

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO 457 OF 2007**

**DISTRICT : NAGPUR**

Dr Nandkishor Gunwantrao Raut, )  
Occ : Service, [Assoc. Professor & Head of )  
Ophthalmology Dept], )  
Govt. Medical College, Nagpur. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Awar Secretary, )  
Dept. of General Administration, )  
Backward Cell, 16-B, Mantralaya, )  
Mumbai. )
2. State of Maharashtra, )  
Through its Secretary, )  
Department of Medical Education & )  
Drug Department, Mantralaya, )  
Mumbai. )

3. Director, )  
 Medical Education & Research, )  
 St. Georges Hospital Compound, )  
 Mumbai. )
4. Maharashtra Public Service Commission)  
 Through its Secretary, Bank of India, )  
 Bldg, 2<sup>nd</sup> floor, M.G Road, )  
 Mumbai. ) **.Respondents**

Dr R.G Raut, applicant present in person.

Shri M.I. Khan, learned Presenting Officer for the Respondents.

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

**DATE : 11.8.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Applicant present in person and heard' Shri M.I Khan, learned Presenting Officer for the Respondents.

2. This old matter was kept for final hearing on 3.7.2017 and on that day, the Applicant was present in person. On his request, the case was kept for final hearing on 7.7.2017. On that day, learned Advocate Shri V.G

Bhamburkar was present for the applicant and he wanted adjournment. The request for adjournment of the case was not accepted and as learned Advocate Shri Bhamburkar expressed his inability to argue, the learned Presenting Officer Shri M.I Khan was heard for the Respondents. Learned Presenting Officer stated that the Applicant has been irregular in attending this Original Application. On 8.10.2015, this Tribunal has dismissed this O.A for default. It was restored on file on 9.3.2016. After that also, the Applicant has been irregular in attending this Original Application. We have, therefore, decided to dispose of this Original Application on merits.

3. This Original Application has been filed by the Applicant claiming that there is backlog of the Other Backward Classes (O.B.C) in the cadre of Professors in Government Medical Colleges, Maharashtra Medical Education & Research Services, Group 'A'. The Applicant also seeks directions to the Respondents to amend G.R dated 19.8.2005 in respect of Locomotor Handicapped category. The Applicant wants that out of 4 posts in Ophthalmology, 2 posts should be kept for open, 1 post for OBC, 1 for S.T and 1 post of Ophthalmology may be reserved for both legs Locomotor Handicapped person.

4. The Applicant's case is that adequate reservation is not provided for O.B.C category as per Mandal Commission. The State Government is not providing 19% reservation for O.B.C in direct recruitment. In the post of

Professor and Associate Professor, adequate representation is not provided to O.B.C category.

5. The other grievance of the Applicant is that 3% reservation for physically handicapped person is also not applied properly, especially for Locomotor Handicapped persons. Those who have Locomotor handicap in both legs are made ineligible for many posts. He has accordingly challenged certain provisions of G.R dated 19.8.2005.

6. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the present Original Application is in the nature of a Public Interest Litigation. The Applicant is claiming that O.B.C representation in the cadres of Professor & Associate Professor in Government Medical Colleges is inadequate. However, this Tribunal cannot entertain P.I.L and the Applicant should limit his prayers to his personal grievances. In the present Original Application the Applicant had applied for the post of Professor in Ophthalmology and he claims that in none of the advertisement issued by M.P.S.C the post of Professor was ever reserved for O.B.C. However, for small cadres, such situations are bound to occur as per 100 point roster prescribed in G.R dated 18.10.1997. The claim of the Applicant that out of 4 vacancies in the post of Professor in Ophthalmology, , 2 posts should be kept for open, 1 post for OBC, 1 for S.T, has no basis at all. Similarly, the reservation for handicapped persons is based on percentage of disability suffered by that person. There is no absolute bar on a person having disabilities in both the legs from being employed in a post. Only consideration is that he

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should be able to discharge the duties of the post to which he is selected. G.R dated 19.8.2005 is based on the report of an Expert Committee. Persons suffering from some extreme disabilities may not be able to perform duties to look after patients. Accordingly, the admissible disabilities have been prescribed for different posts in medical posts.

7. Government of Maharashtra has prescribed following reservation for recruitment, viz:-

(i)	Scheduled Caste	:	13%
(ii)	Scheduled Tribe	:	7%
(iii)	Vimukta Jatis-A	:	3%
(iv)	Nomadic Tribe-B	:	2.5%
(v)	Nomadic Tribe-C	:	3.5%
(vi)	Vimukta Jati-D	:	2%
(vii)	Other Backward Class	:	19%
(viii)	Spl. Backward Category	:	2%
			<u>52%</u>

The Applicant claims that there are a total of 14 posts of Professors in Ophthalmology in the State. However, the Respondents have clarified that the number is actually 12. Six posts are filled by nomination and 6 by promotion. There is no reservation for O.B.C in promotion. For the posts to be filled by nomination (6), the question is as to how the reservation should be applied. Only 3 posts can be reserved at any given time. For a short cadre these posts would be required to be reserved by rotation. 100 point roster point for

direct recruitment is prescribed in G.R dated 29.3.1997. Persons from S.C, S.T, V.J(A) and NT-B category will get opportunity for reservation, before O.B.C candidates can be considered. As per para 4 in the affidavit in reply dated 20.11.2007, it is stated that:-

“6. As per the directions of Hon’ble Supreme Court, reservation quota should be restricted up to 52% of the total strength of post. As mentioned above, there are only 6 posts available for nomination quota. Out of these 6 posts, 1 post is filled in from S.C candidate and 1 post is filled in from VJNT candidate. There was a backlog of S.T candidate and therefore, requisition of S.T candidate has been submitted to Maharashtra Public Service Commission. In these circumstances at any time there must be three candidates from open category and therefore, a requisition submitted by Government and the advertise published by the Maharashtra Public Service Commission is correct.”

From this, it is clear that turn of OBC candidate will come in the next round, when any of the three reserved post is vacant. This is a prima facie observation without deeply delving in the issue of reservation. However, it must be made clear that one out of 3 posts cannot be permanently reserved for S.C candidates. Once a post is filled by a candidate from a particular caste, that roster point is used up and when that candidate retires, next roster point will have to be used as per 100 point roster. No post in a small cadre can be reserved for

a particular caste, and at any given time reserved posts will have to be filled as per 100 point roster.

8. As regards reservation for handicapped persons the Respondents have given details about the recommendations of the Expert Committee. The recommendations regarding the Ophthalmology Department are summarized as below:-

“As per the recommendation of the Committee constituted by the Government for identification of the post, no candidates from Blind, Dumb and Deaf category are eligible to work in Ophthalmology Department as Teacher. As per the recommendation of the Committee, the candidates having defect in one leg are only eligible to work in Ophthalmology Department as a Teacher.”

9. As G.R , dated 19.8.2005 is based on recommendations of the Expert Committee, no interference in the provisions of that G.R from this Tribunal is warranted.

10. The Applicant has filed this Original Application challenging advertisement issued by M.P.S.C on 31.7.2007 for selection to the post of Professor in various disciplines in Government Medical Colleges in Maharashtra. The Applicant was treated as ineligible for the post since both of his legs are affected. However, this Tribunal allowed the Applicant by order dated 5.9.2008 to appear for interview. The result of

the selection process was allowed to be declared by order dated 11.11.2008. As the Applicant is clearly ineligible for the post of Professor in terms of G.R dated 19.8.2005, it is not necessary to examine any other issue. This Original Application is disposed of as infructuous with no order as to costs.

**Place : Nagpur**  
**Date : 11 . 8 .2017**  
**Dictation taken by : A.K. Nair.**