

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 831 OF 2016

DISTRICT : BEED

Pathan Hares Khan s/o Pathan Sikandar Khan,))
Age : 36, Occu. : Nil;))
R/o : Islampur, Taq. Dist. Beed.).. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai.)
2. **The Dean,**)
Government Medical College, Aurangabad.)
3. **Joint Director,**)
Medical Education and Research,)
4th Floor, Government Dental College Building,))
CST, Mumbai.)
4. **The Collector,**)
Beed, Dist. Beed.)
5. **Director,**)
Medial Education and Research,)
Mumbai.).. **RESPONDENTS**

APPEARANCE : Ms. Anagha Pandit, Advocate holding for Shri
S.B. Talekar, Advocate for Applicant.

: Shri V.R. Bhumkar, P.O. for respondent
Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **13.03.2023**

Pronounced on : **20.04.2023**

ORDER
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by one Shri Pathan Hares Khan S/o Pathan Sikandr Khan, invoking provisions of Section 19 of Administrative Tribunals Act, 1985 on 26.10.2016, upon being aggrieved by the impugned order passed by respondent no. 3, dated 12.04.2016.

2. The applicant is seeking relief in view of this Tribunal's order dated 13.09.2000 in respect of which he made latest representation to respondent No. 5 on 15.01.2015 which was rejected by respondent no. 2 by impugned order dated 12.04.2016. Therefore, it is relevant to see whether the statement made by the applicant that the present O.A. is within limitation is correct or not. It is also noted that neither there is office objection on point of limitation nor the respondents have raised any objection.

3. Background Facts:- Background facts in the matter is being summed up as follows :-

(a) The applicant admittedly submitted an application dated 21.02.2000 (a copy thereof is marked as Annexure – G and appended at page no. 32 of the paper-book), to the respondent no. 2, i.e., the Dean, Government Medical

College, Aurangabad asking for appointment on the post of *Laboratory Attendant* under quota of category of project affected persons, (in short, *PAP*). The said application was made under provisions of Government Resolution issued by General Administration Department, Govt. of Maharashtra, bearing No. क्र. एईएम-१०८०/३५/१६-अ, मंत्रालय, मुंबई-३२, Dated 21.01.1980, by which *PAP* could get employment under establishment of any department other than Irrigation Department and public sector undertakings etc.

(b) Applicant has alleged in para no. (V) (9) of the O.A. that the respondent no. 2 was giving direct appointments to other applicants under *PAP* category; but, he was not giving appointment to the applicant. But, the applicant has not substantiated this allegation by any evidence whatsoever. Contrary to aforementioned allegation, the applicant has mentioned in para no. (V) (10) of the O.A. that he along with three others, namely, Shri Changdev Ramrao Gaikwas, Shri Naresh Kumar Raosaheb More and Nitishkumar Nageshwarrao Waghmare filed O.A. No. 745/2000 before Aurangabad Bench of the Maharashtra Administrative Tribunal. From the records submitted by the

applicant, it is evident that this statement made by the applicant too, is incorrect. From the first page of the O.A. 745/2000 as cited and appended by the applicant at page no. 33 of the paper-book and containing names of parties to the dispute therein, the correct fact appears to be that O.A. No. 745/2000 was filed by the present Applicant as a sole applicant.

(c) The applicant has stated in para no. (V) (11) of the present O.A. that Oral Order was passed by this Tribunal in O.A. No. 745/2000 on 13.09.2000. In support of this statement, he has appended a copy of the said order under reference, as Annexure-H of the present O.A. The first page of this document pertains to O.A. No. 745/2000 with only the present applicant as the Original Applicant therein, whereas, the second page showing some other O.A. Nos. which are difficult to decipher. Operating part of the second order has mention of a common order in respect of only three petitioners. In other words, document at Annexure-H is mixing of two deferent orders in different set of O.A's. In order to make this point clearer, scan copy of the entire Annexure- H, enclosed at page nos. 33-34 of the paper-book is reproduced below :-

(i) First page of Annexure-H

33 34
ANNEXURE
"H"

C.C.No. 608/2014
 Applied by : Adv./State
 Applied on 5/12/2014
 Ready on 10/12/2014

No. of Pages 02
 Urgent Fees 10/-
 Ordinary Fees —
 Delivered on 10/12/2014

BEFORE THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL - MUMBAI
 BENCH AT AURANGABAD

Copy Compared by
Patil
 10/12/14
 Assistant
 Maharashtra Administrative Tribunal
 Bench at Aurangabad.

ORIGINAL APPLICATION NO. 745 OF 2000 (D.B.)

DISTRICT : BEED

Between

Pathan Hares Khan s/o Pathan Sikandar Khan,
 Age: 19 years, Occu : Nil,
 R/o Islampura, Tq. & Dist. Beed. ...APPLICANT

And

1. The State of Maharashtra.
 (Copy to be served on the P.O.,
 M.A.T., Bench at A'bad).
2. The Dean,
 Government Medical College,
 Aurangabad.
3. The Collector,
 Beed District, Beed. ...RESPONDENTS

(ii) Second page of Annexure-H

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL AURANGABAD BENCH, AURANGABAD	
TRANSFER/ORIGINAL APPLICATION No.	2007, 2008, OF 2000 2009 of 2000
OFFICE NOTES	TRIBUNAL'S ORDERS
	<p>DATE : 13.9.2000</p> <p>ORDER : Heard Mr. A.S. Deshmukh, Mrs. M.N. Deshpande, Mr. P.M. Shinde, Mrs. C.R. Baraswadkar, Id. adv. for applicants, Id. POs for res. and Id. CPO for res. respectively in all these three petitions. All the res. are served.</p> <p>Since common question of law and facts arise on appointment to the post of Laboratory Attendant or any other Class IV post from the Project Affected Persons Category and, therefore, it is appropriate to decide all these three petitions by this common order.</p> <p>The applicants' claim for appointment on the post of Laboratory Attendant or any other post from Class IV category from the Project Affected Persons quota should be considered as and when posts are made available, from this category as per the applicant's turn and seniority strictly on merit. Order accordingly. All the three petitions though are on urgent ^{admission} stage disposed of accordingly with no order as to costs.</p>
	<p>sd/- MEMBER (J)</p> <p>sd/- MEMBER A</p> <p>Verified to be True Copy 10/11/2014 Registrar Maharashtra Administrative Tribunal</p>

(d) Applicant has submitted a copy of communication dated 18.02.2001 issued by respondent no. 5 addressed to respondent no. 2 and also to the Dean, Government

Medical College Hospital, Aurangabad (who has not been added as party respondent in the present O.A.) which clarifies the aforementioned inconsistencies in the contents of para No. (V) (9) to (V) (11) of the present O.A. It is clear that the four O.A.s filed by the four aggrieved candidates were numbered as 745/2000, 746/2000, 747/2000 and 881/2000. In addition, it appears that the four aggrieved persons had made representation to respondent no. 5 by letters of different dates, all of the month of January 2001, citing the aforesaid order of this Tribunal. In response to aforementioned representation, Respondent No. 5 has issued directions to Dena, Government Medical College, Aurangabad and Dean, Government Medical College Hospital, Aurangabad vide his letter dated 14.02.2001 (page No. 35 of paper book) and as he too may not be able to make out sense out of document at Annexure-H purported to be order of this Tribunal in O.A. No. 745/2000, dated 13.09.2000 made specific mention as follows :-

“ दिनांक १३.९.२००० च्या न्यायालयीन आदेशाची सुस्पष्ट प्रत सादर करून त्यामध्ये दिलेल्या आदेशानुसार विषयांकित उमेदवारांच्या नियुक्तीबाबत शासन निर्णय दिनांक १३.९.२००० च्या अधिन राहून नियमाप्रमाणे योग्य ती कार्यवाही करून तसे अर्जदाराना कळवून सविस्तर अहवाल शासनास / संचालनालयास सादर करावा.”

(e) It is admittedly, that other three original applicants in O.A. No. 746/2000, 747/2000 and 881/2000 had been given appointments as PAPs. vide orders dated 16.11.2001 in compliance with following various orders such as orders of Industrial Court, Hon'ble High Court and this Tribunal in different O.A.s and contempt petitions. Applicant's case appears to be different, being based on his plain paper application for appointment as Laboratory Attendant dated 21.02.2000. To quote the references part of one of the 3 appointment orders issued to other 3 applicants in O.A. Nos. 746/2000, 747/2000 and 881/2000, which is being cited by the present applicant as under in order to make the issue clear :-

“कार्यालयीन आदेश

जा.क्र.शावैमरुओ/आस्था-४/स्टेनो/१३५२१/२००१
अधिष्ठाता यांचे कार्यालय,
शासकीय वैद्यकीय महाविद्यालय व रुग्णालय,
औरंगाबाद.
दिनांक : १६ नोव्हेंबर २००१

विषय:- धरणग्रस्त या माध्यमातून चतुर्थश्रेणी पदावर नियुक्ती करणे बाबत...

संदर्भ :- १) इंडस्ट्रीयल कोर्ट यांचे आदेश क्र.युएलपी /१२१/८७ आणि २६८/९०

२) उच्च न्यायालयाचे आदेश क्र. २५९५/९१

३) प्रशासकीय न्यायधिकरण खंडपीठ औरंगाबाद यांचे आदेश क्र.
अवमान याचिका क्र. १५४४/२००१/ओए क्र.९४२/२०००

४) प्रशासकीय न्यायधिकरण खंडपीठ औरंगाबाद यांचे आदेश क्र.
अवमान याचिका क्र. १५४५/२००१/ओए क्र.८८१/२०००

५) प्रशासकीय न्यायधिकरण खंडपीठ औरंगाबाद यांचे आदेश क.

अवमान याचिका क्र. १५४६/२००१/ओए क्र.७४६/२०००

उपरोक्त संदर्भीय आदेशानुसार श्री चांगदेव रामराव गायकवाड, मु. पो. नेकनूर, ता. जि. यांची धरणग्रस्त माध्यमातून कक्षसेवक या पदावर रु.२५५०-५५-६०-३२०० या वेतनश्रेणीत शासकीय वैद्यकीय महाविद्यालय व रुग्णालय, औरंगाबाद येथील रिक्त असलेल्या पदावर तात्पुरत्या स्वरूपात कामावर रुजू झाल्यापासून खालील अटी व शर्तीच्या अधीन राहून तात्पुरती नियुक्ती करण्यात येत आहे.”

(f) The applicant, thereafter, filed a contempt petition No. 65/2001 in O.A. No. 745/2000 which was dismissed in default vide Oral Order dated 14.12.2001 which is quoted below :-

“None appeared for the applicant previously. None appears even today for applicant duly instructed. Dismissed for want of prosecution.

14.12.2001

Sd/-
(A.S. BHATE)
ACTING CHAIRMAN

Sd/-
(P.G. KURSE)
MEMBER-A”

(g) The applicant did not take any steps thereafter, in other words, he remained dormant for about 14 years and filed representation to respondent no. 5 dated 15.01.2015 seeking direct appointment to the post of Laboratory Attendant demanding parity with cases of applicants in other three original applications. The applicant's representation has been rejected by respondent No. 2 by impugned order dated 12.04.2016 in view of Government

Resolution issued by General Administration Department, Govt. of Maharashtra, bearing No. न्याय-१००९/प्र.क्र. २०२/०९/१६-अ, मंत्रालय, मुंबई-३२, Dated 27.10.2009 issued in pursuance of judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 7472/2007, judgment dated 31.03.2008.

4. Relief Prayed for :- The applicant has prayed for relief in terms of para no. (VIII) (31) of the original application which is being reproduced verbatim for ready reference as follows-

“31) **PRAYERS:**

In view of the above circumstances, the applicant most respectfully prays under section 19 of the Administrative Tribunal Act 1985:-

- A. *To direct the respondents to appoint the applicant on the post of Laboratory Attendant (Class IV) in Project Affected Person category;*
- B. *To grant the interim injunction restraining the respondents, their officers, servants, agents or anybody acting on behalf of them from making further appointments to the post of Laboratory Attendant (Class IV), pending hearing and final disposal of the Original Application.*
- C. *To grant interim stay to appointments to vacant posts of Laboratory Attendant (Class IV) in Project Affected Person category, pending hearing and final disposal of the Original Application;*
- D. *Any other relief, which this Hon'ble Tribunal may deem fit may kindly be granted in favour of the applicant.”*

5. Chronology for Pleadings and Final Hearing:-

After circulation was granted on 26.10.2016, all the respondents were served notice in the month of November 2016. Affidavit in reply on behalf of respondents was filed on 26.04.2017 which was taken on record and a copy thereof was served on the other side. Rejoinder affidavit was filed on behalf of applicant on 08.08.2017 which was taken on record and a copy thereof was served on the respondents. The applicant has cited judgment of Hon'ble High Court of Judicature (Bench at Aurangabad) in **2009 (4) Mh. L.J. 961 in Writ Petition No.s 5266, 6100 and 7185 of 2008, Rajendra Pandurang Pagare and others Vs. State of Maharashtra**, decided on 09.07.2009. The matter was closed for orders on 13.03.2023 after final hearing that took place on the same day.

6. Analysis of Facts on Record and Oral Submissions Made:-

(i) From facts on record it is clear that the applicant filed O.A. No. 745/2000 on being aggrieved by the fact that his application dated 21.02.2000 for his appointment on the post of Laboratory Assistant was not decided by respondent no. 2. However, the applicant has annexed only first page of certified copy of this Tribunal's Order comprising of only title clause, which was issued to him by this Tribunal's office on 10.12.2014. Page no. 2 of the document claimed to be part of the Tribunal's Order clearly has mention of other

O.As which cannot be deciphered so as to lead us to believe that the same is part of common order along with order in O.A. No. 745/2000 filed by the present applicant. This brings out inconsistencies in the contents of critical part of the present O.A.

(ii) Further, on plain reading of the references mentioned on orders of appointments issued to other three candidates from PAP categories, it is clear that the other three candidates had background of orders passed by Industrial Court and Hon'ble High Court of Judicature too which is not the case of applicant and therefore, we cannot simply treat them to be on same footing.

(iii) As the applicant claims that he had already been granted relief by this Tribunal by order passed in O.A. No. 745/2000, it is beyond comprehension how he has been legally advised to file another O.A. for the same relief especially when the Contempt Petition No. 65/2001 in O.A. No. 745/2000 filed by the applicant has already been dismissed by this Tribunal for want of prosecution.

(iv) It is also not explained by the applicant as to how he has claimed this O.A. to be within limitation in respect of alleged non-compliance of this Tribunal's order passed in year 2000.

(v) In our considered opinion, the applicant has jumbled the records annexed with the present O.A., wrongfully created a story in the O.A. that other three candidates were part of the same O.A. No. 745/2000, {ref: para no. V (13) of

the O.A.}, who have already been given appointment orders excluding the applicant. He has made self- contradictory submissions in his representation dated 10.04.2015 addressed to respondent no. 2 (appended in O.A. No. 745/2000 at page No. 51 of paper-book and marked as Annexure-‘O’.

(vi) Last, but not the least, the applicant has cited a judgment of Hon’ble High Court, Bench at Aurangabad in order to buttress his claim in ***Rajendra Pandurang Pagare and Anr. Vs State of Maharashtra, reported in 2009 (5) ALL MR 830, judgment dated 09.07.2009***. He has advanced the argument that the aforesaid judgment applies with prospective effect and cannot be applied on this Tribunal’s Order in O.A. No. 745/2000. This argument of the applicant is contradictory to his own argument that cause of action for filing the present O.A. has arisen on the date of passing impugned order dated 12.04.2016.

(vii) Above analysis of facts on record leads us to draw inference that by filing the present O.A. No. 831/2016 the applicant has made brazen effort to make this Tribunal admit the present O.A. No. 831/2016 even though the present O.A. is for the same relief which he claims that this Tribunal had already granted by passing orders in O.A. No. 745/2000 in the year 2000. For this purpose, he has attempted to make mutually contradictory submissions, rely on truncated documents, and draw unfounded similarities with the case of other three candidates. On the other hand, respondents have not opposed admission of the

present O.A. on ground of limitation but expect the Tribunal to accept their excuse of on non-availability of 16 to 23 years old documents in respect of non-submission of detailed reply on ground.

7. Conclusions: In our considered opinion, the applicant has approached this Tribunal by filing second O.A. for the same relief which he claims to have been granted by this Tribunal passed in earlier O.A. No. 745/2000; that too, by submission of distorted and factually wrong and mutually contradictory statements / claims. Contempt of Court Proceeding No. 65/2001 in O.A. No. 745/2000 had been dismissed for want of prosecution by this Tribunal's Order dated 14.12.2001. Instead of approaching this Tribunal for restoration of the Contempt of Court matter, he clearly appears to have made story of a new cause of action emanating from passing of impugned order dated 12.04.2016 and, at the same time seeking protection to this Tribunal's Order passed in year 2000 in O.A. No.745/2000 by relying on doctrine of prospective over-ruling which constitute a major contradiction in arguments made on behalf of the applicant. The applicant, who is seeking appointment as Laboratory Attendant, may not be well versed with all these complexities and therefore, he was dependent on others and possibility cannot be ruled out that he could not have got proper guidance. Hence, the following order:-

ORDER

- (A) Original Application No. 831 of 2016 is dismissed.
- (B) No order as to costs.

MEMBER (A)**MEMBER (J)****Kpb**/D.B. O.A. No. 831/2016 appointment