

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 115 /2017

Dr. Umesh Bhaurao Nawade,
Aged 55 years, Occ. District Civil Surgeon,
R/o Civil Surgeon's Quarters IGGMCH Compound,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary,
Public Health Department,
Mantralaya, Mumbai-400 032.
- 2) Director of Health Services,
Aarogya Bhavan, Saint Georges Hospital Campus,
P. Dimelo Road, Mumbai-400 001.
- 3) Deputy Director of Health Services,
Nagpur Circle, Nagpur.

Respondents

Shri B.D. Pandit, Advocate for the applicant.

Shri P.N. Warjurkar, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 5th day of May,2017)

Heard Shri B.D. Pandit, Id. Counsel for the applicant and
Shri P.N. Warjurkar, Id. P.O. for the respondents.

2. The applicant Dr. Umesh B. Nawade is the District Civil Surgeon. He was appointed by nomination as a Paediatrician (Specialist) on 1/4/1995 and thereafter he was recommended for regular appointment, vide order dated 9/2/1997. Thus from 1/4/1995 the applicant has been appointed in the cadre of Maharashtra Medical Services (Group A) (Class I) (District Civil Surgeon).

3. On 20/9/2014 the applicant requested respondent no.1 to place his name in the common seniority list of Maharashtra Medical Services (Group A) (Class I) cadre w.e.f.1/4/1995. The respondent no.1 published a provisional common seniority list of Maharashtra Medical Services (Group A) (Class I) consisting of District Civil Surgeon, District Health Officer and Specialist on 24/4/2016. The said list was as on 1/1/1999. The applicant took objection to the said original list vide his letter dated 27/4/2016. On 4/1/2017 the final common seniority list was published and the applicant's representation was rejected. The applicant has been placed at sr.no.345 in the said common list, but his seniority is at sr.no.275 in the list dated 4/1/2017 (A-5,P-22).

4. The applicant is claiming for a direction to the respondents to place the applicant as sr.no.234 in the seniority list of Maharashtra Medical Services (Group A) (Class I) on the basis of his entry in service i.e. 1/4/1995. He is also claiming order of his placement in the seniority list at sr.no.345 be quashed.

5. The respondent no.1 admitted the fact that the applicant was appointed as Paediatrician (Specialist Cadre) and has joined duties on 1/4/1995. It is stated that the applicant later on applied for change of cadre. He was previously working as Paediatrician (Specialist Cadre) and thereafter he deliberately changed his cadre and joined in the cadre of Civil Surgeon as a fresh appointee. Though these cadres are included in M.M.H.S. Group, both the cadres have different recruitment rules, different duties and responsibilities and their seniority is maintained separately. Since the applicant was appointed in the cadre of Civil Surgeon in 1997 and joined said cadre on 19/5/1997, his seniority has been considered for 19/5/1997. The respondent no.1 therefore defended the placement of the applicant.

6. The learned P.O. has placed on record one communication dated 6/6/2015 which is addressed to the Chief Secretary, Public Health Department, Mumbai by Director of Health Services, Mumbai. In the said letter it has been informed to the Chief

Secretary of the State Government that the applicant's name is being considered for promotion of Deputy Director and the matter is under process and further that the applicant's case will be considered as per his seniority.

7. The learned counsel for the applicant submits that the reason for rejection of seniority to the applicant is that the applicant has changed his cadre to Civil Surgeon on 9/5/1997 by the nomination and as such he is not entitled to seniority from 1/4/1995 is absolutely contrary to the recruitment rules and the respondent no.1 has failed to appreciate that the post of Paediatrician (Specialist) and District Civil Surgeon are not different cadre. It is stated that the respondent has lost sight of recruitment rules as well as the Judgment reported in O.A.No. 743/2014, **DR. Ratna D. Raokhande Vs. State of Maharashtra** delivered on 8/7/2016.

8. The learned counsel for the applicant has invited my attention to the Judgment in the O.A. as aforesaid. In the said O.A.No.743/2014 the similar issue was dealt by the Principal Bench of this Tribunal and vide order dated 8/7/2016, this Tribunal has observed as under :-

“(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 respondents 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 Gynaecologist 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 MPSC for the post of Gynaecologist 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 Gynaecologist 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 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.”

9. Perusal of this aforesaid Judgment we make it crystal clear that as per the Maharashtra Medical and Health Services (Class-I) Recruitment Rules,1981, the posts of Civil Surgeon and those of Specialists posts like applicant are similar. In view of this Judgment the respondent no.1 ought to have considered the seniority of the applicant from the date of his initial appointment i.e. 1/4/1995 and should not have denied that seniority merely because the applicant has changed his cadre. I am therefore satisfied that the case of the applicant is covered by the Judgment in O.A.No. 743/2014. In view of the discussion in foregoing paras, I pass the following order :-

ORDER

The O.A. is allowed. The respondents are directed to consider the representation of the applicant for his placement at sr.no.234 in the seniority list of Maharashtra Medical Services,

Group A, (Class-I), on the basis of his entry in service from 1/4/1995 in view of the Judgment in O.A.No. 743/2014. The applicant's placement in the seniority list at sr.no.345 be accordingly modified.

No order as to costs.

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

dnk.