

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 321/2015

Dr. Bharatsing Deorao Rathod,
Aged about 34 years,
R/o 25, Old Subhedar Layout,
Shard Chowk, near Adarsha
Vidya Mandir, Nagpur.

2. Dr. Sunita Girdhar Rathod,
Aged about 42 years,
R/o Royal Residency Apartment,
201/1, Phtao Square, Jatharpeth,
Akola.

-----**Applicants**

Versus

1. The State of Maharashtra,
Through its Secretary, Deptt.,
of Medical Education and Research,
Mantralaya, Mumbai.
2. The Maharashtra Public Service Commission,
^{Kulpresh}
~~Cooperage~~ Telephone Exchange Building,
8th Floor, Maharshi Karve Road,
Cooperage Mumbai, through
its Chairman.
3. Dr. Rashmi Moreshwar Wahane,
Asst. Professor, Deptt. of Medicine,
Govt. Medical College, Nagpur.
4. Dr. Sachin Nandkishore Solanke,
Asst. Professor, Deptt. of Medicine,
Govt. Medical College,

Panchakki Road, Aurangabad.

5. Dr. Kapil Sheshrao More,
127, Prandya Niwas,
Vivek Nagar, Nanded.

----- Respondents.

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1. Shri N.R. Saboo, Advocate for the applicant.
 2. Shri A.P. Sadavarte, Presenting Officer for the Respondents 1 and 2.
 3. None for R/3 to 5.

CORAM : B. Majumdar : Vice Chairman
and

S.S. Hingne : Member (J)

DATE : 7th April, 2016

ORDER

PER VICE-CHAIRMAN

The applicants have filed this O.A. as they are aggrieved that they have not been selected for the post of Associate Professor (General Medicine), Group-A.

2. On 30/6/2014, the MPSC (R/2) issued an advertisement No.165/2014 for 22 posts of Associate Professor in General Medicine, Group-A in the Govt. Medical College. These included 1 post for NT(C) (Sports), 5 posts

for Open (General), 4 posts for Open (Female) and 3 posts for SC (General). The applicant no. 1 applied in response to the advertisement from the category of VJ (A)(General) and the applicant no. 2 applied from VJ(A) (Female). Respondent no. 3, Rashmi Moreshwar Wahane applied from S.C. Respondent no. 4, Sachin Nandkishore Solanke and Respondent no. 5, Kapil Sheshrao More applied from Open (General). The MPSC first published a merit list (Page-21 of PB) with a foot-note which states that the candidates at Sr. Nos. 4,12 and 18 (the places are kept blank) were held eligible for interview from the category of NT-(C) (Sports) and views of the Govt. with regard to interchangeability for the posts. Pending this, the results are held back. Subsequently on 28/5/2015 the MPSC published a select list. As per this list R/3 is selected from SC, R/4 and R/5 from Open (Female). No candidate is shown to have been selected for the post from NT-C (Sports) presumably as the Govt.'s decision with regard to interchangeability was awaited. The applicants have challenged this list. On 28/8/2015 the Govt.

informed the MPSC that as per the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001, the post in NT/DT can be interchanged if no suitable candidate is found in one category. Subsequently MPSC (R/2) issued another merit list (page 47 of PB).

3. The applicants submit that four seats were reserved for Open (Female) . In the merit list prepared by MPSC at 47 of PB it is shown that only one female was available for Open category and the remaining three seats were de-reserved and categorized as Open (General). While doing this Rashmi Moreshwar Wahane (R/3) who belongs to SC could have been considered against Open (General) but she was considered from SC. They further submit that as it is a clearly laid down policy of the Govt. to interchange between NT and DT categories if a candidate is not available in one category the applicants should have been considered on merit for appointment from the category of NT-C.

4. R/2-MPSC in its reply submits that R/3 has been recommended against SC category on merit. As per her merit rank she could not get recommended against Open (General) category. Besides, as per Govt. Circular dated 13/8/2014 candidates from purely Open category can only be considered against any vacancies available in Open (Female) category and hence she was not considered against the Open (Female) category. The respondent further states that the R/3 could not be recommended against Open (General) as she was low in merit. Similarly the applicant no. 1, who is at Sr. No. 4 in merit cannot be considered for the post of Open (General) for the reason that he does not fulfill the short-listing criteria for that category. The respondent concludes by stating as follows :-

“ Result of 3 candidates (1 NT(C) post) was withheld for the opinion of the Government regarding interchangeability amongst DT(A), NT(B), NT(C) and NT(D) categories, Declaration of the remaining result is under consideration

of the Commission as the opinion of the government has been received."

5. It may be stated here that the R/2 filed an additional affidavit on 17/3/2016 vide which he submitted the short-listing criteria for Open (General) category. The affidavit states that the applicant along with Smt. Shital Rathod was called for interview for the post of NT(C) (Sports) as per interchangeability rules. These candidates were found ineligible for Open category as per the short-listing criteria and the applicant was considered and recommended against NT(C) (Sports) post only. The applicant no. 2 was considered for both the Open and NT(C). However, she could not get recommended as she was low in merit.

6. Shri N.R. Saboo, Id. Counsel for the applicant as also Shri A.P. Sadavarte, Id. P.O. for the respondents reiterated the submissions on the respective sides.

7. For adjudicating into the issue raised in the

present O.A. we rely on the final merit list (page 47 of the O.A.). As per the advertisement in the Open category 5 posts were available for Open (General) and 4 for Open (Female) . It is undisputed that if no Open (Female) candidate is available , the post is required to be de-reserved and taken in the pool of Open (General) . As regards the 5 vacancies in Open(General), as per the existing rules and the law laid down by the Supreme Court, the first 5 candidates as per merit are required to be selected against these 5 posts. The applicant no. 1 is at merit list No. 4. However as per MPSC he does not fulfill the short-listing criteria for Open (General) and hence he cannot be selected from that category.

8. The applicant at Sr. No. 1 in merit Dipti Bhagwandas Gujar is a female candidate. As she qualifies on merit for the post of Open (General), out of 4 posts in Open (Female) now only 3 are required to be filled

from female candidates. Thus, a total of 6 posts for Open (General) are required to be considered as per merit excluding the applicant no. 1. Hence the candidates at merit position nos. 1, 2, 3, 5, 6 and 7 are to be selected from Open (General) category.

9. From the merit list we find that the candidate at Sr. No.7, Baporikar Madhuri Narayan, who now stood qualified from Open (General) is a female candidate and belongs to the Open category. Hence the number of candidates to be selected from Open(Female) gets further reduced from 3 to 2. However, there are no more female candidates from female category in the remaining merit list. Thus, all the posts from the Open category are required to be treated as Open (General) and consequently, the candidates at merit No. 1,2,3 and 5 to 10 will have to be considered against these 9 posts of Open (General). There is however a presumption that all these candidates fulfill the short-listing criteria for Open (General). The MPSC has not made any denial in this regard.

10. We now come to the vacant post of NT (C). The Govt. has confirmed that the post of NT (C) can be filled from the candidate belonging to DT(A). As per the merit list there are 3 candidates from DT(A). The applicants are at Sr. No. 4 and 12, while the third candidate Smt. Shital Rathod is at Sr. No. 18. Hence, the applicant no. 1, who is the highest scorer from that category is eligible for selection from the category of NT (C)/DT(A). We further observed that the R/3 Rashmi Moreshwar Wahane has been selected against the category of SC. As we have seen above , she is required to be selected from Open (General) . In that case three slots for SC will go to the next three candidates from the SC in merit, i.e. candidates at Sr. Nos. 15,16 and 20. To sum up, by strictly following the law as laid down by the Supreme Court in its various judgment including in Rajesh Daria, the MPSC is required to carry out the selection of candidates in the above 3 categories based on merit as follows :-

- a) Open (General) 9 posts : Merit list Sr. No. 1, 2,3 and 5 to 10.

- b) NT (C)/DT (A) 1 post : Applicant No. 1 (Merit list No. 4).
- c) SC 3 posts : Merit list Sr. Nos.15, 16 and 20.

11. The O.A. therefore stands disposed of in terms of the following directions :-

- mm* a) The impugned ^{*select*}~~seniority~~ list dtd. 28/5/2015 is quashed and set aside.
- b) The MPSC is directed to prepare a fresh seniority list keeping in view the observations made by us as above.
- c) Consequently, Applicant, Dr. Bharatsing Deorao Rathod is required to be selected from the category of NT (C)/DT (A).
- d) The MPSC will complete the exercise as per our directions as above and publish the select list within 6 weeks from the date of receipt of this order and recommend the names of the selected candidates to the Govt. for appointment immediately thereafter.

sd/-

(S.S. Hingne)
Member (J)

sd/-

(B.Majumdar)
Vice-Chairman.

Skt.