

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.279 OF 2016

DISTRICT : THANE

Dr. Sharad Vilas Gaikwad.)
Medical Officer, R/o. Medical Officers)
Quarters No.2, Primary Health Centre,)
Taluka : Palghar, Dist : Thane 401 501.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
10th Floor, New Mantralaya, G.T.)
Hospital Compound,)
Mumbai - 400 001.)
2. Independent Selection Board.)
Deputy Secretary & Member)
Secretary, Independent Selection)
Board of Public Health Department,)
10th Floor, New Mantralaya,)
G.T. Hospital Compound, Mumbai.)...**Respondents**

Dr. S. Sadavarte, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 26.04.2017

JUDGMENT

1. A Doctor has brought this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 seeking an order of posting as such at Primary Health Centre, Agashi or any other suitable vacancy.
2. I have perused the record and proceedings and heard Dr. Gunratan Sadavarte, the learned Advocate for the Applicant and Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.
3. Extensive submissions were made on both the sides, but as I shall be presently pointing out the controversy falls in a narrower compass. The 1st Respondent is the State of Maharashtra in Public Health Department while the 2nd Respondent is the independent selection board of Public Health Department. The Applicant is a Doctor by training and degree. Unfortunately, he suffers from 20% disability and in that sense, it can be mentioned that he is physically challenged.
4. He had applied earlier also in the year 2013 for the post of Medical Officer from Open category (by birth, he

is Scheduled Caste) and he also claimed for the horizontal reservation under the physically disabled candidates. He was issued posting order on 22.4.2013, but his services were terminated by the order of 7.8.2013. That order of termination was challenged by the Applicant by way of **OA 1267/2013 with 4 MAs (Dr. Sharad V. Gaikwad Vs. State of Maharashtra and 2 others)**. That OA came to be decided against the Applicant by the 2nd Division Bench of this Tribunal which spoke through the Hon'ble Vice-Chairman, but I was also a Member on that Bench. That order was rendered on 2.3.2016, a copy of which is at Exh. 'R-4' (Page 51 of the Paper Book (PB)). It was mentioned therein that the Applicant was selected as Medical Officer Grade 'A' in the given pay scale from Open Physically Handicapped category. The 2nd Division Bench then summarized the submissions made before it and reproduced an Affidavit submitted by the Applicant in Marathi. It was noted that the order therein impugned of cancellation of appointment was neither punitive nor stigmatic. The ineligibility was attributable to the fact that while the relevant GR prescribed 40% of disability as an eligibility criterion, the Applicant was 20% disabled and could, therefore, not have been appointed from Physically Handicapped category. It was noted that the Applicant vide the Affidavit alluded to hereinabove was conscious of



his eligibility being under clouds and his appointment was subject to the determination by the State Government which he could not recile from and on that ground, the OA came to be dismissed.

5. The Applicant carried the matter to the Hon'ble High Court by way of **Writ Petition No.3763/2016 (Dr. Sharad V. Gaikwad Vs. State of Maharashtra and others, dated 1st April, 2016)**. The Division Bench of the Hon'ble the Chief Justice was pleased to dismiss the said Writ Petition thereby confirming the order made by the 2nd Division Bench of this Tribunal.

6. It appears that, thereafter, the 2nd Respondent invited applications for the same post and the Applicant responded. A copy of his Application Form submitted on-line is at Exh. 'R-2' (Page 45 of the PB). There are various columns therein including name, father's name, mother's name, their occupation, gender, date of birth, mother tongue, addresses. In the column of reservation, the category SC has been tick-marked and it seems that the Caste Certificate was also available. There was a column of "physically handicapped" which was answered saying, "Yes. (1 leg affected)". The other columns may not be quite

relevant. They pertained to the academic attainments and other personal details.

7. It is very clear from a bare perusal of the Application Form that the Applicant did not claim the benediction of the horizontal reservation under Physically Handicapped quota. He has mentioned "Yes" against that column, but then generally so speaking, he does suffer from 20% disability, but that being below 40%, he was not eligible for being considered from Physically Handicapped quota. Mrs. K.S. Gaikwad, the learned PO contended before me that the Applicant was guilty of having made some suppression earlier for which she invited reference to a noting made by an Under Secretary of Law and Judiciary Department. That made some caustic comments against the Applicant. In my view, however, the facts discussed above are a few and simple. Earlier for the reasons stated in the disposed of OA, he wanted to justify his selection from Physically Handicapped quota which was rejected by this Tribunal and the Applicant could do no better before the Hon'ble High Court. But that in my opinion, does not affect the integrity aspect of the Applicant, and therefore, I do not have to closely scrutinize the said noting of Law and Judiciary Department.

2


8. It is, therefore, quite clear that the Respondents moved with a thought process that the Applicant had applied from Physically Handicapped quota, and therefore, his application was not considered and that approach was erroneous. I hold that he had not invoked the horizontal reservation of Physically Handicapped and his application ought to have been considered without carrying that baggage.

9. Dr. Gunratan Sadavarte, the learned Advocate for the Applicant sought to rely upon a G.R. of 18th October, 1997 issued pursuant to the Judgment of the Hon'ble Supreme Court in the matter of **R.K. Sabharwal and others Vs. State of Punjab & Ors. : 1995 SCC (2) 745**. He told me that the Applicant ought to have been considered from the Open category. The GR referred by him was in case of vertical reservation. I have to be guided only by the facts such as they are, and apply the legal principles and the final order will show the result of that thought process.

10. The Applicant wants specific directions to be appointed at a particular place. I find that he was excluded from consideration only on that short point of horizontal reservation, and therefore, his candidature will have to be reconsidered by making it clear that he has not



applied from the handicapped quota. The Respondents will now have to process his case just as it is done in case of any other candidate. At this stage, I cannot give direction about a particular place which he should be posted at, but I must make it clear that I have not expressed any opinion thereabout and the Respondents shall process his matter and take an appropriate decision.

11. The Respondents are hereby directed to process the case of the Applicant clearly bearing in mind that his application is not from the quota of Physically Handicapped candidates and the observations hereinabove made be borne in mind and an appropriate decision be taken about his candidature and if found otherwise fit and suitable, be given an appropriate posting. Compliance within eight weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(Sd/-) 26.04.17
Member-J
26.04.2017

Mumbai

Date : 26.04.2017

Dictation taken by :

S.K. Wamanse.

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