

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 737/2013 (D.B.)

Smt. Anita Wd/o Nagraj Kolhe,
Aged 45 yrs., Occ. Service,
R/o Shri Apartment Plot No. 13, Old Subhedar Layout,
Near Bank of Maharashtra, Sharada Square,
Post Ayodhya Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Medical Education and Drugs Department,
G.T. Rugnalya, 9th Floor, New Building, Cropherd Market,
Mumbai-32.
- 2) Director of Ayurved,
Government Dental College and Hospital Building,
Fourth Floor, Saint Georges Hospital Campus P. Diemlo Road,
Fort, Mumbai.
- 3) Dean Government Ayurvedic College &
Hospital Sakkardara Square, Raje Raghuji Nagar,
Nagpur.

Respondents

Shri N.S.Bade, the Id. Advocate for the applicant.

Shri H.K.Pande, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J) &
Hon'ble Shri Shree Bhagwan, Member (A).**

JUDGMENT

PER : VICE CHAIRMAN (J)

(Delivered on this 06th day of November, 2018)

ORDER

Heard Shri N.S.Bade, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the Respondents.

2. The applicant is claiming to be seniormost Panchkarma Vaidya. It is stated that the Departmental Promotion Committee considered the applicant's confidential report and her performance for promotion to the post of Resident Medical Officer in the meeting dated 07/05/2013. She was found eligible and entitled for promotion as a R.M.O. on regular basis and the committee also directed that she shall be promoted accordingly. But no action has been taken in respect of her promotion. The applicant is, therefore, claiming declaration that she being the next seniormost Panchkarma Vaidhya and being found eligible to the post of R.M.O., be promoted on said post on regular basis.

3. It seems that, one Departmental Enquiry was pending against the applicant during the pendency of this O.A.. Vide chargesheet dated 03/12/2013, the Director of Ayurveda, Government of Maharashtra passed an order in the said Departmental Enquiry on 01/07/2015 holding that the charge nos. 1 and 2 were proved. The said order was confirmed by the appellate authority and, therefore, the applicant was reverted to the lower post. This order of reversion was

challenged by the applicant before the Principal Bench of this Tribunal at Mumbai by filing O.A.No. 610/2016. In the said O.A., this Tribunal passed an order and was pleased to quash the order dated 01/07/2015, 24/05/2016 and 31/05/2016 issued by the respondent authorities and quashed the Departmental Enquiry. In view of the said order of this Tribunal, the respondents issued an order on 26/09/2017 and again posted the applicant as Panchakarma Vaidya and also granted arrears of salary for the said post.

4. The respondents had earlier resisted the claim for filing reply on 13/05/2015. It is stated that, in fact, the applicant was not entitled to the appointment on compassionate ground itself, as per the G.R. dated 28/03/2001. Since, the employee, in whose place, she was claiming appointment, was Extension Officer i.e. Group –B officer. The said contention has now no meaning. Since the appointment of the applicant has been regularized and even the Tribunal found in O.A. 610/2010, that the appointment of the applicant was not illegal. The respondents have filed return on 11/06/2018 and admitted the claim of the applicant. It is stated in para no. 2 of the said affidavit as under:-

"The present answering respondents have already filed their elaborate reply in O.A.No. 285/2017 (Shri Louis Chacko John) submitting that in the seniority list published for the year 2012-2016, the applicant Smt. Kolhe is at Sr. No.1 and as such she is the senior most Panchakarma

Vaidya. It is submitted that a post of Resident Medical Officer is a promotional post and the same can only be filled in by promotion on the basis of seniority cum merit. The Hon'ble Principal Bench held that the applicant's appointment is regular since 01/07/1997. The D.P.C. in its meeting held on 27/09/2017 considered eligibility, seniority as well as preceding 5 years CR of total 11 candidates/ Vaidya. As Smt. Kolhe fulfilled all eligibility criteria for promotion to the post of RMO, she was rightly recommended for promotion to the post of RMO. By the order dated 05/10/2017 this Hon'ble Tribunal directed the respondent State not to issue promotion order in favour of Mrs. Kolhe till further orders. For the said reason the present answering respondent has not issued order of promotion so far. "

5. From the aforesaid reply affidavit, it will be clear that the name of the applicant has already been considered by the respondents for promotion to the post of R.M.O. and the applicant admittedly seems to be seniormost Panchkarma Vaidhya. Though she was reverted for a certain period from the post of Panchakarma Vaidhya to lower post, the punishment in this regard has been quashed and set aside in view of the Judgment of O.A. No. 610/2010 and the applicant has been reposted as Panchkarma Vaidhya and has been granted arrears and financial benefits, for such post.

6. We have also perused the minutes of meeting dated 07/05/2013 (Annexure-A-28) at P.B., Pg. Nos. 103 to 106 (both inclusive). This minutes of meeting clearly shows that, the applicant was seniormost and was found eligible for being promoted on the regular basis to the post of R.M.O.. As already stated, the respondents have already recommended the name of the applicant for such promotion. It is true that this Tribunal has directed the respondents not to issue promotion order till further order. In view of the order passed in O.A. No. 285 of 2017 decided on 06/11/2018. Since the said O.A. has already been dismissed and the applicant in that O.A. could not prove that he is senior than the present applicant, the said order now no more exists.

7. In view thereof, we pass the following order:-

ORDER

1. The O.A. is allowed.
2. It is hereby declared that the applicant being the next senior most Panchkarma Vaidhya and is being eligible for promotion to the post of R.M.O. on regular basis in the D.P.C. dated 07/05/2013, she will be entitled to be promoted as a R.M.O. on regular basis.
3. The respondents are directed to issue necessary promotion order accordingly within **one month** from the date of this order.

4. No order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice Chairman (J)

Dated :- 06/11/2018.

aps.