

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATIONS NO.312, 355, 1194 & 1195 OF 2019**

ORIGINAL APPLICATION NO.312 OF 2019

DISTRICT : PUNE

Devendra Prabhakar Koli,)
Age 42 years, occ. Service, R/o F/603, Empire Estate,)
Chinchwad, Pune)..Applicant

Versus

1. The Secretary,)
(Command Area Development))
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The Chief Engineer (Mechanical),)
Water Resources Division, Mico Circle,)
Trambak Road, Nashik 422 002)
3. Yugesh S/o Janardan Pakhmode,)
Age 49 years, Deputy Engineer,)
Public Works Mechanical Sub-Division,)
Thane, PWD Compound, Station Road,)
Thane West)

4. Dattatray S/o Yadav Gulumkar,)
Age 47 years, Deputy Engineer,)
Public Works Mechanical Sub-Division, Patas,)
Taq. Daund, District Pune)
5. Shashikant Narayan Joshi,)
Ag 45 years, occ. Assistant Superintending)
Engineer, Public Works Mechanical Circle,)
Central Building, Near Railway Station, Pune)
6. Rajratn Mahadevrao Randive,)
Age 44 years, Deputy Engineer,)
Chief Gate Erection Sub Unit, 34, Satara,)
Bodoli, Satara)..Respondents

WITH

ORIGINAL APPLICATION NO.355 OF 2019

DISTRICT : THANE

1. Narayan Dashrathrao Apte,)
Age 50 years, occ. Service, R/o C Wing,)
904, Tharwani Residency, Plot No.C-1, Sector 6A))
Kamote, Navi Mumbai)
2. Ramesh Prabhakar Koli,)
Age 46 years, occ. Service,)
R/o 400/21/60, Sai Soha Bhukhand,)
Sant Tukaram Nagar, Nr. Y.M. Hospital,)
Pimpri, Pune 18)

3. Vivekanand Pandurang Maindargi,)
 Age 55 years, occ. Service,)
 R/o 1182/12 E Ward,Near Nigade Samaj Mandir)
 3rd Lane, Takala, Rajaramuri, Kolhapur)
4. Ashok Jalamsing Deore,)
 Age 56 years, occ. Service, R/o Flat No.2-C-303,)
 Bhakati Heights, 122 Building, Tilak Nagar,)
 Chembur, Mumbai 400089)..Applicants

Versus

1. The Secretary,)
 (Command Area Development))
 Water Resources Department,)
 Mantralaya, Mumbai 400032)
2. The Chief Engineer (Mechanical),)
 Water Resources Division, Mico Circle,)
 Trambak Road, Nashik 422 002)..Respondents

WITH

ORIGINAL APPLICATION NO.1194 OF 2019

DISTRICT : THANE

Sanjaykumar Dhondu Sapkale,)
 Age 51 years, occ. Service,)
 R/at A-203-B, Shree Shreejidhan CHS, Parsiknagar,)
 Kalwa, Thane 400605)..Applicant

Versus

1. The Principal Secretary (CADA),)
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The Chief Engineer,)
Hydro Project, Mumbai, 4th Floor,)
Near Hongkong Building, Fort, Mumbai)..Respondents

WITH

ORIGINAL APPLICATION NO.1195 OF 2019

DISTRICT : NASHIK

Sudhir Dadaji Pagar,)
Age 49 years, occ. Service, R/o Godavari Hyrdo)
Electricity Lift Irrigation Division, Nashik)..Applicant

Versus

1. The Principal Secretary (CADA),)
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The Chief Engineer (Electrical),)
Hydro Project, Mumbai, 4th Floor,)
Near Hongkong Building, Fort, Mumbai)..Respondents

Shri D.R. Irale Patil – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

Shri Ajay Deshpande with Shri V.P. Potbhare – Advocate for Respondents

No.3 to 6 in OA No.312/2019

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 3rd July, 2024

PRONOUNCED ON: 1st August, 2024

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicants who are working as Junior Engineers in the Water Resources Department pray for granting them benefit of 3/8th past service holding the post of Junior Engineer/Sectional Engineer after having passed the degree course and pray for proper placement in the State seniority list. The details of the applicants are as follows:

Sr. No.	OA No.	Name	Date of joining as Junior Engineer	Date of obtaining Degree
1	312/2019	Shri D.P. Koli	16.4.1998	29.11.2002
2	355/2019	Shri N.D. Apte Shri R.P.Koli Shri V.P. Maindarge Shri A.J. Deore	1.6.1990 6.4.1998 7.4.1982 5.8.1983	18.10.2011 29.11.2002 13.4.2009 18.2.2012
3	1194/2019	Shri S.D. Sapkale	1.7.1997	May 2011
4	1195/2019	Shri S.D. Pagar	2.1.1998	February 2008

2. Ld. Advocate for the applicants relied on the following orders passed by this Tribunal:

(i) Judgment and order dated 8.3.2023 passed by this Tribunal in OA No.695/2018 (Ninad K. Chavan & Ors. Vs. The State of Maharashtra & Ors.) as confirmed by the judgment and order dated 23.6.2023 passed by the Hon'ble Bombay High Court in W.P. No.5851 of 2023 & W.P. No.6323 of 2023.

(ii) Judgment and order dated 16.6.2016 passed by this Tribunal in OA No.380 of 2015 Sanjay Ramchandra Devgekar Vs. The State of Maharashtra & Ors.

(iii) Judgment and order dated 13.9.2022 passed by the Aurangabad Bench of this Tribunal in OA No.535/2019 Nitin Dattatray Ingale Vs. The State of Maharashtra.

3. Ld. Advocate for the applicants prays that the department should provide them the benefit of Sectional Engineer on the basis of GR dated 16.4.1984. As per GR after completing 5 years of continuous service as a Junior Engineer and possessing 3 years Diploma was made eligible to be designated as Sectional Engineer. Ld. Advocate for the applicants pointed out that all the service conditions are one and the same for Junior Engineer and Sectional Engineer.

4. Ld. Advocate for the applicants states that Government of Maharashtra under GR dated 16.4.1984 framed the policy for the purpose of Recruitment Rules in technical cadre post such as Junior Engineer & Assistant Engineer, Grade-II. He states that this GR is applicable for Public Works Department (PWD) and Irrigation Department. He pointed out that for the first time the Government of Maharashtra has taken decision to grant the technical cadre post, the status of Sectional Engineer to 3 years diploma holders after completing 5 years of service. He further pointed out that the Government of Maharashtra for the first time framed

Recruitment Rules for the cadre post of Assistant Engineer (Civil), Grade-II in the Maharashtra Service of Engineers, Group-B Recruitment Rules, 1997. However, these rules were not made applicable for Mechanical and Electrical Junior Engineers.

5. Ld. CPO for the Respondents and Shri Ajay Deshpande with Shri V.P. Potbhare, Advocate for Respondents No.3 to 6 in OA No.312/2019, submitted that the difference between these three above judgments cited by the Ld. Advocate for the applicants and the present cases is that the applicants in the present case are working in the Irrigation Department and in the judgment cited by the Ld. Advocate for the applicants, all the applicants are working in the Public Works Department. There are separate rules for PWD and Irrigation Department and hence these judgments are not applicable to the present cases. We accept these submissions.

6. Ld. CPO and Ld. Advocates submitted that the Maharashtra Government is yet to revise the service rules as recommended by Bakshi Committee which also includes recommendation of providing 3/8th service to diploma engineers who complete degree while in service. Government has to ensure that there should not be an injustice to those Maharashtra Public Service Commission (MPSC) candidates recruited after 1997, who have graduated earlier than applicants and selected through competitive examination. Therefore, the entry of graduate Junior Engineers to Assistant Engineer, Grade-II post without the recommendation of MPSC has been stopped since 1997.

7. We have considered the submissions of both the sides. In OA No.695/2018 *Ninad Kishna Chavan & Ors.* (supra) we had passed the following order on 8.3.2023:

“12. Original Application No.695 of 2018 is partly allowed. As far as Applicants No.2, 3 & 4 are concerned as they have secured graduation while in service before 16.5.2009, they should be given the benefit of GR dated 29.11.1984. We therefore, direct the respondents to ensure that the benefit of the said GR and the consequential benefits are extended to Applicants No.2, 3 & 4 within a period of four months from the date of this order. However, Applicants No.1 & 5 are not entitled to the benefits of this GR dated 29.11.1984 as they have completed their graduation after Recruitment Rules of 2009 were notified in the official gazette on 16.5.2009. No order as to costs.”

8. The above order dated 8.3.2023 was confirmed by the Hon'ble Bombay High Court in W.P. No.5851/2023 by order dated 23.6.2023.

9. It is seen that the recruitment rules of the PWD for the post of Assistant Engineer (Electrical), Grade-II have been notified vide notification dated 16.5.2009 and these recruitment rules are not with retrospective effect. There is no provision in these rules to give benefit of 3/8th service to diploma holder Junior Engineer in Government service if they hold Engineering Degree or AMIE qualification. However, Recruitment Rules of 2013 of Water Resources Department (WRD) for the post of Assistant Engineer (Electrical & Mechanical), Grade-II in Maharashtra Engineering Services (MES) Group-B Gazetted vide notification dated 13.3.2013 have been implemented with retrospective effect from 1.4.1981. Moreover, in these recruitment rules inclusion for the post of Assistant Engineer (Electrical & Mechanical), Grade-II in the WRD is mentioned if he has obtained the benefit of 3/8th service before 31.12.1996 in the cadre of Assistant Engineer.

10. It is seen the service rules for appointment of Assistant Engineer, Grade-II were framed on 16.1.1997 for Civil Engineers and the same were

extended for Mechanical Engineers. These rules are uniformly applicable to Civil, Mechanical and Electrical Wings of the Department.

11. The recruitment rules of Assistant Engineer, Grade-II fall under the purview of MPSC since 16.6.1997. MPSC carried out subsequent recruitment of Assistant Engineer, Grade-II post as per service rules framed by the Government. The service rules state that a candidate needs to pass the examination conducted by the MPSC, to be appointed and included in the State seniority of Assistant Engineer, Grade-II. The applicants became eligible to appear for the MPSC examination for the post of Assistant Engineer, Grade-II after obtaining their graduation degree. Moreover, it is seen that the applicants were appointed by Secondary Services Commission. The cadre of Junior Engineer is not a feeder cadre to the post of Assistant Engineer, Grade-II. These service rules framed in 1997 for entry as Assistant Engineer, Grade-II cadre automatically repealed the provisions of GR dated 29.11.1984.

12. The applicants graduated on the following dates:

Sr. No.	OA No.	Name	Date of joining as Junior Engineer	Date of obtaining Degree
1	312/2019	Shri D.P. Koli	16.4.1998	29.11.2002
2	355/2019	Shri N.D. Apte Shri R.P.Koli Shri V.P. Maindarge Shri A.J. Deore	1.6.1990 6.4.1998 7.4.1982 5.8.1983	18.10.2011 29.11.2002 13.4.2009 18.2.2012
3	1194/2019	Shri S.D. Sapkale	1.7.1997	May 2011
4	1195/2019	Shri S.D. Pagar	2.1.1998	February 2008

13. Since the applicants graduated after 1997, they are governed by the service rules framed in the year 1997 for the post of Assistant Engineer, Grade-II post.

14. Considered the submissions of both the sides. It is seen that the recruitment to the post of Assistant Engineers were carried out as per the Rules of 1997. The recruitment rules framed for Engineers in 2013 superseded all the earlier GRs. It is specifically mentioned in these rules that these rules would be effective from 1.4.1981. Thus the rules for the post of Assistant Engineer, Grade-II were framed in the year 1997 for the civil discipline and the same rules were extended to Electrical and Mechanical discipline. This brought the recruitment to the post of Assistant Engineer under the purview of MPSC. Thus, direct appointment of Assistant Engineers without the concurrence of the MPSC was stopped.

15. The recruitment rules framed by notification dated 27.4.2013 superseded all the GRs regarding service rules since 1989. Thus, to sum up it is seen that the Assistant Engineer's post is a Group-B Gazetted post while the Junior Engineer's post is a Group-B Non-Gazetted post. The Junior Engineer's post is not a feeder cadre to Assistant Engineer, Grade-II post. The new service rules framed in 1997 for the post of Assistant Engineer, Grade-II does not have approval for direct recruitment to the said post by the Government. Hence, the GR of 1984 stands automatically cancelled.

16. We can distinguish the ratio of the Hon'ble Bombay High Court in W.P. No.7415/2003 Sunita Daulatrao Patil & Ors. Vs. State of Maharashtra & Ors., wherein the Rural Development Department (RDD) had issued GR on 29.5.2007. The said GR gave a reference of the recruitment rules framed by Irrigation Department on 16.6.1997 and the benefit of 3/8th service to the degree holders has been cancelled. However, this case is different as WRD and PWD formulated service rules for Assistant Engineers in 1997 and all subsequent recruitments were conducted by the MPSC. Moreover, implementation dates and

recruitment rules of Assistant Engineers in RDD are different from the Irrigation Department and PWD. Finally the GR regarding recruitment rules of Assistant Engineer (Mechanical) of 2013 superseded all the GRs since 1981 unlike GR of RDD on 29.5.2007.

17. Thus, it is seen that if the benefit as prayed by the applicants is granted, the candidates recruited by the MPSC for the post of Assistant Engineers after 1987 will be placed unfavourably in the seniority list if benefit of 3/8th service is given to candidates after the year 1997. This will be violative of Article 14 of the Constitution of India. Moreover, the Government of Maharashtra is yet to modify the recruitment rules of Assistant Engineers, Grade-II as recommended by the Bakshi Committee. It is not permissible that the applicants be allowed to enter the cadre of Assistant Engineer, Grade-II without competing with the graduate aspirants and without passing the limited departmental examination conducted by the MPSC. Moreover, if the claims of these applicants are accepted it will be grave injustice to those candidates who have entered as per Recruitment Rules framed in 1997.

18. Thus, in view of the reasons stated above, we find no merit in the OAs and all the above four OAs deserves to be dismissed. Hence, all the above four Original Applications are dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
1.8.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
1.8.2024

Dictation taken by: S.G. Jawalkar.