

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 449 OF 2014

DISTRICT : - AURANGABAD.

Dr. Pradeep S/o. Shivaji Raut,

Age : 36 years, Occu. Service

(as Asstt. Professor in Anesthesia,
GMC, Aurangabad), R/o. 'Atharva',

109-B, Dwarkapuri Row Houses,

Near Pratap Nagar, Osmanpura,

Aurangabad.

.. APPLICANT.

V E R S U S

- 1) **The State of Maharashtra**
Through its Secretary,
Medical Education & Drugs
Department, M.S.,
Mantralaya, Mumbai-32.
- 2) **The Director,**
Medical Education & Research,
M.S., Mumbai.
- 3) **Dr. Ramakant Govindrao Alapure,**
Asstt. Professor, Department of
Anesthesia, Cancer Hospital,
Aurangabad.
- 4) **Dr. Smt. Vrushali Ramesh Ankalwar,**
Asstt. Professor, Department of
Anesthesia, Govt. Medical College,
Nagpur.

...2

- 5) **Dr. Santosh S/o. Uttamrao Gite,**
Asstt. Professor, Department of
Anesthesia, Govt. Medical College,
Latur.
- 6) **Dr. Rajesh S/o. Vitthalrao Nagmothe,**
Asstt. Professor, Department of
Anesthesia, Govt. Medical College,
Nagpur. .. RESPONDENTS.

APPEARANCE : Shri A. S. Deshmukh, learned
Advocate for the applicant.

: Shri I.S. Thorat – learned Presenting
Officer for the respondents.

CORAM : **HON'BLE SHRI RAJIV AGARWAL,**
VICE CHAIRMAN (A).
AND
: **HON'BLE SHRI B.P. PATIL,**
MEMBER (J)

DATE : **18TH AUGUST, 2017.**

ORDER

[Per : Hon'ble Shri B.P. Patil, Member (J)]

1. The applicant has prayed to quash and set aside the
impugned communication dated 26.05.2014 received from

the respondent No. 1 rejecting his request for assignment of an appropriate and proper placement in the seniority list of the cadre Assistant Professors in Anesthesia over & above respondent Nos. 3 to 6 and to direct the respondent Nos. 1 & 2 to place him above the respondent Nos. 3 to 6 in the seniority list of the cadre of Assistant Professors in Anesthesia and extend the consequential service benefits thereon.

2. The applicant is having qualifications of MBBS and MD (Anesthesia). He is belonging to OBC Category. In the year 2007 in pursuant to the advertisement issued by the Maharashtra Public Service Commission (for short 'the Commission'), he has submitted his candidature for the post of Assistant Professor in Anesthesia. He had participated in the selection process undertaken by the Commission. On completion of selection process the Commission was pleased to prepare and publish a selection list of in all 11 candidates on 14.02.2008 on the basis of their merits. One Dr. Sanjay Shriram Bule stood

at Sr. No. 1, the name of the applicant figured at Sr. No. 2. Thereafter, the names of the present respondent Nos. 3 to 6 had been mentioned serially at Sr. No. 4 to 7 respectively. The Commission forwarded the select list to the respondent No. 1. On receiving the said list, the respondent No. 1 has issued communication to the applicant directing him to produce requisite documents for facilitating it for issuance of the appointment order. The applicant complied with all the requisite formalities except the requirement of 'Non Creamy Layer' certificate. He had not received the same though he had applied for it on 21.01.2008. He had informed respondent No. 1 that he would produce the 'Non Creamy Layer' certificate as soon as he will receive it. He received the 'Non Creamy Layer' certificate dated 31.03.2008 from the Sub-Divisional Magistrate, Bhoom sometime in the first week of April, 2008. Prior to that he had received one more communication dated 4.4.2008 from the respondent No. 1 to comply the earlier direction and to produce the 'Non

Creamy Layer' Certificate.

3. Accordingly, the applicant submitted the 'Non Creamy Layer' Certificate to the respondent No. 1 on 7.4.2008 and thereby complied with all the requirements for getting order of appointment on the post of Assistant Professor in Anesthesia. He made an enquiry with the office of respondent No. 1 in the month of April, 2008 as regards probable date of issuance of his appointment order and that time it was informed to him that it would take some time and the order will be sent to him by Registered Post Acknowledgement Due (R.P.A.D.) immediately after its issuance. After waiting for one month again he approached the office of respondent No. 1 and made an enquiry and at that time it was informed to him that the process was in progress. The applicant waited again for one month and when he had not received the appointment order, he again visited the office of respondent No. 1 and met the concerned Desk Officer on 07.06.2008. At that time the concerned officer asked

...6

him to accept a spare copy of the order of appointment, which had already been issued on 06.05.2008 and asked him to report at the place of his posting. The applicant had requested the Desk Officer to permit him to make an endorsement in the relevant record regarding date of receipt of said appointment order by him in person as it had not received to him by post. However, upon his request the Desk Officer had told him that he was required to make any endorsement on the office copy. It is his contention that the appointment order dated 06.05.2008 had never been sent to him by RPAD and he had not received it prior to that, but the said appointment order had been sent to the other respondent Nos. 3 to 6, as well as, other selected candidates and thereafter the endorsement "issued/sent – निर्गमित" had been made on the office copy of it.

4. It is his further contention that after receiving his appointment order dated 7.6.2008 i.e. on Saturday, on 9.6.2008 i.e. on Monday he reported immediately at the

Grant Medical College, Mumbai and submitted his joining report and thereby complied with the condition contained in the appointment order that he should join at the place of his posting within 30 days on receiving the appointment order. The Dean of Grant Medical College permitted him to join the duty pursuant to the appointment order dated 06.05.2008 and nobody had raised any objection at that time in that regard. Not only this, but respondent No. 1 has not taken any action of cancellation of the appointment order on the ground that the applicant had not joined the place of his posting within a period of 30 days from the date of issuance of the appointment order.

5. It is his contention that for counting his seniority in the cadre of Assistant Professor in Anesthesia amongst the candidates selected along with him the provisions of Rule 4 (2) (a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 are applicable, and therefore, his seniority ought to have been counted according to his

ranking in the merit / select list. It is his contention that respondent No. 2 had published a seniority list on 04.06.2010 of the cadre of Assistant Professors as on 01.01.2010 and he has given lower placement at Sr. No. 31, while respondent No. 3 & 5 were placed above him at Sr. Nos. 28 & 29 respectively. However, respondent Nos. 4 & 6 were placed below him at Sr. Nos. 32 & 33 respectively. It is his contention that respondent Nos. 3 & 5 stood below him at Sr. Nos. 4 & 6 in the select list prepared by the Commission, but they were given higher placements than him at Sr. Nos. 28 & 29 in the seniority list in violation of the provisions of Rule 4 (2) (a) of the of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. He immediately submitted representation to the respondent No. 2 through proper channel on 30.06.2010 pointing out the said fact and requested to place him over and above respondent Nos. 3 & 5 and one Dr. Shailendra D. Chauhan, as per the select list prepared by the Commission. It is his contention that Dr.

Shailendra D. Chauhan, is not working in the cadre of Assistant Professor in Anesthesia and, therefore, he has not made him as a party respondent to this Original Application.

6. It is his further contention that respondent No. 1 again published seniority lists dated 27.06.2011, 03.08.2012 and 14.10.2013 and placed him below respondent Nos. 3 & 5, but in the select list published on 03.08.2012 for the first time it has been mentioned in remarks column that he was assigned said placement at Sr. No. 38, because he had joined on his post of Assistant Professor after the period of 30 days from the date of his appointment order and the said fact has again been repeated in the seniority list dated 14.10.2013. Therefore, he submitted specific representation to the respondent No. 1 on 17.10.2012 contending that he never received the appointment order by Post and he collected it personally and then joined immediately and he prayed to assign him

an appropriate placement on the basis of his rank/merit position at Sr. No. 2 in the select list prepared by the Commission. But the respondent No. 1 has not considered his representation and again assigned him lower placement in the subsequent seniority list published on 14.10.2013. Therefore, he again filed representations with respondent No. 1 on 13.08.2013, 28.08.2013, 14.11.2013, 11.02.2014 and 02.05.2014 pointing out as to how and why he is entitled to be assigned a higher placement on the basis of his rank in the select list published by the Commission. On 26.05.2014, respondent No. 1 issued a communication to him and rejected his request on the ground that he had not joined the place of his posting within a period of 30 days from the date of order of his appointment order. Respondent No. 1 again published a seniority list on 28.05.2014 and assigned him a wrong placement at Sr. No. 10 below the names of respondent Nos. 3 to 6, who were placed at Sr. Nos. 5, 6, 7 and 8 respectively. The applicant again filed representation

dated 01.08.2014 and raised objection to the seniority list, but his objection was rejected by communication dated 26.05.2014. Therefore, he has filed the present Original Application and assailed the communication dated 26.5.2014 rejecting his representation and prayed to direct the respondents to place him above the respondent Nos. 3 to 6 in the seniority list and also sought consequential financial benefits.

7. Respondent Nos. 1 & 2 have filed their affidavit in reply and resisted the contention of the applicant. It is their contention that the request of the applicant is not valid and cannot be considerable under the Rules and, therefore, he was informed accordingly by the communication dated 26.5.2014. It is their contention that on receiving the communication from the Commission they asked to the applicant to comply with the condition contained in the advertisement to receive the appointment order, but the applicant had not produced 'Non Creamy

Layer' certificate at the earliest though he had undertaken to produce the same at the time of interview conducted by the Commission. In the absence of the said certificate it was not possible for them to issue appointment order to him. It is their contention that on production of the 'Non Creamy Layer' certificate by the applicant they issued appointment order dated 6.5.2008. The applicant must have joined the posting within a period of 30 days from the date of appointment order, but he failed to join the duty within a stipulated time and, therefore, he is not entitled to claim seniority as prayed for.

8. It is their contention that respondent No. 2 published seniority list as per the rules and norms. The name of the applicant has been listed therein as per his joining date. There is no illegality in the impugned order. It is their contention that the applicant had submitted 'Non Creamy Layer' certificate on 10th April, 2008. Thereafter, the proposal of appointment of the applicant has been sent to

the Hon'ble Minister and the same was approved on 29th April, 2008. The draft appointment order was approved on 3rd May, 2008 and appointment order of applicant was issued on 6th May, 2008. The appointment order used to be sent to the inward outward section of the concerned department for sending it to the candidates. By the order dated 6.5.2008, the appointment was given to the applicant and one Dr. Rajesh Nagmothe. The appointment order is usually marked to the Directorate of Medical Education and Research, Mumbai and Dean of the Government Medical College where the candidate is posted. The applicant was posted at Grant Medical College, Mumbai and Dr. Nagmothe was posted at Government Medical College, Nagpur. As per the usual practice in the Government Offices vital documents like appointment order used to be sent by Registered Post. Dr. Nagmothe had received the appointment order and he had joined the post within stipulated time. The Directorate of Medical Education and Research Mumbai and Dean of

Grant Medical College, Mumbai had received the copies of the said appointment orders. Therefore, it is difficult to believe the contention of the applicant that he had not received the appointment order within prescribed period. It is their contention that the outward register had been destroyed after 5 years and, therefore, the same is not available. It is their contention that the applicant has filed false application and, therefore, they prayed to reject the present Original Application.

9. We have heard Shri Avinash Deshmukh – learned Advocate for the applicant and Shri I.S. Thorat – learned Presenting Officer for the respondents. We have perused affidavit, affidavit in reply filed by the respondents. We have also perused the documents placed on record by the respective parties.

10. Admittedly, the applicant is having qualification of MBBS and MD in Anesthesia. He is belonging to OBC Category. He has applied for the post of Assistant

....15

Professor in Anesthesia in view of the advertisement issued by the Commission, in the year 2007. He had participated in the selection process undertaken by the Commission and he was declared as selected candidate. Admittedly, select list of the selected candidates on the basis of their merit has been prepared by the Commission and it was forwarded to the Government for issuing appointment order. Admittedly, one Dr. Sanjay Shriram Bule stood at Sr. No. 1 and the applicant stood at Sr. No. 2 in the merit and select list sent by the Commission. Admittedly, respondent Nos. 3 to 6 stood at Sr. Nos. 4 to 7, in the merit list. It is not much disputed that the respondent No. 1 directed the applicant to produce requisite documents including 'Non Creamy Layer' certificate to facilitate it to issue appointment order in his favour. Admittedly, the applicant complied with all the requirements except production of 'Non Creamy Layer' certificate. Admittedly, He had not received the 'Non Creamy Layer' certificate though he had applied for it on

21.01.2008. He had informed respondent No. 1 that he would produce the 'Non Creamy Layer' certificate as soon as he will receive it. Admittedly, he received the 'Non Creamy Layer' certificate dated 31.03.2008 from the Sub-Divisional Magistrate, Bhoom sometime in the first week of April, 2008. Admittedly, he produced the same before the respondent No. 1 on 4.4.2008. Thereafter, on 6.5.2008 the appointment order has been issued by the respondent No. 1 and he was posted at Grant Medical College, Mumbai. There is not dispute about the fact that the applicant collected the office copy of the appointment order dated 6.5.2008 personally and thereafter he joined the posting at Grant Medical College, Mumbai on 9.6.2008 i.e. on Monday. It is also admitted fact that neither the respondent No. 1 cancelled the appointment order dated 6.5.2008 nor he raised objection previously that the applicant has not joined the duty within a period of 30 days from the date of appointment order.

11. Learned Advocate for the applicant has submitted that the appointment order dated 6.5.2008 had not been sent to the applicant by RPAD and the applicant never received the same by Post Office. He has submitted that when the applicant went to the office of respondent No. 1 on 7.6.2008 and made enquiry, that time he received information that the appointment order has been issued and the concerned Desk Officer supplied the spare copy of the appointment order and asked the applicant to join the post immediately and accordingly, he joined the post on 9.6.2008 as there was holiday on 8.6.2008 on account of Sunday. Learned Advocate for the applicant has submitted that as the name of the applicant was appearing at Sr. No. 2 on the merit/select list published by the Commission and the names of the respondent Nos. 3 to 6 were appearing at Sr. Nos. 4 to 7 as merit list, the same sequence and seniority has to be maintained by the respondents while preparing the seniority list. But the respondent No. 2 has published the seniority list dated

04.06.2010 of the cadre of Professors in Anesthesia as on 01.01.2010, wherein the applicant was given lower placement at Sr. No. 31 than the respondent Nos. 3 and 5, who were placed above him at Sr. Nos. 28 & 29 respectively. He has submitted that the said fact has been challenged by the applicant by filing representation, but the respondent No. 1 has not considered his representation and continued to publish the seniority lists thereafter also by maintaining the same position. He has submitted that in the select list dated 3.8.2012 for the first time the reasons for not assigning the placement to the applicant above the respondent Nos. 3 to 5 has been mentioned. He has argued that the applicant has challenged the said fact by filing representation with respondent No. 1, but the respondent No. 1 has rejected his representation on the ground that the applicant has not joined the posting within a period of 30 days from the date of appointment order dated 6.5.2008. He has submitted that the said act of the applicant is in violation

of the Rule 4 (2) (a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, which runs as follows: -

“4. General principles of seniority. –

(2) Notwithstanding anything contained in sub-rule (1).-

(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow:”

12. Learned Advocate for the applicant has further submitted that respondent No. 1 rejected the representation of the applicant on 26.5.2014 and the said communication is illegal. Therefore, he prayed to quash the communication and to allow the present Original Application.

13. Learned Presenting Officer has submitted that there is no illegality on the part of the respondents in preparing select list. He has submitted that the applicant was appointed by an order dated 6.5.2008 and as per appointment order he has to join his posting within a period of 30 days from the date of issuance of the appointment order, failing which his appointment stands cancelled. He has submitted that the applicant joined his posting on 9.6.2008 i.e. beyond 30 days as mentioned in the appointment order dated 6.5.2008, which is at Annexure 'A-5' page-27 of the paper book of O.A. He has submitted that because of this the applicant lost his seniority and, therefore, his seniority has been considered

on the basis of date of his joining the service and, therefore, he has been placed accordingly below the respondent Nos. 3 to 6 in the seniority list. Therefore, he supported the order of the respondent No. 1 and prayed to reject the present Original Application.

14. On going through the documents, we find that the applicant was appointed as Assistant Professor in Anesthesia, in view of the order dated 6.5.2008, wherein there is a condition No. 2, which provides that candidate should join the posting within a period of 30 days from the date of issuance of the appointment order, failing which his appointment stand cancelled. The said clause is reproduced herein under: -

“२. उपरोक्त उमेदवाराने त्यांच्या नियुक्तीच्या ठिकाणी सदर शासननिर्णय निर्गमित झाल्यापासून ३० दिवसांचे आत रुजू व्हावे, अन्यथा त्यांना सदर पदावरील नियुक्ती स्वीकारण्यात स्वारस्य नाही असे गृहीत धरून त्यांची नियुक्ती रद्द करण्यांत येईल.”

15. In this case, the applicant is claiming that the appointment order dated 6.5.2008 has not been sent to

him by post by the respondents and he collected the order personally on 7.6.2008 when he visited office of respondent to make inquiry. But the respondents denied it. The date of service of appointment is crucial in this to decide the matter in issue.

16. In order to verify the fact whether the order has been served on the applicant by RPAD or personally the respondents were directed to produce the record in that regard, but the respondents filed affidavit stating that the inward/ outward register has been destroyed as per the rules. A copy of the order dated 6.5.2008 produced by the applicant at page-27 does not disclose as to whether it has been sent to the applicant by Post or any other mode. Moreover, the said copy does not bear stamp of the office of respondent No. 1 mentioning "sent/issued-निर्गमित" like other office copies of the other candidates, who were appointed, on which the stamp "निर्गमित" along with date has been embossed. The respondents, have not produced any document to show that the appointment order has been

served on the applicant on 6.5.2008 or thereafter. In the absence of the evidence, it is difficult to accept the contention of the respondents that the appointment order dated 6.5.2008 had been issued and served on the applicant in the regular and ordinary course of business. Not only this, but as mentioned in the condition No. 2 the appointment of the applicant has not been cancelled by the respondent No. 1 on expiry of 30 days. 30 days expired on 5th June, 2008. The respondent No. 1 ought to have been cancelled the appointment order of the applicant on that ground, but no such order has been passed. On the contrary, the applicant was allowed to join the duty at Grant Medical College, Mumbai on 9.6.2008 and nobody objected to it. It means respondent No. 1 implied extended the period of 30 days given to the applicant to take up the appointment as provided under Rule 4 (2) (a) of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Therefore, the contention of the respondents in that regard is not acceptable in the

absence of document. Since no order of cancellation of the appointment order of the applicant has been issued and the applicant was permitted to join his duty on 9.6.2008, it can be held that the respondent No. 1 extended the period by exercising its discretion and allowed the applicant to join duty on 9.6.2008. Therefore, the applicant cannot lose his seniority as mentioned in the select/merit list issued by the Commission. Therefore, the decision of the respondents to place him below the respondent Nos. 3 to 6 on the basis of his joining date is not proper and legal.

17. The applicant has been placed at Sr. No. 2 in the merit list issued by the Commission and he was above the respondent Nos. 3 & 6. His seniority ought to have been determined according to his ranking in the order of preference arranged in merit list prepared by the Commission. On the basis of merit list issued by the Commission he ought to have been placed over and above

respondent Nos. 3 to 6 in the seniority list, but the respondents have wrongly shown him below respondent Nos. 3 to 6.

18. Respondent No. 1 has not considered all these aspects and has wrongly rejected the representation of the applicant by communication dated 26.5.2014. Therefore, the communication dated 26.5.2014 is not maintainable and it requires to be quashed. Therefore, in our view, it is just to quash and set aside the communication dated 26.5.2014 and to direct the respondent Nos. 1 & 2 to assign appropriate placement to the applicant in the seniority list in the cadre of Assistant Professors in Anesthesia above respondent Nos. 3 to 6, as per ranking in the order of preference arranged by the Commission in the select list by allowing the Original Application.

19. Resultantly, the present Original Application is allowed. Communication dated 26.5.2014 issued by respondent No. 1 rejecting the representation of the applicant to give him an appropriate assignment in the

cadre of Assistant Professors in Anesthesia is hereby quashed and set aside. Respondent Nos. 1 & 2 are directed to correct the seniority lists of the cadre of Assistant Professors in Anesthesia and place the applicant over and above respondent Nos. 3 to 6 on the basis of ranking of preference arrangement by the Commission in the select/merit list. Respondents are directed to give consequential service benefits to the applicant as per his eligibility after correcting seniority lists. The respondents shall comply this order within a period of two months from the date of this order.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.449-2014(hdd)-2017(DB)