

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 173 of 2006 (D.B.)**

Dr. Ashok Gajanan Lanjewar,  
Aged about 56 years, Resident of C-42,  
Yeshoda Nagar, Phase-I, Hingna Road,  
Nagpur-16.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Medical Education  
and Drugs, Mantralaya, Mumbai-32.
- 2) Director, Medical Education and Drugs,  
St. John Building, 4<sup>th</sup> floor, Chhatrapati  
Shivaji Terminus, Mumbai-1.

**Respondents**

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**S/Shri A.C. Dharmadhikari, R.V. Shiralkar, V. A. Gosewade, Advocates  
for the applicant.**

**Shri S.A. Sainis, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this 30<sup>th</sup> day of November,2017)**

Heard Shri R.V. Shiralkar, Id. Counsel for the applicant  
and Shri S.A. Sainis, Id. P.O. for the respondents. The O.A. is heard  
finally with consent of Id. counsel for parties.

2. This matter has been taken up for disposal with consent of respective parties. The applicant has retired as a Professor of Preventive and Social Medicine, Indira Gandhi Medical College (IGMC), Nagpur and has filed this O.A. since he was aggrieved by denial of benefits of regular promotion as Professor till his retirement.

3. The applicant was promoted as a Professor on ad-hoc basis on 13/3/2002 and thereafter he was promoted on regular basis vide G.R. dated 29/8/2003. He was posted at Miraj. Instead of joining at Miraj, the applicant requested that one post was available at IGMC and therefore he be posted at Nagpur on the said post of promotion. On 7/11/2003 his request for posting at Nagpur was rejected.

4. Thereafter the applicant was again granted ad-hoc promotion as Professor at IGMC, Nagpur itself vide order dated 9/7/2004. However his earlier order of promotion dated 29/8/2003 was cancelled on the ground that he did not join on the promotional post at Miraj. In spite such cancellation of regular promotion order, the applicant continued to work on promotional post of Professor at Nagpur but on ad-hoc basis.

5. Against the order of refusal of regular promotion and posting at Nagpur, the applicant filed the O.A. No.318/2005. However, in the said O.A. it was stated that the name of the applicant

will be proposed for promotion and that a proposal to that effect has already been sent to the Establishment Board. In the meantime, the applicant got retired on superannuation on 28/2/2007.

6. According to the applicant, he is senior most Associate Professor in the Department and was working as Professor on ad-hoc basis from 9/7/2004 till he retired on 28/2/2007. He was promoted on ad-hoc basis and posted at IGMC, Nagpur when a vacancy arose due to retirement of Dr. Smt. P.M. Durge and therefore he should have been considered for regular promotion.

7. It is the case of respondent no.2, the Director of Medical Education and Drugs, Mumbai that the applicant has refused promotion in 2003 and that his name will be included only when the next meeting of Establishment Board takes place.

8. On hearing the parties, this Tribunal was pleased to consider the aspect of cancellation of promotion of the applicant due to his refusal to join on promotional post in view of the G.R. dated 30/4/1991. The relevant para nos. 11 & 12 of the order in O.A.443/2005, dated 24/2/2015 decided by this Tribunal was referred. This reference was as under :-

***“Para 11** : The G.R. dated 30/04/1991 deals with the repercussions of the applicant’s refusal to join at the Govt. Science College at Gadchiroli on promotion as Principal. After*

*considering that there are many instances where Govt. servants refuse to accept promotion which involves posting in interior and other inconvenient places, vide this G.R. Govt. had decided that all such cases of refusal of promotion will entail deletion of name from the select list for promotion and the cases of these employees will be considered afresh on merit when such a list is prepared in future. This is reflected in the last part of the G.R. which is reproduced below :-*

*^; k I oZ ckchpk fopkj d#u 'kkI dh; I oclauh i nktburh ukdkjY; kl R; k i dJ. kh i qhyi ek. ksdk; bkgd djkoh vl svkns k 'kkI u nr vkgS oJP; k I oclurh i nktburhl kBh fuoM >kY; kuarj , [kn; k I oclkus i nktburhps i n fLodkj.; kl udkj n'kfoY; kl R; kps ukd i nktburhl kBh i k= vl .kk&; k I oclurh; k fuoM ; knhr u dk<u Vkd.; kr ; kos i nktburhl kBh i k= vl .kk&; k depk&; kph fuoM ; knh R; kuarj tbgk cufo.; kr ; bzy] R; koGh R; k depk&; kP; k i dJ. kkp k xqkoRrsi ek. k si tbgk fopkj djkok- \*\**

**Para 12 :** “ Thus, in terms of the above G.R. once a Govt. employee refuses promotion, two things happen. Firstly, his/her name is deleted from the select list and he/she is precluded from being considered for promotion against any other post on the basis of this list. Secondly, his/her case will be considered afresh on merit whenever a new select list is prepared in future....”

9. Considering the aforesaid aspects, this Tribunal was pleased to direct the respondents to hold the meeting of Establishment Board for considering the case of the applicant for promotion against the vacant post of Professor of Preventive and Social Medicine, Indira Gandhi Medical College (IGMC), Nagpur in terms of G.R. dated 30/4/1991 within three months of receipt of the

order and it was observed that if the Establishment Board finds the applicant fit for promotion, the respondents will grant him regular promotion to the post of Professor effective from the date he held the post with all consequential benefits. The said Judgment was delivered on 4/8/2015 in this O.A.

10. Being aggrieved by the aforesaid Judgment dated 4/8/2015 the State preferred Writ Petition no.4978/2016 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur. In the said Writ Petition on 30/01/2017, the Hon'ble High Court was pleased to dispose of the Writ Petition and observed that the only question to be looked into is, whether the Maharashtra Administrative Tribunal is justified in directing the petitioner-State to consider entitlement of respondent to promotion, as directed in para-8 of its Judgment dated 4/8/2015. The Hon'ble High Court has further directed as under :-

*“(6) In this situation, we set aside the order dated 4<sup>th</sup> August,2015 and restore Original Application no.173/2006 back to file of M.A.T. Parties are directed to appear before the MAT on 2<sup>nd</sup> March, 2017. The employee is permitted to amend his pleadings so that respondent-state (before MAT) also gets due opportunity to rebut those contentions.*

*(7) The MAT thereafter shall attempt to consider the need of issuing directions to consider entitlement of petitioner for deemed promotion afresh. Effort shall be made to complete this exercise within three months.”*

11. In view of the aforesaid observations made by the Hon'ble High Court, the applicant amended the O.A. and submitted that there existed vacancy at IGMC, Nagpur which was created because of the retirement of one Dr. Smt. P.M. Durge on 31/12/2004. The applicant was working at the relevant time at Government Medical College, Nagpur since 13/6/2003 and was promoted regularly as Professor vide order dated 29/8/2003. He also made the representation that instead of Miraj he may be posted at Nagpur in the post to be vacated due to retirement of Dr. Smt. P.M. Durge. However his request was not considered and his promotion was cancelled vide order dated 11/10/2005 but he was earlier promoted as Professor on ad-hoc basis on clear and vacant post because of retirement of Dr. Smt. P.M. Durge. Thus though the applicant was working in a clear vacancy, he was promoted on ad-hoc basis and was not deliberately accommodated at Nagpur.

12. The applicant also submitted that the respondents have acted arbitrary with the applicant. It is stated that the respondents did not conduct the meeting of the Establishment Board to consider the applicant's promotion deliberately. It is stated that one Shri Sanjay Suryawanshi was also promoted from Lecturer to Associate Professor in PSM Department was posted at Government Medical College, Kolhapur vide order dated 19/7/2001. His order was cancelled but

after three months by issuing fresh order he was promoted and there are several such instances where the respondent no.1 has changed the posting of employees on promotion, but the applicant's representation was rejected arbitrarily.

13. The respondent nos. 1&2 have filed reply-affidavit to the amended pleadings. It is stated that the respondent no.2 had submitted a proposal to Government for filling six vacant posts of Professor in the Preventive and Social Medicine vide impugned order dated 1/9/2004 and as the applicant was already granted promotion vide order dated 29/8/2003, he was not considered in that proposal dated 1/9/2004. It is further stated that the G.R. dated 25/5/2004 regarding implementation of reservation for backward class was challenged by one Vijay Ghogre by filing W.P.No.8452/2004 and status-quo order was passed by the Hon'ble High Court to the Government for implementation of reservation. The Government lateron filed C.A.No. 1783/2006 in the said Writ Petition and was allowed to fill all promotional posts by suitable candidates. It is further stated that after direction of the Government vide letter dated 24/8/2006 the respondent no.2 submitted proposal to the Government to fill 7 vacant posts of Professor and accordingly promotion order came to be issued on 22/1/2008 and 28/3/2008, but in the meantime the applicant got superannuated on 28/2/2007. The reply-affidavit is

silent as regard the alleged arbitrary treatment given to the applicant while rejecting his proposal for transfer to Nagpur on promotion and cancellation of his promotion order for not joining in the promotional post and also as regards treatment given to Shri Sanjay Suryawanshi, under similar circumstances.

14. From the facts on the record and argument put forth by the learned counsel for respective parties. It is clear that the applicant was promoted on the regular post of Professor as per order dated 29/8/2003 and he was posted on promotion from Nagpur to Miraj. The applicant however did not join at Miraj and on the contrary filed representation to the effect that one Dr. Smt. Durge was to retire on superannuation 31/12/2004 and therefore the applicant may be considered for posting at Nagpur in place of Dr. Smt. Durge. However the applicant's representation was not considered. Thereafter he filed O.A. No.318/2005 against the order in the said O.A. The applicant was given assurance that his claim will be considered in the next meeting of Establishment Board. However the same was not considered on the ground that the applicant was already promoted on a regular promotional post. Thereafter till the retirement of the applicant, no meeting of the Establishment Board was taken. In the impugned communication dated 11/10/2005 it was clearly intimated to the applicant as under :-

^vki .kkI dGfo.; kr ; rs dh] eG vtZ dz 318@05 e/; segljk"V<sup>a</sup> izkkI dh;  
 U; k; kf/kdj.k] ecb]cp ukxiij ; kauh fnyy; k vkn'skkud kj vki Y; k fnukad  
 2@8@2004 o 12@4@2005 P; k vtLpk fopkj dj.; kr vkyk- i jarw vLkFki uk  
 eMGkusvki yh i k/; ki d i nkoj i nktburhph f'kQkj l fnukad 8@6@2003 jksth dsy syh  
 vkg's R; kl 2 o"kb >kysy vkg's- vki Y; k i nktburhps vkn's k fnukad 29@8@2003  
 jksth fuxIer >kysy vkg's- vki .kkI i j d k vo/kh nough vki .k i k?; ki d i nkoj #tw  
 >kysy ukghr- R; keGsvkrk vki Y; k i nktburhpk fopkj djrk ; sks 'kD; gskkj ukgh-  
 i qhy oGh vLkFki uk eMGkl i kBfo.; kr ; skk&; k i Lrkoke/; s vki Y; k ukokpk  
 l ekos k dj.; kr ; by- \*\*

15. It was therefore incumbent upon the respondents to consider the name of the applicant again for promotion. Prior to that on 11/10/2005 the applicant's promotion was cancelled on the ground that he did not join at Miraj inspite sufficient time was given to him for joining.

16. As already stated this Tribunal has considered the effect of non-joining on promotional post. In such circumstances even for argument sake it is accepted that the applicant did not join at Miraj, his name should have been re-considered for promotion in the next meeting. However till retirement of the applicant no meeting was conducted. The learned P.O. submits that there was stay by the Hon'ble High Court in Writ Petition no.4978/2016. However that should not have come in way of the respondents while considering the case of the applicant in any manner.

17. As per the order dated 9/7/2004, the applicant has been promoted to the post of Professor of Preventive of Social Medicine, Indira Gandhi Medical College (IGMC), Nagpur and it is admitted fact that from 9/7/2004 till the date of retirement on superannuation, i.e., 28/2/2007 the applicant has worked on the promotional post of Professor continuously. Admittedly, the applicant has retired on superannuation on 28/2/2007 and inspite number of chances available for considering his case for promotion on regular post, either he was not considered or no meeting of Establishment Board was ever called for considering the promotion of the applicant. The learned counsel for the applicant has invited my attention to the fact that such meeting for promotional post is to be called annually as per clause 9 of the Notification dated 23/7/1985. The said clause states that the selection list shall be drawn up annually. It is also admitted fact that the applicant was lastly promoted vide order dated 9/7/2004 at Nagpur and the said post was a clear vacancy. Since the applicant was already promoted earlier on regular basis and his earlier order was cancelled only on the ground that he did not join at Miraj, the respondents ought to have re-considered the applicant's case again for promotion when a clear vacancy was already available and the applicant was promoted in the said post but on ad-hoc basis. There was absolutely no need to again call for a meeting when the

applicant's name was already cleared for promotion by the competent board.

18. From the discussion in forgoing paras, I am therefore satisfied that injustice has been done with the applicant initially by not considering his representation favourably for posting him at Nagpur on retirement of Dr. Smt. Durge. Secondly, the respondents have caused injustice to the applicant by cancelling his promotion though in some cases the respondent no.1 has applied different scale by not cancelling the promotion and allowing the employees to join on promotional post by changing their postings like in case of Shri Surywanshi and thirdly when a regular post was available, the applicant was promoted on ad-hoc basis at Nagpur and was allowed to continue on the said post of promotion till his retirement on superannuation without considering his claim by not conveying any meeting for promotion committee.

19. In view of the discussion in forgoing paras, I am satisfied that since the applicant has already been promoted on ad-hoc basis in a vacant post, there is no need for issuing any directions to the State call meeting of promotional committee to consider the entitlement of the applicant to the promotion. The respondent no.1 can simply declare the applicant as promoted on regular basis on the post of Professor of Preventive and Social Medicine, Indira Gandhi Medical

College (IGMC), Nagpur from the date of his promotion, i.e., from 9/7/2004. In view thereof, I pass the following order :-

**ORDER**

The O.A. is allowed in terms of prayer clause 7 (A-i). No order as to costs.

**Dated:- 30<sup>th</sup> November,2017.**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

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