

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.311 OF 1998

Shri Pralhad Byhimacharya Purohit,
Executive Engineer, Works Division IX,
Irrigation Department,
Government of Goa, Gogol,
Margao, Goa, aged 54 years, married,
Indian National, Resident of
House No.1452, Shri Gurukrupa,
Agali, Fatorda, Margao, Goa 403 602. Petitioner.

V/s.

1. Shri V.O. Madhavanunni,
Surveyor of Works, Circle II,
Irrigation Department,
P.O. Tivim Industrial Estate,
Mapusa, Goa.
2. Shri V.U.P. Gaitonde,
Superintending Surveyor of Works,
Irrigation Department,
Colvale, Bardez, Goa.
3. Shri P.J. Bhobe,
Executive Engineer,
Soil Conservation Division,
Directorate of Agriculture,
Panaji, Goa.
4. Shri V.B. Joshi
Executive Engineer,
Works Division XIV,
Irrigation Department,
Gogol, Margao, Goa.
5. Shri Arvind Salelkar,
Executive Engineer,
Works Division II,
Fatorda, Margao, Goa.
6. Shri S. Paramsivam,
Executive Engineer,
Works Division VIII,
Irrigation Department,
Bicholim, Goa.
7. Shri S.T. Nadkarni,
Superintending Engineer,

C.P.O. Irrigation Department,
Panaji, Goa.

8. Shri P.J. Kamat,
Municipal Engineer,
Panaji Municipal Corporation,
Panaji, Goa

9. Shri V.M. Golasangai,
Executive Engineer,
W.D.VII, Irrigation Dept.
P.O. Tivim Industrial Estate,
Mapusa, Goa.

10. Shri A.G. Somanache,
Executive Engineer,
Works Division V,
Irrigation Department,
Sanquelim, Goa.

11. Shri J.S. Hosamani,
Executive Engineer,
Works Division XII,
Irrigation Department,
Gogol, Margao, Goa.

12. Shri R.R. Sohani,
Surveyor of Works,
C.P.O. Irrigation Dept.
Panaji, Goa.

13. Shri G.D. Sapeco,
Surveyor of Works,
C.P.O. Irrigation Department,
Panaji, Goa.

14. Shri S. Sekhar,
Executive Engineer,
Works Division VI,
Irrigation Department,
P.O. Tivim Industrial Estate,
Mapusa, Goa.

15. Shri Ashok Rane,
Executive Engineer,
Works Division X,
Irrigation Department,
Sanguem, Goa.

16. Shri M.K. Pant,
Executive Engineer,

W.D. XV, Irrigation Department,
Bicholim, Goa.

17. State of Goa,
through the Chief Secretary
to the Government of Goa,
Secretariat, Panaji, Goa.

18. Goa Public Service Commission,
EDC House, Dr. Atmaram Borkar
Road, Panaji, Goa
through its Secretary,

19. Shri N.B. Das,
Superintending Engineer,
Irrigation Department,
Panaji, Goa.

..... Respondents.

Mr. D.B. Ambekar, Advocate for the petitioner.

Mr. M.S. Sonak, with Mr. D. Pangam, Advocates for
respondents No.3, 7 and 8.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. J.D'Souza, Advocate
for the respondent No.12.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.R.Bharne,
Government Advocate for respondent No.17.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik,
Government Advocate for respondent No.18.

CORAM : A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE OF RESERVING THE
JUDGMENT : NOVEMBER 5, 2003.

DATE OF PRONOUNCING THE
JUDGMENT : DECEMBER 30, 2003.

J U D G M E N T : (Per KHANWILKAR, J.)

By this writ petition under Article 226 of the
Constitution of India, the petitioner prays for quashing
and setting aside of the order dated 25.9.1997 issued by

the Government of Goa (Exhibit-P1) as also the promotion to the respondent No.16 and to maintain status quo ante. The petitioner has prayed for quashing and setting aside the gradation rankings in the impugned promotions afforded to the respondents No.1 to 16, qua the petitioner who was entitled to rank No.1 or thereabout. The petitioner further prayed for directing the respondents No.17 and 18 to process the review of the promotions to Executive Engineers, with a review DPC in respect of the vacancies pertaining to the recruitment years 1984 onwards till the year 1997. The petitioner has also prayed for writ of prohibition against the respondents No.17, State of Goa and respondent No.18, Goa Public Service Commission (GPSC) from operating the ranking gradation given in the impugned promotion order (Exhibit-P1) as also the promotion of respondent No.16 to the posts of Executive Engineer, without correcting the mistake of recruitment- yearwise number of vacancies and holding a review Departmental Committee and applying therein the formula of assessment of one superior grade, in respect of higher post officiating years and also considering the petitioner and applying the correct law. The petitioner has further prayed for writ of mandamus against the respondents No.17 and 18 to operate the ad hoc, uninterrupted lengths of officiation in the post of

Executive Engineer for the purpose of filling up the current existing and anticipated vacancies in the superior posts of Superintending Engineer by operating the rule of ad hoc promotion. The petitioner has further prayed for declaration that the guide-lines in paragraph no.6.3.1 in Exhibit P-15 in the Office Memorandum No.12/14/89/PER dated 26.09.1990, in so far as the bench mark of "Good", is to be the over all grading for all Officers whose over-all grading is equal to or better than "Good" as unconstitutional. Further relief is claimed of writ of certiorari for quashing and setting aside the impugned order Exhibit P-17 dated 28.7.1998, issued by Government of Goa, further promoting the respondents No.7 and 2 to the post of Superintending Engineer.

2. This petition was instituted by the petitioner on 5.8.1998. During the pendency of this petition, the petitioner has taken voluntary retirement with effect from 1.12.2000 (F.N.). Nevertheless, when the petition was taken up for hearing, the Counsel for the petitioner, on instructions, has pressed this petition for quashing and setting aside the impugned order at Exhibit P-1 and placing the petitioner at sr. No.1 as Executive Engineer by review DPC and moulding of

the reliefs of promotion as Superintending Engineer above the respondents No.2 and 7 and affording pay above the wrongfully superseded Superintending Engineer respondents No.2 and 7 from 25.09.1997 and revised computation of his retirement benefits. This prayer is, however, made across the Bar and there is no formal application made in that behalf.

3. Briefly stated, it is the case of the petitioner that he joined the composite Public Works Department (PWD), as a Section Officer, with 6 additional increments, being a graduate, and later on as Assistant Engineer on ad hoc basis with effect from 7.12.1972. It is common ground that the petitioner was regularised as Assistant Engineer vide order, with effect from 3/2/1973. According to the petitioner, as per Rules which were prevailing at the relevant time, the petitioner became eligible for promotion to the post of Executive Engineer in the year 1981 on completion of eight years' of regular service in feeder grade (Assistant Engineer). It is also the case of the petitioner that by selection, the petitioner was appointed as Executive Engineer vide order dated 25.2.1982 on ad hoc basis though; and since then he had continued officiation for about 15 years, 7 months as

Executive Engineer (ad hoc). However, on 2.4.1984, the composite PWD was bifurcated into PWD and Irrigation Department. The petitioner was allocated to the Irrigation Department and continued to work as the Executive Engineer on ad hoc basis in that Department. According to the petitioner, there were six vacancies of Executive Engineer in the year 1984 and the petitioner being eligible ought to have been appointed against one of the vacancies of that year. However, the seniority list of Assistant Engineer in the composite PWD was subjudice before the Apex Court and no appointment to the post of Executive Engineer in the new Irrigation Department could be made in relation to the vacancies from 1984 till 1997. It is also common ground that the final seniority list of Assistant Engineers was issued on 23.4.1997 after the disposal of the appeal pending before the Apex Court. In the said seniority list, the petitioner was shown at sr. No.5. After the proposal was submitted to the GPSC/DPC for recommending the names of the candidates to be appointed against the vacancies of the respective years from 1984 till 1997 there were in all 20 vacancies during the period from 1984 till 1997. It is a matter of record that the DPC met on 8.8.1997 and considered the eligible officers coming in the zone of consideration for promotion yearwise. In so

far as the petitioner is concerned, he was considered, but was recommended for the promotion against the vacancy of 1996 having received higher grading in comparison with the other eligible candidates considered along with him for the vacancy of the year 1996. It is relevant to note that the selection post with regard to the vacancy arising after 1996 was governed by the Recruitment Rules of 1996 and for the previous years by earlier Rules of 1969. After the process was completed and the names were recommended, the impugned order dated 25.9.1997 was issued by the Government of Goa appointing the persons therein to the post of Assistant Engineer on regular basis with immediate effect. The name of the petitioner finds place at sr. No.7 of this list. The petitioner did not question this order till the respondents No.2 and 7 came to be promoted by order dated 28.7.1998 Exhibit P-17 to the post of Superintending Engineer on regular basis with immediate effect after following the necessary procedure. This petition has been obviously filed after the institution of Writ Petition No.116/1998 which we have decided today by a separate Judgment, filed by respondent No. 12 herein. In that writ petition, the petitioner herein has been impleaded as respondent No.7. Be that as it may, it would be apposite to advert to the grounds on

which the petitioner has pressed for the reliefs referred to above. We would think it appropriate to reproduce the grounds articulated in the memo of writ petition, which read thus :

" G R O U N D S

- I. The State Respondents have communicated mistaken number of vacancies for recruitment year of 1984 to the DPC, as one as against the vacancies being 6, patently clear on the State record. The gradation in the impugned promotion is, therefore, illegal, vitiated and a nullity. The Petitioner is within the first five eligible candidates, qua these 6 vacancies.
- II. The State Respondents have communicated a mistaken status of the vacancy of 1984 to be reserved for Scheduled Caste. A Scheduled Caste Officer, Shri N.B.Das is already occupying the Roster Point 1, in the newly formed Department of Irrigation, on 02.04.1984, and continued in 1984, to occupy the said post. There is no Scheduled Tribe candidate available for any further reservation point on the Roster. As such, all the six vacancies in the year 1984, are General and Open vacancies. The petitioner is entitled to gradation rank no.1 or thereabout.
- III. The impugned promotions down-grading the Petitioner are violative of the Office Memorandum dated 26.09.1990, as amended from time to time, for not adhering to the mandatory requirements and are therefore nullity ab initio.
- IV. The impugned promotions down-grading the Petitioner are discriminatory, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.

- V. The Petitioner is once selected by DPC, by comparing within the zone, and placed indefinitely, as ad hoc EE, with effect from 25.02.1982, and continued so, uninterruptedly, till the impugned purported regular promotions to the Petitioner with very low gradation are ordered in 1997. The Petitioner is second time, also selected by the DPC in case of the impugned promotions. The higher officiation of the Petitioner has to be weighed in recruitment yearwise assessment by the DPC, and the Petitioner has to be assessed, one grade higher, in respect of higher post, officiation years, as per the law, on the subject. In this view, the grading in the impugned promotions, placing the Petitioner for below, is bad in law, null and void. The DPC has not considered and assessed one grade superiority, in respect of the Petitioner's years of higher officiation. The Petitioner is entitled to rank no.1 or thereabout in the gradation and the impugned promotions are accordingly bad in law and null and void.
- VII. The process underway or likely to be taken up, to fill up the four vacancies of SEs, is amiss the 1986 RRs, as the promotee EEs of 1997, have not acquired the prescribed eligibility. The weightage to longer officiation is the only Rule available and Petitioner's higher gradation, in the EE's regular promotions, affords the Petitioner the higher opportunity of placement as SE, by longer officiation, under the adhoc Rules, the 1986 RRs, eligibility requirement having been broken down.
- VIII. The concept of selection, for the posts of SEs, under the 1986 RRs, dissociated with the eligibility requirement, fails the selection. The course open, is only filling up the SE's post for adhoc officiation, on the basis of longer officiation in the EEs posts. The guidelines for the DPC, also,

emphasise the first principle of zone formation, based on seniority, being mandatory. Longer officiation prevails the merit, in zone formation. In case of break-down of the eligibility merit, longer officiation and adhoc placement as SE is the only legal alternative.

- IX. Under the recommendation of the Fifth Pay Commission, in paragraph no.50.45, upon which the Petitioner shall rely, duly accepted by the State, Group 'A' Engineering services are treated as nationally important. For the length of 13 years of Group 'A' service, including the service as EE, in case of a SE, the functional senior grade is held admissible. The longer officiation has the official premium. The Petitioner is officiating as EE for the last 16 years. In the eyes of the law, his longer officiation with the correction of superior grading in the mistaken impugned promotion grading of EE, should afford the Petitioner the good chance of holding the officiation in the post of SE.
- X. The petitioner shall take all the other grounds, adverted to, in the pleadings above.
- XI. The Petitioner seeks liberty to add, amend or delete any of the aforesaid grounds, with the leave of this Hon'ble Court at the time of hearing."

In the context of the above grounds, the respondent No.17 filed an affidavit of Shri S.D. Sayanak, Chief Engineer of Water Resources Department, previously known as Irrigation Department and as Additional Secretary to the Government of Goa. In that affidavit each of the grounds has been refuted and stated to be misconceived. In so far as the first ground, the affidavit expressly

denies the existence of six vacancies in the year 1984. As a matter of fact, in the companion writ petition No.116/1998, a detailed affidavit was filed on behalf of the GPSC, as well as the State of Goa giving particulars about the vacancies in general as well as in the reserved categories, yearwise basis. That affidavit is on record. As per that affidavit and which position has been reiterated in the present affidavit, there was only one vacancy reserved for the Scheduled Caste in the year 1984. Since the foundation of the claim set up by the petitioner was inappropriate, the contention which proceeds on that premiss would naturally fall to the ground. In so far as ground No.V is concerned, even that stands explained by reply-affidavit as filed on behalf of the respondent No.17. The position that emerges is that the petitioner was promoted in the composite PWD as Executive Engineer on 25.2.1982 on ad hoc and purely temporary basis as can be seen from the Notification. The Notification clearly mentions that the appointment which includes that of the petitioner as purely on ad hoc basis and will not bestow any claim for regular appointment and service rendered on ad hoc basis in the grade and for eligibility for promotion to the next higher grade. That course was required to be taken as the seniority list of the composite PWD was under

challenge before the Court. It is, therefore, wrong to contend that the petitioner was selected by the DPC on the earlier occasion. In so far as the ground regarding giving weightage regarding the officiating years put in by the petitioner, such argument cannot stand in the wake of express provision made in the promotion order dated 25.2.1982. In fact, no grievance was made in respect of that order by the petitioner till institution of this petition. Moreover, it is asserted that the Rules provide that only regular service can be counted. Even the other grounds taken in the writ petition as referred to above, would stand answered by the reply filed on behalf of the respondent No.17. It is stated, at the outset, in the reply that the petition deserves to be dismissed on the ground of laches, as it has been filed on 5.8.1998, questioning the order passed on 25.9.1997. The affidavit asserts that the post of Executive Engineer is a selection post and the appointment would necessarily have to be made on merit-cum-seniority basis. Further, the affidavit clearly asserts that the required procedure as per the extant Rules have been complied with, as observed by the GPSC. However, no rejoinder-affidavit has been filed on behalf of the petitioner controverting the stand taken by respondent No.17. Along with the affidavit, the said

respondent placed on record the relevant documents to dispel the claim set up by the petitioner including the details regarding the vacancies of the executive engineers yearwise basis. In so far as the promotions made vide order dated 14.3.1988, even that order has been placed on record which shows that it was in respect of the composite PWD to the post of Executive Engineer/Surveyor of Works in respect of recruitment orders of 1977 to 1983 as is conceded by petitioner in para 6 of the petition. However, no rejoinder has been filed.

4. At the time of hearing, learned Counsel Mr. Ambekar for the petitioner, however, contended as follows: According to him, the petitioner was the senior-most incumbent; That the seniority list had broken down for a long period between 1984 to 1987 as no DPC was convened; In such a situation, consultation with the DPC was imperative and was not done: It was next contended that there were six vacancies in the year 1984 to 1987 and the assertion made by the petitioner in that behalf has remained uncontroverted. As against those vacancies, the case of the petitioner could have been considered and, therefore, it is appropriate to direct the authorities to hold review DPC. It was also

contended that there was no intelligible basis for regularising the ad hoc appointments of some of the Executive Engineers, excluding the other vacancies similarly placed, who were appointed in the composite PWD on ad hoc basis. It was next contended that respondents No.2 and 7 were considered for promotion to the post of Superintending Engineer even though they had less than one year experience. It was, therefore, contended that this Court ought to mould the relief in favour of the petitioner to do substantial justice. Learned Counsel further submits that two juniors who have been considered along with the petitioner against the vacancy of 1984, he had written the Confidential Reports. Learned Counsel further submits that the petitioner has put in long 15 years as ad hoc Executive Engineer and that period of officiation ought to have been given weightage so as to step gradation of petitioner while considering his case along with other officials who had relatively less officiating experience. Reliance was placed on the decision reported in 1993 (1) SLR 692 of Central Administrative Tribunal (Hyderabad), Full Bench in the case of S.S. Sambhus vs. Union of India and ors., to buttress the above contention. According to the petitioner, the decision of the Tribunal in S.S. Sambhus (supra) has

been approved by the Apex Court by dismissal of Special leave Petition against that Judgment, as can be discerned from the dictum in Shiv Kumar Sharma and anr. vs. Union of India and ors, reported in 1998 SCC (L&S) 93. Relying on those observations, learned Counsel contends that weightage ought to be given to the officiating experience of the petitioner and, therefore, the petitioner was entitled for the reliefs as claimed for. Learned Counsel has placed reliance on the decision of the Apex Court in 1988 (2) SCC 233, in R. Prabhadevi vs. Government of India to contend that the direct recruits though senior to the petitioner on quota-rota basis but not fulfilling the eligibility condition were not qualified for promotion. The learned Counsel has also placed reliance on the decision of the Apex Court reported in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and ors, reported in (1990) 2 SCC 715. Learned Counsel also relied on AIR 1984 SC 1594 in Shri O.P. Singla and another vs. Union of India and ors. to contend that there has been break-down in the fact situation of the present case since 1984 till 1987, on account of which all posts of Executive Engineer were required to be filled in on ad hoc basis and in such a situation since the petitioner was in continuous

officiation, uninterruptedly since 25.2.1982, on the post of Executive Engineer, the period of officiating be counted.

5. In response to the arguments canvassed of behalf the petitioner, learned Advocate General for respondents No.17 and 18 has replied that none of the arguments deserve any consideration. He submits that the factual basis on which the entire argument of the petitioner proceeds is erroneous. Inasmuch as, the fact that there were six vacancies in the year 1984 in the post of Executive Engineer is misconceived; whereas, there was only one vacancy reserved for scheduled caste in the year 1984 and which factual position is supported by record. In so far as argument of giving weightage for the officiating period spent by the petitioner in the post of Executive Engineer on ad hoc basis, the learned Advocate General contends that even this argument is misplaced inasmuch as the decision in the case of S.S. Sambhus (supra) deals with the provision which provides for dual assessment. Whereas no such provision has been made in the present Recruitment Rules. Therefore, that authority is inapplicable to the case on hand. He further submits that the argument of the petitioner that of giving weightage for the

officiating period has been approved by the Apex Court, is also misconceived. Inasmuch as from the reported decision in Shiv Kumar Sharma's case, contends the learned Advocate General, it is seen that the Apex Court approved the formula evolved by the Full Bench of the Central Administrative Tribunal as the proper and just one having regard to the facts and circumstances of that case and the practicabilities of the situation. It is on that count, the Apex Court refused to invoke its jurisdiction under Article 136 of the Constitution of India. According to the learned Advocate General, approval of the Central Administrative Tribunal's Judgment in S.S. Sambhus' case by the Apex Court will have no bearing on the fact situation of the present case where the Rules are completely different and make no provision for dual assessment. He further submits that on close examination of para 6 of the dictum of the Apex Court in Shiv Kumar Sharma's case, it can be seen that the Apex Court has plainly observed that it was not proposing to express any opinion on the merits of the matter, but only directed the UPSC to reconsider the case of the appellants therein in the light of the Full Bench Judgment of the Central Administrative Tribunal, so that a proper assessment could be made by the UPSC. Besides, the learned Advocate General has placed reliance on an

unreported decision of the Division Bench of our High Court in the case of Shri Bramhanand Sripad Naik vs. State of Goa and ors., (W.P.No.115/1999) to buttress his submission that the opinion expressed in S.S. Sambhus's case (supra) and as approved by the Apex Court is only in the facts of that case and will have no application to the present case. Especially when there is no provision in the Recruitment Rules as applicable in the case of dual assessment and nor any challenge has been set up by the petitioner to the present rules on any such grounds. Learned Advocate General has also argued that it is not open to the petitioner to raise this contention having regard to the express stipulation provided in the promotion order dated 25.2.1982 which was accepted by the petitioner without any demur. In so far as argument regarding break-down of the seniority is concerned, learned Advocate General contends that this submission is entirely misconceived. The law relating to rota-quota Rule would not apply in such a situation where no appointments could be made from 1984 to 1987 on account of nonfinalisation of the seniority list of the feeder post as the matter was subjudice before the Apex Court. It is further contended that in any case, in view of the express language stipulated in the appointment order of the petitioner as Executive

Engineer dated 25.2.1982, it is not open to the petitioner to raise this contention. Moreover, if the petitioner's plea was to be accepted, that would result in issuing mandamus to the Authorities to do an act against the statutory rules. In so far as challenge to the promotion of respondents No.2 and 7 to the post of Superintending Engineer, the learned Advocate General contended that even this submission is clearly misplaced as it overlooks that the requirement of experience of service in the feeder post was relaxed by the Government in exercise of power under Rule 5 of the Rules of 1986 and that relaxation was not only confined to respondents No.2 and 7, but to all the candidates. We have dealt with that aspect of the matter in the accompanying writ petition No.306/1998, with regard to this challenge, Mr. Sonak, learned Counsel appearing for the respondents No.3,7 and 8 has adopted the argument of Learned Advocate General and submits that the petition deserves to be dismissed being devoid of merits.

6. We would place on record that after the arguments were concluded and the matter was reserved for Judgment, the Counsel for the petitioner has filed synopsis on behalf of the petitioner, in which several grounds of challenge have been articulated. We may,

however, observe that the propositions articulated in the synopsis no foundation has been laid in the memo of writ petition to support that contention. Moreover, even at the time of arguments some of the propositions were not canvassed across the Bar.

7. Be that as it may, we would prefer to confine adjudication on the basis of the pleadings as filed before this Court and the grounds on which the reliefs have been claimed by the petitioner. In the first place, we find substance in the objection taken on behalf of the contesting respondents that the petition deserves to be dismissed on the ground of laches. Indeed, the impugned order promoting the candidates to the post of Executive Engineer/Surveyor of Works in the Irrigation Department on regular basis was passed on 25.9.1997 in which the petitioner has been placed at sr. No.7. Besides, the petitioner was recommended for promotion to the post of Executive Engineer in the Irrigation Department by GPSC/DPC in respect of the vacancy of the year 1996. Nevertheless, that order was accepted by the petitioner without any demur. It is obvious that only after the petitioner was superseded by respondents No.2 and 7 on account of promotion to the post of Superintending Engineer by the impugned order

dated 28.7.1998 and more so, after the institution of Writ Petition No.116/98, that the petitioner has chosen to file the present writ petition. Understood thus, challenge to the order dated 25.9.1997 in the Writ Petition filed by the petitioner on 5.8.1998 obviously suffers from laches and on that count alone the same deserves to be dismissed.

8. Assuming that the petitioner was entitled to question the correctness of the order dated 25.9.1997 (Exhibit P-1), we find no substance in the ground as pressed into service assailing the correctness of the said order. The argument proceeds on the basis that there were six vacancies in the year 1984. That position is factually incorrect, for that is countered by the affidavit filed on behalf of the respondents in the present writ petition, as well as the accompanying Writ Petition No.116/1998, which information is supported by the record. From the said affidavit, it transpires that there was one vacancy which was reserved for SC for the year 1984. Moreover, the position as explained in the affidavit filed on behalf of the contesting respondents, it is established that the necessary procedure was complied with both by the Government as well as the GPSC in the process of

selection for promotion to the post of Executive Engineer in the Irrigation Department. We have already recorded that finding in the companion Writ Petition No.116/98, disposed of today by a separate Judgment. Thus no fault can be found with the impugned order dated 25.9.1997 as the petitioner has been found to be suitable only for the vacancy relating to the year 1996. That would answer first two grounds taken in the petition which are already reproduced hereinabove.

9. In so far as the grounds No. III and IV regarding down-grading the petitioner being violative of the Office Memorandum dated 26.09.1990 are concerned, we find no substance even in this contention. The petitioner has been assessed by the DPC and gradation has been given on that assessment with regard to the respective years that is based on the materials which are required to be taken into account for the respective periods. If that is so, there was bound to be variation in the assessment for the vacancies of different years. That would not mean that the petitioner was down-graded as is understood for the adverse remarks in the Confidential Report. No serious argument was canvassed on behalf of the petitioner with regard to this ground of challenge. In any case, we find no substance in

quashing the entire process on the ground as articulated. Moreover, there is no proper foundation laid in the writ petition with regard to this ground as to the nature of infraction of the office memorandum which would vitiate the entire process.

10. The next ground is relating to placing of the petitioner as ad hoc Executive Engineer for indefinite period from 25.2.1982 and from which period he was continued uninterruptedly till the impugned purported regular promotion was made. In the first place, the grievance of the petitioner that the petitioner has undergone proper selection process on two occasions for the same promotion, is untenable. That position is explained by the order dated 25.1.1982 itself, which provides that the promotion was on ad hoc and purely temporary basis and will not bestow any claim for regular appointment and the service rendered on the ad hoc basis in the grade will not be counted for the eligibility for promotion. It is too late in the day for the petitioner to make grievance about that stipulation which is perhaps the subtle attempt made by the petitioner. It need not be over emphasised that the said promotion was granted to the petitioner on ad hoc basis due to fortuitous circumstances resulting out of

the inability of the Department to issue final seniority list of the composite PWD due to the pending challenge in that behalf before the Apex Court. Moreover, the petitioner has himself conceded in para 6 of the petition that the persons who were eligible and entitled for recruitment against the vacancies during the years 1977 to 1983 were so promoted by order dated 14.3.1988. The petitioner was considered for promotion only against the vacancy on and from 1984 onwards, subject to suitability. Besides, the petitioner was considered along with other eligible candidates in respect of the vacancy for the respective years till he was found to be suitable against the vacancy of 1996. We find no substance in the grievance of the petitioner that the petitioner ought to have been provided weightage for long experience over 15 years as Executive Engineer. That argument is unavailable in the light of the stipulation in the promotion order which was granted to the petitioner on ad hoc and purely temporary basis, vide order dated 25.2.1982; and which condition was accepted by the petitioner without any demur. Moreover, there is no express provision in the Recruitment Rules as are applicable to the facts of this case, providing for such weightage; nor there is any provision regarding dual assessment. In the circumstances, the

reliance placed on the decisions in S.S. Sambhus' case (supra) and Shiv Kumar Sharma's case (supra) on behalf of the petitioner will be of no avail.

11. In so far as grounds No.VII, VIII and IX regarding ineligible candidates (respondents No.2 and 7) being considered for promotion to the post of Superintending Engineer is concerned, we find no substance even in this grievance. No doubt the said respondents had not completed the required period of service in the feeder post, but as is rightly contended by the learned Advocate General, relevant rules were relaxed for all candidates in exercise of power bestowed under Rule 5 of the Recruitment Rules, 1986. In the companion Writ Petition No.306/98 we have elaborately considered this aspect by a separate Judgment delivered today. We have recorded the finding that no infirmity is committed by the Government and the relaxation has been done in exercise of power available under Rule 5 of the Recruitment Rules of 1986. Once that position is reached, it necessarily follows that respondents No.2 and 7 were eligible for being considered and the requirement of relaxation of service has been done in view of the piquant situation faced by the Government and obviously in public interest. If that is so, the

action of the State-Respondents cannot be questioned nor doubted as is being suggested by the petitioner. The reliance placed on the decision in the case of R. Prabha Devi and ors. (supra) by the petitioner, will be of no avail to the fact situation of the present case, so as to question the promotion of respondent No.2 and 7 on the said ground.

12. We also find no substance in the ground as articulated that there has been break-down of the seniority rule for which reason long officiation and ad hoc placement as Superintending Engineer was the only legal alternative. As rightly contended by the learned Advocate General, Rule of break-down would apply in respect of break down of rota-quota rule and not to a situation such as the present one. In that sense, reliance placed on the decisions in Shri O.P. Singla and another (supra) and Direct Recruit Class II Engineering Officers' Association (supra) will be of no avail to the petitioner. Moreover, if that challenge was to be accepted, it would result in issuing mandamus against the authorities to perform an act which will be against the statutory rules.

13. Even the argument as canvassed regarding

relaxation of the petitioner, protecting his 1982 selection as Assistant Engineer in the composite PWD, superseding the seniors by the direct recruits of later date who had not acquired eligibility, does not commend us. There is no question of relaxation of the petitioner. In the first place, that contention is not available in the wake of express stipulation in the order dated 25.2.1982. Besides there is no express provision, at least brought to our notice, in terms whereof such a course was open or that this Court could legitimately issue writ to the authorities to adopt that course. The fact that the petitioner stood superseded alone cannot be the basis for granting relief to the petitioner. Indisputably, the post of Executive Engineer or for that matter, Superintending Engineer is a selection post. The petitioner's case has been recommended upon finding the petitioner suitable only against the vacancy for the appropriate year.

14. We make it clear that we have adjudicated the matter only in the context of the pleadings as filed before us and have confined this decision in the context of grounds as articulated. We cannot permit the petitioner to raise new contentions across the Bar or for that matter by way of written submissions, as that

would take the other side by surprise.

15. For the aforesaid reasons, we find no substance in this writ petition and the same is liable to be dismissed not only on the ground of laches, but even on merit. Accordingly, this writ petition is dismissed with costs.

A.M. KHANWILKAR, J.

P.V. HARDAS, J.

ssm.