

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11216 OF 2022

1. Shri Rahul Shivaji Salunkhe ... Petitioners
Age - 39 years, Occupation -
Service/C.E.A.
Dy. Eng. C-1, Worli, Mumbai
Residing at M/7/A, 501, Mauli Building,
Pratiksha Nagar, Sion, Mumbai
2. Shri Lalit Prabhakar Varule,
Age-49 years, Occupation - Service/C.E.A.
Dy. Eng. Sub. Div. No.1, Dindori, Nashik,
Residing at Flat No.3, Vrunda Apt.,
Manik Nagar, Opp. Atul Dairy,
Kamthwada, Nashik.
3. Shri. Milind Namdeo Marathe,
Age-53 years, Occupation-Service/ C.E.A.,
Dy. Eng. Andheri (P.W.), Sub.Div.
Andheri (W), Mumbai
Residing at 8 Type 2 Caterers, 3rd Floor,
PWD Co-Op., Opp. Tahasil Office,
Dadabhai Road, Andhei (W),
Mumbai - 400058.
4. Shri Yogesh Kashiram Thakare,
Age - 35 years, Occupation - Service /
C.E.A.
Dy. Eng. Sub. Div. Surgana, Nashik
Residing at 11, Raj Vihar Row House,
Near S.T. Workshop, Peth Road,
Omkar Nagar, Nashik - 422 004.
5. Shri Prashant Karbhari Chavan
Deputy Engineer, Dindori - 1, Nashik.
Age-31 years, Occupation-Service / C.E.A.
Residing at A/9/1, Raj Sarathi Society,
Indirangar, Nashik -9.
6. Shri Dilip Y. Patharawat,
Additional and Dy. Engineer, Sub-Division,
South (P.W.), Mumbai.
Residing at B 167/6, Government

Quarters, Bandra (E), Mumbai 400 051.

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Public Works Department (Civil),
Having office at Mantralaya,
Mumbai - 400 032.
- 2 Deputy Secretary (Establishment),
Public Works Department (Civil)
Having office at Mantralaya,
Mumbai - 400 032
- 3 The Executive Officer
The State of Maharashtra,
Public Works Department,
Having office at Mantralaya,
Mumbai - 400032
- 4 Shri Rajendra Laxmanrao Patil
Age-about 55 yeas, Occupation - Junior
Engineer, PWD, Central Mumbai Division,
Worli, Mumbai
Residing at Gagan Mahal C-2 (Ground
Floor), S.P. Road, Worli, Mumbai 400 032.
- 5 Shri Arun Sheshrao Kharat
Age - about 55 years, Occupation - Junior
Engineer, PWD, N. H. Division, Thane,
N. H. Sub-Division, Murbad
Residing at B-201, Madhuban CHSL,
Opp. Railway Power House,
Ballyani Road, Manda-Titwala (E),
Taluka - Kalyan, Thane.
- 6 Yogesh Abhimanyu Ahire,
Age - 40 years, Occupation - Sectional
Engineer Class II, Having Office at
Executive Engineering P.W. Division,
District - Jalgaon
- 7 Ashok Gokul Borate,
Age - 40 years, Occupation - sectional
Engineer Class II, Having Office at
P.W. Sub Divisional Bhoom,
Tal. Bhoom, District - Osmanabad.

- 8 Arun Tejamal Jadhav
Age – 46 years Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional, Chalisgaon.
- 9 Rajeshkumar Hemkant Rasse
Age-54 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional, Arvi,
P.W. Circle, Chandrapur.
- 10 Arun Madhukar Karanjekar
Age – 57 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional,
Lakhandar, District - Bhandara
- 11 Krushna Laxman Dhole
Age – 57 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional, (Rural), Nagpur
- 12 Kamlesh Bhaurao Nagrale
Age – 40 years, Occupation – Sectional,
Engineer Class II, Having Office at
District Laboratory (P.W.)
Chandrapur.
- 13 Sunil Vishweshwarrao Betwar
Age – 44 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sod, P.W. (Tribal)
Sub Divisional, Allapalli,
Tal.Ahere, District - Gadchiroli
- 14 Bupendra Gangadharrao Kumbhare
Age-44 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional,
A/P/T Bramhopur,
District – Chandrapur.

- 15 Arvind Jejeram Ramteke
Age – 52 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Divisional,
Taluka – Nagphid,
District - Chandrapur
- 16 Ravidas Parsharam Tembhurne,
Age-52 years, Occupation – Sectional,
Engineer Class II, Having Office at
Assistant Engineer Grade-1,
P.W. Sub Division No.2,
Taluka – Gadchiroli,
District - Gadchiroli
- 17 Kiran Moreshwar Moon,
Age – 42 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer,
National Highway Division,
Nagpur.
- 18 Kailas Pandurang Kulkarni
Age-43 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer,
P.W. (North) Division,
Behind Bandhkaam Bhavan,
Nashik
- 19 Durgesh Deorao Walmandare,
Age – 43 years, Occupation – Sectional,
Engineer Class II, Having Office at
Sdo, P.W. Sub Division,
Wadsa, District – Gadchiroli.
- 20 Bahirji Udhav Shinde,
Age – 40 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer,
Public Works Department,
Aurangabad Road, Fakirwada,
Ahmednagar.
- 21 Dnyaneshwar Gunwant Thakare,
Age – 47 years, Occupation – Sectional,

Engineer Class II, Having Office at
Executive Engineer,
P.W. (East) Division,
Nashik Bandhkam Bhavan Campus,
Trymbak Road, Nashik.

- 22 Manoj Hiralal Patil
Age - 48 years, Occupation - Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Division,
Taluka - Jamner, District - Jalgaon.
- 23 Nilesh Dattatraya Metkar,
Age-46 years, Occupation - Sectional,
Engineer Class II, Having office at
Public Works (North) Division,
Trambak Road, Nashik.
- 24 Jamal Maheebub Shaikh
Age - 40 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
Road Development Division,
No.4 Andheri (W), Mumbai
- 25 Vinod Marotrao Naik,
Age-51 yeas, Occupation - Sectional,
Engineer Class II, Having Office at
National Highway,
Sub Division, Pune
- 26 Hemant Laxman Dashputre
Age - 44 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
Public Works Division (East),
Trimbak Road, Nashik.
- 27 Arun Sudhir Shirsath,
Age - 46 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
P.W. (North) Division, Nashik
- 28 Mrs. Farheen Majid Kazi,
Age - 35 years, Occupation - Sectional,

Engineer Class II, Having Office at
Executive Engineer,
Construction Division, Osmanabad.

- 29 Rjaram Tukaram Gawade,
Age - 47 years, Occupation - Sectional,
Engineer Class II, Having Office at
Sub-Divisional Engineer,
P.W. Office Vita,
Taluka - Khanapur, District - Sangli.
- 30 Vijaykumar Vilasrao Vanmore
Age-46 years, Occupation - Sectional,
Engineer Class II, Having Office at
Deputy Engineer, P.W.
Sub Division, at Malkapur,
Taluka - Shahuwadi,
District Kolhapur
- 31 Abubakar Babaso Shaikh,
Age - 43 years, Occupation - Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Division,
Kavathemhankal, District - Sangli.
- 32 Rahul Damodar Pachorkar,
Age - 45 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer Public
Works Division,
Taluka -Sangamner,
District - Ahmednagar.
- 33 Pramod Rajaram Doiphode,
Age - 47 years, Occupation - Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Division,
Radhanagari,
District - Kolhapur
- 34 Nandkishor Latari Dhengle,
Age - 49 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
P.W. Sub Division No.3, Nagpur

- 35 Vilesh Ramprasad Amrute,
Age - 43 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
P.W. Division No.3,
Sub Division Umred, Nagpur
- 36 Vinod Deochandji Meshram,
Age - 43 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer, Public Works
Divisional No.2, Civil Line, Nagpur.
- 37 Nitin Wasudevrao Zode,
Age - 41 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
P.W. Integrated Unit, Nagpur.
- 38 Sachin Arjun Sapkale,
Age - 40 years, Occupation - Sectional,
Engineer Class II, Having Office at
Sub Divisional Engineer,
P.W. Sub Division, Dhorangaon,
District - Jalgaon
- 39 Manohar Dhuryabhan Tayade,
Age - 46 years, Occupation - Sectional,
Engineer Class II, Having Office at
Assistant Engineer Grade-1,
P.W. Sub Division, Savada.
- 40 Sharda Amil Bhute,
Age - 38 years, Occupation - Sectional,
Engineer Class II, Having Office at
P.W. Circle, Nagpur
- 41 Prajakta Shashikant Kokane,
Age - 43 years, Occupation - Sectional,
Engineer Class II, Having Office at
Executive Engineer,
Public Works Department,
Opp. Tara Pan
Near S. T. Stand, Sangamner,
District Ahmednagar.
- 42 Sandip Chandrakant Ashtekar,

Age-51 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer, Public Works Division,
Near Bus Stand, Sangamner,
District – Ahmednagar.

- 43 Dilip M. Somkuwar,
Age-57 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer,
National Highway Division,
Nagpur.
- 44 Mrs. Dimple Mohan Nair,
Age – 42 years, Occupation – Sectional,
Engineer Class II, Having Office at
Deputy Engineer,
P.W. Sub Division No.2, Behind
Ramnagar Police Station,
Mul Road, Chandrapur.
- 45 Sandip Shriram Bathe,
Age-40 years, Occupation – Sectional,
Engineer Class II, Having Office at
Executive Engineer,
World Bank Project Division
(PWD), Akola.
- 46 Swapnil Bapurao Tambe,
Age - 35 years, Occupation – Sectional,
Engineer Class II, Having Office at
Having office at Assistant
Engineer Grade – I, P.W.D. Sub
Division, Baramati, District – Pune.
- 47 Rajendra Laxman Chaudhari,
Age-39 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division,
Bhigwan
- 48 Mukesh Laxman Pawar,
Age – 39 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division (East),
Triambak Road, Nashil.

- 49 Kishor Krushnarao Kalbande,
(handicaped)
Age-53 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division,
Wardha.
- 50 Vijay Kesharao Chopkar,
Age-45 years, Occupation – Sectional,
Engineer Class II, Having Office at
Special Project (P.W) Division,
Yawatmal.
- 51 Ku. Shital Jagdishrao Kukade,
Age – 35 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division,
Achalpur.
- 52 Aminoddin Bahoddin Kazi,
Age-44 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division,
Yawtmal.
- 53 Aniruddha Madhukarrao Kolkhede ... Respondents
Age – 51 years, Occupation – Sectional,
Engineer Class II, Having Office at
Public Works Division,
Amravati.

Mr. Amit A. Gharte for the Petitioners.

Mr. B. V. Samant, AGP for the Respondent Nos.1 to 3-State.

Mr. Om Lonkar for the Respondent Nos.4 & 5.

Mr. Bhooshan Bandiwadkar for the Respondent Nos.6 to 53.

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

DATED : 10 JANUARY, 2023

PC :-

1. By this Petition, the petitioners assail order dated 3rd

August, 2022 passed by the Maharashtra Administrative Tribunal at Mumbai (**Tribunal**) in Miscellaneous Application No.456 of 2022 filed in Contempt Application No.8 of 2021. By that order, the Tribunal has proceeded to entertain the Misc. Application filed by the intervenors (respondent Nos.4 to 53 herein) seeking to intervene in the Contempt Application filed by the petitioners. The petitioners also assail order dated 24th August, 2022 by which the Misc. Applications filed by the intervenors have been allowed.

2. Appearing for the petitioners, Mr. Amit A. Gharte, the learned counsel would submit that the petitioners has filed the Contempt Application No.8 of 2021 for non-implementation of order dated 13th February, 2020 passed by the Tribunal in Original Application No.848 of 2018. He would submit that by that order, the Tribunal has directed the official respondents to rectify the mistake in the seniority list and promote the eligible candidates including the applicants in Original Application in accordance with rules. He would submit that as direction was not implemented, the Contempt Application No.8 of 2021 was required to be filed. He would submit that the contempt is the matter between the applicants to the Original Applications and

the Official respondents with which the intervenors have no concern. He would submit that by permitting the intervention, the Tribunal has enlarged the scope of Contempt Petition by seeking to go beyond the order of which the contempt is alleged.

3. *Per contra*, Mr. Om Lonkar Ld. Counsel appearing for respondent Nos.4 & 5 and Mr. Bhooshan Bandiwadekar Ld. Counsel appearing for respondent Nos.6 to 53 would oppose the Petition and support the order passed by the Tribunal. They would submit that the petitioners failed to implead the intervenors as a party respondents to Original Application No.848 of 2018 and sought orders from Tribunal behind their back. That there has been erroneous implementation of order dated 13th February, 2020 which has resulted in reversion of some of the intervenors by issuance of show cause notice. It is therefore submitted that the presence of intervenors is vital to while deciding the contempt petition. It is also contended by Mr. Lonkar that some of his clients have already instituted Original Application No.763 of 2022 challenging the orders of their reversion.

4. We have also heard Mr. B. V. Samant, learned AGP for the Respondent Nos.1 to 3-State.

5. It is apparent that the petitioners had filed Original Application No.848 of 2018 challenging the promotional list 10th April, 2018, 2nd August, 2018 and 19th June, 2018, and further a direction to prepare a fresh promotional list. It appears that Original Application No.840 of 2018 was instituted without impleading affected parties. Tribunal has disposed of Original Application No.840 of 2018 by passing the following order;

8. O.A. is disposed of with directions to the Respondent No.1 to rectify the mistake in Seniority List, if any, and to promote the eligible candidates including applicants in accordance to rules.

6. Perusal of order dated 13th February, 2020 would indicate that no specific direction was issued by the Tribunal to effect the promotions of the petitioners. Despite absence of specific direction for promotion of the petitioners, Contempt Application No.8 of 2021 was instituted by them alleging non-implementation of order dated 13th February, 2020. The Tribunal proceeded to pass the following order in the Contempt Application No.8 of 2021 on 25th July, 2022 ;

5. We are of the view that this stand cannot be acceptable when there is no stay. The Respondent-State is bound under obligation to take steps for compliance of the order. As per instructions from the learned C.P.O. it appears that the promotion was wrongly given to nearly 112 Civil Engineering Assistants to the post of Junior Engineer. The said promotion as per the order of the Tribunal was given as a deviation of the rules. Hence, it is obligatory on the part of the Respondent-State to issue notice of reversion to all these 112 Junior Engineers who were wrongly promoted by way of compliance of the order of this Tribunal.

7. The order passed by the Tribunal on 25th July, 2022 in Contempt Application apparently resulted in issuance of show cause Notice dated 28th July, 2022 to 85 individuals. This triggered filing of Misc. Application Nos. 456 of 2022 and 496 of 2022 seeking intervention by such affected candidates in the Contempt Application. It also appears that the affected individuals have also instituted a separate Application No. 763 of 2022 challenging the reversion orders.

8. The law with regard to course of action to be adopted by the employees who are affected by orders passed by the Tribunal in proceedings instituted behind their back is well settled by the Judgment of the Apex Court in its case of ***K. Ajit Babu and Others V. Union of India and Others***¹. In Paragraph 6

¹ (1997) 6 SCC 473

of the Judgment, the Apex Court has held as under;

“4. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority.....

5. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad in the case of P.S. John (supra) in TA No. 263 of 1986. It is here that the Tribunal apparently fell in error. No doubt the decision of the Tribunal in the case P.S. John was against the appellant but the application filed by the appellant under Section 19 of the Act has to be dealt with in accordance with law.

6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the “Doctrine of Precedent”. The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the benches (see John Lucas1). In the present case, what we find is that the Tribunal rejected the application of the appellants thinking that the appellants are seeking setting aside of the decision of the Tribunal in Transfer Application No.263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law.”

9. In our view, the affected employees being respondent Nos.4 to 53 in the present Petition have rightly instituted separate Original Application No.763 of 2022. The issue is therefore whether it was necessary for those employees to seek intervention in contempt application as well? The answer to the question would be in the negative. By hearing such affected employees in contempt application, the Tribunal cannot enlarge the scope of such contempt application, which is restricted in examining whether there is willful and intentional violation of its order passed in OA. In that view of the matter, there is no question of permitting them to intervene in Contempt Application No.8 of 2021 instituted by the petitioners.

10. True it is that the Tribunal faces a unique situation where implementation of its order passed in OA 840 of 2018 is apparently resulting in reversion of employees who were not heard while deciding the OA. However the situation can very well be salvaged by hearing and deciding OA No. 763 of 2022. What we also find that while disposing of OA 840 of 2018, the Tribunal has not issued any specific direction for promotion of Applicants therein or reversion of any individuals. It appears

that there are competing claims between the two sets of employees over the issue of seniority. The seniority list has been directed to be corrected by order passed in OA 840 of 2018. The issue of very same seniority list is also involved in IA 763 of 2022.

11. The Tribunal has already observed in its order dated 24th August, 2022 as under;

3. M.A. No.496 of 2022 and M.A. No.456 of 2022 are hereby allowed.

Apparently we are of the opinion that separate O.A. is required to file.

4. Learned Advocate Mr. Lonkar submits that he has already filed O.A. No.763/2022 which is on today's board under the caption 'Due Admission' wherein next date is fixed as 30.08.2022.

5. Adjourned to 30.08.2022 along with O.A. No.763/2022.

(emphasis supplied)

12. Thus, the Tribunal has already posted Contempt Application No.8 of 2021 along with Original Application No.763 of 2022. Both set of proceedings can be heard together. Petitioners herein can be directed to be added as party Respondents to OA 763/2022 by the Tribunal. Intervention by respondent Nos.4 to 53 in Contempt Application No.8/2021 is neither warranted nor permissible. Order dated 24th August 2022 to that extent deserves to be set aside.

13. Accordingly, we proceed to pass the following order;

ORDER

- (i) Order dated 24th August, 2022 passed in M.A. No.496 of 2022 and 456 of 2022 is set aside;
- (ii) Applicants in OA No, 763 of 2022 shall implead Applicants in OA No. 840/2018 as party Respondents;
- (iii) Tribunal shall proceed to hear Contempt Application No.8 of 2021 along with OA No.763 of 2022 and make an endeavor to decide the same as expeditiously as possible.
- (iv) With above directions, Writ Petition is disposed of with no order as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)