

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.893 OF 2022**

**DISTRICT : SATARA**

**Sub.:- Promotion**

1. Sou. Nirmala S. Khandare. )  
Age : 55 Yrs, Occu.: Laboratory Scientific )  
Officer, Class-III, Having Office at District )  
Malaria Office, 405, Guruwar Peth, )  
Juna Dawakhana, Satara and residing at )  
Aditya Clinic, Subhash Nagar, )  
Tal.: Koregaon, District : Satara. )
  
2. Shri Satish L. Thombre. )  
Age : 42 Yrs, Occu.: Laboratory Scientific )  
Officer, Class-III, Having Office at Primary )  
Health Centre, Mohair, Tal.: Mangrulpir, )  
District : Washim and residing at as above.)
  
3. Shri Pravin R. Chakule. )  
Age : 47 Yrs, Occu.: Laboratory Scientific )  
Officer, Having Office at National )  
Filarial Control Unit, Beside Dafrin )  
Hospital, Amravati and residing at 5A, )  
Sabu Layout, Akoli Road, Sainagar, )  
Amravati. )
  
4. Smt. Archana R. Sharma. )  
Age : 49 Yrs, Occu.: Laboratory Scientific )  
Officer, Having Office at National )  
Filarial Control Unit, Beside Dafrin )  
Hospital, Amravati and residing at )  
Pawan Nagar, Near Arihant Hospital, )  
New Town, Bandera, District : Amaravati. )
  
5. Shri Sunil V. Khadse. )  
Age : 55 Yrs, Occu.: Laboratory Scientific )  
Officer, Having Office at District )  
Malaria Office, Risod Road, Lakhala, )  
Washim and residing at Plot No.23, )  
Charakha Layout, Near Dr. Pande )  
Hospital, Akola Naka, Washim. )

6. Dr. Junad S. Sayed. )  
 Age : 47 Yrs, Occu.: Laboratory Scientific )  
 Officer, Having Office at National )  
 Filial Control Unit, Amaravati and )  
 residing at Habib Nagar No.1, )  
 Walgaon Road, District : Amaravati. )
7. Smt. Prajakta P. Aghav. )  
 Age : 46 Yrs, Occu.: Laboratory Scientific )  
 Officer, Class-III, Having Office at District )  
 Malaria Office, Z.P. Building, Post Oros, )  
 Tal.: Kudal, District : Sindhudurg and )  
 residing at Rajashrei Complex, A-Wing, )  
 Bhairavwadi, Kudal, District : Sindhudurg.)...**Applicants**

**Versus**

1. The State of Maharashtra. )  
 Through Additional Chief Secretary, )  
 Public Health Department, having )  
 Office at Dhobi Talao, CST Area, )  
 G.T. Hospital Campus, Fort, )  
 Mumbai – 400 001. )
2. The Commissioner cum Director, )  
 National Health Programme, having )  
 Office in the campus of St. Georges' )  
 Hospital, Mumbai – 400 001. )
3. The Director of Health Services, )  
 M.S, Mumbai, The Directorate of )  
 Health Services, Having Office at )  
 Central Building, Pune – 1. )
4. The Joint Director of Health Services,)  
 [Malaria, Filaria, Water Borne )  
 Diseases], Having Office at Arogya )  
 Bhavan, Yerwada Road, Pune – 6. )...**Respondents**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**  
**DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 23.08.2023**

**PER : A.P. KURHEKAR, MEMBER-J**

**JUDGMENT**

1. Heard finally at the stage of admission.
2. The Applicants are serving as Laboratory Scientific Officers, Class-III and filed the present O.A. for direction to the Respondents to promote them to the post of Health Supervisor *inter-alia* contending that they are eligible for promotion, but deprived of the same.
3. As per old Recruitment Rules of 2003, the requisite qualification for the post of Health Supervisor was graduate and three years' experience. However, later Recruitment Rules were replaced by issuance of Health Supervisor, Group 'C' in the Commissionerate of Health Services under the Public Health Department of Government of Maharashtra (Recruitment) Rules, 2021. By this Rule for promotion, in addition to graduation, the Diploma in Medical Laboratory Technology (DMLT) from Government recognized institute is required.
4. Admittedly, Applicants possesses degree qualification as well as DMLT qualification. There is specific pleading in that behalf in Para No.6(2) of O.A, which is not denied by the Respondents in their Affidavit-in-reply. On the contrary, in the Affidavit-in-reply, Respondents while giving reply to Para No.6(2) states that it is factual position. Suffice to say, Applicants possesses qualification for promotion to the post of Health Supervisor in terms of old Recruitment Rules of 2003 as well as new Recruitment Rules of 2021. This being so, they were required to be considered for promotion.
5. The only defence raised by the Respondents in Affidavit-in-reply is that some of the Laboratory Scientific Officers, who are seniors to the Applicants in gradation list do not possess DMLT qualification, as

required new Recruitment Rules of 2021, and therefore, Respondent No.4 had forwarded proposal to the GAD to re-consider the requirement of DMLT for promotion, so that Laboratory Scientific Officers, who are seniors to the Applicants, but do not possess DMLT qualification should not suffer. This is the only ground raised by the Respondents in Affidavit-in-reply.

6. The learned Advocate for the Applicant has also pointed out that there are large number of vacancies for the post of Health Supervisor. In this behalf, the perusal of appropriate staffing pattern also reveals that 179 posts of Health Supervisors were vacant on 31.12.2021. Notably, it is not the defence that the Government do not want to fill-in the vacancies of the post of Health Supervisors. Indeed, the tenor of the Affidavit-in-reply is that the Respondents want to wait till the decision of General Administration Department (GAD) about the proposal forwarded to relax or reconsider the requirement of DMLT qualification. Suffice to say, there are vacancies and Respondents also intend to fill-in the same.

7. We see no rational or logic in the stand taken by the Respondents for awaiting the decision of GAD on the proposal sent by them to relax DMLT qualification. Once Government had framed Recruitment Rules of 2021 exercising powers under Article 309 of the Constitution of India, it will have to be given effect without waiting for the decision of GAD on the proposal forwarded to it. Indeed, Recruitment Rules of 2021 are framed in supersession of all existing Rules, Orders, Resolutions or Instructions made by the Government in this behalf earlier and it being so, the Recruitment Rules of 2021 comes in force and are required to be implemented without any delay. Applicants' cases for consideration of promotion could not be kept on hold indefinitely awaiting the decision of GAD. Otherwise, Applicants would be deprived enjoying promotional post. They have not got single promotion during the tenure of 25/30 years' service and some of them are due to retire within next five years. They have already got the benefits of Time Bound Promotion, but that

cannot be the ground to deny functional promotion if they fulfilled requisite qualification for the promotional post of Health Supervisor.

8. For the aforesaid reasons, O.A. deserves to be allowed in terms of following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) Respondent Nos.3 and 4 are directed to convene Special DPC within two months from today for consideration of the Applicants for promotion to the post of Health Supervisor and if they fulfill requisite qualification in terms of Recruitment Rules of 2021, necessary orders shall be passed and it be communicated to the Applicants within two weeks from the date of meeting of DPC.
- (C) No order as to costs.

Sd/-  
**(DEBASHISH CHAKRABARTI)**  
**Member-A**

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 23.08.2023  
Dictation taken by :  
S.K. Wamanse.

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