

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 604/2010 (D.B.)

Manish S/o Jaideorao Bhavatkhar,
Aged Major, Occ. Service,
R/o 85, Old Chavre Nagar,
Near Lalit Kala Kendra, Jaripatka,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary,
Medical College & Drugs Department,
Mantralaya, Mumbai-32.
- 2) The Director,
Medical Education and Research Centre,
Mumbai.
- 3) The Dean,
Government Medical College and Hospital,
Nagpur.
- 4) Shri R.G. Bharaskar, **(Deleted.)**
Aged : Major,
R/o C/o Indira Gandhi Medical College,
Nagpur.

Respondents.

Shri M.Y. Wadodkar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 5th November, 2019.

Date of Pronouncement of Judgment : 18th December, 2019.

JUDGMENT**Per : Anand Karanjkar : Member (J).****(Delivered on this 18th day of December,2019)**

Heard Shri M.Y. Wadodkar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The representation dated 5/8/2010 was made by the applicant to consider him for promotion to the post of Lecturer in Occupational Therapy. The first representation in this regard was made by the applicant on 05/01/2008 and thereafter there were so many representations made by the applicant which were not considered, consequently this O.A. is filed. It is contention of the applicant that he fulfils the eligibility and qualification to be appointed as Lecturer in Occupational Therapy, but his case was not considered. It is submitted that the respondent nos.1 to 3 have promoted the respondent no.4 in violation of law and not promoted the applicant though the applicant was fulfilling the requirement. It is request of the applicant that direction be given to the respondents to promote the applicant on the post of Lecturer in Occupational Therapy and deemed date be given w.e.f. 5/1/2008. It is also prayed by the applicant that the promotion order of respondent no.4 be set aside.

3. The application is mainly attacked by the respondents on the ground that the applicant was serving as Occupational Therapist, Class-III at Government Medical College, Aurangabad from 2003 to 2005. Thereafter, the applicant came to be transferred to Government Medical College, Nagpur. It is contention of the respondents that advertisement was published to fill 3 posts of Lecturers in Occupational Therapy as per the advertisement dated 16/12/2008. The posts were to be filled in by nomination by the Divisional Selection Board on the temporary basis. The post of the Lecturer in Occupational Therapy was shown reserved for S.C. category and required qualification was Master Degree in Occupational Therapy. There were 5 applications for the post, but the applicant did not submit his application as per the advertisement. It is case of the respondents that no person was promoted as a Lecturer in Occupational Therapy. One Shri Pritam Shende challenged the appointment of Shri Deepak B. Asia in O.A. No.234/2009. It is contention of the respondents that 100% posts of Lecturer were to be filled in by nomination as no candidate was recommended by the MPSC, consequently on ad-hoc basis the appointments were made. It is main contention of the respondents that as the applicant was serving as Occupational Therapist, Class-III post and he did not apply

for the post of Lecturer as per the advertisement, therefore, there was no issue to consider the applicant for the promotion.

4. We have perused the letter dated 8/12/2018 received by the P.O. from the Section Officer, Medical Education & Pharmaceutical Department. In this letter it was informed that to fill the post of Lecturer in Occupational Therapy by promotion meeting of the Promotional Committee could not be held and name of no person was recommended. It is also mentioned in the letter that it was in consideration of the Government to frame the rules for giving promotions and draft rules were forwarded to the GAD and approval was given by the GAD and it was submitted before the Law and Judiciary. It was also mentioned in the letter that after seeking approval of the Hon'ble Governor, as per the rules the proceeding to give promotion would be completed within two months.

5. Vide letter dated 2/2/2019 it was informed that corrections were suggested in the draft rules and as per the suggestion corrections were made and draft rules were again forwarded for the approval of the Hon'ble Governor.

6. Now it is brought to our notice that the Government has framed the rules dated 1/6/2019 and these rules would remain in force till 31/3/2020. As the rules are framed to regulate the services of

Professor Group-A, Associate Professor Group-A, Assistant Lecturer, Group-B.

7. The learned counsel for the applicant has filed Pursis dated 23rd September, 2019 and informed that now the applicant is promoted on the post of Assistant Professor in Occupational Therapy and copy of the order dated 13th September, 2019 is placed on record. Now as the order dated 10/7/2019 passed by this Bench is complied and promotion is given to the applicant, therefore, nothing survives so far as the issue of promotion is concerned.

8. So far as grant of deemed date is concerned, we would like to point out that the applicant is claiming deemed date promotion w.e.f. 5/1/2008. In this regard, we have to mention that before framing of the rules, the facility of promotion was not available to the cadre of the applicant and only after framing of the rules, the applicant became eligible to claim promotion. In view of this, we do not think it suitable to grant this relief to the applicant.

9. In view of above observations, the O.A. stands disposed of. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 18/12/2019.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 18/12/2019.

Uploaded on : 18/12/2019.

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