

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 144 of 2016 (D.B.)**

Sunil Ganeshprasad Awasthi,  
Aged about 42 years, Occ. Service,  
R/ Post Moha, Girja Nagar,  
Dhamangaon Road, Yavatmal,  
Tahsil & District Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Public Health Department, Mantralaya,  
Mumbai-32.
- 2) The Director of Health Services,  
Directorate "Arogya Bhavan",  
St. George Hospital Campus,  
Near CST, Mumbai-400 001.
- 3) The Deputy Director of Health Services,  
(HIVS), Naidu Hospital Compound,  
Kenedy Road, Behind Pune Railway Station,  
Pune-411 001.

**Respondents.**

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**S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.**

**Shri Sainis, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri A.D. Karanjkar, Member (J).**

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**JUDGMENT****Per : Member (J).****(Delivered on this 22<sup>nd</sup> day of January,2019)**

Heard Shri D.M. Kakani, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant is claiming correction in the seniority list of the years 2014 and 2015 and also praying for time bound promotion.

The facts are as under –

3. The applicant was appointed as Statistical Assistant on contractual basis in the year 2001. It was specified in the Government G.R. dated 18/05/2001 that the post was till completion of the project and on completion of the project the post shall abolish automatically.

4. The applicant filed O.A.No.583/2005 and requested for his absorption in the service on the post of Statistical Assistant. In O.A.No.583/2005 it was brought to the notice of the Bench that as per the G.R. the applicant was appointed only till completion of the project and after completion of the project post shall abolish, therefore, the applicant had no right to claim the post. It was also brought to the notice that the post of Statistical Assistant was a promotional post and it was not permissible to fill the post by direct recruitment.

5. When the O.A.No. 583/2005 was pending it transpired that 22 Statistical Investigators were to be promoted as Statistical Assistants and therefore, the advertisement was published to fill 22 posts of Statistical Investigators. The applicant had filed the C.A.No.91/2007 requesting to absorb him on one post of Statistical Investigator. The Bench vide order dated 16/04/2007 directed to keep one post of statistical investigator vacant for the applicant. The Bench ultimately held that it was not permissible to absorb the applicant on the post of Statistical Assistant and consequently directed the respondents to appoint the applicant as Statistical Investigator from the Open category on the post which was kept vacant. In accordance with this order the applicant resumed duty as statistical assistant on 15-12-2007.

6. It appears from the record and proceeding that on 30<sup>th</sup> June,2008 the Deputy Director of Health Services, Pune passed order and directed to regularise the services of the applicant from 17/10/2001 till 14/12/2007 (till appointment of the applicant on the post of Statistical Investigator). It is submission of the applicant that as per the order passed by the Deputy Director his service was treated as continuous service from 17/10/2001 and seniority of the applicant was fixed. In the year 2008 the applicant was at sr.no.39, in the year 2009 at sr.no.31, in the year 2010 at sr.no.27 and in the

year 2011 the respondents placed the applicant at sr.no.103 in the seniority list. Thereafter the applicant made representation and accordingly the list was corrected, and the applicant the was again placed at sr.no.26.

7. It is grievance of the applicant that thereafter in the year 2012 seniority list was published in which the applicant was shown at sr.no.102. The applicant thereafter made representation and requested the respondents to correct the seniority but it was in vain.

8. It is contention of the applicant that without giving opportunity of hearing seniority of the applicant was disturbed, disregarding the earlier order passed by the Deputy Director giving continuity to the applicant's service from 17/10/2001. It is submitted that this action of the respondents is illegal.

9. The second submission of the applicant is that as he joined the service in the year 2001 on completion of 12 years he became entitled to time bound promotion, but it is not given. It is submission of the applicant that the O.A. be allowed.

10. The respondents have filed their reply at page no.114 and resisted the application on the ground that though the applicant was appointed in service in the year 2001 but it was not a vacant post, the applicant was appointed till completion of the project. It is submitted that this position was examined in the previous O.A. No.583/205 and

this Bench refused to absorb the applicant on the post of Statistical Assistant. The second contention of the respondents is that the post of Statistical Assistant was promotional post and it could not be filled by nomination. According to the respondents as 22 Statistical Investigators were promoted on the post of Statistical Assistants, therefore, 22 posts of Statistical Investigator were vacant. At that time, the applicant himself made request to appoint him on the post of Statistical Investigator and accordingly direction was given by the Bench in O.A.No.583/2005. It is submission of the State that as the applicant accepted the post of Statistical Investigator he cannot claim seniority over Statistical Investigators who had joined the services before him. It is submitted that the fixation of the seniority by the department is correct and legal. It is further submitted that as the applicant has not completed 12 years service after joining the service as Statistical Investigator, therefore, he cannot claim time bound promotion.

11. We have heard the rival submissions on behalf of the applicant and on behalf of the respondents. The order passed by this Bench is a page no.28 at Anx-A-3. After reading this order it is crystal that the applicant was appointed in service as Statistical Assistant as per the Government G.R. dated 18/05/2001, as per this G.R. the applicant was appointed till completion of the project and his

appointment was liable to be terminated automatically on completion of the project.

12. It further appears that the applicant was apprehending his termination, therefore, he approached the MAT and filed O.A. No. 583/2005 and in that proceeding the C.A.No.91/2007 was moved by the applicant and request was made by him to absorb him on one post of Statistical Investigator as it was not possible to absorb the applicant on the post of Statistical Assistant, because it was promotional post. In this background the applicant was directed to be appointed on the post of Statistical Investigator from Open category on one post which was kept vacant.

13. In view of above situation it is clear that earlier the applicant was appointed on temporary post and the appointment was only till completion of the project, the applicant had no right to that post. Secondly as the department decided to fill 22 posts of Statistical Investigators the applicant himself made request for absorption in service on the post of Statistical Investigator and ultimately that request was granted. It is therefore clear that the persons who were already in service as Statistical Investigators when the applicant joined the duty as Statistical Investigator as per the order passed in O.A.No. 583/2005 dated 12/07/2007, were quite senior to the applicant. It is pertinent to note that while deciding the

O.A.No. 583/2005 no direction was issued by this Bench to give continuity in service to the applicant in the cadre of Statistical Investigator.

14. The learned counsel for the applicant is strongly relying upon the order passed by the Deputy Director of Health Services, Pune. It is submitted that by this order the continuity in service is given to the applicant from 17/10/2001. It is contended that in view of this order dated 30/06/2008 (Annx-A-4,P-36) now the respondent cannot disturb the seniority of the applicant.

15. The learned P.O. has submitted that the order dated 30/06/2008 giving continuity in service to the applicant from 17/10/2001 to 14/12/2007 is apparently erroneous because it is nowhere mentioned in the government G.R. dated 21/01/1980 to give seniority to the Project Affected Person.

16. We have gone through the Government G.R. dated 21/01/2018. After reading the G.R. it seems that the G.R. was regarding the reservations at the time of recruitment for appointing Project Affected Person and procedure was laid down how to fill the vacancies. The G.R. Dated 21/01/2018 does not say that seniority be given to the Project Affected Person. In this regard I would like to point out that in pursuance of the order dated 12/07/2007 passed by the MAT, Bench at Nagpur the applicant joined the duty on

15/12/2007. Therefore, the Statistical Investigators who had already joined the duty before the applicant were senior to him in the cadre of Statistical Investigator. The Department was misled and the continuity in service was granted to the applicant and therefore at the time of preparation of seniority list in the year 2008 and the applicant was placed at sr.no.39 above the Statistical Investigators who had joined the duty on 29/09/2003. It is important to note that without giving opportunity of hearing to these persons who had already joined the services as Statistical Investigator before the applicant, the seniority was fixed. It is contention of the respondents that this was injustice to the Statistical Investigators who had joined the service prior to applicant, consequently the action was taken by the department to re-fix the seniority and as per the joining date of the applicant / the order passed by the MAT, the applicant was placed at sr.no.102.

17. Once it is accepted that there was no question of absorption of the applicant on the post of Statistical Assistant, therefore, actually he had not case but considering his request in O.A.No. 583/2005 direction was issued to the Collector, Yavatmal to appoint the applicant on the post of Statistical Investigator. It is pertinent to note that in para-5 of the Judgment in O.A.No. 583/2005 it is observed that “ the Collector, Yavatmal has maintained the list of



Project Affected Persons and the applicant's name was recommended for the said post. We have gone through the said list. The name of the applicant is at sr.no.2." After reading the observations in para-5 it is crystal clear that when the matter was decided in 2007 the rank of the applicant was at sr.no.2 in the waiting list of the Project Affected Persons. As per law it was duty to the Collector to appoint the Project Affected Persons as per their serial numbers in the waiting list. However in the year 2001 the applicant was appointed as Statistical Assistant till completion of the project. It must be remembered that the applicant was aware that his appointment as Statistical Assistant was only for limited period. Similarly the applicant himself made representation in O.A.No. 583/2005 and requested to absorb him in service as Statistical Investigator and this Bench directed to appoint the applicant as Statistical Investigator. The relevant portion of the order is as under :-

*" Accordingly we direct the respondents to appoint the applicant as Statistical Investigator from open category on the post which was directed to be vacant for the candidate for open category."*

18. Thus it seems that it was a case of appointment on the post of Statistical Investigator, therefore, the seniority of the applicant was to be fixed since the date of joining and his past service which was in fact only till completion of the project could not be taken into

account. It seems that without considering the legal rights of the Statistical Investigators who were senior to the applicant, the seniority lists were prepared and published in the years 2008, 2009 and 2010, but does not give any right to the applicant to claim seniority over them. In view this discussion we do not see any merit in the case of the applicant that error is committed by the respondents while fixation of seniority of the applicant in the year 2012 and onwards. We hold that the respondents have rightly fixed the seniority of the applicant. So far as the claim for time bound promotion is concerned, as the applicant joined the service on 15/12/2007 he has not completed period of 12 years and therefore the applicant is not entitled for the benefit of time bound promotion.

19. The learned counsel for the applicant placed reliance on the Judgment of **State of Maharashtra Vs. Uttam Vishnu Pawar (2008) 1 SCC (L&S),522.** It is submitted that an employee on transfer to a new department though may not get seniority but his experience in the past service counts for other benefits like promotion and higher pay scale.

20. In a matter before the Hon'ble Apex Court the respondent was working as Telephone Operator in the Irrigation Department of State of Maharashtra, he made request for his transfer from Mumbai Zone to Kolhapur Zone. The request of the respondent was

accepted and he was transferred on his own request from Mumbai Zone to Kolhapur Zone, therefore, he lost his seniority in the Mumbai Zone and he was shown the junior most in Kolhapur Zone and considering this fact, his past service in the Mumbai Zone was taken in account for giving benefit of time bound promotion. In our opinion the law laid down in case of the State of Maharashtra Vs. Uttam V. Pawar is not applicable to the present set of circumstances as the earlier service of the applicant was only till completion of the project, the applicant was not appointed on the vacant post following rules of recruitment and therefore in our opinion the applicant cannot claim the time bound promotion. In result we hold that the application is devoid of merits and liable to be dismissed. Hence the following order.

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(A.D. Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 22/01/2019.**

\*dnk.