

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 359 of 2023 (S.B.)**

Anju Raju Damodar,
Aged about 53 years. Occupation - Service as Class I Officer
Anaesthetist at Regional Referral Services Hospital,
Daffarin Campus, Irwin Square, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary Public Health Department
in the Campus of Gokuldas Tejpal Hospital,
Circuit Building 10th Floor, Mantralay, Mumbai -32.
- 2) The Director of Public Health Services,
Maharashtra State in the Campus of Gokuldas Tejpal Hospital,
Circuit Building 5th Floor, Mantralay, Mumbai -32.
- 3) The Deputy Director of Public Health Services,
Akola Circle, Akola.
- 4) The Civil Surgeon, Civil Hospital, Amravati
District Amravati.
- 5) Shri Amol Sadashiv Narote,
Aged about 40 years. Occupation - Service as Medical
Superintendent at Regional Referral Services Hospital,
Daffarin Campus, Irwin Square, Amravati.

Respondents.

**S/Shri N.D. Thombre & T.N. Thombre, Advs. for the applicant.
Shri S.A. Sainis, learned P.O. for respondent nos.1 to 4.
Shri Shamsundar B. Patil, Advocate for respondent no.5.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 14/12/2023.

JUDGMENT

Heard Shri N.D. Thombre, learned counsel for the applicant, Shri S.A. Sainis, learned P.O. for respondent nos.1 to 4 and Shri S.B. Patil, learned counsel for respondent no.5.

2. The case of the applicant in short is as under –

The applicant was appointed as a Medical Officer and she has been promoted on the post of Anaesthesia at Regional Referral Services Hospital, Daffarin Campus, Irwin Square, Amravati. The applicant is senior to respondent no.5. The applicant is having Post Graduate Diploma in Anaesthesia. Without considering her seniority and qualification, respondent nos.1 to 4 issued posting order dated 21/02/2022 (P-43), by which the respondent no.5 is temporarily posted as Medical Superintendent of the Regional Referral Services Hospital, Amravati. The applicant is a senior to respondent no.5 and having qualification as per the Notification dated 18/01/2021, but not posted as a Superintendent, whereas, respondent no.5 is junior to her, but he is posted as per the order dated 21/02/2022. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“ (9) (1) It is prayed that this Hon'ble Tribunal may kindly issue appropriate order for quash and set aside the order issued by the Respondent No. 1 i.e. Secretary Public Health Department, Mumbai dated 21-02-2023 (annexed as Annexure A-5) and thereby posting the Respondent No. 5 to the post of Medical Superintendent of the Regional Referral Services

Hospital, Daffarin Campus, Irwin Square, Amravati by holding it to be unlawful, illegal and against the provisions of law.

2. That this Hon'ble Tribunal may kindly issue appropriate direction to the Respondent Department to consider the claim of the applicant to be placed on the post of Medical Superintendent of the Regional Referral Services Hospital, Daffarin Campus, Irwin Square, Amravati in the interest of justice and equity.

(10) (1) It is prayed that this Hon'ble Tribunal may kindly issue appropriate order for staying the effect, implementation and operation of the order issued by the Respondent No. 1 i. e. Secretary, Public Health Department, Mumbai dated 21- 02-2023 (annexed as Annexure A-5) and thereby posting the Respondent No. 5 to the post of Medical Superintendent of the Regional Referral Services Hospital, Daffarin Campus, Irwin Square, Amravati by holding it to be prima facie unlawful, illegal and against the provisions of law.

3. The O.A. is opposed by the respondents. It is submitted that the applicant is having Post Graduate Diploma, whereas, respondent no.5 is having degree in M.D. Pathology and therefore his degree was considered by the respondents. As per the Notification, the promotion / nomination is to be granted on the basis of seniority-cum-merit and qualification is shown in the Notification.

4. During the course of submission the learned counsel for the applicant has pointed out the Notification dated 18/01/2021. He has pointed out the Rule 3 (a) (i) and (ii). As per his submission, the promotion on the post of Civil Surgeon is to be given on the basis of seniority-cum-merit from amongst the suitable persons holding the

post of Medical Officer, Maharashtra Medical and Health Services, Group-A and possessing the qualification prescribed for appointment by nomination in clause (iii) of sub rule (b) of this rule having not less than three years regular service in that post.

5. As per sub rule **(b) by nomination on the basis of selection through Commission from amongst the candidates who—**

(i) are not more than thirty-eight years of age:

Provided that, the upper age limit may be relaxed upto ten years in case of candidates who are already in the service of Government;

(ii) possess M.B.B.S. degree of a statutory University or any other qualification specified in the First Schedule or Second Schedule to the Indian Medical Council Act, 1956;

(iii) possess a post graduate degree of a statutory university in any clinical subject or the qualification specified in the First or Second Schedule to the Indian Medical Council Act, 1956, or any other qualification recognized as equivalent thereto by the Medical Council of India.

and

(iv) possess experience of working in a hospital, of not less than five years out of which minimum three years experience of working in any hospital having minimum capacity of 30 beds gained after acquiring qualification mentioned in clauses (ii) and (iii) of sub-rule (b) of this rule.

6. During the course of submission the learned counsel for respondent no.5 Shri S.B. Patil has pointed out the order in O.A.No.742/2022, dated 04/08/2022 decided by the M.A.T., Bench at

Aurangabad. He has submitted that the respondent no.5 is having degree of M.D. Pathology and as per the Judgment of the M.A.T., Aurangabad Bench it is a qualification for appointment on the post of Civil Surgeon.

7. The respondent no.5 is having a degree, whereas, the applicant is having Post Graduate diploma. As per rule 3 (a) (ii) and (b) (iii) of the Notification is reproduced below –

“(3) Appointment to the post in the “Civil Surgeon Cadre” Group-A shall be made either ;

(a) by promotion ;

(ii) on the basis of seniority-cum-merit from amongst the suitable persons holding the post of Medical Officer, Maharashtra Medical and Health Services, Group-A and possessing the qualification prescribed for appointment by nomination in clause (ii) of sub-rule (b) of this rule or who possess the post graduate diploma in any clinical subject or the qualification specified in First or Second Schedule to the Indian Medical Council Act, 1956 or any other qualification recognized as equivalent thereto by Medical Council of India having minimum 10 years of regular service in the Maharashtra Medical and Health services, Group-A and out of which, having five years experience of working as Medical Officer in Rural Hospital or Sub District Hospital.

Ratio of promotion to be filed in amongst the candidates in sub-clauses (i) and (ii) of sub-rule (a) shall be 75:25:

Provided that, the suitable candidates having qualifications and experience in clause (ii) of sub-rule (a) of this rule shall be promoted and posted only on the post of Medical Superintendents, in charge of Rural Hospitals in the Civil Surgeon cadre.

(b) by nomination on the basis of selection through Commission from amongst the candidates who—

(iii) possess a post graduate degree of a statutory university in any clinical subject or the qualification specified in the First or Second Schedule to the Indian Medical Council Act, 1956, or any other qualification recognized as equivalent thereto by the Medical Council of India.

8. As per the rule 3 (b) (iii) of the Notification, the person who possess the post graduate degree of statutory university in any clinical subject is eligible for the post of Civil Surgeon. The M.A.T., Bench at Aurangabad also held that the candidate who having degree of MD Pathology, is eligible for the post of Civil Surgeon. The applicant is having post graduate diploma. As per the rule, the seniority-cum-merit is to be considered. The respondent no.5 is having more qualification i.e. having degree, whereas, the applicant is having only post graduate diploma. Therefore, posting of respondent no.5 on the post of Superintendent cannot be said to be illegal. Hence, the following order –

ORDER

The O.A. is dismissed with no order as to costs.

Dated :- 14/12/2023.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 14/12/2023.