

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO. 743 OF 2014**

**DISTRICT :Thane**

Dr. Ratna W/o. Dinkar Raokhande, )  
Occu. Assistant Director, (Medical) )  
Mumbai Circle, Thane. )  
R/at. Bungalow no.1, Mental Hospital )  
Campus, Teen Hath Naka, Wagale Estate,) )...**Applicant**  
Thane West. )

**VERSUS**

The State of Maharashtra, Through, )  
Secretary of Public Health Department, )  
Mantralaya, Mumbai. )....**Respondent**

Shri S.S. Dere, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**Shri R.B. Malik, Member (J)**

**DATE : 08.07.2016**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

**ORDER**

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

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2. This Original Application has been filed by the Applicant seeking seniority in the cadre of Civil Surgeon from the date when Dr. Bharati Sonawane was appointed as Gynecologist, Class-I.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as specialist class-I on the recommendations of Maharashtra Public Service Commission (M.P.S.C.) on 9.1.1991. <sup>She</sup> ~~He~~ again applied for the post of Civil Surgeon to M.P.S.C. and was appointed as Civil Surgeon on 9.10.1996. One Dr. Bharati Sonawane joined service as Gynecologist, Class-I on <sup>1.1.1991</sup> ~~1.1.1999~~ (specialist) in the same batch as the Applicant on being selected by M.P.S.C. Dr. Sonawane, though she joined earlier, was junior to the Applicant as the Applicant was placed at Sr.No.1 while Dr. Sonawane was at Sr.No.2 in the merit list by M.P.S.C. Learned Counsel for the Applicant stated that there are three cadres in Maharashtra Medical & Health Services at the level of Civil Surgeons, viz. Civil Surgeon, District Health Officer and Specialists. Though separate seniority lists are maintained for these cadres, for promotion to next higher posts, these cadres are merged and a combined seniority list is prepared and maintained. The Respondents have given seniority to the Applicant from 9.10.1996 in the cadre of Civil Surgeon, though, he was working in equivalent post of Specialist from <sup>1.1.1991</sup> ~~0.1.1999~~ and was senior to Dr. Sonawane, who is recruited as Specialist and has been working in that post and as <sup>Gynecologist</sup> ~~Civil Surgeon~~ from 1.1.1991. The Applicant is, therefore, entitled to be given deemed date of 1.1.1991 in the

Correction is carried out as per order dt:- 26/7/2016.

Registrar

cadre of Civil Surgeon, otherwise, he will be seriously prejudiced when he is considered for promotion to the next higher post. Learned Counsel for the Applicant stated that in a number of cases, specialists, are posted as Civil Surgeons without losing seniority. In case of Dr. Sonawane, she was absorbed in the cadre of Civil Surgeon, without losing her seniority.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Applicant was selected as Gynecologist (Specialist) by M.P.S.C. and joined on 9.1.1991. Later the Applicant again appeared for the post of Civil Surgeon through M.P.S.C. and was appointed as Civil Surgeon on 14.10.1996. The Applicant has deliberately changed her cadre and her appointment as Civil Surgeon was a fresh appointment. She is, therefore, not entitled to count her previous service for seniority in the cadre of Civil Surgeon. As regards Dr. Bharati Sonawane, Learned P.O. stated that she was appointed as Gynecologist (Specialist) on 1.1.1991. She was working in P.P.C. Programme, which was closed by the Government by order dated 20.11.2002. Dr. Sonawane was then given posting in Civil Surgeon's cadre. As Dr. Sonawane has joined cadre of Civil Surgeon by Government's orders, her seniority in that cadre is given from the date of her joining as Gynecologist.

5. We find that the Maharashtra Medical and Health Services (Class-I) Recruitment Rules, 1981 have a schedule which have the posts of Civil Surgeon (and equivalent posts),

Superintendent of Women's Hospital, District Health Officer (and equivalent posts) and various specialists posts. For appointment for all these posts in the Schedule, Rule 3 ibid provides that such appointment may be either by promotion of Medical Officer, Group A in Maharashtra Medical & Health Services or by nomination. These posts are equivalent posts and broadly categorised by Government in three cadres viz. Civil Surgeon, Dist. Health Officer and Specialists. It is not denied by the Respondents that there are a number of instances when specialists are posted as Civil Surgeons. The Respondent has admitted in para 9 of the affidavit-in-reply dated 2.2.2015 that Dr. Sonawane was initially appointed as Specialist, and she has been taken in the cadre of Civil Surgeon after abolition of P.P.C. programme on 20.11.2002, where she was working. It is not understood, as to how Dr. Sonawane can count her service as Gynecologist in the cadre of Civil Surgeon, while the same request of the Applicant is denied. It is also not denied by the Respondent that the Applicant was senior to Dr. Sonawane in the merit list prepared by M.P.S.C. for the post of Gynecologist in 1990/1991. Just because the Applicant had applied and was selected for the post of Civil Surgeon in 1996, she cannot be made to lose seniority to Dr. Sonawane, when Dr. Sonawane's post of Gynecologist was abolished so she was absorbed in the cadre of Civil Surgeon. Just because Dr. Sonawane's cadre was changed by Government order will not create any prior claim in her favour. It only shows that postings in these cadres are inter transferrable without any loss of seniority. This appears to be in consonance with the

Recruitment Rules. Another relevant fact is that for further promotion to the post of Deputy Directors, a common seniority list of these three cadre is maintained by the Government. This is another reason, why the Applicant cannot be made to lose her seniority or asked to forgo her regular service in an equivalent cadre of specialists, when inter-transfer among cadres is allowed.

6. We are of the considered opinion that the Applicant, who was senior to Dr. Sonawane in the cadre of Gynecologist cannot be placed below her when both are now working for whatever reasons, in the cadre of Civil Surgeon. The Applicant is entitled to be placed above Dr. Sonawane in the seniority list of Civil Surgeon as well as the combined seniority list of Civil Surgeon, Dist. Health Officer and Specialists. This O.A. is allowed accordingly with no order as to costs.

Sd/-  
**(R.B. MALIK)**  
**MEMBER (J)**

Sd/-  
**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

Date : 08.07.2016

Place : Mumbai

Dictation taken by : SBA

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**FARAD CONTINUATION SHEET NO.**

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p><b>DATE:</b> <u>26/7/16</u></p> <p><b>CORAM:</b>                      Hon'ble Shri. RAHV AGARWAL                      (Vice - Chairman)                      Hon'ble Shri A. B. MALIK (Member) J</p> <p><b>APPEARANCE:</b>                      Shri/Smt. <u>S. S. Dere</u>                      Advocate for the Applicant                      Shri/Smt. <u>K. B. Bhise</u>                      C.P.O. for the Respondents                      order passed in the                      Adj. to <u>Tribunal's column.</u></p>	<p style="text-align: center;"><u>O.A. No.743 of 2014</u></p> <p>Dr. Ratna D. Raokhande ..Applicant                      Vs.                      The State of Maharashtra &amp; Ors. ..Respondents</p> <p>Heard Shri Sandeep Dere, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.</p> <p>2. Shri Dere, Ld. Advocate for the Applicant states that there are certain typographical errors in para 3 of the order dated 8.7.2016 in OA No.743 of 2014.</p> <p>3. In the 4<sup>th</sup> line word 'He' should be read as 'She'. In the 7<sup>th</sup> line the date should be '1.1.1991' rather than '1.1.1999'. Again in the 21<sup>st</sup> line the date should be read as '1.1.1991' and not '9.1.1991'. In 23<sup>rd</sup> line the word 'Civil Surgeon' should be read as 'Gynecologist'.</p> <p>4. These typographical errors may be corrected as prayed for. Ordered accordingly</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p><i>(Sd/- M)</i>                          (R.B. Malik)                          Member (J)                          26.7.2016                          (sgj)</p> </div> <div style="text-align: center;"> <p><i>(R Sd/- Ag)</i>                          (Rajiv Agarwal)                          Vice-Chairman                          26.7.2016</p> </div> </div>