

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.277 OF 2018**

**DISTRICT : MUMBAI**

Dr. Mohan Apparao Jadhav, )  
Age adult, occ. Govt. service, )  
Department of Public Health, State of Maharashtra, )  
C/o Arogya Bhavan, 8<sup>th</sup> floor, )  
St. Georges Hospital Compound, Mumbai-01 )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400032 )
2. Maharashtra Public Service Commission, )  
Through its Secretary, Bank of India Building, )  
3<sup>rd</sup> floor, M.G. Road, Hutatma Chowk, Mumbai )

3. Dr. Sanjiv Wamanrao Kamble, )  
R/o Arogya Bhavan, St. Georges Hospital )  
Compound, Mumbai )..Respondents

Dr. Gunratan Sadavarte, Advocate holding for Shri Y.P. Deshmukh –  
Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for Respondent No.1

Shri Abhijit A. Desai – Advocate for Respondent No.2

None for Respondent No.3.

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)

CLOSED ON : 7.5.2018

PRONOUNCED ON : 11.5.2018

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

PER: Shri Justice A.H. Joshi (Chairman)

1. Heard Dr. Gunratan Sadavarte, learned Advocate holding for Shri  
Y.P. Deshmukh, learned Advocate for the Applicant, Smt. Archana B.K.,

learned Presenting Officer for Respondent No.1 and Shri Abhijit A. Desai, learned Advocate for Respondent No.2. None for Respondent No.3.

2. The present OA proceeds on following admitted background.

(a) The Government of Maharashtra advertised one vacancy of the post of Director, Health Services, Maharashtra Medical and Health Services, Group 'A', through advertisement No.6 of 2016 dated 17.2.2016.

(b) The applicant possesses required eligibility and additional qualification of Degree of DM in Neurology.

(c) Present OA is third round of litigation, where earlier selection was set aside and selection process was relegated to the stage of re-fixation of bench mark in keeping with the recruitment rules.

(d) The bench mark has been re-fixed.

(e) The applicant's candidature is rejected by assigning the ground that he does not cross the bench mark of 24 years, 10 months and 5 days, in view of applicant's *own claim that he possesses* total experience of 21 years, 11 months and 12 days.

(f) In his application form uploaded by him, profile whereof is now brought on record, applicant had furnished the details of his experience after passing MD which totals to "21 years, 11 months and 12 days".

(g) Admittedly though the applicant has mentioned his total experience of 24 years 11 months and 11 days as sum total, while furnishing the details he has failed to incorporate tenure of service rendered by him during 28.6.2003 to 12.6.2006.

(h) During the process of refixation of bench mark based on the basis of educational qualification prescribed in Recruitment Rules, any additional weightage or latitude towards Degree of DM acquired by the applicant has not been given.

(i) Since MPSC has counted applicant's experience as was represented in his application, he has not been shortlisted for selection.

(j) After filing present OA the reason of rejection is made known to the applicant, copy whereof is on record at page 150 Exhibit R-6 to Government's affidavit.

(k) During pendency of OA process of selection was completed and Dr. Sanjiv Wamanrao Kamble – Respondent No.3 has been selected and is appointed, and with the leave of the Tribunal this candidate is arrayed as respondent no.3.

(l) State as well as MPSC have opposed this OA by filing short affidavit, while State is mute, apparently because the contest is between applicant and MPSC and State has no role to play.

(m) Selected candidate has remained exparte.

3. The State has chosen to adopt the stance of MPSC by acquiescence.

4. The MPSC has opposed the OA by filing affidavit of Smt. Sukhada Sanjay Amrite, Under Secretary. Crucial averments read as follows:

"3. ....  
*The application form uploaded by the candidate is available in his account of Online application System managed by 'Mahaonline'. According to the*

*Hon'ble Tribunal's order, the application form of the applicant has again been examined thoroughly, from which it is crystal clear that, he had not claimed any experience during the period from 12.6.2003 to 11.6.2006 in his online application. As specified in the rule c(iv) of the Recruitment Rules and para 4.4.3 of the advertisement of the post (copy is already annexed to the OA at pages 49 & 50), the experience of the applicant was calculated after the passing of PG degree (MD – 26.3.1991). After calculating the experience claimed by the applicant in his online application, once again it has been revealed that, he possesses a total experience of 21 years, 11 months and 12 days. As the applicant possesses less experience than the short listing criteria applied for the post, he was rightly held ineligible for the interview of the post.”*

(Quoted from page 130 of OA)

5. The MPSC has responded to applicant's claim for considering his experience of service as Civil Surgeon during the period from 28.6.2003 to 12.6.2006 contending that request for change in claim made in the application cannot be considered. The averments in that regard reads as follows:

*“4. I say and submit that, the applicant has provided his experience certificate dated 20.3.2013 along with his representation dated 23.3.2018, in which, it is shown that he was working as District Civil Surgeon during the period from 28.6.2003 to 12.6.2006. However, para 5.3.1 of 'General Instructions to Candidates', clearly provides that, 'after submitting the application form, a request for any change in the claims made in the application will not be considered by the Commission'. Therefore, the applicant cannot claim that experience for the period from 12.6.2003 to 11.6.2006, as he did not claim the same in his application form of the post. This provision has been upheld by the Hon'ble Tribunal bench at Aurangabad in OA No.410 of 2012 vide order dated 11.10.2013.”*

(Quoted from page 130-131 of OA)

6. During the course of hearing, this Tribunal had suggested the learned Advocate for the applicant to find out any precedent or doctrine or proposition even academically debated, to the effect that:

“A deficient representation by the candidate should not impair selection of best talent if candidate possesses higher merit, however, he is eliminated from the process of selection due to a lapse or deficiency in the process of uploading and/or furnishing the information, particularly when singular higher post is involved and candidates are not too large in number.”

7. The learned Advocate for the Applicant has chosen to abstain from answering query made by this Tribunal and persisted to urge as follows:-

(a) The applicant does not accept that there is any lapse or deficiency on his part.

(b) Though applicant accepts that he has failed to narrate his experience between the period 2003 to 2006 as Civil Surgeon, Ratnagiri, he argues that his having stated that his total experience is of 24 years 11 months and 11 days in the application (as is evident from page 10 of MA No.194 of 2018 in above OA) said length of experience ought to have been accepted and acted upon by MPSC for calling applicant for verification of documents and he ought to have been called for interview.

(c) It was the duty of MPSC to find out as to what was the foundation for applicant's claim in view of total experience disclosed by him.

(d) MPSC should crave for the search of best talent for the important post of Director of Health Services.

(e) Weightage ought to have been given to applicant's Degree of DM (Neurology) since MPSC has a declared policy to give preference to a candidate having higher qualification proclaimed through MPSC's order dated 17.2.2004, which reads as follows:

*(ब) विज्ञापित पदसंख्येच्या तुलनेत अर्जाची संख्या अधिक असल्यास कोणत्या आधारे निकष लावला जातो, हे उमेदवारांना स्पष्ट होण्यासाठी अधिसूचनेमध्ये "For adopting criteria, candidates having higher qualification and /or experience will be considered" हे विधान जेथे निकष लावण्याची / चाळणी परीक्षा घेण्याची तरतुद करण्यात आली आहे, तेथे समाविष्ट करण्यात यावे. परंतु त्या पदांच्या सेवा प्रवेश नियमात प्राधान्यशील अर्हतेचा समावेश करण्यात आलेला आहे, अशा पदांच्या अधिसूचनेत उपरोक्त विधान नमूद करण्याची आवश्यकता नाही.*

(Quoted from MPSC's standing order No.3/2004/Two dt.17.2.2004 tendered by Advocate for Applicant while arguing the case.)

8. The MPSC's stance is of denial. In its short affidavit, the MPSC has placed reliance on condition No.5.3.1 contained in the General Instructions stating that the reference to General Instructions is seen in the advertisement. Clause 10 of the advertisement reads as follows:

*“१०.१ प्रस्तुत परीक्षेसाठी अर्ज फक्त ऑनलाईन पध्दतीने स्वीकारण्यात येतील. इतर कोणत्याही प्रकारे अर्ज स्वीकारण्यात येणार नाहीत.*

*१०.२ पात्र उमेदवारांना वेब-बेस्ड (Web-based) ऑन लाईन अर्ज <https://mahaonline.gov.in> या वेबसाईटद्वारे दिनांक १७ फेब्रुवारी, २०१६ ते दिनांक ८ मार्च, २०१६ या कालावधीत सादर करणे आवश्यक राहिल.*

*१०.३ ऑनलाईन पध्दतीने अर्ज सादर करण्याच्या सविस्तर सूचना आयोगाच्या <https://mahampsc.mahaonline.gov.in> तसेच [www.mpsc.gov.in](http://www.mpsc.gov.in) या संकेतस्त्रावर उपलब्ध आहेत. ”*

(Quoted from page 50 of OA)

9. Copy of General Instructions of MPSC is on record at Exhibit R-4 page 140-142 of OA. The General Instructions No.5.3.1 relied by the MPSC, text whereof is at page 142 which is quoted below:

*“५.३.१ आयोगाकडे अर्ज सादर केल्यानंतर अर्जात केलेल्या दाव्यांमध्ये कोणत्याही प्रकारचा बदल करण्याची विनंती आयोगाकडून विचारात घेतली जाणार नाही.”*

(Quoted from page 142 of OA)

10. The MPSC has placed reliance on the judgment and order dated 11.10.2013 passed by Aurangabad Bench of Tribunal in OA No.410 of 2012 Anil Prakash Sarkate Vs. MPSC & Anr. where this Tribunal took a view that claims once made in the application (information once submitted) cannot be altered.

11. Learned Advocate for the Applicant has urged in reply that he cannot be blamed as responsible for furnishing erroneous information or inadequate information as he has furnished exact information to the effect that he holds experience of ‘24 years, 11 months and 11 days’ and, therefore, he is not claiming to modify or alter a claim made in the application, he rather craves to prove the fact of his actual and factual experience.



12. In the background of rival contentions, the question which is now to be considered while deciding present OA is:-

Whether applicant could be allowed to add, amend, modify his claim as contained/made by him while submitting his application, as regards his experience?

13. We have given cautious and conscious consideration to respective pleas and the record.

14. We find that MPSC's object and purpose of seeking detailed information in the application form with all details with reference to dates of experience, post, qualification as requisitioned by prescribing a format to be a part and parcel of the form of application and again through the profile, appears to be aimed at the goal of securing 'exact and accurate' facts and data. Each applicant is under obligation to furnish the information with all details and with precision.

15. Disclosure and narration of information with accuracy and precision is a need particularly in the background of strong and cutthroat competition between the candidates.

16. We find that the sum total of experience to be given/furnished by each applicant at the 3<sup>rd</sup> page of application form (in present case at page 10 of MA No.194 of 2018) is an arithmetic work. Verification of reckoning

of total experience claimed by applicant is possible only after the calculation of each spell of tenure furnished by each applicant is to be totaled after arithmetic summing/totaling thereof.

17. We find that it was fully within the control and power of the applicant to furnish the data – the exact narration of one and all postings/experience with precision. The post of Director of Health Services is of greater responsibility. Highest degree of diligence and proficiency is expected from the applicant, over and above his wish and craving for selection and appointment.

18. Now, since the applicant had produced copy of MPSC's standing order dated 17.2.2004 part whereof is quoted in foregoing para 7(e), this Tribunal has to read entire order which we have done. We have noted that clause 2(c) of the standing order dated 17.2.2004 provides for a sort of ventilator to overcome the cases where information is supplied or disclosed however, a decision to decline the candidature is taken and the candidate comes forward with evidence in support. The relevant clause 2(c) [२(क)] reads as follows:

“ (क) प्रचलित पध्दतीनुसार उमेदवारांनी अर्जासोबत अद्ययावत प्रमाणत्रांच्या प्रती जोडल्या नसतील, परंतु त्याबाबत अर्जामध्ये दावे केलेले आहेत, त्यांना मुलाखतीच्या वेळी सदर प्रमाणपत्रे सादर करण्याच्या अटीच्या अधीन राहून मुलाखतीस बोलविण्यात यावे. ही पध्दत बंद करून अशा उमेदवारांना प्रथम दर्शनी अपात्र ठरविण्यात यावे. अशा उमेदवारांनी जर नंतर प्रमाणपत्र पाठवून मुलाखत घेण्यासाठी विनंती अर्ज/ अभिवेदन पाठविले व पुनर्विचारांती त्यांची मुलाखतीसाठी निवड करण्यात आली, तर त्यामुळे परि.१ मध्ये नमूद केलेल्या प्रमाणापेक्षा मुलाखतीसाठी उमेदवारांची संख्या अधिक झाल्यास हरकत राहणार नाही.

(Quoted from MPSC's standing order No.3/2004/Two dt.17.2.2004 tendered by Advocate for Applicant while arguing the case.)

19. The foregoing quotation reveals that evidence in support of a claim of qualification, experience etc. made in application by a candidate has to be entertained. Only condition to be fulfilled is that the 'claim' ought to have been 'made in the application'.

20. From the foregoing discussion that what emerges is summarized as below:

- (a) Once a candidate makes any claim in the online application submitted by him, the claim that cannot be altered or changed.
- (b) Whenever evidence in support of claim already made is to be furnished, permission to furnish the same has to be granted.

21. On facts we hold that the applicant had failed to stake a claim based on due narration that he was actually possessed of experience of 24 years, 11 months and 11 days. Furnishing the figure 24 years, 11 months and 11 days does not amount to making a claim of experience to that magnitude without making a claim in terms of years, months and days with reference to each post in the tabulated form.

22. Additional evidence produced by the applicant did not pertain to his claim of duration of experience incorporated by him in text included in

table forming integral part of the application form submitted online (copy whereof is at pages 8-10 of MA No.194/2018). Therefore, he was not entitled to rely upon additional evidence in support thereto.

23. In the result, OA fails and it is dismissed with no order as to costs.

**Sd/-**  
**(P.N. Dixit)**  
**Member (A)**  
**11.5.2018**

**Sd/-**  
**(A.H. Joshi, J.)**  
**Chairman**  
**11.5.2018**

Dictation taken by: S.G. Jawalkar.