

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 123 OF 2014**

DIST. : AURANGABAD

Rajesh Ramkrishna Potpallewar,  
Age. 44 years, Occ. Service,  
R/o Plot no. 89-A, Nath Prangan,  
Shivajinagar, Aurangabad.

-- APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through the Secretary,  
Medical Education & Drugs Department,  
Mantralaya, Mumbai – 32.  
(Copy to be served on  
Presenting Officer, M.A.T.,  
Aurangabad Bench).

2. The Dean,  
Govt. Medical College & Hospital,  
Aurangabad.

3. The Medical Board,  
Through Dean Medical College  
And Hospital, Aurangabad.

-- RESPONDENTS

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APPEARANCE : Shri Vivek Pingle, learned Advocate for the  
applicant.

: Shri I.S. Thorat, learned Presenting Officer  
for the respondents.  
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**Coram :** Hon'ble Shri Justice M.T. Joshi, Vice Chairman

**Date :** 13-06-2017

**ORAL ORDER**

Heard Shri V.G. Pingle, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. The present original application has been filed by the applicant for quashing and setting aside the impugned communications issued by the res. no. 2 dated 9.8.2012 and 13.1.2014 regarding benefits for the physically handicapped employees.

3. The applicant is serving with the res. no. 2 as a Sr. Clerk. According to him, he met with an accident on 17.8.2007 and he became disabled by his right leg by 42% by M.B. scale. The Doctors of department of Orthopedic of Government Medical College & Hospital, Aurangabad after examining the applicant, issued certificate to that effect. When the applicant applied for concession vide letter dated 9.8.2012, the res. no. 2 referred the case of the applicant for medical verification to the res. no. 3 i. e. the Medical Board, Aurangabad. The Medical Board opined that disability of the applicant would be 31% and therefore benefits of handicapped person has been denied to the applicant vide its letter / communication dated 13.1.2014.

4. According to the applicant, as per the Circular dated 16.5.2002 (Exh. C) it was not necessary for the respondents to verify the said

certificate which is issued by the authority equivalent to District Civil Surgeon.

5. During the pendency of the present original application, the applicant got himself examined independently through online procedure on 2.3.2017. The copy of the said certificate is produced on record by the applicant at Exh. 'X'. This certificate would also show that it was issued by the Board consisting of Assistant Professor and Medical Superintendent / President of Govt. Medical College & Hospital, Aurangabad. It would show that the applicant is suffering 42% physical impairment disability to right lower limb shortening with ankle stiffness (Exh. X of the original application).

6. In the circumstances, the learned Advocate for the applicant submits that, since now it is again confirmed that the applicant is suffering from 42% disability, the impugned communications issued by the res. no. 2 be quashed and set aside.

7. Additionally the learned P.O. relied on the judgment of the Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in writ petition no. 6912/2012 dated 29.1.2014, wherein it is held that the Medical Board constituted of experts had reached to the conclusion that the degree of disability, to the extent of 40%, is properly certified and therefore no interference is called for in exercise of extraordinary writ jurisdiction.

8. In view of different percentage given in 2 different certificates, this Tribunal vide order dated 15.3.2017 directed the Dean, Govt. Medical College & Hospital, Aurangabad to explain the difference between these two certificates. Accordingly, Mr. Chandrakant Bhaskar Mhaske, Dean has filed his affidavit in reply. He explained that, there is no anomaly in these two certificates as there is a difference of 4 years between examining the present applicant. He further submits that, difference could occur due to lapse of four years period after issuance of first physical handicapped certificate. He sworn that a person always faces the degenerative changes and deterioration in the human body due to age and hence the aforesaid variations may occur in the percentage of disability of the applicant and, therefore, the present applicant is not entitled for benefits available to the disabled persons.

9. The learned Advocate for the applicant pointed out from Circular dated 16.5.2009 Exh. (C), wherein it is advised that, there is no necessity to send the disability certificate for scrutiny again, in case the same is issued by the Dist. Civil Surgeon. In the circumstances, he submits that, since the first certificate was issued by the Orthopedic Department and counter signed by authority equivalent to Civil Surgeon i. e. the Medical Superintendent of Govt. Medical College, Aurangabad, the respondents ought not to have sent the certificate for verification.

10. The learned P.O. makes a statement that the posts of the Dist. Civil Surgeon and the Head of Orthopedics Department or Medical

Superintendent are two different posts. The posts could not be equated with each other and, therefore, the said Circular could not be made applicable in the present case. In the circumstances, according to him, the Dean, Govt. Medical College & Hospital, Aurangabad was right in referring the applicant's case to Medical Board.

11. Upon hearing both the sides, in my view, since the original certificate on which reliance is placed by the learned Advocate for the applicant is issued by the Orthopedic Department's Head and not by the Dist. Civil Surgeon and, therefore, rightly the res. no. 2 referred the case of the applicant to the Medical Board. The recent examination of the applicant would not help him in view of the affidavit of present Dean. Hence, there is no merit in the present original application and the same is dismissed without any order as to costs.

**VICE CHAIRMAN**

ARJ-O.A. NO. 123-2014 J. MTJ (DIRECTIONS)