

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.296 OF 2020

DISTRICT : PUNE

Dr. Rajesh Sudhakar Hiray,)
Age 53 years, Professor (Adhoc) in Department of)
Pharmacology, B.J. Government Medical College,)
Jai Prakash Narayan Road, Railway Station Road,)
Pune 411001)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Medical Education & Drugs Department,)
9th Floor, New Mantralaya, G.T.Hospital Premises))
Lokmanya Tilak Road, Mumbai 400001)
2. The Director,)
Directorate of Medical Education & Research,)
Govt. Dental College & Hospital Compound,)
Near V.T. Mumbai 400001)
3. The Dean, B.J. Government Medical College,)
Jai Prakash Narayan Road, Railway Station Road))
Pune 411001)
4. Dr. B.R. Daswani,)
Professor (Adhoc), Dept. Of Pharmacology,)
B.J. Govt. Medical College, Pune 411001)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)

DATE : 1st February, 2021

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant was working as Professor of Pharmacology at B.J. Government Medical College, Pune. It is pleaded that he is the senior most Professor. Therefore, by virtue of GR dated 5.9.2018 he was made Head of Department (HOD) on 1.10.2018 and he was holding the said additional charge till 11.4.2020. On 11.4.2020 he sustained fracture and has undergone surgery on his leg. He, therefore was on medical leave from 12.4.2020 to 24.5.2020. However, when he joined the services he was not given the additional charge of HOD but he found that the said charge of HOD was given to respondent no.4 in his absence and which was continued. Hence, he is before this Tribunal praying that the respondents no.1 to 3 be directed to allow the applicant to discharge the duties of HOD of Pharmacology at B.J. Government Medical College, Pune.

3. The respondents no.1 to 3 have filed their affidavit in reply through Shri Chandan Kumar Dey, Associate Professor on 6.10.2020.

4. It is submitted by the Ld. Advocate for the applicant that applicant is the senior most person and as per GR dated 5.9.2018 the Government has given directions to all the departments to give preference to the

experienced Govt. servants as per their seniority while giving the charge of HOD, so that the administration can be benefitted.

5. Ld. PO while opposing this OA relied on the affidavit of Shri Chandan Kumar Dey and submitted that the applicant was given additional charge of HOD for a period of two years and as he was on medical leave the additional charge was handed over to one Dr. Bharti R. Daswani-Respondent no.4. Ld. PO has submitted that the respondents have given her temporary charge and have not violated the provisions of GR dated 5.9.2018.

6. The issue involved in the matter is very short based on the understanding of GR dated 5.9.2018. As per GR dated 5.9.2018, the additional charge is to be entrusted to the senior most and experienced person in the department so that the administration will get the benefit of his knowledge and experience. In para 2 clause (1) of the said GR it is further mentioned that if the administration decides to supersede the senior most civil servant and decides to handover additional charge to other person in the department then it is binding on the administration to maintain the record by giving reasons in writing as to why the senior most person was not found eligible or competent.

7. Thus, it is expected from the administration to follow the procedure or guidelines laid down in the GR. The administration has the powers to take decision of handing over additional charge to the second senior most person. However, it is necessary to fulfill the condition of recording the reasons in writing for not giving the charge of HOD to the senior most Govt. servant in the department.

8. It was argued by the Ld. PO that there are written complaints against the applicant about his conduct in the department while working

as HOD. The Ld. Advocate for the applicant has submitted that there are also written complaints against the respondent no.4 about her conduct while functioning as HOD. Assuming submissions are true, however, respondents no.1 to 3 ought to have taken proper decision by recording the reasons in writing for discontinuing the applicant as HOD and handing over the charge to respondent no.4, who is junior to the applicant. Mere continuation of the junior person without reasons in view of the GR is not justifiable.

9. On query, the Ld. PO has produced one letter/decision dated 13.4.2020 wherein it is mentioned that due to medical leave of the applicant, the additional charge of HOD is handed over to respondent no.4 so that the medical services in the critical period of COVID-19 Pandemic situation would not be effected. Thus, this is the reason for handing over additional charge to respondent no.4 during the medical leave of the applicant. What is necessary for the respondents is to produce record with reasons in writing for sidetracking the applicant. However, Ld. PO on instructions could not produce any such record. Therefore, I am of the view that the respondents have deviated from the guidelines/directions given in the GR dated 5.9.2018. Hence, indulgence is required and I proceed to pass the order.

10. Original Application No.296 of 2020 is allowed. The Respondents No.1 to 3 are directed to handover the charge of Head of Department to the Applicant on or before 5.2.2021. No orders as to cost.

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
1.2.2021

Dictation taken by: S.G. Jawalkar.