

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.889 OF 2024**

DISTRICT : MUMBAI

Dr. Nia Sara Padmapani,)
(Erstwhile Dr. Deepak Bhagawanrao Shinde),)
Age 47 years, Medical Officer, Group-A.)
Government Maternity Hospital, Ulhasnagar, Thane)
R/at 1102, Rulu River View Classic, Building No.6,)
Near K.M. Agarwal College, Chadal Pada, Kalyan West)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Public Health Department,)
10th Floor, New Administrative Building,)
New Mantralaya, G.T.Hospital Complex, Mumbai)
2. The Commissioner, Health Services,)
Arogya Bhavan, St. George's Hospital Compound)
P.D'Mello Road, Mumbai 400001)
3. The State of Maharashtra, Health Services,)
Through its Deputy Director, Mumbai Circle,)
Regional Psychiatric Hospital Premises,)
Thane West 400604)

4. The State of Maharashtra, Health Service,)
Through its Medical Superintendent,)
Government Maternity Hospital & Clinic,)
Ulhasnagar-4, Thane 421004)..Respondents

Shri Kranti L.C. – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 30th July, 2024
PRONOUNCED ON: 1st August, 2024
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant who is working as a Medical Officer challenges rejection of her application for No Objection Certificate (NOC) from the State of Maharashtra seeking permission to appear as an in-service candidate for the entrance examination for Post Graduate Diploma Course under National Eligibility-cum-Entrance Test (NEET) PG-2024 under the Department of Public Health vide order dated 5.7.2024 communicated by letter dated 9.7.2024.

2. The applicant is working as a Medical Officer with the State of Maharashtra since 2014. She is a Transperson by identification.

3. This matter has a long history. The applicant had cleared the NEET-PG Examination in the year 2020. However, she was held ineligible to go for the PG Course in Dermatology and Venereal Disease (DVD) as

she held a Diploma in Anesthesia. She challenged cancellation of her candidature by filing OA No.414/2021 in this Tribunal. The applicant had stated that the condition mentioned in para 8 of the GR dated 19.3.2019 was illegal and ultra vires. This Tribunal had passed the following order on 13.7.2022:

“10. Considering this object and the nature of the facility offered by the State we are of the view that the policy is reasonable. Thus Clause 8 is not arbitrary or discriminatory does not breach Article 14 of the Constitution, as it provides opportunity to the Applicant to go for further education in Anesthesia of which she holds the Diploma and bars education in other faculty. Thus, the impugned order passed by the Respondent-State under challenge is legal. We do not find merit in the OA. Hence, it is dismissed.

11. Learned Advocate submits that the Applicant was earlier given permission to go for Diploma in DVD and therefore she paid Education fees of Rs.1,00,400/- and subsequently the Government issued order of her elimination from the select list of candidates for PG course. Therefore, neither this amount is to be forfeited nor she is to be penalized. Submissions made by learned Advocate in this regard are correct, hence accepted. Thus, we pass the following order:

ORDER

(a) Education fees of Rs.1,00,400/- is to be returned to the Applicant within two weeks from the date of this order.

(b) No penalty is to be imposed on the Applicant.

(c) Applicant is free to take Post Graduate as in-service provided she is found meritorious as per requirement and subject to all the conditions of the GR dated 19.3.2019.

(d) OA stands dismissed.”

4. Ld. Advocate for the applicant states that said order dated 13.7.2022 was challenged by the applicant in the Hon'ble High Court which was subsequently withdrawn.

5. Ld. Advocate for the applicant states that applicant then filed Review Application No.15 of 2023 in OA No.414 of 2021 on the main ground that the applicant had raised fundamental issue regarding validity of the earlier Diploma of the applicant in Anesthesiology from the College of Physicians and Surgeons of Bombay. The RA was allowed on 30.4.2024 by this Tribunal on the ground that when earlier order dated 13.7.2022 was passed in OA the fact regarding Diploma in Anesthesiology given by the College of Physicians and Surgeons of Bombay being derecognized, was not pointed out and no discussion has taken place on this fact which is a very basic point. This Tribunal had passed the following order on 30.4.2024:

“10. The Review Application is allowed. The Respondents are directed not to apply the bar at clause (8) of the GR dated 19.3.2019 to the case of the Applicant on the basis of her Diploma in Anesthesiology from College of Physicians and Surgeons of Bombay. No order as to costs.

11. This order will be applicable only prospectively for all subsequent NEET Examination.”

6. Ld. Advocate for the applicant pointed out that when the applicant applied for NOC to appear for the NEET-2024 examination as an in-service candidate, the Deputy Director, Public Health, Mumbai Zone, Thane refused to give her NOC vide order dated 5.7.2024. This was on the sole ground that the applicant is overage being 47 years old as against the upper age limit of 45 year as per clause 5.4 of the GR dated 19.7.2023.

7. Ld. Advocate for the applicant pointed out that NEET does not prescribe any age limit to the candidates seeking to apply for the PG course. He further pointed out that this is solely the prerogative of the State Government. Moreover, he pointed out that the State of Maharashtra until last year had relaxed the age limit for in-service candidate in the light of service rendered during the COVID-19 Pandemic by GR dated 7.11.2022 and 24.7.2023.

8. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.2016 of 2022 **High Court of Delhi Vs. Devina Sharma** decided on 14.3.2022 wherein para 29 reads as under:

“29. In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examination.”

9. Ld. CPO opposes the contentions raised by the Ld. Advocate for the applicant. She pointed out that it is the prerogative of the State Government to decide the eligibility criteria for in-service candidates appearing for NEET-PG examination. She pointed out that clause 4.3 of the GR dated 19.7.2023 has stated that age limit of the candidates has to

be 45 years. However, the applicant is now 47 years and hence ineligible to appear for the said NEET-PG examination.

10. Considered the submissions of both the sides. This case has a chequered history. It is a fact that this matter has been sub-judice since 2020 when the applicant filed OA No.414/2021 which was decided on 13.7.2022. We have taken into consideration the fact that the RA of the applicant was allowed on 30.4.2024 and this Tribunal had directed the respondents not to apply the bar at clause 8 of the GR dated 19.3.2019 to the case of the applicant on the basis of her Diploma in Anesthesiology from the College of Physicians and Surgeons of Bombay. We had further stated that the order will be applicable only prospectively for all subsequent NEET examination.

11. It is undoubtedly true that it is the prerogative of the State Government to decide the criteria and rules for eligibility for NEET-PG Examination for in-service candidates. The rationale behind putting an age limit of 45 years for all in-service candidates for NEET PG Examination was that the candidates should render service to the State Government for at least five years. It is seen that the applicant still has time to work for the State Government before her superannuation at the age of 58 years.

12. This case is an exceptional one because of the unusual facts and circumstances. The applicant is a transgender person and has approached this Tribunal way back in 2020. Thus, it is seen that the Review Application in the OA was allowed on 30.4.2024. Hence, the matter has been sub-judice for over four years when the applicant first applied for NOC for NEET-PG examination she was well within the age limit of 45 years. Moreover, it is seen that her RA was allowed and hence this would classify as an exceptional circumstance.

13. In view of these facts and circumstances of the case, we pass the following order:

ORDER

(A) The Original Application is allowed and the impugned orders dated 5.7.2024 and 9.7.2024 are quashed and set aside.

(B) The Respondents are directed to grant NOC to the applicant to appear for the NEET-PG-2024 Examination as an in-service candidate by relaxing the age criteria mentioned in clause 4.3 of the GR dated 19.7.2023.

(C) In view of the fact that the NEET-PG Examination is scheduled in early August 2024, we direct that the said NOC should be issued to the applicant within three days from today.

(D) This order is passed in the peculiar facts and circumstances of the case and it should not be taken as a precedent.

(E) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
1.8.2024

Sd/-
(Mridula Bhatkar, J.)
Chairperson
1.8.2024

Dictation taken by: S.G. Jawalkar.