

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.209 OF 2017**

**WITH**

**ORIGINAL APPLICATION NO.468 OF 2019**

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**ORIGINAL APPLICATION NO.209 OF 2017**

**DISTRICT : PUNE**

Smt. Bhavana Suresh Chaudhari, )  
Chief Administrative Officer, Public Health Department,) )  
R/at Type V, District Hospital Officers' Quarters, ) )  
Aundh Chhawani, Pune 411027 )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Principal Secretary, )  
Public Health Department, Mantralaya, Mumbai )
2. Maharashtra Public Service Commission, )  
Through its Secretary, 5 ½ th & 8<sup>th</sup> Floor, )  
Cooperage MTNL Building, M.K. Road, Mumbai )
3. Director/Commissioner & Mission Director, )  
Directorate of Health Services, Aarogya Bhavan, )  
P.D'Mello Road, Mumbai 400001 )
4. Shri Kailas Butta Baviskar, )  
R/at Narmada, Plot No.18, N-12, J-1 Sector, )  
Vivekanand Nagar, HUDCO, Aurangabad 431003)..Respondents

**WITH****ORIGINAL APPLICATION NO.468 OF 2019  
(OA No.214/2018-Nagpur)****DISTRICT : NAGPUR**

Smt. Jyoti Kesharao Kannanke, )  
 Publicity and Media Officer in the office of )  
 Family Welfare Training Center, Mata Kacheri, )  
 Deeksha Bhoomi, Nagpur )  
 R/o E-1/24, Near KDK College, Vyankatesh Nagar, )  
 Nandanvan, Nagpur 440009 )..Applicant

Versus

1. The State of Maharashtra, )  
 Through its Principal Secretary, )  
 Public Health Department, Mantralaya, Mumbai )
2. Maharashtra Public Service Commission, )  
 Through its Secretary, 5 ½ th, 7<sup>th</sup> & 8<sup>th</sup> Floor, )  
 Cooperage MTNL Building, M.K. Road, )  
 Mumbai 400021 )
3. Director, Health Services, )  
 Health Services Directorate, Mumbai )
4. Shri Kailas Butta Baviskar, )  
 R/at Narmada, Plot No.18, N-12, J-1 Sector, )  
 Vivekanand Nagar, HUDCO, Aurangabad 431003)

5. Smt. Bhavana Suresh Chaudhari, )  
 R/o 2, Type V, District Officers' Quarters, )  
 Aundh Chhawani, Pune 411027 )..Respondents

Smt. B.S. Chaudhari – Applicant in person in OA No.209/2017

None for Applicant in OA No.468/2019

Smt. Archana B.K. – Presenting Officer for Respondents No.1 & 3

Shri Sandeep S. Dere – Special Counsel for Respondent No.2-MPSC

Shri A.S. Deshpande – Advocate for Respondent No.4

Shri R.D. Murkute – Advocate for Respondent No.5 in OA No.468/2019

'ABSENT'

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
 Shri A.P. Kurhekar, Member (J)  
 RESERVED ON : 25<sup>th</sup> September, 2019  
 PRONOUNCED ON : 1<sup>st</sup> October, 2019  
 PER : Shri P.N. Dixit, Vice-Chairman (A)

### **J U D G M E N T**

1. Heard Smt. B.S. Chaudhari, Applicant in person in OA No.209/2017, Smt. Archana B.K., learned Presenting Officer for Respondents No.1 & 3, Shri Sandeep S. Dere, learned Special Counsel for Respondent No.2-MPSC and Shri A.S. Deshpande, learned Advocate for Respondent No.4.

2. These two OAs are being disposed off by common judgment because the facts are exactly identical.

3. The applicants were not selected for the post of Deputy Director, Health Services. Aggrieved by the same they have challenged the selection of private respondent no.4 and prayed to quash his selection. Smt. B.S. Chaudhari – Applicant in OA No.209/2017 had pressed for interim relief and on 10.3.2017 this Tribunal had directed respondent no.3 to hold the interview of applicant Smt. B.S. Chaudhari.

4. Accordingly respondent no.3 conducted the interviews and published the merit list which reads as under:

उप संचालक, आरोग्य सेवा (कुटुंब कल्याण विस्तार), गट-अ  
(जाहिरात क्रमांक १७/२०१६)  
गुणव-ता यादी

अ. क्र.	उमेदवाराचे नाव	लिंग	वर्गवारी	ज्या वर्गवारीसाठी उमेदवाराचा विचार व्हावा ती वर्गवारी	शिफारस/ शेरा	मुलाखतीचे गुण	मु.क्र.	टोकन क
1.	Shri Baviskar Kailas Butta	M	OPEN	OPEN	OPEN-1	65	1	3
2.	Shri Borlepwar Narendra Vasantrya	M	OPEN	OPEN	No Post Available	60	3	5
3.	Smt. Chaudhari Bhavana Suresh	F	OBC (F) NCL YES तथापी NCL सादर केले नाही. यास्तव OPEN	OPEN	No Post Available	55	6	6
4.	Smt. Kannake Jyoti Kesharao	F	ST	OPEN	No Post Available	45	2	2
5.	Smt. Mohite Ratnakala Martandarav	F	OBC (F) NCL YES तथापी NCL सादर केले नाही. यास्तव OPEN	OPEN	No Post Available	41	4	1

टिप : प्रस्तुत निकाल मा. प्रशासकीय न्यायाधिकरण मुंबई येथे दाखल झालेल्या मुळ अर्ज क्र.२०९/२०१७ वरील मा. न्यायाधिकरणाच्या अंतिम आदेशाच्या अधिन राहून जाहीर केलेला आहे.

(Quoted from page 29 of OA No.468/19)

5. The advertisement dated 13.4.2016 for the post of Deputy Director Health Services (Family Welfare Extension) Gr. A (Exhibit A-1 page 25 of OA No.209/17) stated as under:

*“4.5 Candidate must possess:*

*4.5.1 A degree and;*

*4.5.2 A degree or diploma in Journalism;*

*4.5.3 Have adequate knowledge of Marathi; and*

*4.5.4 Have experience in the field of Journalism, editing and the like for not less than seven years in a newspaper, news agency or a publicity organization, gained after acquiring the qualifications mentioned in para 4.5.2.*

*Preference may be given to candidates having a degree or a diploma in Health Education, or Master’s degree in Social Science with experience of producing publicity material, pamphlets or brochures and the like for the family Welfare Programmes.”*

(Quoted from page 25 of OA No.209/17)

6. Applicant Smt. B.S. Chaudhari in her application form (Exhibit A-2 page 30 of OA No.209/17) mentioned about her experience in Journalism which totals up as 10 years 4 months and 20 days. The applicant has challenged selection of respondent no.4 on the grounds which are summarized as under:

(i) Though the advertisement mentions that the candidate should have experience in field of journalism and preference may be given to candidates having a degree or a diploma in Health Education, or Master’s degree in Social Science with experience of

producing publicity material, pamphlets or brochures and the like for the family Welfare Programmes, the selected candidate respondent no.4 was working as Ophthalmic Officer and nature of his duties is in no way related with Family Welfare Programmes, as pointed out by the State Family Welfare Office (Exhibit A-14 page 53 of OA No.209/17).

(ii) The short listing of the candidates is arbitrary.

(iii) The applicant is most eligible candidate as she fulfills the required educational qualification and has requisite relevant experience.

7. Smt. J.K. Kannanke – Applicant in OA No.468 of 2019 has mentioned similar grounds in support of her prayer. She has stated that the job and duties of Ophthalmic officer does not include duties for publication of Family Welfare Programme, Health Education and Editing. According to the applicant she is the most eligible candidate and has vast experience. The applicant has further mentioned that in the case of respondent no.4 experience period during his Ph.D. work was not excluded.

8. Respondent no.2-MPSC and respondent no.4 have filed their affidavits in reply in both the OAs and contested the submissions made by the applicants in both the OAs. According to the submission made by respondent no.2:

(i) Short listing has been done as per rule 9(i) of the Rules of Procedure of Maharashtra Public Service Commission and candidates were called for interview in the ratio of 1:5. The provisions as to the method of applying short listing criteria have

been given in Rule 9(v)(a), 9(v)(b), 9(v)(c) and 9(v)(d) of the Rules of Procedure of the Commission.

(ii) Valid experience of applicant viz. Smt. B.S. Chaudhari as per details submitted by her in the online application form is 10 years 4 months and 20 days. This total experience is less than the short listing criteria and thus she was not eligible for interview.

(iii) As far as experience of the selected candidate and respondent no.4 is concerned, respondent no.2 has stated in the affidavit as under:

*“25.1 I say that the respondent no.4 Mr. Baviskar Kailas Butta (at Sr. No.1 in the list of shortlisted candidates and recommended to the Government for the said post) has claimed the total experience of 19 years, 8 months and 28 days in his application form for the said post, which is more than the cut off experience, required as per the short listing criteria. Accordingly he was rightly called for the interview of the said post. Mr. Baviskar in support of claims made in the application form had produced appropriate experience certificates at the time of certificate checking before the interview, on the day of interview, therefore he was rightly held eligible to be interviewed for the said post. Nature of post mentioned in the experience certificate produced by the Dr. Baviskar is “Professinal/Others (Publicity, Editing, Organization, Health Education, National Programmes) which is relevant as per the Recruitment Rules/Advertisement of the post. Dr. Baviskar had not claimed any new experience at the time of interview.*

*27. .... Mr. Baviskar in support of claims made in the application form had produced appropriate experience certificates at the time of certificate checking before the interview, on the day of*

*interview, therefore he was rightly held eligible to be interviewed for the said post.”*

(Quoted from page 125-128 of OA.209/17)

9. Respondent No.2 has therefore submitted that the OAs filed by the applicants are without any foundation and devoid of any merit and deserves to be dismissed.

10. Respondent no.4 who was declared as successful and hence selected has submitted his affidavit. Relevant portion of the same are as under:

*“4. I say that, I have completed Diploma in Ophthalmic Science from Government Medical College and Hospital, Aurangabad in the year 1991 and on that basis joined service as Ophthalmic Assistant in Civil Hospital, Aurangabad in 1992. While in service, I prosecuted graduation studies i.e. B.A. with Sociology, History and Political Science in the year 1994. I also completed Bachelor of Journalism in 1996 and also Master of Arts (Sociology) under distant learning programme. I also acquired Post Graduate Degree in Mass Communication & Journalism (MJ) in thye year 1997. I have completed Diploma in Community Eye Health in the year 2005 and also Post Graduate Diploma in Health Services Management in 2007. I had also undertaken research work for the Doctoral Degree and the topic of my research is ‘Doctor Patient Relations : a Study of Communication’. I have been conferred a Doctoral Degree i.e. Ph.D. in the year 2013.*

*5. I say that the nomenclature of the post of Ophthalmic Assistant became Ophthalmic Officer from the year 2012 and I have been working as such. I have appeared for Bachelor of Science in Optometry – two year duration degree after Diploma in Ophthalmic Science which I completed in the year 1991, before I joined service as Ophthalmic Assistant. In my respectful submission, I possess the eligibility prescribed under the advertisement at Exhibit A-1 in all fours. I also possess a Master’s Degree*



*in Social Science (Sociology-1996), which is preferential qualification for the post in question, as per the advertisement at Exh. A-1. I also possess experience in producing publicity material etc. as required under the advertisement. As against this, the applicant does not possess either Degree or Diploma in Health Education or even Master's Degree in Social Science. The eligibility as regards experience of producing publicity material etc. would be a matter of scrutiny by R-1 and I would, therefore, refrain myself from offering any comment as to the eligibility in regard thereto of the applicant. However, I can certainly assert that, I did possess eligibility on this score.*

8. *I say that, by virtue of the nature of post in question and duties attached to it, what was contemplated in the eligibility criteria is an experience of journalism, editing. One has to appreciate a subtle distinction between being an 'Author/Journalist' and being an 'Editor'. These two skills, which are altogether different. A good author/journalist need not necessarily be a good editor and vice-versa. A skill of an author of a 'Book', so also a skill of an author of a "News" is also distinct and separate. A good author of a book need not necessarily be a good author. If this Hon'ble Tribunal undertakes a threadbare scrutiny of the titles of books/papers under captioned 'Publication' appearing on page 31 of the paper book, it would be abundantly clear that, none of the publications have even a remote co-relation with the nature of duties attached to the post in question, and also the eligibility criteria and preference prescribed under the advertisement. Possessing academic qualifications is one thing, and possessing experience in the given field is yet another thing."*

(Quoted from page 190-192 of OA No.209/17)

11. The respondent no.4 has therefore submitted that the OAs deserve to be dismissed as these are without any merits.

Discussion and findings:

12. We have examined the advertisement for the post of Deputy Director (Health) (Family Planning) as well as online application forms of the applicants and respondent no.4. Examination of these reveals that the advertised post requires experience as under:

*“4.5.4 Have experience in the field of Journalism, editing and the like for not less than seven years in a newspaper, news agency or a publicity organization, gained after acquiring the qualifications mentioned in para 4.5.2.*

*Preference may be given to candidates having a degree or a diploma in Health Education, or Master’s degree in Social Science with experience of producing publicity material, pamphlets or brochures and the like for the family Welfare Programmes.”*

(Quoted from page 25 of OA No.209/17)

13. Perusal of the above indicates that what was primarily required was a candidate with experience in the field of journalism, editing. The advertisement further mentions that preference may be given to a candidate having a degree or a diploma in Health Education or Masters Degree with experience of producing publicity material for the family welfare programmes. Thus it is clear that the experience required is in the field of editing. It does not mention that a degree or experience in producing material pertaining to family welfare programme is the necessity. If the candidate has experience in publishing material pertaining to family welfare programmes, that would be preferable. The preference cannot precede the mandatory provisions of having experience in the field of journalism or it cannot replace the same.

14. Applicant in OA No.209 of 2017 does not have adequate experience as per her own online application submissions. Even then following a

directive from this Tribunal, respondent no.2 had called her and interviewed her.

15. The merit list prepared by respondent no.2 in respect of applicant and selected candidate is as under:

उप संचालक, आरोग्य सेवा (कुटुंब कल्याण विस्तार), गट-अ  
(जाहिरात क्रमांक १७/२०१६)  
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टिप : प्रस्तुत निकाल मा. प्रशासकीय न्यायाधिकरण मुंबई येथे दाखल झालेल्या मुळ अर्ज क्र.२०९/२०१७ वरील मा. न्यायाधिकरणाच्या अंतिम आदेशाच्या अधिन राहून जाहीर केलेला आहे.

(Quoted from page 29 of OA No.468/19)

16. Examination of the above indicates that respondent no.4 has been selected as he has emerged as the most successful candidate. Smt. B.S. Chaudhari – Applicant in OA No.209/2017 and Smt. J. K. Kannanke – Applicant in OA No.468/2019 have not been recommended for selection, as they are less meritorious.

17. The experience by the selected candidate indicates that he has edited books, journals in the field of health and therefore it would be incorrect to say that his experience is restricted to the field of Ophthalmic Officer.

18. For the reasons stated above, we find that the applicants who have not been selected, have failed to demonstrate any malafides or valid reasons to interfere in the selection process completed by respondent no.2. Therefore, both the Original Applications are devoid of any merit and dismissed. No order as to costs.

**(A.P. Kurhekar)**  
**Member (J)**  
**1.10.2019**

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**1.10.2019**

Dictation taken by: S.G. Jawalkar.