

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 914 OF 2016

DISTRICT : BEED

Ravi S/o Ambadas Jadhav,)
Age : 26 years, Occu. : Service,)
R/o : Quarter No. MD-4/6, Sawar Quarters,)
Medical Parisar, Ambajogai,)
Tq. Ambajogai, Dist. Beed.)

.. **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through it's Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai-32.)
2. **The Director,**)
Medical Education and Research,)
Mumbai.)
3. **The Dean,**)
Swami Ramanand Teerth Rural Medical)
College, Ambajogai, Tq. Ambajogai,)
Dist. Beed.)
4. **The President,**)
Promotion Committee for Class-IV to)
Class-III Employees Swami Ramanand)
Teerth Rural Medical College, Ambajogia,)
Tq. Ambajogai, Dist. Beed.)
C/o Head of The Department)
(Ophthalmologist), Ambajogai.)
5. **Kailas S/o Rambhau Maid,**)
Age : 50 years, Occu. : Service,)
R/o : Sawar Quarter, Medical Parisar,)
Ambajogai, Tq. Ambajogai, Dist. Beed.)

6. **Balasaheb S/o Digambar Patange,**)
 Age : 50 years, Occu. : Service,)
 R/o : Latur Road, Amba Sakhar Karkhane,))
 Waghala, Tq. Ambajogai, Dist. Beed.)
7. **Rahul S/o Gopalrao Ambekar,**)
 Age : 43 years, Occu. : Service,)
 R/o : Swatantrya Sainik Colony, Chanai)
 Road, Ambajogai, Tq. Ambajogai, Dist. Beed.)

.. **RESPONDENTS**

APPEARANCE : Shri I.D. Maniyar, Advocate for the Applicant.

: Shri N.U. Yadav, P.O. for the Respondents.

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

Reserved on : **16.11.2022**

Pronounced on : **01.12.2022**

ORDER

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

1. The present Original Application has been filed by one Shri Ravi Ambadas Jadhav on 07.12.2016, invoking provisions of Section 19 of Administrative Tribunals Act, 1985, being aggrieved by the order dated 05.10.2016 passed by Respondent No. 4 by which Respondent Nos. 5 to 7 have been shown as eligible for promotion to the Class III posts in the cadre of clerk-cum-typist as a result of which the Applicant could not get promotion to the cadre of clerk cum typist in the year 2016 within vacancies available at that point of time. It is admittedly that the Applicant

and the Respondent Nos. 5 to 7 had been working as class IV employees with Swami Ramanand Teerth Rural Medical College, Ambajogai, Taluka- Ambajogai, District-Beed, (in short, '*the Medical College*'), which is under administrative control of the Department of Medical Education and Research (now, called as Department of Medical Education & Drugs), Government of Maharashtra. Therefore, the Respondent No. 1 was a misjoinder and inadvertently, the same continued to be in the array of respondents by oversight.

2. As per the Service Affidavit dated 16.01.2017 filed by learned Advocate for the applicant, all the Respondents were duly served notice in the month of December 2016. However, none of the private Respondents have appeared and filed affidavits in reply. For obvious reason as explained earlier in this paragraph, Respondent No. 1, not being concerned with the affairs of Medical Education & Research Department, too did not submit affidavit in reply. However, Affidavit in Reply was filed on behalf of Respondent Nos. 2 to 4 on 28.02.2017 and a copy thereof was provided to the other side. The Applicant filed Rejoinder Affidavit on 25.07.2018. The matter was, thereafter, fixed for final hearing on 04.10.2018. It is in compliance with the Oral Order passed by this Tribunal on 13.12.2018 by which the Respondent No. 4 and,

in case of he had superannuated in the meantime, then the Respondent No. 3 was required to file Additional Affidavit explaining certain points regarding options for the post of clerk-cum-typist by two employees named as Mr. Dhanwade and Mr. Bhandare (who are not party respondents to this O.A.), that additional reply was filed by the Respondent No. 3 on 06.02.2019. The matter was finally heard and reserved for orders on 07.09.2022. However, constitution of the Division Bench was changed by an order of the Hon'ble Chairperson dated 21.10.2022, therefore; the matter was fixed for re-hearing which took place on the designated date of 18.11.2022 and the matter was again reserved for orders.

3. The Applicant has prayed for following reliefs in terms of para (VII) and (VIII) of the present O.A. which is reproduced verbatim as follows:-

“VII) INTERIM RELIEF SOUGHT:

A) Pending hearing and final disposal of this Original Application, the execution, operation and implementation of the impugned order dated 05.10.2016 issued by respondent No. 3 may kindly be stayed.

VIII) RELIEF SOUGHT

- 1. Allow this Original Application.*
- 2. The impugned order dated 05.10.2016 passed by respondent No. 3 may kindly be quashed and set aside.*

3. *To hold and declared that, the applicant is eligible for promotion of the post of Junior Clerk and directed the respondents to give the promotion to the applicant on the post of Junior Clerk.*
4. *To direct the respondents to delete the names of the respondent Nos. 5 to 7 from the promotion list of the post of Junior Clerks.*
- E) *Any other suitable and equitable relief may kindly be granted in favour of applicant.”*

As per record, it appears that No Interim Relief prayed for in terms of para (VII) of the O.A. had been granted.

4. It is admittedly that the Applicant as well as the Respondent Nos. 5 to 7 had been working as Sweepers, they all were S.S.C. pass and had certificate for having requisite speed of Marathi and English typing.

5. It is not disputed that the Applicant is junior to the Respondent Nos. 5 to 7 in the Class IV cadre. Seniority of the Applicant and Respondent Nos. 5 to 7, as published on 03.06.2016 (Annex A-4, Page 32 of Paper-Book), is as tabulated below:-

Party Reference	Name	Seniority Position in cadre of Class IV
<i>Applicant</i>	<i>Shri Ravi Ambadas Jadhav</i>	<i>21</i>
Respondent No. 5	Shri Kalidas Rambhau Maid	1
Respondent No. 6	Shri Balasaheb Digambar Patange	16

Respondent No. 7	Shri Rahul Gopal Rao Ambekar	19
------------------	---------------------------------	----

6. In view of above, in ordinary course, the Applicant would not have any reason for promotion denying the same to the Respondent Nos. 5 to 7. Therefore, the service-rules and departmental guidelines applicable for adjudication of the present O.A. are required to be referred to, which is as follows:

(a) Erstwhile Department of Medical Education and Research, which is now called as the Department of Medical Education & Drugs, follows following two set of rules/ guidelines :-

(i) *Recruitment Rules for the posts of clerk cum typist and typists published by General Administration Department vide its Notification No. सा.प्र.वि. क्रमांक आरटीआर-१०८९-आय/सी आय/ सी आर/ बाय, दिनांक २२ डिसेंबर, १९८९.*

(ii) *Recruitment Rules for the posts of Laboratory Assistant had been published by the Department of Medical Education and Research vide its Notification No. 'ग.अ.वै.शि. व औ.द्र.वि. क्रमांक आरटीआर-१०८९/६७६/ सी आर-४०/ ८९/एमईडि-१४, दिनांक २२ डिसेंबर, १९८९.*

(b) According to the two Recruitment Rules, all Class-IV employees from different cadres namely, Sweepers, Barber, Peon, Room Attendants, Cook etc., are eligible for promotion to the post of laboratory assistants as well as the post of clerk-cum-typist.

(c) However, the Directorate of Medical Education and Research had, vide Notification No. जा.कं. लिपिक क. २०९०-४२१६८-(२१)(तीन)/ड संचालनालय वैद्यकिस शिक्षण आणि संशोधन, महाराष्ट्र शासन, मुंबई-४०० ००१, dated 10.12.1990 issued a circular, relevant parts of which in the present context are at para 2 and 3 which are being reproduced verbatim for the ready reference for the purpose of adjudication of this O.A.:

“२. चतुर्थश्रेणी पदावर कार्यरत असलेल्या कर्मचा-यांना ते धारण करीत असलेल्या पदनामानुसार वर्गवारी करून प्रयोगशाळा परिचर पदावर कार्यरत असलेल्या कर्मचा-यास केवळ प्रयोगशाळा सहाय्यक या पदावर पदोन्नती आणि प्रयोगशाळा परिचर या पदनामा व्यतिरिक्त असलेल्या इतर पदनाम धारक चतुर्थश्रेणी कर्मचा-यांना केवळ कनिष्ठ लिपिक या पदावर पदोन्नती प्रदान करण्याची कार्यवाही करता येईल का, असा मुद्दा उपस्थित करण्यात आलेला आहे.

उपरोक्त मुद्दयाच्या संदर्भात असे स्पष्टीकरण करण्यात येते की, प्रस्तुत परिपत्रकात नमूद केलेल्या दोनही अधिसूचनेतील नियम ३(ए) अनुसार, चतुर्थश्रेणी सेवेतून पदोन्नती हे समान सूत्र निर्धारित करण्यात आले आहे. म्हणजेच या नियमामध्ये चतुर्थश्रेणी पदावरील कर्मचारी हाच मुद्दा विचारात घ्यावयाचा आहे. चतुर्थश्रेणी पदधारकामधील त्यांच्या पदनामानुसार स्वतंत्रपणे वर्गीकरण करण्याची तरतूद नाही. त्यामुळे उपरोक्त परिच्छेद २ येथे उपस्थित केलेला मुद्दा नियमावर आधारित नाही.

३. लिपिक पदावरील पदोन्नतीचे नियम व प्रयोगशाळा सहाय्यक पदावरील पदोन्नतीचे नियम स्वतंत्र असल्यामुळे चतुर्थश्रेणी सेवेतील पात्र कर्मचा-याकडून संबंधित विहित सेवा प्रवेश नियमानुसार त्यांना लिपिक पदावर पदोन्नती अपेक्षित आहे की, प्रयोगशाळा सहाय्यक पदावर पदोन्नती अपेक्षित आहे या बाबतचा लेखी विकल्प रिक्त पद प्रत्यक्षात पदोन्नतीद्वारे भरण्याचे वेळी प्राप्त करणे व त्याप्रमाणे एकदा दिलेला विकल्प अंतिम असल्याचे व त्यामध्ये कोणत्याही परिस्थितीत बदल करता येणार नसल्याचे लेखी प्रतिज्ञापन संबंधित चतुर्थश्रेणी कर्मचा-याकडून प्राप्त करणे अशी व्यवस्थ कार्यान्वित आणणे आवश्यक आहे. अन्यथा सोयीनुसार पुन्हा संवर्ग बदल करण्याची विनंती प्राप्त होण्याची शक्यता राहिल.

वर उल्लेखिल्याप्रमाणे लेखी प्रतिज्ञापन प्राप्त केल्यावर लिपिक पदासाठी व प्रयोगशाळा सहाय्यक पदासाठी असे दोन स्वतंत्र वर्गीकरण करावे व त्या स्वतंत्र वर्गीकरणानुसार ज्येष्ठतेच्या आधारे पात्रतेच्या अधिन राहून योग्य व्यक्तीला त्यांनी दिलेल्या लेखी विकल्पाप्रमाणे व संबंधित सेवाप्रवेश नियमानुसार विहित प्रमाण, विचारात घेउन पदोन्नती प्रदान करावी. प्रमाणाच्या संदर्भात असे नमुद करण्यात येते की, दिनांक २२ डिसेंबर, १९८९ च्या अधिसूचनेनुसार प्रयोगशाळा सहाय्यक ही पदे चतुर्थश्रेणी सेवेतून पदोन्नतीचे आणि नामनिर्देशनाने २५:७५ या प्रमाणात भरण्याची तरतूद नियम ४ अंतर्गत आहे. त्याचप्रमाणे दिनांक १८ डिसेंबर, १९८६ च्या अधिसूचनेनुसार लिपिक पदे चतुर्थश्रेणी सेवेतून त्या त्या वर्षामध्ये रिक्त होणा-या एकूण लिपिक पदापैकी २५% टक्क्यापेक्षा अधिक होणार नाही अशा प्रमाणात रिक्त लिपिक पदे पदोन्नतीने भरण्याची

तरतूद नियम ३ खालील परंतुकामध्ये विहित आहे. सदर प्रमाण विचारात घेउन पुढील कार्यवाही करण्यात यावी.”

(d) It is also admittedly that the promotion of class IV employees to Class III is also regulated by the Government Resolution dated 14.01.2016 issued by the Finance Department of the Government of Maharashtra, bearing No. संकीर्ण २०१५/प्र.क. ५७/२०१५/विसु-१, dated 14.01.2016 which was issued by modifying G.R. of General Administration Department, Government of Maharashtra, dated 10.05.2005. This GR dated 14.01.2016 does not require obtaining any preference for a particular Class III posts if basic eligibility criterion for such posts in Class III are the same.

6. **Grounds for seeking relief** : The applicant stated certain facts as main grounds for seeking reliefs prayed for gist of which is as follows:-

(a) The applicant and Respondent Nos. 5 and 6 were given temporary promotion for 364 days on the post of junior clerk by Respondent No. 3 vide his order dated 01.04.2014,

(b) The Applicant and Respondent No. 7 were given internal promotion vide order dated 26.04.2014 issued by Respondent No. 3.

(c) The Applicant and Respondent Nos. 5 to 7 were given temporary promotion for 364 days on the post of junior clerks vide order dated 01.04.2015 issued by Respondent No. 3.

(d) From admitted facts narrated in preceding subparagraphs, it is clear that the Applicant had no objection to granting temporary promotions to Respondent Nos. 5 to 7 to the post of clerk-cum-typist till year 2015.

(e) It is only after that the Government in GAD issued GR dated 14.01.2016 (*supra*) thereby, increasing the percentage of number of posts in Class II to be earmarked for recruitment by promotion from class IV to class III from 25% to 50% that the applicant and others submitted a joint representation to Respondent no. 3 dated 02.02.2016 for getting regular promotion on the post of junior clerk (renamed from the designation of clerk-cum-typist). Following which, the Respondent No. 3 published on 03.06.2016 a list of eligible class IV employees for

promotion to Class III, based on seniority and preference given by them for the post of junior clerks and number of vacancies in the post of junior clerks. Claims & Objections were invited on the same. This triggered taking of objection by the Applicant to the said list of eligible Class IV employees. To be more specific, the applicant took objection to inclusion of Respondent Nos. 5 and 6 in the list of eligible candidates stating that the Respondent No. 5 had given preference for promotion as Laboratory Assistants on 13.12.2011 and Respondent No. 6 had given preference for the post of laboratory assistant in the year 2011 without mentioning day and month. As the preference once indicated cannot be permitted to be modified subsequently as per Circular dated 10.12.1990 (*supra*) these two Respondents cannot be considered for the post of junior clerks. The applicant submitted another objection dated 09.06.2016 in respect of inclusion of names of Respondent Nos. 6 and 7 in the select list based on similar grounds that the two Respondents appear to have given preference for promotion to the post of laboratory assistant in the year 2011. The Applicant submitted photo copies of preferences

given by Respondent Nos. 5 to 7 after procuring he same under RTI Act.

(f) The Departmental Promotion Committee in its meeting held on 15.06.2016 decided to obtain option/ preferences from concerned employees invoking following provision of the Notification dated 10.12.1990 :-

“ लिपिक पदावरील पदोन्नतीचे नियम व प्रयोगशाळा सहाय्यक पदावरील पदोन्नतीचे नियम स्वतंत्र असल्यामुळे चतुर्थश्रेणी सेवेतील पात्र कर्मचा-याकडून संबंधित विहित सेवा प्रवेश नियमानुसार त्यांना लिपिक पदावर पदोन्नती अपेक्षित आहे की, प्रयोगशाळा सहाय्यक पदावर पदोन्नती अपेक्षित आहे या बाबतचा लेखी विकल्प रिक्त पद प्रत्यक्षात पदोन्नतीद्वारे भरण्याचे वेळी प्राप्त करणे व त्याप्रमाणे एकदा दिलेला विकल्प अंतिम असल्याचे व त्यामध्ये कोणत्याही परिस्थितीत बदल करता येणार नसल्याचे लेखी प्रतिज्ञापन संबंधित चतुर्थश्रेणी कर्मचा-याकडून प्राप्त करणे अशी व्यवस्थ कार्यान्वित आणणे आवश्यक आहे. अन्यथा सोयीनुसार पुन्हा संवर्ग बदल करण्याची विनंती प्राप्त होण्याची शक्यता राहिल.”

(g) The applicant had, vide his representation dated 30.06.2016, taken objection to taking preferences at the time of actually filling up the posts of junior clerks by promotion.

(h) The Departmental Promotion Committee headed by Respondent No. 4 in its meeting held on 26.07.2016 rejected the objection taken by the Applicant dated 30.06.2016.

(i) The Departmental Promotion Committee headed by Respondent No. 4 in its meeting held on 19.09.2016 approved the revised select list dated 21.09.2016 which included names of the Applicant as well as Respondent Nos. 5 to 7.

(j) The said The Departmental Promotion Committee its meeting held on 04.10.2016 recommended names of 16 senior most class IV employees for appointment as Junior Clerks against 18 vacancies which included names of Respondent Nos. 5 to 7 and based on the same, respondent Nos. 5 to 7 were promoted as Junior Clerks vide order dated 05.10.2016.

(k) The Applicant has been promoted to the post of Junior Clerk vide order dated 31.01.2019.

7. **Analysis of facts on record and Oral Submissions Made:**
From the facts on record and oral submissions made, following issues emerge for determination:-

ISSUE No. 1: *Under provisions of para 3 of the Circular issued by the Department of Medical Education and Research, dated 10.12.1990, what is the stage at which*

written binding preference of employees in Class IV is stipulated to be taken?

Analysis: From plain reading of the said circular, written binding preference is required to be taken at the time of actually filling Class III posts by promotion.

ISSUE No. 2: *Once the Respondent Nos. 5 o 7 had given written option for the post of Lab. Assistant in the year 2011, and if the Applicant genuinely believed that the Respondents have thereby lost claims to be promoted as clerk-cum-typist, then in what circumstances the applicant did not raise objection to temporary promotion of the Respondent Nos. 5 to 7 to the post of clerk-cum-typist during years 2014 and 2015?*

Analysis: The Applicant has not offered any explanation to acquiescing to the promotion given by Respondent Authorities to the Private Respondents Nos. 5 to 7 to the post of clerk-cum-typist during the year 2014 and 2015?

ISSUE No. 3: *What is the period of validity of preference once given by an employee under provisions of para 3 of the Circular of Medical Education and Research Department dated 10.12.1990? In other words, whether the validity of preference given is for an ongoing promotion process or for the entire service tenure of the employee or, until he is actually promoted substantively to Class III?*

Analysis: Provisions of para 3 speaks of two conditions; firstly, that option has to be obtained at the time of actually

filling the post of class III by promotion from Class IV and, secondly, that the option once given shall not be allowed to be changed in any circumstances. Reconciled interpretation of the two conditions is, in our considered view, that option has to be taken afresh every time process of granting actual promotion is to be undertaken and option given for a particular process of promotion shall not be allowed to be changed until the process of promotion is completed with issuance of appointment orders and exhaustion of the waiting list, if any.

ISSUE No. 4 : What inference can be drawn from reading of the Circular dated 10.12.1990 and GR issued by GAD dated 14.01.2016 together?

Analysis: From the facts on record, it is obvious that employees could give option for any of the two posts in Class III cadre, viz, Junior Clerks and Lab. Assistants. It means that there is no requirement for any specific educational or technical qualification for promotion from various Class IV to Class III posts of Junior Clerks and Lab Assistants. In view of this, in our considered opinion, need for taking options from Class IV employees as per provisions of Circular dated 10.12.1990, may arise only when the processes of promotion to the posts of junior clerk as well as laboratory assistant are undertaken simultaneously. Otherwise, senior most Class IV employee eligible for promotion may be offered promotion to the post which is being filled up by promotion at any particular point of time. This interpretation of provisions of taking

options as per Circular dated 10.12.1990 does not conflict with the provisions of GR dated 14.01.2016. However, this point has not been agitated by any of the two sides to the disputes and therefore, may be useful for the Respondent Authorities while giving a fresh look to the Circular dated 10.12.1990 and making the same clear and explicit.

8. **Conclusion** : The Applicant had not raised any objection to the promotion given to the Respondent Nos. 5 to 7 to Class III cadre during the year 2014 and 2015 in spite of options given by them for the post of Lab. Assistant during the year 2011. The Applicant has taken objections at the time when it was clear to him that he could not get immediate promotion to Class III post of Junior Clerk unless names of Respondent Nos. 5 to 7 are deleted from the list of eligible candidates. Therefore, it is clear that the objection raised by the Applicant amounts to an afterthought. Moreover, provisions of Circular dated 10.12.1990 (*supra*) read with GR. dated 14.01.2016 (*supra*) requires reconciled reading as discussed earlier which leads us to conclusion that option of a Class IV employee has to be taken each time at the time of actual promotion to the two posts in Class III. Therefore, the impugned order dated 05.10.2016 passed by respondent No. 3 is in order and the present Original

Application is misconceived and is devoid of merit and hence following order is passed:-

ORDER

- (A) Original Application No. 914 of 2016 is hereby dismissed for being devoid of merit.
- (B) No order as to costs.

MEMBER (A)

Kpb/D.B. O.A. No. 914/2019 VDD & BK 2022 Promotion

MEMBER (J)