

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1 OF 2016**

DISTRICT : THANE

Shri Avinash Bajirao Shinolikar,)
Aged 40 years, General Manager, Administration and)
Human Resources Development,)
M/s. International Cargo Terminals and)
Infrastructure Pvt. Ltd., Container Freight Station,)
Sector-8, Dronagiri, Tal. Uran, Raigad, Navi Mumbai)
R/o House No.2104, Vasundhara Heights, Sector 11,)
Sanpada, Navi Mumbai, District Thane)..Applicant

Versus

1. The Chairman/Secretary,)
Maharashtra Public Service Commission,)
3rd floor, Bank of India Building, M.G. Road,)
Fort, Mumbai 400001)
2. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.D. Karanjkar, Member (J)
RESERVED ON : 18th June, 2019
PRONOUNCED ON : 21st June, 2019
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Brief facts of the case:

2. Respondent No.1 (MPSC) issued an advertisement for the post of Chief Administrative Officer (CAO) Group A on 7.2.2014. The required educational qualification was stated as under:

“४.५ शैक्षणिक अर्हता व अनुभव :-

(ii) *Possess executive or administrative experience or both, for a period of not less than seven years, gained after acquiring the qualification mentioned in sub clause (i) above, in a Government Department, Commercial concern, Local authority or a Corporation or Board established by the Government.”*

(Quoted from page 71 of OA)

3. In response to the same the Applicant applied online and claimed to possess following educational qualification and experience:

I) Educational Qualification : B.A.

II) Experience:

Name & Educational Qualification	Sr No	Organisation/ Department	Designation	Nature of Post	Pay Band-Grade Pay (Basic Pay)	Period (From Date to To Date)
Avinash Bajirao Shinolikar B.A.	1	Bhansali Bright Bars Pvt. Ltd.	Manager Head of Department	Administrative	7770-0 (4280)	1.6.1999 to 28.1.2003
	2	Hyva India Pvt. Ltd.	Executive	Administrative	12103-0 (5800)	3.2.2003 to 4.6.2004
	3	Seabird Marine Services Pvt. Ltd.	Assistant General Manager	Executive	40000-0 (14000)	7.6.2004 to 15.2.2014 ”

(Quoted from page 124/141 of OA)

4. Following the same, screening test was conducted on 3.8.2014 and the result declared on 27.3.2015. Since the Applicant cleared the written test and qualified for interview he was interviewed on 14.5.2015 on the condition that he fulfills all the terms and conditions mentioned in the advertisement. Following the directives of this Tribunal, clarification was sought from the Government about the validity of the experience of the candidates called for interview. On 13.7.2015 after examining out of 14 candidates referred to the Government, 13 did not fulfill the conditions of requisite experience. The Government informed Respondent no.1 by letter dated 13.7.2015 that the experience of the Applicant is in private sector and, therefore, it cannot be held valid for the post (Exhibit R-4 page 154 of OA). As the experience of the Applicant was not valid for the post advertised, Respondent no.1 held him ineligible for the post. Respondent no.1, therefore, issued him the impugned letter dated 5.9.2015. The relevant portion of the same reads as under:

“उपरोक्त विषयासंदर्भात आपल्या दिनांक १४ मे, २०१५ रोजीच्या मुलाखतीसंदर्भात आपणास असे कळविण्यात येते की, प्रस्तुत पदाच्या ऑन लाईन आवेदनपत्रात आपण खालील आस्थापनेमध्ये काम करीत असल्याचा दावा केला होता.

Sr. No.	Department	Designation	From Date	To Date	Remark
1	Bhansali Bright Bars Pvt. Ltd.	HOD	1/6/1999	28/01/2003	Private establishment experience is not valid experience
2	Hyva India Pvt. Ltd.	Executive	3/2/2003	5/6/2004	
3	Seabird Marine Services Pvt. Ltd.	Asst. General Manager	3/5/2004	30/11/2014	

प्रस्तुत पदाच्या जाहिरातीतील, परिच्छेद क्रमांक ४.५ (ii) मधील तरतुदीनुसार आपला अनुभव ग्रहण ठरत नाही, असे शासनाने दिनांक १३ जुलै, २०१५ रोजीच्या पत्रान्वये आयोगास कळविले आहेत. यास्तव, प्रस्तुत पदाची आपली उमेदवारी रद्द करण्यात येत आहे, याची कृपया नोंद घ्यावी.”

(Quoted from page 26 of OA)

5. The grounds in support of his claim mentioned by the Applicant in the OA are summarized as under:

(1) *Commercial concern would and should include even private company where the Applicant was working and the commercial concern need not be established by the Government.*

(2) *As per the definition of the word “commercial concern” from Shops and Establishment Act it does not convey that it is established by the Government.*

(3) *The Applicant has cleared the screening test and, therefore, cancelling his candidature is not appropriate.*

(4) *If the word ‘commercial concern’ is interpreted as considered by the Respondents then only employees belonging to the State Government would*

become eligible to compete for the said post. This narrow interpretation would offend Article 14 and 16 of the Constitution of India.

(5) '6.21 That in fact, in respect of the very same post of the Chief Administrative Officer belonging to the Medical Education and Drugs Department or for that matter in respect of the post of the Administrative Officer, Assistant Administrative Officer, Superintendent or Assistant Commissioner belonging to the other Departments of the State Government, it is clear that the very same Respondent no.1 herein issued similar advertisement calling for applications, when the candidates possessing a similar experience in the Commercial Concern like that of the petitioner, have been held to be not only eligible and qualified but are given appointment in these posts by the respective Departments of the State Government and others. (Page 14-15 of OA)'

(6) The impugned order is malafide, arbitrary and illegal.

6. The Applicant has, therefore, prayed to quash the impugned order with consequential service benefits (prayer clause 9(a) & (b) page 22 of OA).

7. The Ld. Advocate for the Applicant has relied on the following judgments:

(i) Shri Krishan Vs. Kurukshetra University, Kurukshetra, AIR 1976 SC 376.

(ii) The State of Maharashtra Vs. Vasant Anat Balel, Writ Petition No.2260 of 2018 & Ors. decided by Hon'ble Bombay High Court on 26.6.2018.

(iii) Pravin Mohanrao Unhale Vs. State of Maharashtra & Anr, 2009(2) Mh.L.J. 503.

(iv) *Shri Subhash Kashiram Marsale Vs. The Joint Director of Vocational Education & Training, Nasik, OA No.335 of 2013 & Ors. decided by this Tribunal on 29.7.2016.*

8. The above judgments are not relevant as the facts and circumstances mentioned in the same are different.

9. The Respondents No.1 and 2 by filing affidavit in reply have resisted the contentions raised by the Applicant. The Respondent no.1 has stated as under:

“9. As per the recruitment rules the qualification and experience required for the Administrative Officer, Group-B are as follows:

(i) possess a degree or a qualification recognized by the Government to be equivalent thereto; and

(ii) possess experience in office administration for a period of not less than five years of which at least three years experience should be in a supervisory capacity in a post comparable to that of Superintendent or Head Clerk under Government or under a Local Authority or Commercial establishment or a Corporation or Board established by Government; and

(iii) Have adequate knowledge of Marathi, so as to be able to speak, read and write the language with facility.”

(Quoted from page 210 of OA)

10. The Principal Secretary-Respondent no.2 in his affidavit has also resisted the contention. The relevant portion of the same is as under:

“3. With reference to para No.6.21 I say and submit that the Applicants experience is in the private sector therefore it cannot be held valid for the post of Chief Administrative Officer as per the recruitment rules. It was also mentioned in the advertisement, under para 4.5 “शैक्षणिक अर्हता व अनुभव” i) possess a degree or any other qualification recognized by the Government to be equivalent thereto, and ii) Possess executive or administrative experience or both, for a period of not less than seven years, gained after acquiring the qualification mentioned in sub clause (i) above, in a Government Department, Commercial concern, Local authority or a Corporation or Board established by the Government, and iii) Have adequate knowledge of Marathi, so as to enable to speak, read and write the language with facility, knowing well the Applicant has applied. And this advertisement was only for the Chief Administrative Officer of Public Health and not for other departments.

4. In the said para the Applicant has mentioned that the very same post of the Chief Administrative Officer belonging to the Medical Education Department or for the post of Administrative Officer, Assistant Administrative Officer, Superintendent or Assistant Commissioner belonging to the other departments, the Respondent No.1 MPSC issued similar advertisement and the candidates possessing a similar experience in the commercial concern like that of the petitioner have been held to be eligible and qualified and are given appointment in this post by the respective department of the State Government. It is submitted that each and every department has its own recruitment rules and they are separate for the posts by taking into consideration the duties and responsibilities. Therefore recruitment of other departments cannot be compared with the selection procedure of this Department’s said post.”

(Quoted from page 216 of OA)

11. The Respondents have, therefore prayed that the OA is without any merits and the same should be dismissed.

12. Issue for consideration:

(i) Whether the term 'Commercial Concern' as mentioned in the required experience in the advertisement means commercial concern established by the Government or whether it should be interpreted as any commercial concern including private houses?

Discussion and findings:

13. Respondent no.1 has advertised this particular post as requisitioned by the Respondent no.2. The post of the CAO in Health Department is a supervisory post comparable to Superintendent who is required to be thorough with the various procedures in purchases, establishment matters, preparation of policy papers etc. A person who has no exposure to the rules and regulations of the Government at the earlier level cannot claim to be senior, effectively. Most of the times he would continue to be in dark about the precedents, procedure and various Government rules and regulations. Howsoever, his exposure in private services including commercial establishment cannot equip him to acquire the knowledge required as a supervisory person in the Government immediately at the time of his appointment. The experience, therefore, mentioned in the advertisement needs to be recalled. The relevant portion reads as under:

“(ii) Possess executive or administrative experience or both, for a period of not less than seven years, gained after acquiring the qualification mentioned in sub clause (i) above, in a Government Department, Commercial concern, Local authority or a Corporation or Board established by the Government.”

14. There is no scope to imagine how a person who has had no exposure to the Government procedure can claim to be eligible in the above list.

15. The grounds furnished by the Applicant viz. his rejection would prevent general citizens from entering the Government service is not tenable. The job requirement is specific to the Department of Health which has to deal with patients and their requirements on a large scale.

16. We, therefore, do not find any merit in the arguments advanced by the Applicant in support of his claim. The OA is, therefore, devoid of any merit and deserves to be dismissed.

17. OA is dismissed with no order as to costs.

Sd/-

(A.D. Karanjkar)
Member (J)
21.6.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
21.6.2019

Dictation taken by: S.G. Jawalkar.