

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8855 OF 2022

Dineshkumar S/o Budha Bagul,
Age; 42 years, Occ; Govt. Service,
R/o; 57, Pramod Nagar, Sector 2,
Deopur, Dhule, Tal. & Dist. Dhule.

..PETITIONER

V E R S U S

1. The State of Maharashtra
Through its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service
Commission,
Through its Secretary,
MS, Mumbai.
3. The Chief Engineer,
Public Works Department,
Bandhkam Bhawan,
Aurangabad.

...RESPONDENTS

.....
Advocate for the petitioner : Miss. Pradnya S. Talekar h/f Talekar and
Associates
AGP for the Respondent Nos. : Mr . K.N.Lokhande
.....

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 29/08/2022.

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

3. The petitioner assails the judgment and order dated 06.05.2022 passed by the Maharashtra Administrative Tribunal in Original Application No. 845 of 2016. Before the Tribunal, the petitioner had prayed for appointment on the post of Assistant Executive Engineer Grade-1 with deemed date of seniority on that post with effect from 01.04.2002 along with all consequential benefits. He had also sought relief of promotion to the post of Executive Engineer with effect from 12.05.2006. By the judgment and order dated 06.05.2022 the Tribunal has dismissed the Original Application.

4. It was petitioner's case before the Tribunal that the posts of Assistant Engineer and Assistant Executive Engineer are filled by way of common recruitment process initiated by the Maharashtra Public Service Commission. He applied for the Maharashtra Engineering Services 1999 in pursuance of the advertisement of dated 12.02.1999 and secured 273 marks. It was pleaded that there were 21 posts of Assistant Executive Engineer Grade-1, two out of which were reserved

for Scheduled Tribe Category, to which the petitioner belongs. One out of two ST category posts was further reserved for woman category, thereby leaving only one post in open ST category.

5. Candidates securing higher merit were offered appointment on the post of Assistant Executive Engineer, whereas those with lesser merit positions were offered the post of Assistant Engineer. On the basis of his merit position, Petitioner was came to be appointed on the post of Assistant Engineer Grade-1 against the post reserved for ST category vide order dated 25.01.2002. He joined the said post without any demur. In his Original Application, he contended that since one vacancy of the post of Assistant Executive Engineer Grade-1 remained vacant, he ought to have been appointed against the vacant post.

6. Since the petitioner was canvassing his cause of action relating to the selection and appointment pertaining to the year 2002 by filing Original Application in the year 2015, obviously there was gross delay. He therefore, filed application for condonation of delay. We would reproduce the order passed by the Tribunal on the application for condonation of delay on 21.10.2016 which reads thus :

“. Heard Ku. Madhavi Ayyappan learned Advocate holding for Shri S.B.Talekar learned Advocate for the Applicant and Shri M.P. Gude learned Presenting Officer for Respondents.

2. Learned P.O. files affidavit in reply on behalf of the respondent Nos. 1 to 3. It is taken on record. Copy thereof has been served on the other side.

3. Applicant has stated in paragraph 5 of the M.A. that seniority list was published on 20th May 2015. This aspect has not been dealt with in the affidavit in reply.

4. This attitude of evasive reply on the part of the respondents only proves higher skills in dishonesty than honesty. Such an attitude deserves to be abhorred and deprecated. This Tribunal is, therefore, satisfied to grant declaration in favour of the applicant as prayed in Clause "A" of the M.A. that there is no delay in filing the Original Application.

5. Objection of delay, if any, raised earlier is over ruled. M.A. is allowed and disposed of accordingly with no order as to costs.

6. In view of the above, O.A. be registered and numbered."

7. Thus, inordinate long delay in filing the Original Application came to be condoned by a Single Member of the Tribunal on altogether different consideration rather than examining the reasons cited for cause of delay.

8. The Original Application was resisted on merits by the respondents therein. By the judgment and order impugned in the present petition, the Tribunal has proceeded to dismiss the Original Application.

9. Ms. Pradnya Talekar, the learned Counsel appearing for the petitioner would submit that the Tribunal has committed an error in not considering the most important point raised before it about the discriminatory treatment being meted out to the petitioner. She invited our attention to the pleadings as well as written submissions by which it was specifically urged before the Tribunal that other candidates in similar circumstances were granted appointments on the post of

Assistant Executive Engineer Grade-1, even after joining the post of Assistant Engineer Grade-1. She submits that since ultimately holders of both posts of AEE and AE meet at the higher level of Executive Engineer and that since Petitioner is already promoted as Executive Engineer, grant of relief to the petitioner would entail only grant of deemed date on the post of Executive Engineer. She submits that the petitioner has a right to claim appointment on the vacant post of Assistant Executive Engineer.

10. Mr. Lokhande, the learned AGP appearing for the State supports the order passed by the Tribunal.

11. After hearing the learned Counsel for the parties, we find that the Original Application filed by the petitioner before the Tribunal was completely misconceived. It is an admitted position that the petitioner accepted the post of Assistant Engineer Grade-1 way back in the year 2002 without any demur. He did not object nor did he make any representation for appointment on the post of Assistant Executive Engineer. He discharged the duties on the post of Assistant Engineer for 13 long years before seeking change of cadre by filing Original Application in the year 2015. Ms. Talekar has fairly admitted that the posts of Assistant Engineer Grade-1, and Assistant Executive Engineer Grade-1 fall in separate Seniority units. These two Cadres are thus completely different. It is therefore incomprehensible as to how the petitioner could have sought the change of Cadre after 13 long years

by instituting the Original Application before the Tribunal. To this query, Miss. Talekar contends that the Tribunal had condoned the delay and that therefore mere passage of long time in seeking change of post would not *per se* disentitle the Petitioner for the relief. We disagree. Permissibility of changing the post of initial appointment after passage of long time is a matter of merit and not just a matter of delay in filing Original Application.

12. The Tribunal has held that after having appointed on the post of Assistant Engineer Grade-1 there was no system of continuing the name of the petitioner on waiting list for the post of Assistant Engineer Grade-1. The Tribunal had further held that the Appointing Authority had to complete the recruitment process and could not have permitted the candidate accepting one post to reserve his claim for another post in future for indefinite period of time. The Tribunal has observed that unless such process has been conducted there could have been unmanageable chaos in the allocation of the process. The Tribunal has further relied on the finding that at the time the petitioner was offered appointment on the post of Assistant Engineer Grade-1, there was no vacancy available on the post of Assistant Executive Engineer Grade-1 for the appointment of the petitioner. In our opinion, no error has been committed by the Tribunal while recording these findings.

13. Now we deal with the submission of Miss. Talekar that even

though the plea of discrimination was specifically raised before the Tribunal, no finding thereon has been recorded in the impugned judgment. On perusal of the impugned judgment, we find that the Tribunal has indeed considered the additional affidavit dated 02.12.2021 filed by the petitioner claiming parity with the case of Mr. Dinesh Narayan Nandanwar in respect of 1994 selection. In support of her contention Ms. Talekar invited our attention to the corrigendum dated 06.06.2006 to the Seniority List of Assistant Executive Engineer, by which the name of the Mr. Nandanwar was therein. We are afraid, merely because the name of Mr. Nandanwar was included in the Seniority List of Assistant Executive Engineer, we cannot presume that there was change of cadre pertaining to 1999 selection in the year 2016. Even otherwise, if some candidates were indeed permitted change of post from AE to AEE as claimed, that action of the State would not create any enforceable right in favour of the Petitioner. Right to equality is a positive concept and cannot be enforced in a negative manner. Therefore, we do not find any merit in the plea of discrimination raised by Ms. Talekar.

14. The petitioner had participated in selection for the post of Assistant Executive Engineer Grade-1 and Assistant Engineer Grade-1 in the year 1999. He happily accepted the post of Assistant Engineer Grade-1 in the year 2002. He cannot now be permitted to take a *volte face* and claim that he ought to have been offered appointment on the post of Assistant Executive Engineer Grade-1. The Tribunal is right in

observing that the Appointing Authority is required to finalize the selection process and cannot permit change of post for indefinite period of time.

15. In the result, we find that the petition filed by the petitioner is devoid of any merits. It is dismissed without any order as to costs.

16. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

mahajansb/