civil) PWD'. However, crucial milestone in this spreadent exercise was issue of 'Appointment Letters' to each such 'Junior Engineers (Civil) PWD' based on availability of posts as per 'Roster of Reservations'. The 810 'Junior Engineers (Civil)' who received 'Appointment Letters' were thereupon required to join within 15 days; so as to retain their inter-se placement in common 'Seniority List' published vide 'Revenue and Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998'.

25. The common 'Seniority List' published by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998', as is evident was standalone document more in the form of 'Tabular Chart' giving basic personal details of '810 Junior Engineers (Civil)' who had earlier served on 'Contract Basis' under 'Earthquake Rehabilitation Programme' of 'Revenue and Forest Department'. Imperative to observe is that sanctity of placements of '810 Junior Engineers (Civil)' in common 'Seniority List' published by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998' was never maintained as it was rendered redundant right away when 'Final Seniority List' of 'Junior Engineers (Civil) PWD' was published on 24.08.2006 by PWD based on their 'Date of Joining' which included Applicant as well as 'Respondent No.2' & 'Respondent No.3'. The 'Final Seniority List' of 'Junior Engineers (Civil) PWD' published on 24.08.2006 included all those who had joined on cadre posts of 'Junior Engineers (Civil) PWD' during the period from 01.04.1996 to 31.03.2003. The Applicant who had joined on 17.06.1999 was given placement at 'Sr.No.423' whereas Respondent No.2 who joined on 21.06.1999 was shown with placement at 'Sr.No.471' and Respondent No.3 who joined later on 28.06.1999 was given placement at 'Sr.No.511'.

Therefore, in this 'Final Seniority List' of 'Junior Engineers (Civil) PWD' published on 24.08.2006 by PWD did not ab-initio maintain the 'Inter-se Seniority' of 810 'Junior Engineers (Civil)' based on common 'Seniority List' published by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998' as per their initial appointment as 'Junior Engineers (Civil)' on 'Contract Basis' under 'Earthquake Rehabilitation Programme' of Revenue & Forest Department. The principles of 'Inter-Se seniority' of '810 Junior Engineers (Civil)' which had been suggested therein were only in form of 'Administrative Instructions' issued by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998'. The 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998' had directed that 'Inter-Se Seniority' of 810 'Junior Engineers (Civil)' would stand protected if they were to join on cadre posts of 'Junior Engineers (Civil)' in (i) 'PWD', (ii) 'Irrigation Department' and (iii) 'Water Supply and Sanitation Department' within 15 days of receiving their 'Appointment Letters'. Therefore, had this principle been observed from the very beginning then (a) Respondent No.2 who was appointed on 'Contract Basis' on 21.04.1995 with placement at Sr.No.388 & (b) Respondent No.3 who was appointed on 'Contract Basis' on 05.04.1995 with placement at Sr.No.351 as per 'Inter-Se Seniority' of 810 'Junior Engineers (Civil)' in common 'Seniority List' published vide 'Revenue and Forest Department (Earthquake Cell) Government Circular dated 23.09.1998' upon receiving their 'Appointment Letters' and if they had indeed joined within 15 days; then naturally both should have been placed much above Applicant in 'Final Seniority List' published on 24.08.2006 by PWD given the fact that Applicant had been appointed on 'Contract Basis' on 28.05.1996 which was much later than both 'Respondent No.2' and 'Respondent No.3'. However, this did not happen because Applicant as well as 'Respondent No.2' and 'Respondent No.3' were all given 'Inter-Se Seniority' based on their respective 'Dates of Joining' on cadre posts of 'Junior Engineers

(Civil) PWD' and continuous service as per provisions of 'MCS (Seniority) Rules 1982'.

26. The criteria based on initial 'Date of Appointment' of '810 Junior Engineers (Civil)' who had been serving on 'Contract Basis' which had been suggested for determination of their 'Inter-Se Seniority' by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998' was based on executive decision was reduced to state of impertinence when 'Junior Engineers (Civil) PWD' joined on cadre posts after receiving 'Appointment Orders'. The names of all such 'Junior Engineers (Civil) PWD' including Applicant and 'Respondent No.2' and 'Respondent No.3' came to be included in 'Draft Seniority List' published on 28.05.2003 based on 'Date of Joining' on cadre posts and after Objections & Claims were duly examined the 'Final Seniority List' published on 24.08.2006 had considered 'Dates of Joining' on cadre posts of 'Junior Engineers (Civil) PWD' by relying upon 'General Principles of Seniority' under 'MCS (Seniority) Rules 1982'. Thus, the 'Doctrine of Occupied Field' came to be upheld with publication of 'Final Seniority List' of 'Junior Engineers (Civil) PWD' on 24.08.2006.

27. The 'Final Seniority List' of 'Junior Engineers (Civil) PWD' who had joined cadre posts of PWD during 01.04.1996 to 31.03.2003 including Applicant and 'Respondent No.2' & 'Respondent No.3' had been published on 24.08.2006 based only on their respective 'Dates of Joining'. The criteria was completely in accordance with 'MCS (Seniority) Rules 1982' and was used to also publish 'Final Seniority List' on 18.06.2010 of those 'Junior Engineers (Civil)' PWD who had joined subsequently during period from 01.04.2003 to 31.03.2007 as is evident from preamble to PWD Government Circular dated 03.02.2023 about publication of revised provisional 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' as on 01.01.2022. The contents of it's 'Para 1' are as under :-

“सार्वजनिक बांधकाम विभागातील कनिष्ठ अभियंता (स्थापत्य) संवर्गाची दि.०१.०८.१९७४ ते ३१.०३.१९९६ या कालावधीची अंतिम जेष्ठतासूची दि.०१.०८.२००१ रोजीच्या परिपत्रकांन्वये प्रसिद्ध करण्यात आलेली आहे. दि.०१.०८.१९९६ ते ३१.०३.२००३ या कालावधीची अंतिम जेष्ठता यादी दि. २४.०८.२००६ च्या शासन परिपत्रकांन्वये प्रसिद्ध करण्यात आलेली आहे. दि.०१.०८.२००३ ते ३१.०३.२००७ या कालावधीची अंतिम जेष्ठता यादी दि.१८.०६. २०१० च्या शासन परिपत्रकांन्वये प्रसिद्ध करण्यात आलेली आहे. दि.०१.०८.२००७ ते ३१.१२.२०१४ या कालावधीची तात्पुरती जेष्ठता यादी दि.२८.०७.२०१५ रोजीच्या शासन परिपत्रकांवर प्रसिद्ध करण्यात आलेली आहे. तसेच कनिष्ठ अभियंता (स्थापत्य) संवर्गाच्या संदर्भाधीन दि.०१.०८.२००१, दि.२४.०८.२००६, दि.१८.०६.२०१० व दि.२८.०७.२०१५ रोजी प्रसिद्ध केलेल्या ज्येष्ठता याद्यांमध्ये वाचा येथील क्रमांक ५ ते ३१ येथील शुध्दीपत्रकांन्वये वेळोवेळी सुधारणा करण्यात आलेल्या आहेत.”

28. The preamble of ‘PWD Government Circular dated 03.02.2023’ thus acknowledges the publication of successive ‘Final Seniority Lists’ of cadre of ‘Junior Engineer (Civil) PWD’ initially on 01.08.2001, then on 24.08.2006 and last on 18.06.2010 based on the ‘General Principles of Seniority’ of then applicable ‘MCS (Seniority) Rules 1982’. However, it also concedes the fact that the subsequent ‘Draft Seniority List’ of cadre of ‘Junior Engineers (Civil) PWD’ for period from 01.04.2007 to 31.12.2014 had remained at the draft stage and further due to several instances of ‘Modification/Changes’ to seniority of certain ‘Junior Engineers (Civil) PWD’ having been approved in the interregnum, it became necessary to incorporate all of them in turn leading to publication of fresh provisional ‘Draft Seniority List’ of ‘Junior Engineers (Civil) PWD’ on 01.01.2022 by Government Circular PWD dated 13.07.2022. The contents of Para 2 are as under :-

“२. महाराष्ट्र नागरी सेवा (ज्येष्ठतेचे विनियमन) नियमावली, २०२१ मधील तरतूदीस अनुसरून कनिष्ठ अभियंता (स्थापत्य) संवर्गाच्या दि.०१.०८.२००१, दि.२४.०८.२००६ व दि.१८.०६.२०१० रोजीच्या परिपत्रकांन्वये प्रसिद्ध करण्यात आलेल्या अंतिम ज्येष्ठतायाद्या व दि.२८.०७.२०१५ रोजीच्या परिपत्रकांन्वये प्रसिद्ध करण्यात आलेली तात्पुरती ज्येष्ठतायादी तसेच या सर्व वेगवेगळ्या कालावधीतील ज्येष्ठता याद्यांमध्ये शुध्दीपत्रकांन्वये करण्यात आलेल्या सुधारणा एकत्रित करून कनिष्ठ अभियंता (स्थापत्य) संवर्गाची दिनांक ०१.०१.२०२२ रोजीची तात्पुरती ज्येष्ठता यादी संदर्भाधीन क्रमांक ३२ येथील दिनांक १३.०७.२०२२ रोजीच्या परिपत्रकांन्वये प्रसिद्ध करण्यात आलेली आहे.”

29. The fresh provisional ‘Draft Seniority List’ of cadre of ‘Junior Engineers (Civil) PWD’ which was published on 13.07.2022 had curiously adopted some ‘Hybrid Criteria’ as is evident from above for re-determination of ‘Inter-Se Seniority’ of those from amongst ‘810 Junior Engineers (Civil)’ who had earlier served on ‘Contract basis’ under ‘Earthquake Rehabilitation Programme’ of ‘Revenue & Forest Department’. The absorption of these ‘810 Junior Engineers (Civil)’ had been permitted by way of executive decision based on relaxation of

important terms and conditions for appointment to cadre post of 'Junior Engineer (Civil)' of (i) 'PWD', (ii) 'Irrigation Department' and (iii) 'Water Supply & Sanitation Department'. The contents of 'Para 3' of PWD Government Circular dated 01.01.2023 which admits of adopting this atypical 'Hybrid Criteria' is reproduced below:-

“भूकंप पुनर्वसन कार्यक्रमांतर्गत या विभागात नियुक्त झालेल्या कनिष्ठ अभियंतांना भूकंप पुनर्वसन कक्ष, महसूल व वनविभाग परिपत्रक दि.२३.०९.१९९८ अन्वये प्रसिद्ध केलेल्या भूकंप पुनर्वसन कार्यक्रमांतर्गत कंत्राटी कनिष्ठ अभियंतांच्या अंतिम सुधारित सामायिक ज्येष्ठता सूची मधील क्रम लक्षात घेऊन महाराष्ट्र नागरी सेवा (ज्येष्ठतेचे विनियमन) नियमावली, २०२१ मधील तरतुदीनुसार तेव्हा ज्येष्ठतेमध्ये स्थान निश्चित करण्यात आलेले आहे. असे करताना दिनांक १३.०७.२०२२ रोजी प्रसिद्ध केलेल्या तात्पुरता ज्येष्ठता यादीतील क्रमामध्ये बदल झालेले आहेत. यास्तव, दि.१३.०७.२०२२ रोजीच्या परिपत्रकान्वये प्रसिद्ध करण्यात आलेली कनिष्ठ अभियंता (स्थापत्य) संवर्गाची दि.०१.०१.२०२२ रोजीची तात्पुरती ज्येष्ठता सूची आणि सदर ज्येष्ठता सूचीमध्ये केलेल्या सुधारणांवर दि.२१.०७.२०२२ रोजी निर्गमित केलेले शुद्धिपत्रक अधिक्रमित करण्यात येत आहे. दि.१३.०७.२०२२ रोजीच्या परिपत्रकान्वये प्रसिद्ध केलेल्या दि.०१.०१.२०२२ रोजीच्या तात्पुरत्या ज्येष्ठता यादीतील क्रमामध्ये झालेले बदल लक्षात घेऊन या परिपत्रकान्वये दि.०१.०१.२०२२ रोजीची तात्पुरती ज्येष्ठतासूची यासोबत जोडलेल्या ‘‘परिशिष्ट-क’ प्रमाणे सुधारित करून पुन्हा प्रसिद्ध करण्यात येत आहे.’’

30. The revised provisional 'Final Seniority List' as on 01.01.2022 of 'Junior Engineers (Civil) PWD' published by PWD Government Circular dated 15.06.2023 has continued to rely upon the 'Hybrid Criteria' mentioned above to re-determine the 'Inter-Se Seniority' of 'Junior Engineers (Civil) PWD'. The ambiguous phraseology used in PWD Government Circular dated 15.06.2023 for re-determination of 'Inter-Se Seniority' of 'Junior Engineers (Civil) PWD' reads as follows :-

“तसेच भूकंप पुनर्वसन कार्यक्रमांतर्गत कंत्राटी कनिष्ठ अभियंता (स्थापत्य) म्हणून नियुक्तीत झालेल्या अभियंतांना महसूल व वनविभाग / भूकंप पुनर्वसन पक्ष यांचा दिनांक १४.०७.१९९८ रोजीच्या शासन निर्णयातील तरतुदीनुसार व दि.२३.०९.१९९८ रोजीच्या परिपत्रकान्वये प्रसिद्ध केलेल्या भूकंप पुनर्वसन कार्यक्रमांतर्गत कंत्राटी कनिष्ठ अभियंतांची अंतिम सुधारित सामायिक ज्येष्ठतासूची मधील क्रम लक्षात घेऊन, तसेच महाराष्ट्र नागरिक सेवा (ज्येष्ठतेचे विनियमन) नियमावली, २०२१ नियम क्र.३ व ४ मधील तरतुदीस अनुसरून ज्येष्ठतेमध्ये स्थान देण्यात आलेले आहे.”

31. The terms & conditions for absorption on cadre posts, fixing of seniority of '810 Junior Engineers (Civil)' who had been appointed on 'Contract Basis' under 'Earthquake Rehabilitation Programme of Revenue & Forest Department had happened after relaxation of important terms and conditions of eligibility and selection procedures as mentioned in 'Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998'. The common 'Seniority List' published by 'Revenue and Forest Department (Earthquake Rehabilitation Cell) Government Circular dated 23.09.1998' could not have been juxtaposed imaginatively as has

been done by PWD Government Circular dated 15.06.2023 of PWD for publication of 'Final Seniority List' of cadre of 'Junior Engineers (Civil) PWD' by giving complete go by to 'Doctrine of Supremacy of Rules' as now applicable 'MCS (Regulation of Seniority) Rules 2021' has been framed under 'Article 309' of the 'Constitution of India'.

32. The 'Final Seniority List' of cadre of 'Junior Engineers (Civil) PWD' published on 24.06.2006 was for those who had joined on cadre posts between 01.04.1996 to 31.03.2003 which included Applicant as well as 'Respondent No.2' and 'Respondent No.3'. However, criteria suggested for 'Inter-Se Seniority' of '810 Junior Engineers (Civil)' who had earlier served on 'Contract Basis' in 'Earthquake Rehabilitation Programme' of Revenue & Forest Department and later absorbed by relaxing important terms and conditions of eligibility and selection procedures by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998' was brazenly violative of 'Doctrine of Occupied Field' due to existence of then applicable 'MCS (Seniority) Rules 1982' and naturally was short lived till publication of 'Final Seniority List' of cadre of 'Junior Engineers (Civil) PWD' on 24.08.2006. The then applicable provisions of 'Rule 4(1)' of 'MCS (Seniority) Rules, 1982' which were as follows :-

"4. General principles of seniority:- (1) Subject to the other provisions of these rules, the seniority of a Govt. servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein:

Provided that, for the purpose of computing such service, any period of absence from the post, cadre or service due to leave, deputation for training or otherwise or on foreign service or temporary officiating in any other post shall be taken into account, if the competent authority certifies that the Govt. servant concerned would have continued in the said post, cadre or service during such period, had he not proceeded on leave or deputation or been appointed temporarily to such other post:

Provided further that, the service, if any, rendered by him as result of a fortuitous appointment (except in a case where the competent authority certifies that it was not expedient / possible or practicable to make a regular appointment strictly in accordance with the ratio of recruitment as prescribed in relevant recruitment rules, with the brief reasons recorded therefor), shall be excluded in computing the length of service and for the purpose of seniority he shall be deemed to have been appointed to the post or in the cadre or service on the date on which his regular appointment is made in accordance with the provisions rules."

The postulate that continuous service in cadre is the corner stone for placements on Seniority Lists of Government Servants have been applicable since long under 'Rule 4(1)' of 'MCS (Seniority) Rules 1982' now stands re-affirmed through incorporation of 'Determination of Seniority of Government Servants' based on length of continuous service under 'Rule 3' of 'MCS (Regulation of Seniority) Rules 2021'. The supremacy of the principle of 'length of continuous service' in any cadre of Government Servants leaves no room for any aberrations as has been attempted by placing reliance on 'Hybrid Criteria' selectively only for those 'Junior Engineers (Civil) PWD' who had been absorbed on cadre posts as per 'Revenue & Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998' upon regularization of their earlier fortuitous appointment so as to enable them to be serve continuously in cadre of 'Junior Engineers (Civil) PWD'.

33. The 'MCS (Regulation of Seniority) Rules, 2021' framed under 'Article 309' of 'Constitution of India' have been brought into effect by 'Notification' published by GAD on 21.06.2021. The contents of 'Rule 3' of 'MCS (Regulation of Seniority) Rules, 2021' reads as follows:-

"3. Determination of Seniority of Government Servant according to his Length of Continuous Service.- Subject to the other provisions of these rules, the seniority of a Government Servant in any post, cadre or service shall ordinarily be determined according to the length of his continuous service therein."

34. The Statute or Rules or Executive Instructions which govern determination of 'Seniority List' of 'Government Servants' must be valid both constitutionally or otherwise. As far as constitutional validity of 'Seniority List' is concerned; they are required to be tested against 'Article 14' and 'Article 16' of 'Constitution of India'; yet in some cases, they might have to pass the test of other provisions namely 'Article 309' or 'Article 148' of 'Constitution of India'. Hence, to arrive at an unassailable conclusion about the legal validity of provisional 'Final Seniority List' of

‘Junior Engineers (Civil) PWD’ published on 15.06.2023, we rely on the following landmark Judgments of Hon’ble Supreme Court of India.

“a) **The Hon’ble Supreme Court of India in *H.V. Pardasani v/s Union of India 1985(2) Serv LR 43 at 46 (SC)*** emphasized that statutory rules will have to be strictly observed and when criteria is laid down in the statutory rules, the same will have to be followed. The important observations are as follows :-

“There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. The legal position is equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail, obviously subject to its constitutionality”.

b) The **Hon’ble Supreme Court of India in *Union of India v. H.R. Patankar & Ors. (1985 SCC (L&S) 19)*** has again emphasized on the ‘Supremacy of Rules’ by recording following observations as follows :-

“It is now well settled law that even if there are no statutory rules in force for determining seniority in a Service or even if there are statutory rules but they are silent on any particular subject, it is competent to the Government by an executive order to make appropriate Seniority Rules or to fill in the lacuna in the statutory rules by making an appropriate seniority rule in regard to the subject on which the statutory rules are silent.”

Execution instructions cannot override a conflict with statutory rules e.g. when the statutory rule expressly providing for fixing seniority on the basis of date of appointment was sought to be altered by Government Orders by taking into account past service. Inter-departmental communications (e.g. letters) cannot override express provisions of statutory regulations and direct a different principle to be adopted.”

c) The **Hon’ble Supreme Court of India in *DP Sharma V/s UOI [1985] (2) Serve I.R.43 at 49 (SC)*** has emphasized on principles of reasonableness and fairness and frowned upon use of retrospective criterion for determination of seniority by making the following authoritative observations :-

“57. The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively.

58. Inter se seniority has been determined under statutory regulations, a subsequent circular purporting to override such determination has been held to be ultra vires.”

(d) The Hon'ble Supreme Court in **K. Meghachandra Singh & Ors. Versus Ningam Siro Ors, Civil Appeal No.8833-8835 of 2019**, while determining 'Inter-Se Seniority' of Direct Recruits vis-a-vis Promotees relied on its earlier judgments of **Jagdish Chandra Patnaik Vs. State of Orissa (1998) 4 SCC 456, Suraj Prakash Gupta & Ors. vs. State of J&K & Ors (2000) 7 SCC 561 and Pawan Pratap Singh and Ors. Vs. Reevan Singh & Ors 3 (2011) 3 SCC 267** and observed as follows :-

"These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre."

(e) The **Hon'ble Supreme Court of India in K. Madalamithu V/s State of TN, (2006) 6 SCC 558** held that person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularized. The pivotal importance of regularizations of services for determination of 'Inter-Se Seniority' was emphasized as follows :-

"It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time his appointment is regularized. Therefore, it is only from the date on which his services are regularized that such appointee can claim seniority over those appointees subsequently. In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularization of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well established principles relating to determination of seniority."

(f) The **Hon'ble Supreme Court of India in Maloom Lawrence Cecil D'souza V/s UOI (361)** advocated that settled seniority should not be easily unsettled by making the following pertinent observations:-

"Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its various aspects, it should at least be possible to ensure the matters like once's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Backing up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would therefore appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time".

(g) The **Hon'ble Supreme Court of India in AB Krishna V/s State of Karnatak, JT 1998 (1) SC 613** has emphasized about the doctrine of 'Doctrine of Occupied Field' in the context of the rule making function under 'Article 309' of 'Constitution of India' by recording the following observations :-

"The question before the Court was whether the general rules made under Article 309 would prevail over those made under Section 39 of the Fire Force Act, 1964. It was held that the rules made under the Fire Force Act, 1964 would prevail in so far as the members of the Fire Service were concerned since those rules occupied the field relating to conditions of employment of members of Fire Services and also because being special rules made earlier they could not be abrogated by the later general rules- Generalia specialibus non derogant.

(h) The **Hon'ble Supreme Court of India in SK Nausad Rahaman & Ors V/s Union of India & Ors in Civil Appeal No.1243/2023** has lucidly explained the well-established principle hierarchy of Law, Rules and Executive Instructions by affirmatively observing as follows :-

"28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

- (i) A law enacted by the competent legislature;*
- (ii) Rules made under the proviso to Article 309 of the Constitution; and*
- (iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.*

Fifth, where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

29. Sixth, a policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution."

35. The revised provisional 'Draft Seniority List' published on 03.02.2023 and provisional 'Final Seniority List' published on 15.06.2023 of 'Junior Engineers (Civil) PWD' should have been prepared and published by PWD by strictly remaining within the outlines circumscribed by 'Rule 3' of 'MCS (Regulation of Seniority) Rules 2021' which is based exceptionally on unassailed criteria of 'length of continuous service' in any cadre of Government Servants in any post,

cadre or service. The supremacy of 'Rule 3' of 'MCS (Regulation of Seniority) Rules 2021' cannot be challenged through any fresh attempt to re-determine the 'Inter-Se Seniority' of 'Junior Engineers (Civil) PWD' either by relying on criteria fixed by executive decision at the time of their absorption in cadre posts or even by relying on 'Rule 4(4)(a)' of 'MCS (Regulation of Seniority) Rules 2021' which is clearly applicable only to cases of 'Deemed Dates of seniority of those from 'Select List' who are promoted to next 'Higher Post' but later than his juniors; as there was no evidence of promotion having been granted to Applicant or Respondent No.2 and Respondent No.3 at the time of absorption for '810 Junior Engineers (Civil)' in (i) 'PWD', (ii) 'Irrigation Department' and (iii) 'Water Supply and Sanitation Department' by 'Revenue & Forest Department GR dated 14.07.1998'.

36. The catena of Judgments of Hon'ble Supreme Court of India referred to above clear the haziness created by publication of revised provisional 'Draft Seniority List' on 03.02.2023 and provisional 'Final Seniority List' published on 15.06.2023 of 'Junior Engineers (Civil) PWD'.

37. The placements in the earlier 'Seniority List' of 'Junior Engineers (Civil) PWD' could not have been re-set after successive 'Final Seniority List' had been published on 24.08.2006 and 18.06.2010. The 'Seniority List' of 'Government Servants' grow in organic manner and it is built up in stages as elaborated by 'Policy Guidelines' in GAD GR dated 21.10.2011 by emphasizing on stacking of the last 'Draft Seniority List' on top of the last 'Final Seniority List'. Further, the Hon'ble Supreme Court of India has forewarned against reopening of settled Seniority List after long time and advocated quietus after lapse of some time which has certainly not been observed by PWD which published revised provisional 'Draft Seniority List' on 03.02.2023 and provisional 'Final Seniority List' on 15.06.2023 of cadre of 'Junior Engineers (Civil) of PWD'.

38. The revised provisional 'Draft Seniority List' published on 03.02.2023 and provisional 'Final Seniority List' published on 15.06.2023 of 'Junior Engineers (Civil) of PWD' as elaborated above infringes on both (a) 'Doctrine of Occupied Field' and (b) 'Supremacy of Rules' as terms and conditions fixed by executive decision for absorption of '810 Junior Engineers' in (i) 'PWD', (ii) 'Irrigation Department' and (iii) 'Water Supply & Sanitation Department' by 'Revenue and Forest Department (Earthquake Rehabilitation Cell) GR dated 14.07.1998' and publication of common 'Seniority List' by 'Revenue & Forest Department (Earthquake Rehabilitation Cell) Circular dated 23.09.1998' cannot be an excuse for conjecturing up atypical 'Hybrid Criteria' to re-determine long settled 'Inter-Se Seniority' of 'Junior Engineers (Civil) PWD' including of Applicant and 'Respondent No.2' and 'Respondent No.3'. The provisions of 'Rule 3' of 'MCS (Regulation of Seniority) Rules 2021' cannot be breached in any circumstances and must prevail as highlighted in various landmark Judgments of Hon'ble Supreme Court. The rules or even executive instructions governing Seniority List of Government Servants from perspective of 'Constitution of India' are not only required to be valid under 'Article 14' and 'Article 16' of 'Constitution of India' but in some cases, are required to pass the tests of 'Article 309' or 'Article 148' of 'Constitution of India'.

39. The revised provisional 'Draft Seniority List' published on 03.02.2023 and provisional 'Final Seniority List' published on 15.06.2023 for cadre of 'Junior Engineers (Civil) PWD' for reasons explained above stand despairingly infirm and are hereby quashed and set aside with directions that fresh 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' be prepared and published within next 'Eight Weeks' stringently in observance of provisions of 'MCS (Regulation of Seniority) Rules 2021' and extant 'Policy Guidelines' issued by GAD.

40. The grievance of Applicant is also about not being promoted to cadre of 'Sub-Divisional Officer, PWD' although he has always been

senior to both 'Respondent No.2' and 'Respondent No.3'. The last 'Final Seniority List' of 'Junior Engineers (Civil) PWD' published on 18.06.2010 which had remained unaltered till publication of provisional 'Draft Seniority List' of 'Junior Engineer (Civil) of PWD' on 13.07.2022 and based on which the name of Applicant came to be included at 'Serial No.21' in 'Zone of Consideration' for promotion to cadre of 'Sub-Divisional Officer, PWD' has to be used now as the reference 'Seniority List' till the publication of fresh 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' who had formed on cadre posts upto 31.03.2007. Against this backdrop, considering that 'Respondent No.2' and 'Respondent No.3' have already been promoted to cadre of 'Sub-Divisional Officer, PWD' only after their seniority was re-fixed now in all fairness to Applicant, the 'Special Meeting of DPC' must be convened by PWD within next 'Two Weeks' to consider giving 'Ad-Hoc Promotion' to Applicant to cadre of 'Sub-Divisional Officer, PWD' pending publication of fresh 'Draft Seniority List' of 'Junior Engineers (Civil) PWD' within next 'Eight Weeks' stringently as per 'MCS (Regulation of Seniority) Rules 1921'. Hence, the following order.

ORDER

- (A) The Original Application No.787 of 2023 is Allowed.
- (B) The revised provisional 'Draft Seniority List' published on 03.02.2023 and provisional 'Final Seniority List' published on 15.06.2023 of 'Junior Engineers (Civil) PWD' based on 'Hybrid Criteria', and not 'Date of Joining' and 'Continuous Service' in cadre of 'Junior Engineers (Civil) PWD' are hereby quashed and set aside.
- (C) The 'Special Meeting of DPC' to be convened by PWD within next 'Two Weeks' to consider eligibility of Applicant for 'Ad-Hoc Promotion' to cadre of 'Sub-Divisional Officer' PWD based on placement of Applicant at 'Serial No.21' of 'Zone of

Consideration' notwithstanding time of 'Eight Weeks' granted for publication of fresh 'Draft Seniority List' of 'Junior Engineers (Civil) PWD'.

(D) No order as to Costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Sd/-

(MRIDULA BHATKAR, J.)
Chairperson

Place: Mumbai

Date : 11.11.2024

Dictation taken by : S.K. Wamanse

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