

O.As. 745 & 746 of 2018 **(SB)**

**Coram : Hon. Shri J.D.Kulkarni,
Vice-Chairman (J).**

Dated : 27.09.2018

Heard Shri A.I. Shah, Id. counsel for the applicants and Shri V.A. Kulkarni, Id. P.O. for the State.

2. Vide impugned order dated 17/07/2018 (Annex-A-5) the applicant Mangala U. Talande a Police Constable in O.A.No.745/2018 has been transferred from Traffic Branch Yavatmal to Mukutban, Tq. Zhari Zhamani, District Yavatmal and her husband i.e. the applicant in O.A.No.746/2018 who is also a Police Constable has been transferred from Traffic Branch Yavatmal to Mukutban, Tq. Zhari Zhamani, District Yavatmal. Admittedly, the applicant Mangala U. Talande in O.A.745/2018 was working at Yavatmal from 2008, whereas the applicant Shri Sandip D. Borkar in O.A.746/2018 is working since 2013 and they have completed more than five years. The impugned order shows that the Civil Services Board has considered

the request of the various employees. The learned counsel for the applicants submits that the applicants never requested for Mukutban and that order is mid tenure since it has been passed in the month of July.

3. The learned P.O. submits that the applicants have already been relieved and as per his information they have joined at Mukutban. The learned counsel for the applicants submits that the applicants are on medical leave and are not yet relieved. For whatever the reasons that may be the fact remains that the applicants are overdue at Yavatmal. Whether the order is issued in breach of Transfers Act or not will have to be considered on merits and in such circumstances no interim relief can be granted at this juncture.

4. In view thereof, issue notice to R-2 to 5, returnable in **four weeks**. Learned P.O. waives notice for R-1. Hamdast allowed.

5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

6. Applicants are authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

7. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicants are directed to file Affidavit of compliance and notice.

9. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before

returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

10. **S.O. four weeks.**

Vice Chairman (J)

dnk.

Dated :- 27/09/2018.

O.A.No.606/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Ms. A.Shah, the Id. counsel for the applicant and Shri S.A.Deo, Id. C.P.O. for the respondents.

The Id. C.P.O. submits the Order No. 10/10/2018 dated 11/01/2018 by Deputy Commissioner of Police (Head quarter) of Nagpur City, by which the applicant is at Sr. No. 3 and his Suspension order has been revoked by the said order. So grievances of the applicant is redressed.

The Id. C.P.O. again submits an order No. 3222/2017 dated & 16-09-2017 of D.C.P. (Zone-5), Nagpur City by which it appears that subsistence allowance has been paid to the applicant as per rule.

*So, now nothing survives in this O.A.,
In view of this, O.A. is disposed of with no
order as to costs.*

Member (A)

aps.

O.A.No.833/2017 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri Sunil Pande holding for Shri R.M.Mardikar, the Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the respondent nos. 1 & 2. Await service of respondent nos. 3 & 4.

2. At the request of Id. counsel for the applicant, issue fresh notices to the respondent nos. 3 & 4.

3. Issue fresh notices to R-3 & 4, returnable on four weeks. Learned C.P.O. waives notice for R-1. Hamdast allowed.

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

5. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice

that the case would be taken up for final disposal at the stage of admission hearing.

6. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

9. **S.O. four weeks.**

Member (A)

aps.

O.A.No.08/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

None for the applicant. Shri S.A.Deo,
the Id. C.P.O. for the respondents.

As per the request of Id. C.P.O., as a
last chance, one week time is given for
amendment. **S.O. one week.**

Member (A)

aps.

O.A.No.12/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri R.N.Bandhe, the Id. counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the respondents.

The Id. C.P.O. submits that he requires two weeks time to file affidavit-in-reply. At his request, **S.O. two weeks.**

Member (A)

aps.

O.A.No.107 & 108/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri P.J.Pande, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.

As submitted by Id. P.O., the Id. counsel for the applicant is directed to supply the copy of O.A. 107/2018 to the Id. P.O., **S.O. two weeks.**

Member (A)

aps.

O.A.No.347/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

None for the applicant. Shri P.N.Warjurkar, the Id. P.O. for the respondent nos. 1 to 4. None for the respondent no. 5.

The Id. P.O. desires three weeks time to file reply, **S.O. three weeks.**

Member (A)

aps.

O.A.No.394/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

None for the applicant. Shri P.N.Warjurkar, the Id. P.O. for the respondents.

The Id. P.O. desires two weeks time to file reply, **S.O. two weeks.**

Member (A)

aps.

O.A.No.403/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri M.Rajkondwar, the Id. counsel for the applicant and Shri P.N.Warjurkar, Id. P.O. for the State. Await service of respondent no. 2.

As requested by Id. counsel for the applicant, **S.O. two weeks** to file service affidavit.

Member (A)

aps.

O.A.No.933/2017 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri Manwatkar holding for Shri S.N.Gaikwad, the Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the State. Await service of respondent no. 2 & 4.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent no. 3. The same is taken on record. Copy is served to the other side.

As requested by Id. counsel for the applicant, **S.O. two weeks** to file service affidavit.

Member (A)

aps.

O.A.No.988/2017 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

None for the applicant. Shri A.M.Khadatkar, Id. P.O. for the respondents.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent nos. 2 & 3. The same is taken on record. He further submits that he will serve the copy to the other side.

As requested by Id. counsel for the applicant, **S.O. two weeks.**

Member (A)

aps.

O.A.No.86/2018 (S.B.)

Coram : Hon. Shri Shree Bhagwan,

Member (A)

Dated : 27.09.2018.

Shri S.M.Khan, the Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the respondents.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent no. 3. The same is taken on record. Copy is served to the other side.

The matter is **admitted** and kept for final hearing. Meanwhile, the Id. counsel for the applicant is at liberty to file Rejoinder, if any.

As requested by Id. counsel for the applicant, **S.O. two weeks.**

Member (A)

aps.

O.A.No.156/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri S.M.Khan, the Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the respondents.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent no. 3. The same is taken on record. Copy is served to the other side.

The matter is **admitted** and kept for final hearing. Meanwhile, the Id. counsel for the applicant is at liberty to file Rejoinder, if any.

As requested by Id. counsel for the applicant, **S.O. two weeks**.

Member (A)

aps.

O.A.No.410/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

None for the applicant. Shri
V.A.Kulkarni, Id. P.O. for the respondents.

As requested by Id. P.O., **S.O. one
week, for dismissal.**

Member (A)

aps.

O.A.No.419/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri Manwatkar, the Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the respondents.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent nos. 1 & 2. The same is taken on record. Copy is served to the other side.

S.O. one week. Meanwhile, the Id. counsel for the applicant is at liberty to file Rejoinder, if any.

Member (A)

aps.

O.A.No.616/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri N.A.Gawande, the Id. counsel for the applicant, Shri H.K.Pande, Id. P.O. for the State and Shri P.V.Thakre, the Id. counsel for the respondent no. 4. None for caveator.

2. At the request of Id. counsel for the caveator, issue fresh notices to the respondents.

3. Issue notices to R-2 to 4, returnable on four weeks. Learned P.O. waives notice for R-1. Hamdast allowed.

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

5. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice

that the case would be taken up for final disposal at the stage of admission hearing.

6. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules,1988, and the questions such as limitation and alternate remedy are kept open.

7. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

9. **S.O. four weeks.**

Member (A)

aps.

O.A.No.658/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri P.V.Thakre, the Id. counsel for the applicant and Shri P.N.Wajurkar, Id. P.O. for the respondents.

The Id. P.O. submitted one document bearing no. , e, I I h 2011@izd-1777@Q&5] fnukd&11 vkkLV] 2011 by which it appears that some policy decision has been taken regarding power. However, the Id. counsel for the applicant submits that this G.R. indicates the Financial Powers not the Administrative Powers.

The Id. P.O. submits that he require three weeks time to file affidavit-in-reply. However, two weeks time is sufficient. Since, the applicant is at suspension.

S.O.11/10/2018.

Member (A)

aps.

O.A.No.688/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri P.V.Thakre, the Id. counsel for the applicant and Shri P.N.Wajurkar, Id. P.O. for the State. Await service of respondent nos. 2 & 3.

At the request of Id. counsel for the applicant, **S.O. two weeks** to file service affidavit.

Member (A)

aps.

O.A.No.806/2017 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Shri V.Mate holding for Shri P.N.Samundre, the Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the respondents.

At the request of Id. counsel for the applicant, he submits that since Shri Samundre is having some medical problem. He desires one week time, **S.O. ten days.**

Member (A)

aps.

O.A.No.312/2018 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Heard Shri D.S.Agnihotri, the Id. counsel for the applicant and Shri S.A.Deo, Id. C.P.O. for the respondents.

The Id. C.P.O. explained in detailed about the maintainability of the O.A.. The Id. counsel for the applicant pleaded his side. But this Tribunal is not convinced, it makes clear that this O.A. is not at all maintainable in this Tribunal. The matter has been already taken up in Industrial Court.

However, as a last chance one week time is given to the Id. counsel for the applicant to decide about the O.A.

S.O. one week.

Member (A)

aps.

O.A.No.587/2017 (S.B.)

**Coram : Hon. Shri Shree Bhagwan,
Member (A)**

Dated : 27.09.2018.

Heard Shri T.S.Kene holding for Shri N.Jog, the Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the respondents.

The Id. P.O. files the affidavit-in-reply on behalf of the respondent no. 7. It is taken on record. Copy is served to the other side.

The Id. counsel for the applicant submits that similar matter has been decided by the Tribunal in another O.A., he like to place on record the same.

S.O. two weeks.

Member (A)

aps.

**O.A.No. 951/2017. (Dr.P.P.Gaur
V/s State and 3) (D.B.)**

**Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.**

C.A. 277/2018

ORAL ORDER Per:-

V.C.(J)

Heard Shri N.R. Saboo, the
Ld. counsel for the applicant and
Shri P.N. Warjekar, the learned
P.O. for the respondent Nos. 1 to 3.
None for R.4.

2. In this O.A., the applicant is
claiming that the order of promotion
dated 4.1.2017 (A-21) in respect of
respondent No.4 be quashed and

set aside and the applicant be granted promotion to the post of Professor in the Department of Radiology from the date on which the respondent No.4 has been promoted. It is stated that the applicant was promoted to the post on *ad hoc* basis for 360 days as a Professor (P.67). Admittedly, the said period has already expired. But still the applicant is continued. He, therefore, filed C.A. No. 277/2018 for directions to the respondents to continue the applicant in the promotional post of Professor till decision of this O.A.

3. In reply affidavit filed on behalf of respondent Nos. 1 to 3, it

is stated that the applicant is at Sr. No.4 in the category of Assistant Professor and was senior to respondent No.4, the deemed date i.e. 6.4.2009 for the post of Associate Professor was granted to the applicant vide Govt. order dated 20.11.2015. It is further submitted that the respondent No.4 i.e. Dr. Arati Anand was promoted as Professor on the select list of year 2014-15 vide Govt. order dated 4.1.2017. The seniority of the applicant was modified as on 1.1.2017 vide Govt. circular dated 13.10.2017. As per the revised seniority list, the applicant was placed at seniority No.3 before the respondent No.4. Hence, the

department has submitted a proposal to the Establishment Board constituted by the G.A.D. to consider the eligibility of the application for promotion o the post of Professor in Radiology. In same select list (i.e. 2014-15), by which the respondent No.4 was promoted on the post of Professor in Radiology. The appropriate decision will be taken regarding promotion as per the recommendation of Establishment Board in due course.

4. From the aforesaid reply affidavit, it is clear the respondents have considered the fact that the applicant is senior to respondent

No.4 and, therefore, they have granted deemed date of promotion to the applicant in the cadre of Associate Professor and now they have also forwarded the proposal to grant deemed date of promotion to the applicant in the cadre of Professor as mentioned in para 10. Only question is that inspite of such proposal, no decision has been taken today and the applicant apprehends that the order of temporary promotion to the post of Professor may be continued. In view of the fact that the respondents have already forwarded the proposal to the Establishment Board. Directions can be issued to the respondent

authorities to take necessary decision within a stipulated period. In view thereof, the respondents are directed to take a decision on the proposal for granting regular promotion to the applicant on the post of Professor in the select list of 20.4.2015 within a period of three months from the date of this order. It is also directed that the applicant shall be continued on the promotional post of Professor till such decision is taken. C.A. and the O.A. stand disposed of accordingly with no order as to costs.

It is needless to mention that the applicant will be entitled for

back wages, if he is considered fit
for the promotion.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 703/2016.

(D.B.)

**Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)**

Dated : 27th September 2018.

C.P. 29/2018

Heard Shri S.V. Sohoni, the Ld. counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. The Ld. counsel for the applicant submits that he has filed C.P. for non-compliance of order dated 17.11.2017 passed by this Tribunal in O.A.No.703/2016. The respondents were directed by the said order as under:-

“The respondent authorities are directed to reconsider the case of the applicant on the point as to whether the applicant’s can be considered for relaxation of the norms given under the Rules of 2014 couples with directions issued in the office memorandum dated 29.12.2005. The decision on such aspect shall be taken within 3 months from the date of this order and shall be communicated to the applicant in writing. No order as to costs.”

3. The applicant has received communication dated 15.2.2018 from the Desk Officer of MPSC, Mumbai whereby it is stated that the matter was reviewed and the applicant was not found fit. The applicant has also issued registered notice through Advocate to the

Desk Officer. However, notices are not issued to all the respondents in O.A.No.703/2016. The Desk Officer of MPSC, Mumbai is made party in the review petition, who was not party in the O.A. Considering this, the learned counsel for the applicant seeks permission to withdraw the C.P. No. 29/2018, since he wants to issue fresh notice to the respondents for non-compliance of the order. Permission is granted to file fresh C.P. after issuing such a notice.

4. In view thereof, permission is granted in the interest of justice. C.P. stands disposed of with liberty to file fresh C.P. after issuing legal notice to the respondents.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 236/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

There is a leave note from Shri Palshikar, the Ld. counsel for the applicant. Shri A.M. Khadatkar, the learned P.O. for the respondents.

S.O. 1.10.2018.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 232/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,

**Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.**

Shri A.J. Mirza, the Ld. counsel for the applicant and Shri A.M. Khadatkar, the learned P.O. for the respondents.

S.O. 28.9.2018.

To be treated as part heard.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 202/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

None for the applicant. Shri H.K. Pande, the learned P.O. for the respondents 1 and 2. None for R,3,

Yesterday also, nobody appeared for the applicant and, therefore, matter has been kept today. Since none appeared for the applicant today, matter be kept tomorrow for dismissal.

S.O. 28.9.2018.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 203/2011.

(D.B.)

Coram: Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

None for the applicant. Shri
H.K. Pande, the learned P.O. for

the respondents 1 and 2. None for R,3,

Yesterday also, nobody appeared for the applicant and, therefore, matter has been kept today. Since none appeared for the applicant today, matter be kept tomorrow for dismissal.

S.O. **28.9.2018.**

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 249/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

None for the applicant. Shri P.N. Warjekar, the learned P.O. for the respondents 1 to 4. Miss K.K. Pathak, Adv. for R.5.

Ld. P.O. wants time to file minutes of meeting.

S.O. 28.9.2018.

To be treated as part heard.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 205/2011.

(D.B.)

**Coram: Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.**

None for the applicant. Shri H.K. Pande, the learned P.O. for the respondents 1 to 4. None for R.5.

S.O. 28.9.2018.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 159/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

Shri N.S. Warulkar, Ld.
counsel for the applicant and Shri
A.M.Khadatkar, the learned P.O. for
the respondents.

S.O. **28.9.2018.**

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

O.A.No. 212/2011.

(D.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shree Bhagwan,
Member(A)
Dated : 27th September 2018.

Heard Shri N.R. Saboo, the
Ld. counsel for the applicant and
Shri S.A. Sainis, the learned P.O.
for the respondents 1 and 2. None
for R.3.

2. In this O.A., the applicant is
claiming that he shall be promoted
to the post of Executive Engineer
from 12.11.2009 i.e. the date on
which his junior i.e. the respondent
No.3 M.V. Khadde was promoted.
Much water has been flown after
filing of application. The applicant
has retired on superannuation on

31.12.2015. The seniority list was corrected during the pendency of the O.A. on 4.2.2013 and the applicant has been shown at Sr. No.2 in the seniority list of Sub-Divisional Engineers, whereas the respondent No.3 has been shown at Sr. No.170. In view of this correction in the seniority list, the applicant has been promoted to the post of Executive Engineer vide order dated 17.12.2013. Only question, therefore, remains is as to whether his claim for deemed date of promotion from 12.11.2009 i.e. the date on which respondent No.3 was promoted, shall be considered.

3. No reply affidavit has been filed in this case by the respondents for the best reasons known to them, though application was amended subsequently due to subsequent events. From the corrected seniority list of Sub-

Divisional Engineers (P.58) dated 4.2.2013, it is now clear that the applicant stands at Sr. 2 in the seniority list, whereas the respondent no.3 stands at Sr. No. 170 and, therefore, admittedly the applicant is senior to respondent No.3 who was promoted on 12.11.2009 to the post of Executive Engineer. The applicant is, therefore, entitled to get deemed date of promotion. We, therefore, pass the following order:-

ORDER

- (i) O.A. is allowed in terms of prayer clause 9 (i) and (ii).
- (ii) No order as to costs.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.

**O.A.No. 215/2011. (D.B.)
(D.L.Kattalwar V/s State and 2)**

**Coram:Shri J.D. Kulkarni,
Vice-Chairman (J) and**

**Shree Bhagwan,
Member(A)
Dated : 27th September 2018.**

Oral order

Per-

VC(J)

Heard Shri P.P. Khaparde, Adv. holding for Shri G.G. Bade, the Ld. counsel for the applicant and Shri A.M. Khadatkhar, the learned P.O. for the respondents.

2. The applicant in this case was initially appointed as Mustering Assistant dated 5.2.1985 and after technical break, the applicant was terminated on 13.7.1988. The said order was challenged before the Labour Court, Chandrapur in ULP No. 43/1991. The judgment was passed by the Labour Court, Chandrapur on 31.7.1993 and the applicant was granted continuity in service and back wages. However, as per order of the Hon'ble High

Court in W.P. No.18/1994, the applicant was granted 50% of back wages from 14.7.1988 to 13.7.1993. The applicant came to be absorbed vide order dated 10.7.2003 in the Tehsil office, Mul as a Clerk in Grade-III category. The applicant is claiming pension and pensionary benefits and relevant benefits on attaining the age of superannuation and is also seeking declaration that he has completed 20 years of continuous service. Having completed 20 years of qualifying service, it is stated that he is entitled to pension and gratuity as per the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules) and, therefore, this O.A.

3. The respondents have filed their reply affidavit. They also filed a copy of judgment passed in

group of O.As i.e. O.A. Nos. 178, 216 and 217 of 2011 delivered by this Tribunal of Nagpur Bench on 8.3.2017 wherein one of our Member (Shri J.D.Kulkarni, Vice-Chairman) was a party.

4. The learned P.O. submits that the case of the applicant has been covered by the judgment delivered in the aforesaid O.As. The learned counsel for the applicant also agrees that the case of the applicant has been covered. In the said judgment, this Tribunal has observed as under:-

“In the said judgment, the issue of absorption of Mustering Assistants and the fact as to whether they are entitled to continuation of service for the purpose of pensionary benefits, was considered. This Tribunal has

observed in the said judgment as under:-

“5. We find that the Muster Assistants were absorbed in Class-III and Class-IV posts in Govt. as per G.R. dated 1.12.1995. Subsequently, G.R. dated 21.4.1999 and circular dated 15.4.2009 were issued. G.Rs dated 1.12.1995 and 21.4.1999 and circular dated 15.4.2009 have been held valid by the Hon’ble Bombay High Court by judgment date d 16.7.2007 in W.P. No. 619/2006. In this judgment, the Hon’ble High Court has held that:

12. The learned AGP pointed out that the Mustering

Assistants whose services were regularized from a particular date would get pension from the date of regularization of service. The State Govt. has taken a clear stand that the past period of such Mustering Assistants prior to the date of regularization would not be counted for the purpose of calculation of pension. We find that the stand adopted by the State was in tune with the scheme framed by the State Govt. Therefore Rule 33 of the Pension Rules would not be applicable to the facts of this case and the scheme framed by the State Govt.

6. O.As 178,216 & 217 of 2011. 6. It is also seen that validity of G.R. dated 1.12.1995 was upheld by the Hon'ble Supreme Court in S.L.P. (Civil) No. 15664 of 1991 by judgment dated 2.12.1996. Clause 5.2 of this G.R. dated 1.12.1995 states that:

5.2- हजेरी सहाय्यकांना सध्या मिळत असलेल्या वेतनश्रेणीत देण्यात शासकीय कर्मचाऱ्याला मिळणारे लाभ अथवा इतर सोयी सवलती अनुज्ञेय राहणार नाही व ते शासकीय कर्मचारी म्हणून ओळखले जाणार नाहीत.”

This G.R. has been upheld by the Hon'ble Supreme Court. There is no question of considering past service as Mustering Assistant for pensionary purpose.

7. This issue was again considered by the Hon'ble Supreme Court when the judgment of the Hon'ble High Court dated 20.12.2001 in W.P. No. 954 of 1990 was considered in S.L.P. (Civil) No. 5171 of 2003. The Hon'ble Supreme Court did not approve the order of the Hon'ble High Court to absorb all Muster Assistants w.e.f. 31.3.1997 and ordered that they be absorbed gradually on the available vacancies in accordance with seniority and roster.

8. This Tribunal (Aurangabad Bench) by judgment, dated 10.6.2010 in O.A. No. 578/2008 has held that the Muster Assistants

were not recognised as Govt. servants till their absorption in the Govt. Accordingly their past service before absorption in Govt. service cannot be counted for pensionary benefits.

9. The judgment dated 21.10.2016 in the group of O.As No. 28 of 2012 etc. delivered by the Aurangabad Bench of this Tribunal after considering all earlier judgments of this Tribunal, judgments of the Hon'ble High Court and the Hon'ble Supreme Court. There is no reason for us to take any different view here.

5. In view of the aforesaid observations, O.A. stands dismissed with no order as to costs.

Member(A)
Chairman(J)

Vice-

Dt. 27.9.2018

pdg.