

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.996 OF 2015

DISTRICT : SANGLI

Shri Azaroddin Ajij Ugare)
Age : 27 years, Occ : Service,)
Aman Nagar, Road No.4,)
Malgaon Road, Miraj 416 410) **...APPLICANT**

VERSUS

1. The Secretary,)
Medical Education and Drugs,)
Mantralaya, Mumbai 400 032)

2. The Director,)
Medical Education and Research,)
St. Georges Hospital Compound,)
Opp. Govt. Dental College Building,)
Mumbai 400 001)

3. The Dean,)
Govt. Medical College,)
Pandharpur Road, Miraj 416 410.) **....RESPONDENTS**

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

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

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CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 22.07.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri S.S. Dere, learned Counsel for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging sub-Rule (b)(ii) of Rule 3 of Recruitment Rules dated 11.02.1999 for the post of X-ray Technician in the Directorate of Medical Education and Research. The Applicant is also claiming that his selection to the post of X-ray Technician and appointment by order dated 14.05.2013 may be held valid and the notice dated 06.12.2014 issued by the Respondent No.2 may be quashed and set aside.

3. Learned Counsel for the Applicant' argued that the Applicant had appeared in M.E.D.S.S. – C.W.T. – 2012 held by the Respondent No.2 on 26.08.2012 and was selected for the post of X-ray Technician from open category. The Applicant was given appointment letter dated 14.05.2013. However, by notice dated 06.12.2014, the Respondent No.2 asked the Applicant to show cause, why his services should not be terminated as he did not have experience of 5 years of working as X-ray / Dark room Assistant in a Government or semi Government Hospital. Learned Counsel for the Applicant argued that the Applicant had produced experience certificate

from Kyle hitech Basavashwar Hospital, Jamkhandi, District Bagalkot (Karnataka) showing that he had worked in that hospital for from 01.11.2007 to 30.11.2011 as CT/ X-Ray Technician. He also, has experience in Vedh Diagnostic & Research Centre from 01.02.2011 to 19.02.2013 in the same capacity. These institutions are not Government or Semi Government Hospitals. However, any stipulation of experience only in Government Hospital is discriminatory and has to be struck down. Learned Counsel for the Applicant relied on judgment of this Tribunal dated 01.03.2013 in O.A.No.1492 of 2009, wherein this Tribunal has struck down Rule 3(b)(iv) of the Assistant Commissioner' (Food), General State Services, Group 'A' (Recruitment) Rules, 1996 as unconstitutional. Learned Counsel for the Applicant argued that the requirement of three months training under a Food (Health) Authority in that Rule resulted in only those working in the Government to be eligible for appointment by nomination as Assistant Commissioner (Food). Rule 3(3) of the Recruitment Rules, for X-ray Technician also restricts appointment to those having experience in Government / Semi Government Hospital, which is liable to be struck down as arbitrary and discriminatory. Once that is done, the Applicant will become eligible for appointment and notice dated 06.12.2014 will become infructuous.

4. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents that the Applicant has been selected on the basis of Recruitment Rules dated 11.02.1999. After his selection, he cannot challenge the same rules. He cited the judgment of **Hon'ble Supreme Court in Civil**

Appeal Nos.6465 and 6466 of 2015 in the case of Madras Institute of Development Studies and Anothers Versus Dr.

K. Sivasubramaniyam and Other. Learned C.P.O. further argued that once the Recruitment Rules are declared invalid, the Applicant's selection will automatically become void as he is selected under the same rules. Learned C.P.O. stated that facts in O.A.No.1492 of 2009 were totally different. There as per Rule 3(b)(iv) for Recruitment to the post of Assistant Commissioner (Food) by nomination it was impossible for a person not working in the State / Central Government to compete for the post. This was the ground on which the rule was struck down by this Tribunal. Under the recruitment rules for the post of X-way Technician, a person having degree with Physics, Chemistry or Biology can be appointed to the post. There is an alternate qualification of Professional Course of X-ray Technician and 5 years experience in a Government / Semi Government Hospital. The rule does not completely exclude non-Government candidates unlike the rule struck down by this Tribunal. Learned C.P.O. argued that recruitment rules do provide relaxation in age and qualifications for those having experience in Government and such relaxation cannot be called discriminatory.

5. The Applicant is relying on judgment of this Tribunal dated 01.03.2013 in O.A.No.1492 of 2009. It will be instructive to quote extracts from the judgment.


"6. In view of the above, Shri Dere pointed out that in nomination category, no one, other than who are in service either in the State Government or in the Central Government can apply for the post."



“10. Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents sought to contend that apart from employees of State Government, others who are working in Indian Railways, Central Government, Municipal Corporation are being given such training and they are entitled to apply for the said post under nomination category.”

“14. In this regard, Shri Rajpurohit, the learned Presenting Officer has made it absolutely clear that such a training in food inspection and sampling is not given to any one in private employment. To put it in other words, those who are in private employment are totally excluded from the nomination category for the said post and they are prohibited from competing for the same post.” (emphasis added).”

6. From these extracts, it is quite clear that the rule which was struck down by this Tribunal totally excluded those in private employment for appointment by nomination as Assistant Commissioner (Food). In the present case, even a fresh graduate having degree in Physics, Chemistry or Biology can be appointed to the post of X-ray Technician. There is no ‘prohibition’ or ‘total exclusion’ of persons in private employment. We agree with learned C.P.O. that the case is clearly distinguishable. The contention of the Applicant appears to be that recruitment rules should in no case have any provision showing preference or giving concessions to those working in Government. Such a contention cannot be accepted. Government is well within its rights to give concession in age and sometimes in qualifications etc. for its experienced employees. On that ground alone the rules cannot be called arbitrary or discriminatory. The Applicant’s



prayer for striking down Rule 3(b)(ii) of the Recruitment Rules for X-ray Technician cannot be accepted.

7. Even if for the sake of argument, the aforesaid rule is held to be invalid, other relevant issues will have to be considered. If the Rule is struck down, then the right course would be to cancel the entire selection process for the post of X-ray Technician and advertise the post afresh as other candidates having experience in private sector could also apply to ensure level playing field. Also, the Applicant is seeking change in the Recruitment Rules with retrospective effect. That appears to be inadmissible. Another fact to be considered is that the applicant has applied for the post, knowing fully that he was not eligible for the post as per Recruitment Rules. He should have challenged the Recruitment Rules, before applying for the post. As it happens, the Applicant is seeking advantage of the mistake of the Respondents. This is clearly not admissible, as a mistake can always be corrected. The Applicant's claim that the notice dated 06.12.2014 is illegal cannot be accepted.

8. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 22.07.2016
Typed by : PRK

ORIGINAL APPLICATION NO.996 OF 2015**DATE : 22.07.2016****L.O.**

After the order was pronounced, learned Advocate Shri S.S. Dere made a request that the interim relief staying the notice dated 06.12.2014 may be continued. However, we do not find any reason to accede to this request and the request is not accepted.

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

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN