

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 358 of 2009 (D.B.)

Dr. Rajkumar Balkrishna Meshram,
Aged about 50 years, Occ. Service,
R/o 48, Girija Vivekanand Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Medical Education and Drugs,
Department, Mantralaya, Mumbai-32.
- 2) The Director of Medical Education and Research
having its office at Govt. Dental College and
Hospital Building,
Saint George Hospital Compound, Mumbai.
- 3) Dean,
Government Medical College and Hospital,
Nagpur.
- 4) Medical Council of India,
through its Secretary,
having its office at Pocket-14, Sector-8,
Dwarka-1, New Delhi-110077.
- 5) Dr. V.R. Shegokar,
Aged about 51 years, Occ. Service,
R/o C/o Department of Microbiology,
Govt. Medical College, Nagpur.

Respondents

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for the respondent nos. 1 to 3.

Shri R.M. Bhangde, S.S. Pandit, Advocates for respondent no.4.

Shri N.R. & Mrs. K.N. Saboo, Advocates for respondent no.5.

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

JUDGMENT

(Delivered on this 22nd day of January,2018)

Heard Shri S.P. Palshikar, learned counsel for the applicant, Shri A.M. Ghogre, Id. P.O. for respondent nos. 1 to 3 and Shri N.R. Saboo, learned counsel for respondent no.5. None for respondent no.4.

2. The matter is being disposed of with the consent of learned counsel for parties on merits. The applicant Dr. Rajkumar B. Meshram is Lecturer in the department of Microbiology in the Government Medical College and Hospital, Nagpur since 20/04/1993. He possesses a degree in M.D. Microbiology. He acquired that degree in 1992. He was selected by the M.P.S.C. as permanent Lecturer and he is continuously working as such from 20/04/1993. According to the applicant, his next promotion is that of Associate Professor for which a candidate must have qualification degree of Ph.D. in medical faculty and five years experience as Lecturer in Microbiology. The applicant possesses the requisite qualification for Associate Professor.

3. The respondent no.5, Dr. V.R. Shegokar also possesses M.Sc. (Microbiology) and Ph.D. (Microbiology) but in Science faculty.

The Ph.D. (Microbiology) degree in Science faculty is not recognised and approved by the Medical Council of India (in short "MCI"), New Delhi for the appointment of Associate Professor. The respondent no.5 is therefore not qualified for being promoted as Associate Professor. The said degree must be in medical faculty.

4. Vide impugned order dated 1/11/2007 the respondent no.1 has promoted respondent no.5, Dr. V.R. Shegokar as Associate Professor. The said order is subject to the decision of Writ Petition no.8452/2004 pending before the Hon'ble High Court of Judicature at Bombay, Bench at Mumbai. According to the applicant, Shri Shegokar is not qualified to be promoted as Associate Professor. The applicant has therefore prayed that the promotion order of respondent no.5, Shri Shegokar dated 01/11/2007 be quashed and set aside and direction be issued to the respondents that they should forthwith promote the applicant to the post of Associate Professor in Microbiology and grant him all consequential monetary benefits arising there from right from the year 2001 when for the first time the respondent no.5 was promoted temporarily as Associate Professor.

5. The respondent nos. 1 to 3 have filed reply-affidavit and justified the promotion given to the respondent no.5. According to the respondents, as per the 1971 MCI Regulation the M.Sc. (Microbiology) is sufficient education qualification for the post of

Reader/ Assistant Professor. The MCI have modified their regulation in the year 1998. The respondent no.5 has secured M.Sc. (Microbiology) degree in the year 1985 and was working in the Public Health Department as Scientist (Bacteriologist) during the period from 1985 to 1999 and was appointed as Lecturer in Microbiology in year 1995. He has been awarded Ph.D. degree in the subject "The changing Trends in Multiple Drug Resistance and Genetic Characterization of Salmonella Typhi- A Medical Study". The subject can only be studied in Medical College. The Ph.d. degree acquired by the respondent no.5 has been granted equivalence by the Nagpur University vide letter dated 27/02/2001 and on the basis of said equivalent certificate issued by the Dean, Faculty of Medicine, Nagpur University and also considering the experience as a Lecturer in Microbiology in recognised Government Medical College, the respondent no.5 has been held eligible for promotion to the post of Associate Professor in Microbiology.

6. It is further submitted by respondent nos. 1 to 3 that the respondent no.5 was promoted vide order dated 2/8/2001 on the post of Associate Professor on Ad-hoc basis and at that time the applicant refused to accept promotion and on the contrary filed O.A.No.516/2003 for cancellation of his promotion and subsequently withdrew that application.

7. The respondent no.4, the Medical Council of India (MCI) also filed reply-affidavit as regards the promotion of respondent no.5.

It is stated as under :-

“(21) It is respectfully submitted that the letter dated 23/8/2001 received from DR. V.R. Shegaonkar, Lecturer in Microbiology, Govt. Medical College, Nagpur through proper channel, was considered by the Teachers Eligibility Qualifications sub-committee of the council as its meeting held on 27/8/2001 and it was decided as under –

“ The sub-committee noted from the letter of Dr. V.R. Shegokar forwarded by the Dean, Faculty of Medicine, University of Nagpur, that he obtained Ph.D. qualification in the subject of Microbiology which has been granted equivalence to Ph.D. in medical Microbiology by the Nagpur University since the work by Dr. Shegokar for the Ph.D. these was done under medical faculty in the department of Microbiology of SRTR Medical College, Ambajogai and Govt. Medical College, Nagpur.

The Committee further noted from the letter of Dean, Faculty of Medicine, Nagpur University that Dr. Shegokar has been a Lecturer in the subject of Microbiology at the recognized medical colleges namely SRTR Medical College, Ambajogai and Govt. Medical College, Nagpur during the period of his doctoral study during the period 1990 to 1999.

The Committee after detailed discussion in the matter, keeping in view that Dr. Shegokar has been a Lecturer for a period of 9 years, decided that Dr. Shegokar may be considered, eligible for the promotion post of Reader/ Associate Professor in the subject of Microbiology in the medical college.

The committee further decided that the promotion will be given effect to after the date of acquiring Ph.D. and further that he can be considered for the promotional posts of Professor only after he fulfils the requirement for this promotion as laid down in the applicable council Regulations Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998.

Accordingly the decision of the Teaching Eligibility sub-committee was communicated to respondent no.5 Dr. V.R. Shegokar vide letter dated 5/10/2001 by MCI. Copy of letter dated 5/10/2001 of MCI is annexed herewith as Annexure-R-4/1.

(22) The contention raised by the applicant that the weightage was given to the certificate issued by Nagpur University dated 27/11/2008 for granting promotion to respondent no.5 as Associate Professor and this certificate was produced by respondent no.5 before the respondent no.4 through the Dean, Faculty, Nagpur University to the respondent no.4 and it appears that respondent no.4 MCI blindly granted equivalence and thereby respondent no.5 appears to have been promoted is incorrect, misleading and denied. It is respectfully submitted that representation dated 11/6/2008 received from the applicant Dr.R.B. Meshram, was considered by the Teachers' Eligibility Qualifications Sub Committee of the Council at its meeting held on 1/4/2009 as approved by the Executive Committee of the Council at its meeting held on 27/4/2009 and it was decided as under:-

“ The Teacher's Eligibility Qualification Sub-Committee considered the matter with regard to illegal promotion of Dr. V.R. Shegokar, M.Sc. (Microbiology) and Ph.D. (Microbiology) in the

faculty of science to the post of Associate Professor in the Department of Microbiology at Govt. Medical College & Hospital, Nagpur. The TEQ sub-committee after considering all documents decided that both Dr. R.B. Meshram and Dr. V.R. Shegokar are eligible for promotion to the post of Associate Professor in Microbiology as per the MCI norms. Regarding the matter of their seniority, it does not fall under the purview of the MCI.”

The decision of the sub-committee of the answering respondent-MCI was communicated vide letter dated 5/5/2009 to the applicant. Copy of letter dated 5/5/2009 of MCI is annexed herewith as Annexure-R-4/2.”

8. It is further stated by respondent no.4 that the statutory regulations of 1998 are binding and mandatory in character. In short the respondent no.4 justified the appointment of respondent no.5.

9. The applicant has filed rejoinder to the pleadings of the respondents and has placed on record some documents to show that earlier the MCI rejected the claim of promotion of respondent no.5, but had taken a somersault by promoting the respondent no.5. It is stated that prior permission of MCI was not obtained for promoting respondent no.5 and respondent no.5 is not eligible to be promoted as per the Medical Institution Regulations Rules, 1998. The Regulations of 1998 amended upto 8th June,2017 are placed on record of page

nos. 1 to 10 (both inclusive) along with rejoinder-affidavit dated 20/07/2017 and shall be referred to as “Regulations of 1998”).

10. The learned counsel for the applicant Shri S.P. Palshikar submits that as per the MCI Regulations, 1998 for promotion to the post of Associate Professor the candidate must possess post graduate degree in the relevant subject in medical faculty and that degree obtained by the respondent no.5 is in science faculty and therefore the respondent no.5 is not eligible. In the representation filed by the applicant for promotion and cancellation of promotion of respondent no.5 dated 22/1/2008 is at Annex-A-3 at P.B. page nos. 32 to 40 (both inclusive), this fact is reiterated by the applicant. It is stated that no relaxation in qualification is permissible. Shri Shegokar holds degree in science faculty and therefore is not eligible to be promoted.

11. The respondent no.4 in their reply-affidavit has referred to the rules of India Medical Council Act, 1956 and has referred to the minimum qualifications for Teachers in Medical Institutions Regulation, 1998 wherein the minimum qualification required for appointment of teachers in Medical College / Institutions has been prescribed. In para-16 of the reply-affidavit, the respondent no.4 has stated as under :-

“It is most respectfully submitted that from the above cited provisions, it is abundantly clear that it is only upto the extent of 30% in Microbiology Department that, when suitable persons with medical degree are not available, the candidates with non medical degrees can be appointed to that extent and for that limited purposes M.Sc. Degree in Microbiology non-medical would be the minimum required qualification for appointment as a Lecturer in a medical college/ institution. However, for appointment to a higher post, either directly or by way of promotion, a candidate must have a M.Sc. (Med. Microbiology) and Ph.D. (Medical Microbiology) /Ph.D. (Medical Bacteriology).

12. It is admitted in para-20 of the reply by respondent no.4 that as per the MCI Regulations,1998 for promotion to the post of Reader/Associate Professor, the minimum qualification, teaching/research experience required is – (i) Requisite recognized post graduate qualification in the subject and (ii) five years teaching experience in the subject in a recognised medical college as Assistant Professor/ Lecturer in Microbiology. As regards criteria of selection/promotion to the various posts of teaching in medical colleges/institutions is the prerogative of the State Government/ State Commissions, but at the same time the minimum qualifications and teaching experience in various departments of medical college and institutions imparting graduate and post graduate medical education shall be as per the MCI Regulations, i.e., minimum qualification for Teachers in Medical Institutions Regulations, 1998. For Reader/

Associate Professor in the various subjects, the qualification required as per 1998 Regulations is prescribed in the regulations and for the subject Microbiology, the minimum qualification required is for Reader/ Associate Professor is as under :-

MICROBIOLOGY

(A) Professor	M.D. (Bacteriology)/ M.D. (Microbiology)/ MBBS with M.Sc. (Med. Bacteriology)/ M.Sc.(Med. Microbiology)/Ph.D. (Med. Bacteriology) /M.Sc. (Med. Bacteriology) with Ph.D. (Med. Bacteriology)/ M.Sc. (Med. Bacteriology) with D.Sc. (Med. Bacteriology)/ M.Sc. (Med. Microbiology) with Ph.D. (Med. Microbiology) /M.Sc. (Med. Microbiology) with D.Sc. (Med. Microbiology)	(i) As reader/ Associate in Microbiology for four year in a recognized medical college. <u>Desirable</u> (ii) Minimum of four research publications indexed in index medicus/national /journal and one research publications in international journal.
(B) Reader/ Associate Professor	- do -	(i) As Assistant Professor / lecturer in Microbiology for five years in a recognised medical college. <u>Desirable</u> (ii) Minimum of four research publications indexed in index medicus/national /journal.

13. In the present case the respondent no.5 has acquired the Ph.D. degree in science faculty and not in medical faculty. However, it

is the case of respondents that the Ph.D. degree obtained by respondent no.5 is equivalent to Ph.D. degree in Microbiology and the same has been recognised by Nagpur University.

14. The learned P.O. has invited my attention to para-21&22 of the reply-affidavit filed by respondent no.4 justifying the promotion of the respondent no.5 on the basis that the decision was taken by sub-committee of the MCI whereby the recommendation given by the Nagpur University in respect of respondent no.5 was accepted.

15. The learned P.O. has also invited my attention to the letter issued by the Joint Secretary of the MCI, dated 5/5/2009 (Annex-R-4/2, P-79). From the said letter it seems that the Executive Committee of the MCI in its meeting dated 27/04/2009 has considered the Teacher's Eligibility Qualifications Sub-Committee's meeting report dated 1/4/2009 and decided as under :-

“The Teacher's Eligibility Qualifications sub-committee considered the matter with regard to illegal promotion of Dr. V.R. Shegokar, M.Sc.(Microbiology)and Ph.D. (Microbiology) in the faculty of science to the post of Associate Professor in the Department of Microbiology at Government Medical College & Hospital, Nagpur. The TEQ sub-committee after considering all documents decided that both Dr. R.B. Meshram and Dr. V.R. Shegokar are eligible for promotion to the post of Associate Professor in Microbiology as per MCI norms. Regarding the

matter of their seniority, it does not fall under the purview of the Medical Council of India.”

16. The learned P.O. as well as the learned counsel for respondent no.5 has invited my attention to the MCI letter dated 22/12/2001 and the certificate issued by the Registrar, Nagpur University, Nagpur on 27/2/2001 at P.B. page nos. 125 & 126 respectively. As per the letter dated 22/12/2001 it was informed by the MCI to one Dr. Abhya P. Jagtap that Ph.D. undergone by a candidate at Medical College can be treated as from medical faculty. In the certificate dated 27/2/2001 (P-126) the Registrar of the Nagpur University had certified that the Ph.D. degree obtained by Dr. V.R. Shegokar (R/5) in science faculty of the subject of Microbiology has been granted equivalent to the Ph.D. degree in the subject of medical Microbiology in the faculty of medicine. It is clear that on the basis of such equivalence granted by the University, the case of the respondent no.5 has been considered. It is material to note that the Regulations framed by the MCI (R-4) as regards recruitment of Lecturer / Associate Professor/ Professor and other posts in the teaching staff are mandatory and binding on everybody and as per said regulations of 1998 for the post Associate Professor the minimum qualification for Associate Professor in Microbiology is M.Sc. medical Microbiology with Ph.D. medical Microbiology and is M.D. in medical Microbiology with Ph.D. in medical faculty of Microbiology. The

respondent no.5 had admittedly obtained Ph.D. degree in science faculty and not medical Microbiology.

17. The learned counsel has invited my attention to the rejoinder-affidavit filed by the applicant to the reply-affidavit of the respondents and referred two documents referred in the said rejoinder. In para-5 of the rejoinder-affidavit, it is stated that respondent no.5 possesses M.Sc., Ph.D. Microbiology in faculty of science and this qualification cannot be considered for promotion as Associate Professor. It is stated that the respondent no.5 does not possess requisite qualification and no prior permission was sought from the MCI either by the Secretary of Medical Education and Drugs Department, Government of Maharashtra or by the Directorate of Medical Education and Research, Government of Maharashtra.

18. As regards the refusal of promotion to the applicant, it is stated that it was Ad-hoc promotion which could have been cancelled in any point of time and at that time the applicant was having 8 years experience post M.D. as a Lecturer. Whereas, the respondent no.5 at that time just had passed Ph.D. examination and was having no experience. The applicant in his rejoinder-affidavit has stated that the respondent nos. 1 to 3 have suppressed material facts from the Tribunal. It is stated that the respondent no.2 vide recommendation dated 10/9/2001 had informed the respondent no.3 that since the

respondent no.5 does not qualify for promotion considering his educational qualification, he was not fit for promotion. It is further stated that the respondent no.1 had also informed the respondent no.5 vide communication dated 20/8/2001 that he cannot be considered for promotion as Associate Professor. However, within a span of 4 months the State Government directed the respondent no.2 vide letter dated 24/12/2001 to submit a proposal to promote respondent no.5. All these relevant documents are placed on record along with rejoinder-affidavit.

19. Vide letter dated 4/12/2007 the applicant sought information under the RTI Act, 2005 from the MCI and a specific questions were posed such as to what is required educational qualification and experience for the post of Associate Professor in Microbiology on Ad-hoc basis as well as on permanent basis in Government Medical Colleges and whether the qualification in science faculty, i.e., M.Sc. (Microbiology) and Ph.D. (Microbiology) can be considered equivalent to qualifications in non Medical faculty, i.e., M.Sc. and Ph.D. in Medical Microbiology or Medical faculty, i.e. MBBS and MD in Microbiology and whether prior permission was sought from MCI for appointment of respondent no.5 as Associate Professor. In response to this application, the MCI has informed to the applicant vide letter dated 4/1/2008 that the minimum qualification for Teachers'

in Medical Institutions Regulations, 1998 for the post of Reader/ Associate Professor in Microbiology is M.D. (Microbiology) and Ph.D. (Medical Microbiology). It was intimated that a person having qualification in science faculty is not eligible and qualified. It was also intimated to the applicant that prior permission was not sought from MCI by the Secretary of Medical Education and Drugs Department, Government of Maharashtra, Mantralaya, Mumbai or by the Director of Medical Education & Research, Government of Maharashtra for promotion of Dr. V.R. Shegokar.

20. The learned counsel for the applicant also invited my attention to document filed along with rejoinder-affidavit dated 10/9/2001. This letter was written by the Director Medical Education & Research, Mumbai to the Dean, Government Medical College, Nagpur. The said letter is self explanatory and vide said letter is it intimated as under :-

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 l o k i d s k f u ; e k o y h r r ' k h r j r n p u l Y ; k e G s R ; k p k i n k l u r h l k B h f o p k j d j r k ; s u k g h -

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 ' k k l u k e k Q r H k k j r h ; v k ; f o K k u i f j " k n s d M u e k x h ' k u e k x f o . ; k r v k y s g k r s e k = H k k j r h ;

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 fu; Dhr djhrk , e-, l-l h- vkf.k ih-, p-Mh- g; k in0; k eMhdY QWdYVhrup %oSkdh;
 'kk[ksnu½ i klr dj.ksvko'; d vkgs

MKW fo-jk-'ksxckdj ; kauh /ksg.k dsySyh ih-, p-Mh- gh inoh %oSkdh; 'kk[ksnu½ dsySyh
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Hkkjrh; vk; foKku i fj "knsusR; kR; k fnukad 12@7@2001 P; k i =kkUo; s?ksySyk gk fu.kz
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 LoræfjR; k ns; kph vko'; drk ukgh- **

21. The learned counsel for the applicant also invited my attention to one letter dated 20/8/2001 issued by the Desk Officer, Government of Maharashtra to respondent no.5. In the said letter it was specifically stated as under :-

^^ fo"k; kadhr i dJ.kh vki Y; k l mHkktDr fuonukP; k vuqkækusdGfo.; kr ; rsdh] Hkkjrh;
 vk; foKku i fj "knB; k (MCI) /ksg.kkRed fu.kz; kud kj 'kkI dh; oSkdh; egkfo?kky; krhy
 vfpfdRI ky; hu fo"k; krhy (Non Clinical Subject) v/; ki dkph fu; Dhr dj.; kl kBh
 l nj v/; ki dkph M.Sc. vkf.k Ph.D. gh 'kRkf.kd vgrk oSkdh; 'kk[krhy (Medical
 faculty) vl .ksvko'; d vl Y; kps MCI us fnukad 12@7@2001 P; k i =kOnkjsdGfoys
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 l (etho'kkL= inkojhy i nkturhckrph fourh ekU; djrk ; r ukgh- **

22. In spite such intimation given to the respondent no.5 and in spite the fact that the applicant's claim for promotion to the post of Associate Professor was rejected on 20/8/2001, the Government of

Maharashtra again directed Director of Medical Education and Research, Mumbai vide letter dated 24/12/2001 to submit fresh proposal for promotion of respondent no.5 as per document no.5 filed along with rejoinder-affidavit at P.B. page no.101. It is not known as to what new facts have been brought to the notice of respondent no.1 so that it was compelled to direct the Director of Directorate of Medical Education and Research, Mumbai to submit fresh proposal. In such circumstances equivalence granted by the University for the degree obtained by respondent no.5 seems to be doubtful and it is really surprising as to how such equivalence can be granted by the Registrar of the University when the Regulations of 1998 clearly prescribed the minimum qualification required for the post of Associate Professor and as per said regulations for appointment of Associate Professor in Microbiology, the minimum qualification required is M.Sc. (Microbiology) with Ph.D. (Microbiology) in medical faculty. It is therefore surprising as to how the Registrar of the University can grant equivalence to a degree which is not provided in the Regulations of 1998 even when the Government, has already stated vide letter dated 20/8/2001 that Ph.D. degree for promotion must be from medical faculty and on the same ground the request for promotion for Associate Professor by respondent no.5 was rejected.

23. The learned counsel for respondent no.5 submits that the applicant was earlier promoted to the post of Associate Professor on Ad-hoc basis on two occasions, but he refused to accept the promotion. It is further stated that the respondent no.5 was promoted on Ad-hoc basis in the year 2001 as Associate Professor, but said promotion was never challenged by the applicant and therefore the applicant cannot now challenge the promotion granted to respondent no.5. It is material to note that earlier promotion of applicant as well as respondent no.5 was on Ad-hoc basis. There is no need to make any comment as to whether the respondent / state can refuse promotion to the applicant on the ground that he has refused to accept the promotion earlier on two occasions and it is for the competent authority to consider this aspect. Earlier promotion of respondent no.5 was admittedly on Ad-hoc basis for a temporary period and therefore it might have not been challenged by the applicant, but he cannot be prevented from challenging the regular promotion granted to the applicant. If the promotion is granted to a candidate though he was not qualified to be promoted, such promotion order is always open to challenge.

24. The learned counsel for respondent no.5 referred to para-13 of his reply filed by respondent no.5 and submitted that in all 5 Lecturers were promoted to the post of Professor / Associate

Professor though they were holding qualification of M.Sc. & Ph.D. in science faculty. Even accepting that such promotion was given by the respondents to the 5 Lecturers, that itself cannot be a ground to justify the illegality, if committed by the respondents. The respondents cannot promote a person who is not qualified as per recruitment rules and regulations. There is no material on record to show that as to what transpired the Director of Medical Education and Research, Mumbai to change his opinion which it has opined vide letter dated 10/9/2001 (P-99) and to re-submit the case of respondent no.5 for promotion as per letter dated 24/12/2001, i.e., just within a period of three months. It is also not clear as to what transpired for the Government to direct the Directorate of Education to re-submit the proposal of promotion of respondent no.5 vide letter 24/12/2001 as against the opinion given by it on 20/8/2001 whereby respondent no.5's request for promotion to the post of Associate Professor was rejected.

25. From the discussion in forgoing para, I am therefore satisfied that the promotion order dated 1/11/2007 so far as respondent no.5 is concerned to the post of Associate Professor is not legal and not as per the regulations of 1998 and as such the same is quashed and set aside. Hence, the following order :-

ORDER

The O.A. is partly allowed in terms of prayer clause (1). The respondents are directed to consider the case of the applicant for the post of Associate Professor in Microbiology, if the applicant is otherwise eligible for the said post. The applicant's prayer that he shall be given such promotion from the year 2001 when for the first time the respondent no.5 was promoted as temporary Associate Professor is however rejected since he has not challenged the said promotion. The respondents will be at liberty to take into consideration the effect, if any, for rejecting the temporary Ad-hoc promotion on the post of Associate Professor as per the rules and regulations. The requisite decision as regards promotion of the applicant on the post of Associate Professor (Microbiology) shall be taken as per the rules and regulations within three months from the date of this order and shall be communicated to the applicant in writing. No order as to costs.

Dated :- 22/01/2018.

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

dnk.