

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 17/2010.**

Dr. Abdul Rafique Mohd. Yakub Siddiqui,  
Aged about 54 years,  
R/o Flat No. A-1, in front of Vidarbha Bazar,  
Behind ESIS Dispensary,  
Ganeshpeth, Nagpur.

-----**Applicant.**

**Versus**

State of Maharashtra,  
Through it Principal Secretary,  
Public Health Department  
Mantralaya, Mumbai

2. The Director of Public Health Services,  
M.S. 'Aarogya Bhavan, St. George Hospital,  
Compound, Mumbai.
3. The Deputy Director of Health Services,  
Nagpur Circle, Nagpur.
4. The Civil Surgeon, Mayo General Hospital,  
Central Avenue, Nagpur. ----- **Respondents.**

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1. Shri G.K. Bhusari, Advocate for the applicant.
  2. Shri V.K. Kulkarni, Presenting Officer for the Respondents.

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**CORAM** : **Rajiv Agrawal : Vice-Chairman(A)**

**&**

**J.D. Kulkarni : Member ( J )**

**DATE** : **6<sup>th</sup> March, 2017**

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**ORDER****PER MEMBER ( J )**

The applicant is claiming directions to the respondents to issue posting order in the post of Medical Officer, Group-A, Class-II in pursuant to the appointment order dtd. 29/10/1991 and to give him all monetary and consequential benefits arising out of same. He is also claiming directions to the respondents to given all future promotions and all other consequential benefits considering that the applicant has been appointed by nomination as Medical Officer, Group-A, Class-II w.e.f. 29/10/1991. It is material to note that for such declaration as aforesaid the claim has been filed in the year 2010.

2. It seems from the admitted facts that the applicant is a Medical Officer , Group-B, Class-II and was working as such at Mayo Hospital , Nagpur since 1981. Initially he acquired MBBS and subsequently in 1989 he acquired MS degree.

3. On 1/6/1991 the MPSC has recommended the applicant's name for appointment as Medical Officer, Group-A, Class-II. In consequence to such recommendation an appointment order was issued in favour of the applicant on 4/10/1991. At the relevant time the applicant was posted at Public Health Centre, Korchi, Distt. Gadchiroli. On 30/9/1991 he was sent on deputation as Medical Officer, Public Health Centre at Narkhed till further orders. In spite of the fact that the applicant was appointed for the Group-A post, he was not relieved and therefore he could not join in the post of Medical Officer, Group-A, Class-II.

4. According to the applicant there was correspondence between the respondents inter-se and the respondents authorities were directed to relieve the applicant immediately but no action was taken and ultimately the applicant was relieved on 6/1/2007. However, he was not allowed to join and therefore this O.A.

5. The Respondent No.1 has resisted the claim and submitted that the applicant was made aware of his appointment as nominated MPSC candidate and was required to join within one month but he did not join. The Govt. had not given any direction to Respondent No. 4 to depute the applicant at Rural Hospital, Narkhed , Distt. Nagpur. It was therefore duty of the applicant to comply with the Govt. Resolution dtd. 1/6/1991. Though it is stated that the applicant has made representation allowing him to be relieved from the post, no such communication has been received by the Respondent No. 1.

6. According to the Respondent No. 1 even after the applicant was relieved on 6/1/2007 by the Respondent No. 4, he did not join at his new posting and on the contrary file a representation on 8/1/2006 and requested that he be retained at Head-quarter since his daughter was studying in 10<sup>th</sup> standard. It is therefore stated that the applicant has not accepted the regular appointment within specified time and this fact was communicated to the applicant by the

Respondent No. 1 vide communication dtd. 6/8/2008 (Annexure-R-1).

7. We have heard the Id. counsel for the applicant Shri G.K. Bhusari and the Id. P.O. for the respondents Shri V.K. Kulkarni. We have also perused the application, affidavit, rejoinder affidavit so also reply-in-affidavit and various documents placed on record.

8. It is material to note that it is admitted fact that the applicant has been recommended by the MPSC for the post of Medical Officer, Group-A, Class-II vide order dtd. 1/6/1991 and in view of that recommendation appointment order was issued on 4/10/1991. It is also material to note that since 1991 till 2010, the applicant never approached the Tribunal. It is highly improbable to accept that the applicant will remain silent for such a long period without any interest on his part. The various documents on record placed by the applicant show that the applicant requested that he shall be relieved. However, most of such communications is between

the Dy. Director, Nagpur and the authorities subordinate to him. There is nothing on record to show that the Respondent 4 was directed to depute the applicant at Narkhed. Even for argument's sake it is accepted that the applicant was interested in joining his post of Medical Officer, Group-A, Class-II immediately, there is nothing on record to show as to why the applicant did not join immediately approach the Tribunal from 1991 till he was relieved in 2007.

9. We have perused the communication whereby the applicant was relieved from his post by the Dy. Director of Health Services. The said communication is dtd. 4/1/2007 at Annexure-A-7. It is material to note that even though the applicant was relieved as per this order and subsequent order dtd. 6/1/2007 at exhibit -Annexure-A-8, the applicant did not join his post immediately. On the contrary he has filed one representation requesting to give him posting at Nagpur since his daughter was studying in 10<sup>th</sup> standard. It is material that the Dy. Director, Health Service, Nagpur also recommended his case to the Director, Medical Health

Services, Mumbai as per Annexure-A-9. Even for argument's sake it is accepted that there is correspondence thereafter as regards the recommendation on the request of the applicant for his transfer to Nagpur to the higher authority, the fact remains that there was no correspondence directly made to the Govt. in this regard though copies of some communications have been forwarded to the Secretary, Mantralaya in its Health Department. It is highly improbable that the person who has been appointed in the year 1991 for Group-A, Class-II Medical Officer will wait for his posting till 2010, had he been really interested in the post.

10. The Id. P.O. has invited our attention to the communication dtd. 6/8/2006 which is at Annexure-R-1, issued by the Govt. of Maharashtra to the Director of Health Services, Mumbai. In the said letter it has been specifically stated that since the applicant did not accept the appointment order dtd. 1/6/1991 within the specific period, his appointment stood cancelled. In spite of specific correspondence in this regard there was absolutely no reason

for the other respondents to recommend the case of the applicant for appointment.

11. We have perused the appointment order of the applicant dtd. 1/6/1991(Annexure-A-1). In para 8 of the said order it has been specifically mentioned that in case the applicant did not join within one month from the date of order, his services will come to an end with immediate effect. The posting order is also subject to such condition.

12. It seems from the correspondence that the applicant himself never requested for relieving him. On the contrary the higher authority has expressed dissatisfaction for not relieving the applicant by Respondent No. 4. Even after the applicant was relieved, he tried to avoid joining at Gadchiroli and file representation to retain him at Nagpur. It shows that the applicant was not interested in joining at Gadchiroli.

13. On a conspicuous of discussion in the foregoing paras, we are satisfied that the Director, Medical



Health Services had already intimated vide communication dtd. 6/1/2008 by the Govt. that the applicant has not accepted the appointment within the stipulated period and therefore he cannot be appointed on the post. The possibility that the applicant might have managed to serve on his choice posting as he wanted not to join at Gadchiroli cannot be ruled out. Considering all these aspects and particularly considering the fact that the appointment order is of the year 1991 and the applicant never approached the Tribunal till 2010, we have satisfied that there is no merit in the O.A. Hence the following order :-

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

**(J.D. Kulkarni )  
Member ( J )**

**( Rajiv Agrawal )  
Vice-Chairman.**

Skt.