

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 970 OF 2014**

**DISTRICT : SOLAPUR**

Dr Vaibhav Dattatraya Shinde )  
Occ : Medical Officer, R/at : 15A )  
Jawan Nagar, Bijapur Road, )  
SOLAPUR 413 004. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai. )  
2. Director of Health Services, )  
Aarogya Bhavan, )  
St. Georges' Compound, )  
Near CST, Mumbai. )...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri R.B. Malik (Member) (J)**

**DATE : 13.07.2016**


**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri A.V Bandiwadkar, learned advocate for the Applicants and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking constitution of the Departmental Promotion Committee to consider the Applicant for promotion to the post of District Health Officer.

3. Learned Counsel for the Applicant argued that the Applicant has the qualification of M.B.B.S and Diploma in Public Health, which he acquired in 2013. The Applicant was initially appointed in February, 2003 as a bonded candidate. His services were continued beyond bond period as a ad hoc Medical Officer and he was absorbed as Medical Officer in the Maharashtra Medical and Health Services, Group 'A' in terms of notification dated 2.2.2009. The Applicant completed Diploma in Public Health (DPH) in the year 2013. The



Applicant is fully eligible to be promoted as District Health Officer in terms of Recruitment Rules notified on 1.8.1981. The Applicant is senior most in the seniority in his class, but despite his representation, the Respondents have not convened D.P.C to consider him for promotion to the post of District Health Officer.


4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the D.P.C to consider eligible candidates for promotion to the post of District Health Officer was held on 29.9.2011. The Applicant's name is at Sr. No. 1236 in the draft Seniority List on the basis of his appointment as Medical Officer, Group 'A' on 12.2.2009. Learned Presenting Officer argued that the service rendered by the Applicant before regularization of his appointment cannot be counted for any purpose in terms of notification dated 2.2.2009, which regularized the service of the Applicant w.e.f 12.2.2009. The Applicant will be considered for promotion on the basis of seniority.

5, The Respondents are relying on Rule 4(vii) of the Medical Officers in Maharashtra Medical & Health Services Group 'A' (one time Absorption of Medical Officers appointed on ad hoc basis in Maharashtra) (Special) Rules, 2009 notified on 2.2.2009. It reads:-

“4 Notwithstanding anything contained in the Maharashtra Medical and Health Services Group A (Recruitment) Rules, 2000:-.....

(vii) the service rendered by the ad-hoc Medical Officers prior to the date of absorption shall not be considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme.”

Learned Presenting Officer argued that service rendered by the Applicant as ad hoc Medical Officer cannot be considered for grant of promotion to any post. Learned Counsel for the Applicant argued that the Applicant is not seeking counting of his ad hoc ‘service’ for promotion. He is only seeking to count ‘experience’ of that service for determining his eligibility for promotion in terms of the Recruitment Rules, viz. the Maharashtra Medical and Health Services (Class-I) Recruitment Rules, 1981. Schedule attached to these rules at Sr. No. 3 is regarding District Health Officer, for which the post graduate degree in Preventive and Social Medicine or Post Graduate Diploma in Public Health with 7 years’ experience for those holding Post Graduate Diploma after acquiring M.B.B.S degree is required (emphasis added). The Applicant has D.P.H Diploma and has more than 7 years of experience in Government after acquiring M.B.B.S in 2003. Learned Counsel for the Applicant



argued that this rule does not require 7 years 'service' under the Government or Zilla Parishad but 7 years of 'experience' which the Applicant does possess. He cited the judgment of Punjab & Haryana High Court in L.P.A no 86/2012 in the case of State of Punjab Vs. Suresh Kumar & others. Hon'ble High Court has held that 'experience' is different from 'service' and experience gained by virtue of ad hoc appointed is valid for being considered equivalent to experience gained in regular appointment. Learned Counsel for the Applicant also relied on the judgment of the Central Administrative Tribunal in the case of V.K. BAWA & ORS Vs. The C.A.T, MADRAS BENCH. It is held that seniority list should be prepared and published regularly as per rules.

6. We find that the Applicant is claiming that his 'experience' (and not 'service') in ad hoc appointment as Medical Officer should be counted for promotion to the post of District Health Officer. As held by Hon'ble Punjab & Haryana High Court, we fully endorse the contention of the Applicant that 'experience' is different from 'service'. As per notification dated 2.2.2009, the Applicant's ad hoc service may not be considered for promotion, i.e. in so far as his seniority in the cadre of Medical Officer, Group 'A' is concerned and when seniority is a criteriaon for promotion. However, after he acquired post graduate Diploma in Public Health, his 'experience' in Government whether in ad hoc or regular capacity has to be counted

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for promotion to the post of D.H.O. Schedule to Rules of 1981, which uses the expression 'experience' and not 'service'. The other issue is regarding finalization of seniority list of Medical Officer, Group 'A', which is yet to be finalized. However, the Respondents have been holding D.P.C meetings on the basis of provisional seniority lists, and there is no reason as to why the same should not be done till seniority list is finalized.

7. The Applicant appears to be eligible for being considered for promotion to the post of D.H.O. If there are vacancies in the cadre of D.H.O, the Respondents may convene meeting of D.P.C, as early as possible, preferably within a period of three months from the date of this order and consider the case of the Applicant, in the light of observations hereinabove. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member (J)**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 13.07.2016**

**Dictation taken by : A.K. Nair.**