

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 1118 OF 2023**

DISTRICT : NASIK

Nasareen Mahammadali Baraskar)
Working as Senior Team Leader,)
Mylan Laboratories Ltd, [A Viatris)
Company], Residing at Post Nasik)
Dist-Nasik 422 011.)...**Applicant**

Versus

1. The Secretary,)
Maharashtra Public Service)
Commission, having office at)
Trishul Gold Field, Plot No. 34,))
Sector-11, Opp. Sarovar Vihar)
Belapur CBD,)
Navi Mumbai 400 014)
2. The State of Maharashtra,)
Through Principal Secretary,)
Medical Education & Drugs)
Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri D.B Khaire with Ms Purva Pradhan, learned advocate for the Applicant.
Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

RESERVED ON : 22.02.2024

PRONOUNCED ON: 27.02.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The Applicant prays that this Tribunal be pleased to hold and declare that the inclusion of the name of the Applicant in the list dated 25.8.2023 of not eligible candidates is illegal and contrary to the provisions of law and hence deserves to be set aside. Further the Tribunal be pleased to quash and set aside the list of the candidates not eligible qua the applicant and further be pleased to direct the Respondent No. 1 to recommend the name of the applicant.

2. Learned Counsel has submitted that pursuant to the Advertisement No. 020/2022 dated 19.3.2022, issued by Respondent No. 1, M.P.S.C, the Applicant had applied for the post of Assistant Commissioner (Drugs), Food & Drugs, Administrative Services, Group A. Learned Counsel then submitted that the Written Examination was conducted on 17.3.2023 and result was declared on 24.4.2023.

3. Learned counsel further submitted that 'Sub Clause 8.1' of 'Clause 8' of the Advertisement dated 19.3.2022 states about the Educational Qualification and 'Sub Clause 8.2' is pertaining to the experience of Minimum Period of 5 years in 'Manufacturing or Testing of Drugs or Enforcement of the Act' for acquiring the requisite Educational Qualification.

4. Learned Counsel for the Applicant thereupon submitted that Respondent No. 1, M.P.S.C published list of 41 Non-Eligible Candidates on 25.8.2023 for the post of Assistant Commissioner (Drugs), Food & Drugs, Administrative Services Group A and also published Eligible Candidates list of 36 Candidates.

5. Learned Counsel submitted that the name of the Applicant was at Sr. No. 25 in the Non-Eligible Candidates List. Respondent No. 1, M.P.S.C informed the Applicant that she is found ineligible on account of not having the requisite experience. The exclusion of the Applicant from the 'Eligible Candidates List' is on the ground of experience and therefore, it is necessary to reproduce the Chart of 'Experience Information' furnished by the Applicant in the Application Form.

Experience information

Sr No	Institution/ Department/ Organization/ Court	Designation [Post Held]	Nature of Appointment	Nature of job	Full Time / other	Pay Band/ Pay Scale Professional charge	Grade Pay	Monthly Gross Salary/ Income	From Date	To Date	Years	Months	Days	Whether Selected From MPSC?
1.	Okasa Pharma Pvt Ltd	Chemist	Permanent	Drugs Manufacturer		139200		10000	27/09/2011	19/09/2011	1	9	18	No
2.	Viatrix	Deputy Manager	Permanent	Drugs Manufacturer		785006		65000	27/09/2011	30/03/2022	10	6	3	No

6. Learned Counsel for the Applicant stated that the experience information at Sr. No. 1 of Okasa Pharma Pvt Ltd is not to be taken into account. The Applicant entirely relied on her Experience Information at Sr. No. 2 of the above Chart which shows the Organization as 'Viatrix'. Learned counsel for the Applicant then submitted that the Applicant is having a valid experience of 10 years in Manufacturing of Drugs in Viatrix from 27.9.2011 to 30.3.2022.

7. Learned Counsel further submitted that along with the Application Form the Applicant has submitted Experience

Certificate issued on 7.12.2021 of Mylan Laboratories Ltd, where it is stated that the Applicant has been working with the said laboratory from September 2011 at their 'F.D.F' Unit at Nasik.

8. Learned Counsel for the Applicant then submitted that on 21.7.2023, Respondent No. 1, M.P.S.C sent letter to the Applicant stating that it is difficult to assess the experience, nature of work on the basis of the Experience Certificate which is produced and therefore, the Experience Certificate should be sent afresh with all the details in PDF Format on or before 25.7.2023. Learned Counsel for the Applicant has stated that the Applicant could not submit her Experience Certificate in short period, i.e., on or before 25.7.2023. But she subsequently submitted the Experience Certificate dated 11.8.2023 along with her representation on 25.8.2023. Learned Counsel further submitted that Respondent No. 1, M.P.S.C, by letter dated 30.8.2023 informed the Applicant that the experience required for the post of Assistant Commissioner (Drugs), Food & Drugs, Administrative Services Group A as per the Advertisement is for minimum period of 5 years. However, on verification of the Experience Certificate of the Applicant it was found that though she claimed working as a Deputy Manager in the Experience Information in the Experience Certificate of Viatris Company it is found that she is working as Senior Team Leader-Technical and so there is a variance in Experience Information given in the Application Form and the Experience Certificate which is produced from Viatris Company. The experience is not as per the details in Sub Clause 8.2 of the Advertisement and so she is declared ineligible.

9. Learned Counsel emphasized that the Applicant has not made any incorrect statement in her Application Form about her Experience Information. The Viatris Company, is her Employer

and Mylan Laboratories Ltd is a part of Viatris Company. Therefore, in the Certificate of Experience dated 11.8.2023 which is issued on the letterhead of Viatris Company, but name of Mylan Laboratories Ltd is also mentioned. Learned counsel has submitted that the said Certificate of Experience should have been considered by M.P.S.C and should not have been only restricted to earlier Certificate of Mylan Laboratories Ltd dated 7.12.2021. Learned Counsel has submitted that the Applicant is thus eligible and her name should have been included in the Eligible Candidates List published by Respondent No. 1, M.P.S.C.

10. Learned C.P.O while opposing the Original Application has relied on the Affidavit in Reply dated 8.12.2023 filed by Shri Ravinda P. Otari, Under Secretary in the office of Respondent No. 1, M.P.S.C.

11. Learned C.P.O has argued that the Applicant has not filed her Experience Certificate in a proper requisite format giving all the details about her Nature of Job which shows 'Drugs Manufacturers'. However, Respondent No. 1, M.P.S.C was fair enough to give second opportunity to the Applicant and all other candidates like her to furnish fresh Experience Certificate with details of Nature of Job along with duties performed etc. Learned C.P.O then pointed out that three days' time though was given, the applicant did not submit her fresh Experience Certificate on or before 25.7.2023, to Respondent No. 1, MPSC but she submitted her Experience Certificate one month thereafter, i.e, on 25.8.2023. Learned C.P.O further submitted that Respondent No. 1, M.P.S.C therefore did not take into account Fresh Experience Certificate of the Applicant and published the Eligible Candidates List on 23.8.2023. The Fresh Experience Certificate along with representation of the Applicant was received by Respondent No. 1,

M.P.S.C on 25.8.2023 after the publication of Eligible Candidates List. Learned C.P.O then submitted that M.P.S.C by way of courtesy gave reply to the representation made by Applicant by sending 'email' on 30.8.2023 and communicated that she is found ineligible. Learned C.P.O also submitted that Experience Certificate of each candidate is scrutinized by the Experts Committee and accordingly the 'Scrutiny Sheet' of the Applicant is attached along with the Affidavit in reply where the Experts Committee have given their Opinion/Remarks.

12. Learned C.P.O lastly submitted that it is the responsibility of the candidates to furnish the necessary details about the Educational Qualification and Experience Certificates. Moreover, when second opportunity was given to the Applicant, she should have produced the fresh Experience Certificate well within the time before 25.7.2023. Therefore, her Certificate of Experience from Viatris Company dated 11.8.2023 could not be counted when the name of two Companies, i.e., Viatris Company and Mylan Laboratories Ltd are found by the Experts Committee of Respondent No. 1, M.P.S.C.

13. By way of reply, learned Counsel for the Applicant pointed out to the order dated 30.8.2023 passed by the Tribunal directing Respondent No. 1, M.P.S.C to inform the reasons of rejection of candidature of Applicant and whether the rejection is on the ground of delay or it is considered on merit. In the Affidavit in Reply dated 8.12.2023 filed by Respondent No. 1, M.P.S.C, it is stated that the candidature of the Applicant was rejected not on account of delay, but on the ground that the Applicant does not possess the requisite Experience Certificate of 5 years in 'Manufacturing and Testing Drugs'.

14. The relevant portion of the Application Form about the Experience Information as mentioned by the Applicant is stated above in Para 2 of this judgment. Admittedly, the experience at Sr. No. 1 need not be considered, but experience at Sr. No. 2 is a valid period of experience claimed by the Applicant. The Opinion/Remarks of the Experts Committee regarding experience is reproduced below:-

Sr. No.	Time Period	Experts Remark
1	27/09/2011 – 19/09/2011	अग्रह्य (कालावधी योग्य नाही तसेच अनुभवाचे प्रमाणपत्र सादर नाही)
2	27/09/2011 – 07/12/2021	अग्रह्य (सदर बाबत Profile details मध्ये कंपनीचे नाव Viatris नमूद आहे. पंरतू प्रमाणपत्र Mylan Lab Ltd. कंपनीचे सादर केले आहे. ज्यामध्ये औषधाचे उत्पादन किंवा चाचणीबाबत नमूद नाही)

15. The relief prayed by the Applicant is contested by the Respondent No. 1, MPSC on two points which need to be addressed.

16. Firstly, the Applicant has failed to present that in which Company she is having Experience Certificate of work. For our perusal the two Experience Certificates produced by the Applicant are placed on record. In her first Certificate at Exh. 'D' dated 7.12.2021, is on the letterhead issued by Mylan Laboratory Ltd. The Certificate states that she has been designated as 'Deputy Manager-Technical, Operations and Services' based on their 'F.D.F, Unit-1, Nasik' and she has been working with them since September, 2011. The second Certificate of Experience is dated 11.8.2023 along with details of job responsibilities mentioned in Attached Sheet. The details are given in Certificate by Mylan Laboratories Ltd dated 7.12.2021 and the Certificate of Experience of 11.8.2023, though on the letterhead of Viatris Company, on the right side name of Mylan Laboratories Ltd, with its address, email

is mentioned and it also affirms that Mylan Laboratories Ltd is a Viatris Company. The Certificate of Experience dated 11.8.2023 is again issued under the seal of Mylan Laboratories Ltd.

17. Thus, it is clear that the Applicant was employed by Viatris Company. However, she was assigned Viatris Company to work in FDF Unit-1, Nasik of Mylan Laboratories Ltd, essentially a part of Viatris Company. All the details mentioned about the job responsibilities in the Attached Sheet to Certificate of Experience dated 11.8.2023 clearly reveals that the applicant was working in the Manufacturing Unit and her earlier Experience Certificate dated 7.12.2021 on the letterhead of Mylan Laboratories Ltd where also it is mentioned that she is working as Deputy Manager-Technical/Operations Services at 'F.D.F Unit 1, Nasik'. On query about long form of 'F.D.F', we were informed that it is stand for 'Finished Drug Forms'. We also perused the opinion expressed by the Experts Committee on the Scrutiny Sheet and find that the Experience Information was not concluded mainly on the ground that Viatris Company and Mylan Laboratories Ltd are two different entities and the Applicant may be having experience with Mylan Laboratories Ltd, but in the Application Form the name of the employer is mentioned as Viatris Company. The Experts Committee have not taken any objection about the nature of experience in respect of her performance, job, but they have pointed out the variance by these two names Viatris Company and Mylan Laboratories Ltd. It is true that they have mentioned that the Certificate of Mylan Laboratories Ltd dated 7.12.2021 is silent about Manufacturing or Testing of Drugs. The Certificate of Experience dated 11.8.2023 and the Attached Sheet to it explains in detail the nature of her job in Mylan Laboratories Ltd and leaves nodoubt that the Applicant having the experience of more than 10 years in the Manufacturing of Drugs. It is also to be noted that the

period for which the Applicant has been working mentioned in the Certificate of Experience dated 11.8.2023 of Mylan Laboratories Ltd and on the letterhead of Viatris Company, begins from 27th September, 2011 and it continues till date. Thus, both the Certificates mention the same period of working of Applicant in Mylan Laboratories Ltd and the Applicant has maintained her stand that she is an employee of Viatris Company which is also mentioned in 'Experience Information' submitted by her in Application Form. We also find that both the Certificates are genuine. If there was any confusion about the name of the employer, she should have been given an adequate opportunity to explain why Mylan Laboratories Ltd is now a Viatris Company and why earlier it was named and known only as Mylan Laboratories Ltd. In such competitive examinations the opinion of Experts Committee is always final and thus more responsibility is cast on the Experts Committee to get their doubts cleared by giving adequate opportunity to all candidates, if the candidate is otherwise found eligible.

18. So far as the Certificate of Experience dated 11.8.2023 of Mylan Laboratories Ltd on the letter head of Viatris Company is concerned, when the Applicant procured her Certificate on 7.12.2021, she was admittedly working as 'Deputy Manager, Technical/Operations-Services'. However, when she was subsequently given the Certificate of Experience on 11.8.2023, she was holding the post of 'Senior Team Leader-Technical Services'. On query, we are informed by the learned counsel for the Applicant that 'Senior Team Leader Technical Services' was a promotional post after 'Deputy Manager, Technical/Operations-Services'. The Applicant gained higher post over the period of time after 7.12.2021. Thus, apparently though one may find there is variance which in fact is not correct and thus the Certificate of

Experience dated 11.8.2023 of Mylan Laboratories Ltd on the letter head of Viatris Company should not have been discarded on the basis of superficial variance as Mylan Laboratories Ltd is a Viatris Company.

19. The second point was on account of delay that the Applicant did not obtain produce the Certificate on or before 25.7.2023, but it was produced on 25.8.2023. On this point, we rely on the communication from the MPSC dated 29.8.2023. M.P.S.C has considered the Certificate of Experience dated 11.8.2023 of Mylan Laboratories Ltd on the letter head of Viatris Company in Viatris and informed that earlier the Applicant has mentioned in the Application Form she is holding the post of 'Deputy Manager, Technical/Operations-Services' and but in the said Certificate of Experience it is now mentioned as Senior Team Leader-Technical Services. Thus, there is a variance of post held in both the Certificates. Therefore, her experience is not as per the requisite experience mentioned in Sub Clause 8.2 of the Advertisement and therefore the candidature of the Applicant was rejected. The submissions of the learned C.P.O that the candidature of the Applicant was rejected on the ground because of the delay does not have force especially in view of our directions dated 30.8.2023 and thereafter the Affidavit in Reply dated 8.12.2023, filed by the Under Secretary, M.P.S.C.

20. Though it is mentioned in the Affidavit in Reply dated 8.12.2023 that the Applicant did not submit the Certificate of Experience within time, i.e., on or before 25.7.2023, it is not the ground to hold her ineligible. The confusion about the names of the Myland Laboratories Ltd and Viatris Company where she was working since 27th September, 2011 was the only factor and therefore in the Affidavit in Reply dated 8.12.2023 M.P.S.C has

considered the designation of two posts of the applicant that is Deputy Manager, Technical/Operations Services and Senior Team Leader-Technical Services. Thus, we are of the view that the M.P.S.C has committed error in rejecting the candidature of the Applicant on the ground of inadequate experience in 'Manufacturing or Testing of Drugs'.

21. We also considered the definition of 'Manufacture' under Section 3(f) of the 'Drugs and Cosmetic Act 1940, which includes wide spectrum of activities relating to 'Manufacturing and Testing of Drugs. The provisions of Section 3(f) reads as follows:-

“(f) manufacturer in relation to any drug [or cosmetic] includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug 14 [or cosmetic with a view to its 15 [sale of distribution] but does not include the compounding or dispensing 16[of any drug, or the packing of any drug or cosmetic] in the ordinary course of retail business; and – to manufacturer shall be construed accordingly.’

22. Non-Application of Mind:

In the process of recruitment generally the opinion of the Experts Committees is authoritarian and power of Judicial Review is generally restricted. However, in the present case after going through the Opinion/Remarks given on the Scrutiny Sheet by the Experts Committee and the communication of M.P.S.C dated 29.8.2023 addressed to the Applicant, it reveals non application of mind by the Experts Committee. The Experts Committee does not understand which activities are involved in the process of Manufacturing and Testing of Drugs and the Experts Committee should have considered that Applicant is working in Manufacturing Unit of Mylan Laboratories Ltd where nature of her work relates to Manufacturing and Testing of Drugs. It appears that the said fact is not satisfactorily appreciated by the Experts

Committee. Hence, it needs indulgence. In view of the above we pass the following order:-

ORDER

The Original Application is allowed and it is directed that Respondent No. 1, MPSC to include the name of the Applicant in Eligible Candidates List and hold 'Interview' of Appointment for the post of Assistant Commissioner, Drugs (Food & Drugs) Administrative Service Group-A.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 27.02.2024
Dictation taken by : A.K. Nair.