

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 390 OF 2009

DISTRICT : NAGPUR

Dr Suresh Eknathrao Nihate,)
Occ : Service, R/o Plot no. 6,)
Santoshimata Nagar,)
Near Bidipeth, Nagpur – 25.)...**Applicant**

Versus

1. The State of Maharashtra)
Department of Medical)
Education and Drugs,)
Mantralaya, Mumbai.)
through its Secretary.)
2. The Director of Ayurved,)
Directorate of Ayurved,)
Govt. of Maharashtra,)
St. Georges' Hospital Bldg,)
Near C.S.T, Mumbai.)

3. The Dean,)
Government Ayurvedic College)
Umred Road, Sakkardar Chowk)
Nagpur.)

4. Dr A.B Deshmukh,)
Reader in Shalakyatantra)
Govt. Ayurved College,)
Usmanabad.)

5. Dr M.A Lahakar,)
Reader in Shalakyatantra,)
Govt. Ayurved College,)
Usmanabad.)

6. Dr S.M Panzade,)
Reader in Shalakyatantra,)
Govt. Ayurved College,)
Usmanabad)

7. Dr Kalpana Wakode,)
Reader in Shalakyatantra,)
Govt. Ayurved College,)
Usmanabad.)...**Respondents**

Shri S.M Khan, holding for Shri P.C Marpakwar, learned advocate for the Applicant.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents no 1 to 3.

None for Respondents no 4 to 7.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 06.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.M Khan, holding for Shri P.C Marpakwar, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents no 1 to 3. None for Respondents no 4 to 7.

2. This Original Application has been filed by the Applicant seeking deemed date of promotion as Reader in Shalakyatantra from 1997, declaring de-reservation of the post as illegal.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Demonstrator by order dated 12.5.1989. The Applicant was appointed as

Lecturer in Shalakyatantra by order dated 18.8.2000. In November, 2008, he was granted deemed date as Lecturer from 10.12.1990. By order dated 27.11.1997, the Respondent no. 1 de-reserved, inter alia, two posts of Reader in Shalakyatantra, which were reserved for Scheduled Caste (S.C) category. The Respondents no 4 & 5 were promoted as Readers in these two posts. Though their promotion was temporary till suitable S.C candidates were available, they were confirmed as Readers by order dated 20.10.2008. The order of de-reserving posts was arbitrary and illegal and by this decision the Applicant was deprived of the opportunity of getting promotion to the post of Reader in 1997. The Applicant belongs to Scheduled Caste category. In the provisional seniority list as on 1.1.2002, the Applicant is shown as senior to the Respondent no. 6. However, the Respondent no. 6 was placed above the Applicant in the subsequent seniority list and he was promoted as Reader on 5.10.2004, ignoring the claim of the Applicant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 to 3 that this Original Application is misconceived and devoid of substance. G.R dated 18.8.2000 and November, 2008 are applicable to all the Demonstrators. By G.R dated 18.8.2000 the post of 'Demonstrator' was re-designated as 'Lecturer' with effect from the date of issuance of G.R. The post was re-designated as 'Lecturer' w.e.f 18.8.2000. The

Applicant is challenging de-reservation of two posts of Readers in Shalakyatantra by order dated 27.11.1997, before G.R dated 18.8.2000 was issued. No reason as to why the order dated 27.11.1997 is illegal have been furnished. In fact, the order dated 27.11.1997 was fully legal in accordance with G.R dated 5.12.1994 and the Respondent no. 1 was fully competent to de-reserve posts reserved for S.C category temporarily till suitable S.C candidates were available. When the order dated 27.11.1997 was passed, the Respondent no. 1 was not aware that in future, experience of 'Demonstrators' would be counted as that of 'Lecturer' retrospectively. The Applicant was designated as Lecturer after that date on 18.8.2000. In any case, the Respondent nos 4 & 5 were confirmed as Readers as per rules, and the Applicant cannot claim any relief against them. Learned Presenting Officer further argued that there are only 4 posts of Readers in Shalakyatantra in the State, 2 each are to be filled by promotion and nomination respectively. As reservation in promotion is 33%, only one post could be reserved and not two. The Applicant became eligible for promotion to the post of Reader only in August, 2003 as he was designated as Lecturer on 18.8.2000. The Applicant was given further benefit of redesignation as 'Lecturer' from the date of issuance of G.R dated November, 2008 and past actions/promotions cannot be cancelled as desired by the Applicant.

5. Learned Presenting Officer argued that the Respondent no. 6 Shri S.M Panzade joined as 'Demonstrator' on 12.5.1989 whereas the Applicant was appointed as 'Demonstrator' on 7.6.1989. The Respondent no. 6 is, therefore, senior to the Applicant. Learned Presenting Officer contended that Shri Panzade was posted as 'Demonstrator' in Kaya Chikitsa vide order dated 10.10.1991. However, that order was cancelled on 19.11.1991 and he remained in the Department of Shalakyatantra.

6. We find that the Applicant is seeking promotion to the post of Reader in Shalakyatantra from the date on which two posts reserved for S.C category were temporarily de-reserved by order dated 27.11.1997. The Applicant claims that this order dated 27.11.1997 is illegal. The Respondents have claimed that if a suitable backward class candidate is not available to fill a post by promotion for the post reserved for a particular backward class category, the post has to be kept vacant for 3 years. In case, it is necessary to fill up the post, it can be temporarily de-reserved and a candidate not belonging to that category can be promoted temporarily on the basis of seniority as per G.R dated 5.12.1994. This is stated in para 5 of the affidavit in reply of the Respondents no 1 to 3 dated 5.9.2009. In the rejoinder dated 8.12.2009, the Applicant has not touched upon this aspect. We are unable to hold that order dated 27.11.1997 was illegal.

7. The second limb of argument of the Respondent nos 1 to 3 is that there are 4 posts of Readers in Shalakyatantra in the State and only two posts are to be filled by promotion as per Rule 7 of the Maharashtra Ayurvedic Service Class-I & II in Government Ayurvedic Colleges, Professor, Reader, Lecturer (Recruitment) Ruls, 1988. 50% of the posts in each of the cadres of Professor, Readers and Lecturers are to be filled by promotion and nomination each. As 2 posts of Readers in Shalakyatantra were to be filled by promotion, only one post can be reserved for S.C, as S.C candidate is at Sr. No. 1 in 100 point roster of promotion as per G.R dated 18.10.1997. In the rejoinder, the Applicant has not denied this position. His claim is that he was the senior most S.C candidate in the cadre of Lecturer, so he should have been promoted as Reader and not Shri Panzade. The Applicant is relying on the provisional seniority list as on 1.1.2002 in support of his contention (Annexure A-9, page 41-43 of the Paper Book). However, the Respondents no 1 to 3 in the affidavit in reply dated 5.9.2009 have stated in para 8 as follows:-

“The Respondent no. 6 Vd. S.M Panzade has joined the post of Demonstrator on 12.5.1989, whereas the Applicant’s joining date on the post of Demonstrator is 7.6.1989. Accordingly, while issuing the next years temporary seniority list, the ambiguities were cleared and the Respondent no. 6 Vd Panzade was

now directly been shown as senior to the Applicant in all subsequent seniority lists. The Respondent no. 6 Vd. Panzade is senior to the Applicant. The Applicant has joined the service vide order dated 12.5.1989 and the Respondent no. 6 has joined the service vide order dated 10.5.1989."

In his rejoinder, the Applicant claims that Shri Panzade was absent for 44 days, so he lost his seniority. We are unable to accept this contention in absence of any law/rule which will make an employee lose his seniority if he is absent from duty. We are not aware, as to how this absence of duty of Shri Panzade was treated. There is no material on record which will enable us to conclude that the Applicant was senior to Shri Panzade.

8. The Applicant has relied on G.R dated 18.8.2000 and G.R of November, 2008 (no date is given). G.R dated 18.8.2000 in para 2(A) provides that 'Demonstrator' in Government Ayurvedic (and Unani) colleges will be re-designated as 'Lecturer' from the date of the G.R, i.e. 18.8.2000. In terms of this G.R, the Applicant has no locus to challenge the promotion as Readers of the Respondents no 4 & 5. By G.R dated November, 2008, 'Demonstrator' was re-designated as 'Lecturer' w.e.f 10.12.1990. However, the Respondents no 4 & 5 were already confirmed as Readers by order dated 20.10.2008. The Applicant has not challenged this

order dated 20.10.2008 in the present Original Application. In any case, these Respondents no 4 & 5 had been working as Reader from 1997 and one post (out of total 4 posts of Readers) was available to be filled by promotion of an open candidate. So one of them could be promoted to that post. May be another open post from nomination quota was utilized by the Respondent no. 1 to confirm another Respondents out of the Respondents no 4 & 5. However, no prejudice can be said to have been caused to the Applicant by promotion and confirmation of Respondents no 4 & 5, as only one post of Reader in Shalakyatantra, was reserved for S.C candidate (as per roster point no. 1) and the Applicant could claim promotion to that post.

9. As per G.R dated 18.8.2000, the Applicant and the Respondent no. 6 (both belonging to S.C category) were re-designated as 'Lecture' w.e.f 18.8.2000. The case of the Respondents no 1 to 3 is that both of them were not eligible to be promoted as Reader before completion of 3 years service as 'Lecturer' which would be from 18.8.2003. Situation underwent a change, after G.R dated November, 2008 was issued and the Applicant and the Respondent no. 6 were re-designated as 'Lecturer' w.e.f 10.12.1990. However, the G.R dated November, 2008 would not make actions/promotions given prior to that date illegal. The Respondents no 1 to 3 promoted Shri Panzade in one post reserved for backward class

candidate on 5.10.2004. The Applicant has failed to demonstrate that he is senior to Shri Panzade, who also belong to S.C category. As the only post reserved for S.C category in the cadre of Reader in Shalakyatantra from promotion quota is already filled, there is no question of promoting the Applicant to that post.

10. Having regard to the facts and circumstances of the case, we find that there is no merit in the Original Application and it is dismissed with no order as to costs.

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

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 06.07.2017
Dictation taken by : A.K. Nair.