

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 243/2015**

Dr. Sanjay Vitthalrao Jiddewar,  
Aged about 56 years,  
R/o O/o Tq. Health Officer,  
Ralegaon, Tah. Ralegaon,  
Distt. Yavatmal.

2. Shri Dr. Avinash Laxmanrao Deshmukh,  
Aged about 56 years,  
R/o O/o Tq. Health Officer, Kalamb,  
Tq. Kalamb, Distt. Yavatmal.

3. Shri Dr. Mohan Uttamrao Khadatkar,  
Aged 54 years,  
R/o O/o Taluka Health Officer, Babulgaon,  
Tah. Babulgaon, Distt. Yavatmal.

-----**Applicants.**

**Versus**

1. Govt. of Maharashtra,  
Through its Secretary,  
General Administration Deptt.  
Mantralaya, Mumbai.

2. The Director, Health Services,  
Arogya Bhavan, Fort. Mumbai.  
Mumbai.

3. The Dy. Director of Health Services,  
Akola Circle, Akola.

4. The District Health Officer .  
Zilla Parishad, Yavatmal.

----- **Respondents.**

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1. Shri N.B. Bargat, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondents 1 to 3.
  3. Shri D.A. Sonwane, Advocate for R/4.
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**CORAM :** B. Majumdar : Vice Chairman  
**DATE :** 27<sup>th</sup> April, 2016

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**ORDER**

The applicants, Medical Officers ( Ayurvedic ) have filed this O.A. aggrieved with an order of their transfer to different hospitals in Yavatmal Distt.

2. Vide G.R. dtd. 16/5/2007 the Govt. created the posts of Tq. Health Officers (THO) under the administrative control of the Chief Executive Officer (CEO), Z.P. The various duties and responsibilities of the THO are also specified in the G.R. On 12/10/2010 the CEO, Yavatmal posted the applicant no. 1 as THO, Zadgaon, Distt. Ralegaon, applicant no. 2 as THO, Kalamb and applicant no. 3 as THO, Babulgaon. It is to be noted here that the above orders mention the applicants as belonging to Maharashtra Medical

and Health Services, Group-A. On 25/9/2013 the Director of Health Services ( R/2) issued a circular communicating to all Dy. Directors and District Health Officers, Z.P., the instructions of the Additional Chief Secretary that the medical officers belonging to District Technical Services ( Group-B) should not be posted as THO, which is a Group-A post, as this amounts to an administrative irregularity. All such Group-B officers should be transferred and posted elsewhere. On 31/5/2015 R/2 issued an order transferring the applicant no. 1 as Medical Officer, Zadgaon, Tq. Ralegaon, applicant no. 2 as Medical Officer, Tq. Kalamb and applicant no. 3 as Medical Officer, Tq. Babulgaon. The order states that they are all Group-B Medical Officers. The applicants have challenged the legality of this order in the O.A. The applicants were relieved by the CEO on 1/6/2015.

3. The applicants' grievance is that they were promoted as THO in 2010 and placed in the pay band of Rs.15,600-39,100/- + Grade Pay of Rs.5400/-. As the minimum of their pay scale is above Rs.11,500/-, in terms of the G.R.

dtd. 2/7/2001 on classification of grades as per pay scales, they are in Group-A. The order of CEO, Yavatmal dtd.12/10/2010 posting them as THOs mentions their status as Group-A Officers. Further, their names are included in the seniority list of Medical Officers, Group-A published on 3/1/2010. Thus, according to the applicants, they belong to Group-A of the Maharashtra Medical and Health Services and hence in terms of the provisions of Sections 4 and 6 of the Transfer Act, R/2 was not competent to transfer them.

4. R/2, the Director of Health Services and R/3, Dy. Director of Health Services in their affidavit-in-reply submit that the applicants, who possess BAMS qualification, belong to Maharashtra Medical and Health Services, Group-B and not Group-A. They are also not Group-A officers as per the recruitment rules. They then submit as follows :-

***“ It is further stated that the applicants are initially posted as a B.A.M.S. Medical Officers in the Group-C in Zilla Parishad (Zilla Tantric Savarga). After that as per Government***

***Resolution issued by the Public Health Department on 28/5/2001 Gazetted status was granted to them. Further by the Government Resolution dated 17/10/2014, these Medical Officers were absorbed as a "Group-B" Medical Officers in Public Health Department with retrospective effect from 2001. The appointments of Group-A Medical Officers are either through M.P.S.C. or through Staff Selection Board under the chairmanship of Principal Secretary of Health. Therefore the applicant is recommended neither by Maharashtra Public Service Commission or Staff Selection Board under the Chairmanship of Principal Secretary of Health. So he cannot be treated as a Group-A Medical Officer."***

5. They further submit that the pay band of the applicants is Rs.9300-34800 with Grade Pay (G.P.) of Rs.4600/- . They are drawing the higher GP of Rs.5400/- due to time bound promotion. They rely on the order dtd. 25/6/2015 of the Principal Bench of this Tribunal at Mumbai in O.A. No.469/2012 filed by similarly placed Ayurvedic Medical

Officers, who were originally appointed in District Technical Services, Group-C and were later absorbed in the State Medical Service. The Tribunal had held that these Ayurvedic Medical Officers were not entitled to the G.P. of Rs.5400/-. Thus it is a settled issue that these applicants belong to Group-B. They also rely on the Govt.'s letter dtd. 29/5/2015 (Annexure-R-II) which clarifies that the pay band of Rs.9300-34800 with G.P. of Rs.4600 is applicable to Group-B Officers in the Directorate of Health Services.

6. The District Health Officer, Z.P. ( R/4) in his reply submits that posting of the applicants as THO in terms of the G.R. dtd. 16/5/2007 did not involve promotion to the post. As per the G.R. dtd. 2/7/2002, the applicants fall in Group-B. The State Govt. never included the applicants in the Group-A Service. As per the seniority list dtd. 2/11/2013 of 869 Medical Officers, the applicants are shown in Group-B. He also relies on the circular dtd. 25/9/2013 of R/2 which states that Group-B Medical Officers should not be given charge of THOs.



7. Shri N.B. Bargat, Id. Counsel for the applicant mainly reiterated the submissions of the applicant made in the O.A.
8. Shri M.I. Khan, the Id. P.O. for R/1 to 3 and Shri D.A. Sonwane, Id. Counsel for R/4 submitted that the applicants were never appointed or promoted as Medical Officers, Group-A. They were initially appointed as Medical Officers in the cadre of District Level Technical Services, Group-'C'. Vide G.Rs. dtd. 28/5/2001 and 17/10/2014 they were absorbed in the Maharashtra Medical and Health Services, Group-B. As the Govt. had taken a decision that the post of THO belongs to Group-A, the applicants could not have been continued as THOs and were therefore required to be transferred to Group-B posts. As R/2 is competent to transfer Group-B Officers, no illegality has been committed by him in issuing the impugned order dtd. 31/5/2015.
9. After hearing the arguments on both the sides and after going through the documents placed before me, I find that

the applicants' only grievance is that as they are Group-A Medical Officers, R/2 was not competent to transfer them vide the impugned order dtd. 31/5/2015.

10. Certain facts are not disputed. The applicants were originally appointed as Medical Officers, Group-C in the District Technical Services and they were absorbed subsequently in the Maharashtra Medical and Health Services, Group-B. This is seen from the following G.Rs :-

- a) Vide G.R. dtd. 28/5/2009, the Medical Officers in Z.P. in the District Technical Services ( Group-C) were granted the pay band of Rs.6500-10500 along with the Gazetted d status ( Group-B ).
- b) Vide G.R. dtd. 17/10/2014, 969 Medical Officers in the District Technical Services, Group-C were absorbed in the Maharashtra Medical and Health Services, Group-B. The applicants are among these officers.

11. It is thus clear that as recent as in 2014, the applicants were absorbed as Medical Officers , Group-B. The applicants could not produce before me any record to show

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that at any stage they were promoted or absorbed as Medical Officers, Group-A.

12. As regards their pay scale, the service book entries of the applicants show that they were wrongly granted the pay band of Rs.1560-39100 +GP of Rs. 5400/-, instead of Rs.9300-34000+ GP of 4600/- as per the 6<sup>th</sup> Pay Commission and a recovery was also ordered. This is clear from the following entry in the service book of Dr. Avinash Laxmanrao Deshmukh ( Applicant no. 2 ) :-

“ मा. अवर सचिव वित्त विभाग, मुंबई यांचे पत्र क्र. संकिर्ण १०१४/पत्र क्र.५३/सेवा-९ दि. २० मे २०१५ अन्वये वेतन पडताळणी पथक , अमरावती यांना प्राप्त झालेले असल्यामुळे त्यांचे पत्र क्र. वेपप/से.पु/पडताळणी/वै.आ.अधि/आयु./१५३०/१५ दि. १०/०६/२०१५ अन्वये या कार्यालयास कळविण्यात आले की दि. २८/०५/२००९ व १७/१०/२०१४ च्या शासन निर्णयान्वये जिल्हा परिषदेकडील वैद्यकिय अधिकारी (तांत्रिक)गट-क यांचे गट ब मध्ये समावेशन झाले आहे. त्यामुळे त्यांना रु.१५६००-३९१०० ग्रेड पे ५४००/- ही वेतनसंरचना अनुज्ञेय ठरत नाही. ही धारणा पक्की करण्यात आलेली असल्यामुळे त्यांना दि. ११ फेब्रुवारी २०१३ च्या शासन निर्णयान्वये अनु.क्र. ४३ (३) पृष्ठ क्र. १६ अन्वये महाराष्ट्र वैद्यकिय व आरोग्य सेवा गट -ब (वैद्यकिय अधिकारी) यांना वेतन

बॅंड रू. ९३००-३४८०० ग्रेड वेतन ४६००/-मंजूर करण्यात आलेली आहे. तेव्हा त्यांना सहाव्या वेतन आयागानुसार रू. १५६००-३९१०० ग्रेड पे ५४०० या वेतन श्रेणीत २३/४/२००९ ते ३१/१०/ २०१३ पर्यंत चुकीच्या वेतन निश्चितीमुळे अतिप्रदान झालेल्या ज्यादा प्रदान रकमेची वसुली रू.४,४०,५९२/- (अक्षरी चार लाख चाळीस हजार पाचशे बारा रू) वेतनातून वसूल करावी.”

12. O.A. No.469/2012 was filed at the Mumbai Bench of this Tribunal by 41 Ayurvedic Medical Officers who were similarly placed as the applicants. The application was disposed of by the Tribunal vide its order dtd. 25/6/2015 by holding that on absorption in the State Medical Services from the District Technical Services, Group-C, the applicants came to Group-B and were entitled to the pay band of Rs.9300-34000 with G.P. of Rs.4600 and not Rs.5400/.

13. The applicants have also relied on the order of this Bench of the Tribunal in O.As. No. 254 & 350 of 2015 filed by Dr. Satish Pradhan and Dr. Rajendra Rahate challenging the same order which is impugned in the present O.A. The Tribunal, vide its order dtd. 6/1/2016, held that as

the applicants in these O.As. are drawing pay in the pay band of Rs.15600-39100+ G.P.Rs.5400/-, they were Group-A Medical Officers and hence R/2 was not competent to transfer them. As already seen, the applicants are in the pay band of Rs.9300-34000 +GP Rs.4600 and hence the cases of these applicants are different from those of the present applicants.

14. In view of the above, I find that it is beyond any dispute that the applicants belong to Group-B of the Maharashtra Medical and Health Services and R/2 has committed no illegality by issuing the impugned order dtd. 31/5/2015. Thus the O.A. is without any merit, stands rejected with no order as to costs.

Skt.

sd/-  
( B. Majumdar )  
Vice-Chairman.