

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

ORIGINAL APPLICATION NO. 804 OF 2015

DISTRICT : YAVATMAL

1. Mohan S/o Wamanrao Pimpre,)
Aged 54 years, Health Worker,)
To R.4, R/o Hanuman Akhada Chowk,)
Yavatmal. Dist. Yavatmal.)
2. Sahebrao S/o Kashinath Chaudhari.)
Aged 53 years, Health Worker,)
To R.4, Yavatmal. R/o. Chhtrapati Nagar,)
At. Ner-Persopant. Dist. Yavatmal.)
3. Rambhau S/o Gomaji Chauke.)
Aged 46 years, Health Worker,)
To R.4, R/o. Kavita Nagar, Darvha.)
Dist. Yavatmal.)...**Applicant**

VERSUS

1. State of Maharashtra,)
Through its Secretary)
Health Department,)
Mantralaya, Mumbai - 400 032.)
2. The Deputy Director of Health Services,)
Aarogya Bhavan, AKOLA.)

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3. The Assistant Director of Health Services,)
(Malaria) Aarogya Bhavan, AKOLA)

4. The District Malaria Officer,)
Yavatmal. 445 001.)

) Respondents

Shri Bharat Kulkarni, learned Advocate for the Applicants.

Shri S.A. Sainis, learned Presenting Officer for the Respondent.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri J.D. Kulkarni (Member) (J)

DATE : 13.02.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

J U D G E M E N T

1. Heard learned Advocate Shri Bharat Kulkarni for the Applicants and Shri S.A. Sainis, learned Presenting Officer for the Respondents.

2. These O.A. has been filed by the Applicants who are working as **Health Workers** under the **Respondent No. 4**. They have challenged the Seniority list of Health Workers published by the Respondent No's 3 & 4 on 08.12.2015 as on 01.01.2015.

3. Learned Counsel for the Applicants argued that the Applicants were appointed in the years 1990, 1995 & 1995 in Amravati & Akola districts as Health Workers and came to be transferred on different dates to Yavatmal district on their own request. In the interim seniority list as on 01.01.2015, the Applicant No. 1 is at Sr. No. 113, his date of appointment is 02.07.1990 and his seniority in Yavatmal district is counted from 26.12.2009. The Respondent No. 2 is at Sr. No. 60, date of his initial appointment is 29.03.1995 while in Yavatmal district, his seniority is fixed from 21.06.2005. The Applicant No. 3 is at Sr. No. 59, his date of appointment is 28.03.1995 and seniority is fixed from 15.06.2005 in Yavatmal. Learned Counsel for the Applicants argued that the Applicant No. 1 is made to lose 19 years, while the Applicant Nos. 2 & 3 are made to lose 10 years of service in this seniority list. Learned Counsel for the Applicants further argued that the transfer orders of the Applicants dated 07.12.2009, 30.05.2005 and 31.05.2005 respectively do not mention anything about loss of seniority due to such transfers. Learned Counsel for the Applicants contended that the Respondents are relying on G.R. dated 03.06.2011, which is prospective in nature and cannot be applied retrospectively in the case of the Applicants.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants were transferred from Amravati, and Akola district to Yavatmal district on their own request. The cadre of Health Workers is a district cadre and

seniority lists are maintained district wise. As per G.R. dated 03.06.2011, when a Group 'C' employee is transferred on his own request, his seniority is to be fixed from the date of his joining in the new cadre. Learned P.O. argued that the seniority list of Health Workers as on 01.01.2015 is correctly prepared.

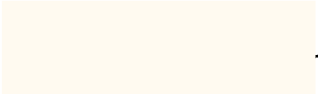
5. We find that the transfer orders of the Applicants dated 07.12.2009 (Applicant No. 1) , 30.05.2005 (Applicant No. 2) and 31.05.2005 (Applicant No. 3) issued by the Respondent No. 3 do not contain any condition that on request transfer to Yavatmal, they will lose their previous seniority. The seniority list in 2005 was prepared for Yavatmal district considering the date of initial appointment as Health Workers for all persons including the Applicants. However, the seniority has been changed in 2015 relying on G.R. dated 03.06.2011, which provides that in case of transfer on request, seniority will be fixed from the date of joining in the new cadre. Clause 3 (11) of this G.R. provides that in such cases, it would be necessary to take undertaking (बंध-पत्र) / bond from the concerned employees that they agree to abide by all the conditions including the condition in clause 3 (8) of the G.R. about seniority from ^{the} date of joining in the new cadre. In our view this G.R. cannot be applied to the Applicants, who were transferred before this G.R. was issued and in view of the fact that there was no such condition in their respective transfer orders. The Applicants have not

given any bonds that they agree to loss of seniority on transfer.


6. Learned Counsel for the Applicant, inter-alia, relied on the judgement of Bombay Bench of this Tribunal dated. 22.12.2015 in O.A. No. 571 of 2015 and judgement dated 06.01.2017 of this Bench in O.A. 545/2015 etc., wherein it has been held that past seniority is a relevant factor for determining seniority in the new cadre/post as per Rule 4(2)(C) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The Applicants have to be given seniority in the cadre of Health Workers in Yavatmal district based on their year of appointment as Health Workers. They may be placed below Health Workers appointed in Yavatmal district in the year the Applicants were initially appointed in other districts. However, clause 3(8) of G.R. dated 03.06.2011 is not applicable in their case.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondent No's 3 & 4 are directed to fix the seniority of the Applicants in accordance with the instructions hereinabove within a period of one month from the date of this order.

8. This O.A. is allowed accordingly with no order as to cost.


(J.D. KULKARNI)
MEMBER (J)
_____ 2017


(RAJIV AGARWAL)
(VICE-CHAIRMAN)
_____ 2017

 Date : 13-2-2017

Place : Nagpur

Dictation by : NMN

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