

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 264 OF 2021  
WITH  
ORIGINAL APPLICATION NO. 282 OF 2021  
(Subject : Appointment)**

**1. ORIGINAL APPLICATION NO. 264 OF 2021**

**DISTRICT : AHMEDNAGAR**

**Sapna D/o Dilip Nikam,** )  
Age :- 27 years, Occ. Service as Community )  
Health Officer, Sub-Centre, Devgaon, )  
Tal. Newasa, District Ahmednagar. )

... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Public Health Department, )  
G.T. Hospital Compound, 10<sup>th</sup> Floor, )  
Mantralaya, Mumbai- 400001. )
2. **The Commissioner,** )  
Health Services, Mumbai, Arogya Bhavan,)  
Saint George Hospital Compound, )  
P.D' Mello Road, Mumbai 400 001. )
3. **The Director-2,** )  
Health Services, Central Building, 1<sup>st</sup> )  
Floor, Near Railway Station, Pune-411001.)
4. **The Deputy Director of Health Services,)**  
Mahaveer Chow, Opposite Baba Petrol Pump,)  
Aurangabad, Dist. Aurangabad 431001.)

..**RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 282 OF 2021**

**DISTRICT : JALNA**

**Seema D/o Shivaji Jaybhaye,** )  
Age :- 29 years, Occ. Service as Staff Nurse )  
(Contract Basis) at Covid-19 Hospital, Jalna, )  
Tal. & District Jalna. )

... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Public Health Department, )  
G.T. Hospital Compound, 10<sup>th</sup> Floor, )  
Mantralaya, Mumbai- 400001. )
2. **The Commissioner,** )  
Health Services, Mumbai, Arogya Bhavan,) )  
Saint George Hospital Compound, )  
P.D' Mello Road, Mumbai 400 001. )
3. **The Director-2,** )  
Health Services, Central Building, 1<sup>st</sup> )  
Floor, Near Railway Station, Pune-411001.)
4. **The Deputy Director of Health Services,) )  
Mahaveer Chow, Opposite Baba Petrol Pump,) )  
Aurangabad, Dist. Aurangabad 431001.)**

..**RESPONDENTS**

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**APPEARANCE** : Shri S.B. Solanke, Advocate for the  
Applicants in both the O.As.

: Shri M.P. Gude, Presenting Officer for  
respondents in both the O.As.

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**CORAM** : **Justice Shri P.R. Bora, Vice Chairman**  
**AND**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **12.07.2022.**

**Pronounced on** : **21.07.2022.**  
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**COMMON ORDER****(Per : Shri Bijay Kumar, Member (A))**

1. We are disposing of both the Original Applications by a common order, as the facts and issues involved in both the matters are similar and identical and deciding them by a common order may not cause prejudice to any of the contesting parties.

2. The Original Application No. 264 of 2021 (O.A. Stamp No. 206/2021) has been filed by one Ms. Sapna D/o Dilip Nikam on 10.06.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned communication dated 02.06.2021 issued by Respondent No. 4 whereby, the Applicant had been informed that due to low eye vision she was not found eligible for appointment on the post of Staff Nurse.

3. The second Original Application No. 282 of 2021 (O.A. Stamp No. 632 of 2021) had been filed by one Ms. Seema D/o Shivaji Jaybhaye on 16.06.2021 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned communication dated 04.06.2021 issued by Respondent No. 4 whereby, the Applicant had been informed that

due to low eye vision she was not found eligible for appointment on the post of Staff Nurse.

4. The two Original Applications relate to the same recruitment process initiated by Deputy Director, Health Services, Public Health Department, Government of Maharashtra vide advertisement dated 22.02.2019, for the post of Staff Nurse and have similar cause of action of rejection of their candidature on ground of 'low vision' and similar relief has been prayed for. However, for the purpose of convenience, O.A. No. 264 of 2021 is taken as a Lead Case.

5. **Bare minimum facts relevant are as follows:-**

(a) An advertisement was issued on 22.02.2019 by the Deputy Director, Health Services, Aurangabad Circle under the Public Health Department, for the purpose of inviting application for recruitment to various Class-3 posts which included the posts of Staff Nurse. The applicant in Original Application no. 264 of 2021 had applied for the post of Staff Nurse under O.B.C. (*Physically Handicapped*) Category (*Private: 50%*) and the applicant in O.A. No. 282 of 2021 had applied for the post of Staff Nurse under N.T. (*Physically Handicapped*) category (*Government: 50%*).

(b) Both the applicants were selected under 'Open' (*Physically Handicapped*) category on the basis of marks secured in examination and accordingly they were called for counselling and documents verification. After document verification, both the original applicants were declared to be ineligible for the post of Staff Nurse on ground of *low vision* and the decision was communicated to the applicants vide respective impugned communications. Therefore, the two Applicants are aggrieved and have approached this Tribunal for relief.

(c) The two impugned communications, prima facie, seem to be lacking inaccuracy in drafting, but they are similarly worded in Marathi. Operative part of the impugned communication in Lead Case of O.A. No. 264 of 2021 is being reproduced below for ready reference:-

“ उपरोक्त सदर्भीय विषयान्वये आपणास कळविण्यात येते की, गट-क, पदभरती अधिपरीचारीका या पादाच्या ५० टक्के (शासकीय) पदभरती मध्ये उक्त संदर्भीयान्वये अधिपरीचारीका, या पदाकरीता, खुला दिव्यांग या प्रवर्गातून निर्वड झाल्याने त्यांना समुपदेशना करीता बोलविण्यात आले होते. व आपण समुपदेशनाच्या वेळी अल्पदृष्टी दिव्यांग प्रमाणपत्र सादर केलेले होते.

संदर्भ क्र. ५ अन्वये महाराष्ट्र शासन सार्वजनिक आरोग्य विभाग शासन निर्णय क्र. अपंग २००४/५५/समन्वय २ मंत्रालय, मुंबई ४०००३२ दिनांक २७.०२. २००९ नुसार सरळसेवा भरतीने नियुक्ती करावयाच्या अपंग व्यक्तीसाठी ”अपंग

व्यक्ती (समानसंधी व हक्काचे संरक्षण) अधिनियम १९९५ च्या कलम २ मध्ये व्याख्या केल्यानुसार शारिरीक पात्रतेचे खालील प्रमाणे निकष मध्ये बसत नाही.

यास्तव अधिपरीचारीका या पदाकरीता आपण दिलेल्या दिव्यांग प्रमाणपत्राच्या आधारे अपात्र ठरत असल्याने निवड समितीने दिलेल्या सूचना नुसार आपणास नियुक्ती देता येणार नाही. त्यामुळे आपल्या ऐवजी गुणवत्ता यादीतील पुढील दिव्यांग उमेदवारास समुपदेशनासाठी बोलावण्यात येत आहे.”

(d) Disability of low vision has been defined in the Schedule [clause (zc) of S. 2] of the Rights of Persons with Disability Act, 2016 as follows:-

“B. (b) “Low vision” means a condition where a person has any of the following conditions, namely:-

- (i) visual acuity not exceeding 6/18 or less than 20/60 or upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or
- (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.”

(e) In case of Applicant No. 1, ‘low vision’ has been reported as- “Low Vision, BE MYOPIA WITH POST LASIK COMPLICATION” and in case of Applicant No. 2, as “Visual Impairment, Both Eyes, BE 6/36 NYSTAGMUS”. Common connotation of the phrase ‘NYSTAGMUS’ is that there is involuntary eye movement which may cause the eye to

rapidly move from side to side and down or in circle, and may slightly blur vision.

(f) The Applicants have contested their cases on a number of grounds which have been analysed in subsequent paras. However, essentially, they have contended that Central Government in Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities (Divyangjan) has notified “*Benchmark Disabilities*” for various jobs vide Notification dated 04.01.2021. According to entry No. 583 of the said notification, *Low Vision* has been declared to be within *benchmark disability* for the posts of ‘*Medical and Health Technician Nurses and Others*’. The applicants have also submitted that the impugned communication refers to S. 2 of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (in short, “**Act of 1995**”), whereas, the said act has been superseded by *The Rights of Persons with Disabilities Act, 2016* (in short, “**Act of 2016**”) The Applicants have prayed for following reliefs in terms of Para 10 as quoted below:

6. **Relief Prayed For:** - The prayer causes in the two O.As. are similarly worded in respect of all material facts. Therefore, the relief prayed for in the Lead O.A. No. 264 of 2021 is being quoted verbatim for ready reference as follows:-

“10. **RELIEF CLAIMED:-**

**HENCE IT IS PRAYED THAT:**

- A. *The Original Application may kindly be allowed with costs;*
- B. *This Hon'ble Tribunal may be pleased to quash and set aside the impugned letter dated 02.06.2021 issued by the respondent No. 4 and for that purpose issue necessary orders;*
- C. *This Hon'ble Tribunal may be pleased to direct the respondent authorities to issue an appointment order in favour of the applicant on the post of Staff Nurse (Private) 50% from Open (Physically Handicapped) Category, within stipulated period and for that purpose issue necessary orders;*

**INTERIM PRAYERS:**

- D. *Pending the hearing and final disposal of the present Original Application, the respondent authorities may kindly be directed to keep one post of Staff Nurse (Private) (50%) vacant, from the Open (Physically Handicapped) Category and for that purpose issue necessary orders;*
- E. *Pending the hearing and final disposal of the present Original Application, the respondent authorities may*



*kindly be restrained from filling in the post of Staff Nurse (Private) (50%) vacant, from the Open (Physically Handicapped) Category and for that purpose issue necessary orders;*

- F. Ad-interim relief in terms of prayer Cause “D” and “E” above, may kindly be granted.*
- G. Any other appropriate relief to which the applicant is entitled to may please be granted in favor of the applicant.”*

After hearing the two sides, Interim Relief in terms of prayer clause “E” was granted by this Tribunal by the orders dated 11.06.2021 in O.A. No. 264/2021 and 21.06.2021 in O.A. No. 282/2021 till filing of the affidavit in reply by the respondents. However, as per practice the Interim Relief is treated to be continuous unless revoked by specific orders of the Bench.

7. **Pleadings and Final Hearing:** - Affidavits in reply in the two O.A.s have been submitted on behalf of the respondents on 21.10.2021 and rejoinders to affidavits in reply filed by respective applicants on 03.01.2022. The two cases were finally heard on 12.07.2022 and the matters were closed for Orders.

8. **Analysis of Facts:-** Contentions of the applicants and response thereto by the learned Presenting officer are as follows:-

(a) The Respondents have quoted provisions of Section 2 of *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* in the impugned communications as the legal basis for declaring them ineligible for appointment on the post of Staff Nurse, whereas, the said act has been repealed and a new act namely, *The Rights of Persons with Disabilities Act, 2016* has been enacted and the same had come into force by the time of undertaking recruitment process. The learned Advocate for the Applicants has pressed this to be a fatal error. The learned Presenting Officer has countered the argument made by the learned Advocate for the Applicant by mentioning that the provision under S. 34 of the **“Act of 2016”** is similar to the S. 33 of the **“Act of 1995”**. Our attention has been drawn towards provisions of S. 102 of the **“Act of 2016”**, sub-section (2) of which reads as- *“Notwithstanding the repeal of the said Act (i.e. **“Act of 1995”**), anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act”*. Upon considering all the facts before us and the oral submissions made by the two sides, we are of considered opinion that

error of making mention of the “**Act of 1995**” in place of the “**Act of 2016**” is not fatal in nature.

(b) The Applicant has further argued that the central government has notified on 04.01.2021 ‘*benchmark disabilities*’ for various posts according to which persons with ‘*low vision*’ are eligible for appointment on the post of ‘*Medical And Health Technician Nurses and Others*’. Therefore, the same is applicable in the cases of the two original applicants. On the other hand, the respondents had stated in the affidavit in reply that the Applicants are not eligible to be appointed on the post of ‘Staff Nurse’ in view of provisions of the State Government Resolution dated 27.02.2009 issued under provisions of “Act of 1995” and also in view of subsequent Government Resolution dated 17.06.2021 issued after the “Act of 2016” came into force; as per which the post of staff nurse has been identified for reservation for persons with ‘*One Leg Locomotor Disability*’ only.

(c) Further, the learned Advocate for the Applicants has argued that provisions of State Government Resolution dated- 27.02.2009 is not applicable as the notification

issued by the Central Government notifying '*Benchmark Disability*' must prevail over notification issued by the State Government. The learned Presenting Officer has contested that proviso to the s. 33 of the "**Act of 1995**" vests powers in the '*Appropriate Government*' to exempt any establishment of the said Government from application of any of the provisions of the said section, having regard to the type of work carried on in any department or establishment. For ready reference, first the definition of '*Appropriate Government*' as provided in S. 2 (a) of "Act of 1995" is reproduced which will be followed by quoting of provisions s. 33 of the "Act of 1995" dealing with powers of '*Appropriate Government*' regarding giving exemption as state earlier in this para. Definition of '*Appropriate Government*' as provided for in S. 2 (a) of "Act of 1995" i.e. *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* is quoted below:-

"2. *Definition.- In this Act, unless the context otherwise requires,-*

a. '*Appropriate Government*' means,-

- i. *in relation to the Central Government.....*
- ii. *in relation to the State Government or any establishment wholly or substantially*

*financed by that Government, or any local authority, other than a Cantonment Board, the State Government;*

*iii. in respect of the Central Coordination Committee.....*

*iv. in respect of the State Coordination Committee.....”*

**“33. Reservation of Posts-** *Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from-*

- i. blindness or low vision;*
- ii. hearing impairment;*
- iii. locomotor disability or cerebral palsy; in the posts identified for each disability:*

*Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section”.*

Similar provisions have been provided in Section 34 of the **“Act of 2016”**. Therefore, in our considered opinion, the argument made by the learned Advocate for the applicant does not hold water. On the contrary, the state government is the ‘*Appropriate Government*’ in the instant

matter and the notification dated 27.02.2009 issued by the state government cannot be said to have been eclipsed by the notification issued in this regard by the Central Government.

(d) The learned Advocate for the Applicants has also argued that the notification dated 27.02.2009 issued by the State Government had lost its force as the Parent Act namely, *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, under which the said notification was issued was repealed in the year 2016 by *The Rights of Persons with Disabilities Act, 2016* and the provisions of the State Government Resolution dated 17.06.2021 is not applicable in the instant matter as the same has been issued after the dates of issue of the two impugned orders, i.e. 02.06.2021 and 04.06.2021. However, it is noticed that this contention of the learned Advocate for the applicant is hit by provisions of s. 102 of *The Rights of Persons with Disabilities Act, 2016* which provides for Repeal and Savings, which is quoted below for ready reference:

**“102. Repeal and savings-** (1) *The Persons with Disabilities (Equal Opportunities, Protection of Rights*

*and Full Participation) Act, 1995 (1 of 1996) is hereby repealed.*

*(2) Notwithstanding the repeal of the said Act, anything done or any action taken under the said Act, (The Rights of Persons with Disabilities Act, 2016) shall be deemed to have been done or taken under the corresponding provisions of this Act.”*

9. **Conclusion:** Upon considering all the facts on record and oral submissions made by the two contesting sides, in our considered opinion, there is no valid reason to interfere with the decision of the Competent Authority, which has determined only the disability of ‘*One Leg Locomotor Disability*’ as the ‘*benchmark disability*’ for the post of staff nurse and excluding the disability of ‘*low vision*’. Therefore, following order is passed :-

**ORDER**

- (A) Original Application No. 264 of 2021 and O.A. No. 282 of 2021 are dismissed for being misconceived and devoid of merit.
- (B) Interim orders dated 11.06.2021 in O.A. No. 264/2021 and 21.06.2021 in O.A. No. 282/2021 are, hereby, recalled/vacated.
- (D) No Orders as to Costs.

**MEMBER (A)**

**VICE CHAIRMAN**

On pronouncement of the judgment, learned Advocate for the applicants has prayed for continuing effect of the interim order passed in these matters for next four weeks, so as to enable the applicants to approach the Hon'ble High Court.

2. The request so made by the learned Advocate for the applicants is opposed by the learned Chief Presenting Officer.

3. In view of the fact that interim relief was operating during the pendency of the present O.As., we deem it appropriate to accept the request made by the learned Advocate for the applicants. Hence, the following order :-

**ORDER**

The effect of interim orders dated 11.06.2021 in O.A. No. 264/2021 and 21.06.2021 in O.A. No. 282/2021 shall remain in force till next four weeks.

**MEMBER (A)**

**VICE CHAIRMAN**