

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO. 1267 OF 2013**

**With**

**MISC. APPLICATION NO.35 OF 2014**

**With**

**MISC. APPLICATION NO.105 OF 2014**

**With**

**MISC. APPLICATION NO.515 OF 2014**

**With**

**MISC. APPLICATION NO.516 OF 2014**

**In**

**ORIGINAL APPLICATION NO. 1267 OF 2013**

**DISTRICT :THANE**

Shri Dr. Sharad Vilas Gaikwad, )  
Medical Officer, )  
R/o. Medical Officer- Quarters No.2. )  
Primary Health Centre, )  
Taluka Palghar, District Thane )  
Pin Code- 401 501. )...**Applicant**

**VERSUS**

- 1) The State of Maharashtra )  
through the Additional Chief Secretary,)  
Public Health Department, )  
Maharashtra Government. )  
10<sup>th</sup> floor, New Mantralaya, )  
G.T. hospital compound )  
Mumbai – 400 001. )
- 2) Deputy Secretary & Member Secretary,)  
Independent Selection Board of )

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Public Health Department, )  
10<sup>th</sup> floor, new mantralaya, )  
G.T. hospital compound, Mumbai. )

3) The District Health Officer, )  
Station Road, Arogya bhavan, )  
Zilla Parashid Thane, Thane west, )  
Pin Code - 400 601. )

)....**Respondents**

Shri A.B. Deshkar, learned Advocate for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**  
**Shri R.B. Malik (Member) (J)**

**DATE : 2 .03. 2016**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

### **ORDER**

1. Heard Shri A.B. Deshkar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 7.8.2013 terminating the services of the Applicant as Medical Officer from Physically Handicapped Category.

3. The Applicant was selected as Medical Officer, Group 'A' in the Pay Band of Rs.15,600-39,100 plus grade pay of Rs.5400 by nomination by Independent Selection Board from Open-Physically Handicapped Category. The advertisement was issued on 23.1.2013 for filling up 545 posts of Medical Officers. 21 posts were reserved for Physically Handicapped Category. The select list was declared on 17.4.2013 and the Applicant was placed at Sr.No.3 in the list of 5 persons selected from Physically Handicapped Category. The posting order of the Applicant was issued on 22.4.2013. His services were terminated by order dated 7.8.2013, which is challenged in the present O.A.

4. Learned Counsel for the Applicant argued that the Applicant holds M.B.B.S. degree. He was appointed as Medical Officer by order dated 22.4.2013 by nomination pursuant to his selection by the Independent Selection Board. The said Board had issued advertisement on 23.1.2013 for recruitment of 545 Medical Officers. 21 posts were reserved for physically handicapped persons, 12 for low vision and 9 for low-motor disability- one leg affected. Learned Counsel for the Applicant stated that the criterion for Physically Handicapped Persons was as per Government Circular dated 20.4.2006. The Applicant had submitted certificate dated 22.5.2013 issued by the Medical Board of J.J. Hospital, Mumbai, which showed that he suffers from 20% disability. The Applicant was placed at Sr.No.3 amongst the 5 candidates selected from Physically Handicapped

Category. The Applicant was issued appointment order dated 22.4.2013 and was called to the office of Deputy Director of Health, Thane. Deputy Director found 20% disability to be ineligible for appointment, but as his office didnot have relevant rules, he allowed the Applicant to join at District Health Office, Thane. The Applicant's case was referred to the Respondent No.1 viz. Public Health Department to decide whether he was eligible. Public Health Department issued termination orders dated 7.8.2013 on the ground that the Applicant is not eligible for appointment for post reserved for physically handicapped person, as his disability is less than 40%. Learned Counsel for the Applicant argued that another advertisement was issued by the Respondents no.2/2013. The Applicant had filed on line application on 24.10.2013 pursuant to the same. The form of this appointment has columns, viz: disability 40% or more and disability less than 40%. It is thus clear that persons having less than 40% disability can also be considered for appointment to the posts reserved for physically handicapped persons. As per office Memorandum dated 29.12.2005, issued by the Ministiry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, there is provision of relaxation of degree of physical disability. Learned Counsel for the Applicant argued that the Applicant was selected as Medical Officer, as he was fully eligible for the post and his termination is illegal and may be quashed and set aside.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents the relevant G.R. dealing with reservation for physically handicapped persons has been issued by the Public Health Department on 27.7.2004. It is clearly mentioned in paragraph no.2 (3) that minimum disability has to be 40% for a person to be eligible to be considered for appointment to 3% posts reserved for physically handicapped person. Learned P.O. argued that the Applicant had admitted that he suffers from 20% disability. He is clearly not eligible. Office memorandum dated 29.12.2005, issued by Government of India also provides 3% reservation for physically handicapped persons in recruitment. Paragraph no.9 of the O.M. deals with degree of disability for reservation. It is clearly mentioned that only those persons who suffer not less than 40% of relevant disability will be eligible for reservation in services/posts. The Applicant is relying on paragraph no.12 of the said memorandum, which deals with relaxation of standard of suitability. This para is regarding lower standard of marks obtained in selection process and does not deal with the relaxation in degree of disability. Learned P.O. argued that application form in which applications are invited does have two columns viz. 40% or more disability and less than 40% disability. This is done to distinguish the eligible persons from non-eligible ones. The Applicant was given appointment on the basis of his affidavit dated 22.5.2013 wherein he has given undertaking that he would abide by decision of the Government about his status as handicapped person.

Learned P.O. argued that Government found that he was not eligible to be appointed from physically handicapped category and therefore his services were terminated.

6. We find that the facts are undisputed in the present O.A. The Applicant has claimed 20% disability and produced certificate accordingly. He was selected from physically handicapped category and was called for verification of his documents. The Applicant in his O.A. has clearly admitted that the Deputy Director of Health Services was not convinced that the Applicant was eligible to be appointed from physically handicapped category. In para 6.11 of the O.A. the Applicant has stated that:-

“6.11 The Applicant states that Public Health Department issued appointment and posting order to applicant over web site <http://maharashtra.gov.in/> and was ordered for document examination at circle Deputy Director's office, for document examination. Accordingly applicant went for document examination at Deputy Director's office, Thane. At this office Dr. Mane objected applicant's 20 percentage physically disability mentioned in certificate. Applicant asked to show the rules mentioning such requirement, but Deputy Director, office did not have the rules. The Deputy Director, Dr. Kamble, for further clarification and opinion, forwarded my documents to Public Health Department, New Mantralaya, G.T. Hospital, Mumbai 400 001, and simultaneously issued movement order to join at District Health Office, Thane.”

In the affidavit-in-reply filed on 30.4.2014, the Respondent No.1 has appended copy of the affidavit given by the Applicant (Exhibit 'R-1'). It reads.

“ प्रमाणित करण्यात येते कि, मी डॉ. शरद विलास गायकवाड माझी शासन निर्णय क्र. ससेप्र-२०१३/प्र.क्र.२८४/१३/सेवा-३ दि.२२ एप्रिल २०१३ अन्वये प्राथमिक आरोग्य केंद्र, दांडी जि-ठाणे येथे वैद्यकीय अधिकारी गट-अ (ग्रे.पे.५४००) या पदावर निवड झालेली असून माझी निवड ही खुला (अपंग) या प्रवर्गातून झालेली आहे. मी नियुक्तीच्या ठिकणी हजर होण्यासाठी उपस्थित राहून कागदपत्राची पडताळणी केली असता माझ्याकडे अपंगत्वाचे प्रमाणपत्र आहे परंतु सदर प्रमाणपत्रात अपंगत्व हे २० टक्के नमुद केलेले आहे. शासनाने प्रसिध्द केलेल्या जाहिरातीनुसार मी वैद्यकीय अधिकारी या पदाचा अर्ज ऑन लाईन एमकेसीएल च्या वेब साईट वर भरला असून सदर अर्जात मी २० टक्के अपंगत्व नमुद करून केलेला आहे व माझी शासन निर्णयान्वये निवड झालेली आहे. तरी मला शासन निर्णयाच्या अनुषंगाने प्राथमिक आरोग्य केंद्र, दांडी जि-ठाणे येथे हजर करून घेणेबाबत आदेश व्हावेत, तसेच माझी निवड हि अपंग प्रवर्गातून झालेली असून माझे अपंगत्व हे २० टक्के असल्याने या बाबत शासनाकडून मागविण्यात आलेल्या मार्गदर्शपर आदेशाच्या अधिन राहून मला हजर होण्यासाठी आदेश व्हावेत, शासनाकडून प्राप्त होणारे आदेश हे मला बंधनकारक राहतील तसेच शासनाकडून माझी झालेली निवड रद्द झाल्यास माझी हरकत राहणार नाही व मला शासनाने आदेश बंधनकारक राहतील याची मला कल्पना आहे.”

The Applicant clearly admitted that his appointment was subject to Government decision about his eligibility to be appointed from Physically Handicapped Category. In such circumstances, the impugned order dated 7.8.2013 cancelling his appointment order dated 22.4.2013 cannot be faulted. It is not a punitive or stigmatic order. The Applicant was found ineligible for appointment from physically handicapped category. The G.R. dated 27.7.2004 deals with

reservation for physically handicapped person. Para 2(3) reads:-

“(३) अपंगत्वाचे प्रमाण किमान ४०% असावे.”

It is clear that a person suffering less than 40% disability is ineligible for appointment to a post reserved for physically handicapped person.

7. The Applicant has admitted that he suffers from 20 % disability. He claims that Government of India, Office memorandum dated 29.12.2005 provided for relaxation of standard of suitability. This O.M. in para 9 provides:-

“9. DEGREE OF DISABILITY FOR RESERVATION:

Only such persons would be eligible for reservation in services/posts who suffer from not less than 40% of relevant disability. A person who wants to avail of benefit of reservation would have to submit a Disability Certificate issued by a competent authority in the format given in Annexure I”. (emphasis supplied)

From this it is clear that a person with minimum of 40% disability alone is eligible to be considered for appointment in posts reserved for physically handicapped. The Applicant is relying on paragraph no.22 of the aforesaid O.A. which reads:-

“22. RELAXATION OF STANDARD OF SUITABILITY: If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging



to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/ posts in question.”

It is quite clear, that this relaxation in standard is in the context of selection process i.e. marks obtained in the same. It does not mean relaxation in the degree of disability. Obviously, if the degree of disability is to be relaxed below 40% a person with 1 or 2% disability may also seek reservation, if persons with 40% or more disability are not available. That will make a mockery of the whole reservation for persons with disability. A Physically Handicapped person or a person with disability is obviously the one who suffers from a minimum of 40% disability. Relaxation is envisaged only in the marks to determine suitability of a person with disability with a view to fill the posts reserved for such persons. There is no merit in the contention of the Applicant in this regard.

8. The Applicant is not a person with disability or a handicapped person as his disability is less than 40%. As

per Government of India O.M. dated 29.12.2005 and G.R. of Government of Maharashtra dated 27.7.2004, he is not eligible to be appointed in a post reserved for a physically handicapped person. Mere provision of columns for person with 40% or more disability and persons with less than 40% disability does not in <sup>any</sup> way prove that persons with less than 40% disability can also be considered. In fact, if this argument is accepted, even a person with 0% disability will become eligible as 0 is less than 40%.

9. The Applicant was allowed to join as Medical Officer on the strength of his affidavit dated 22.5.2013 which has been reproduced in paragraph no. 4 above. He was fully aware that his eligibility was doubtful and subject to determination by the State Government. He has been held to be ineligible from physically handicapped category. He cannot be allowed to turn around now and resile from the underaking given by him.

10. There is no merit in the present O.A. and it is dismissed with no order as to costs. As the O.A. is dismissed, nothing survives in the M.A.s which also stand dismissed.

Sd/-

**(R.B. MALIK)**  
**(MEMBER) (J)**

Sd/-

**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

Date : 2.03.2016

Place : Mumbai

Dictation taken by : SBA

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