

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

REVIEW APPLICATION NO.15 OF 2023

IN

ORIGINAL APPLICATION NO.414 OF 2021

DISTRICT : THANE

Dr. Nia Sara Padmapani,)
(Erstwhile Dr. Deepak Bhagawanrao Shinde,)
Age 44 years, Medical Officer, Group-A,)
Government Maternity Hospital, Ulhasnagar, Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Public Health Department, 10th Floor,)
New Administrative Building, New Mantralaya,)
G.T. Hospital Complex, Mumbai 400001)
2. The Commissioner,)
Health Services, Arogya Bhavan,)
St. George's Hospital Compound,)
P. D'Mello Road, Mumbai 400001)
3. The Principal Secretary,)
Medical Education & Research Department,)
Mantralaya, Mumbai)..Respondents

S/Shri Kranti L.C., Sangram Chinappa & Kaustubh Giddh – Advocates 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 : 16th April, 2024

PRONOUNCED ON: 30th April, 2024

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard S/Shri Kranti L.C., Sangram Chinappa & Kaustubh Giddh, learned Advocates for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. This is an application under Section 22(3)(f) of the Administrative Tribunals Act, 1985 seeking review of the Tribunal's judgment dated 13.7.2022 in OA No.414 of 2021. The Hon'ble Supreme Court in **Ajit Kumar Rath vs. State of Orissa & Others, 2000(1) SLR 622** in paras 29 and 30 of its judgment on the provisions of review has held as follows:

"29. the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restriction indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for

correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

30. *Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”*

It is clear from the above observation of the Supreme Court that review is a statutory power and it vests with the Tribunal, which can be used in only one or more of the following three circumstances:

- (a) on the discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the applicant for review or could not be produced by him at the time when the order was made; or*
- (b) on account of some mistake or error apparent on the face of the record; or*
- (c) for any other sufficient reason sufficiently analogous to those specified in the rule.*

3. The present Review Application arises out of judgment and order dated 13.7.2022 passed by this Tribunal in the above OA No.414 of 2021 dismissing the OA of the applicant stating that, ‘applicant is free to take Post Graduation as in-service candidate provided she is found meritorious as per requirement and subject to all the conditions of the GR dated 19.3.2019’.

4. The present Review Application puts forth one main ground for review. Ld. Advocate for the applicant raised the fundamental issue of invalidity of the earlier Diploma in Anesthesiology from College of Physicians and Surgeons of Bombay awarded to the applicant. He pointed out that this crucial fact and the legal issues arising in the OA have not been considered in the judgment sought to be reviewed. He pointed out that the applicant had a Diploma in Anesthesiology from College of Physicians and Surgeons of Bombay. However, this diploma is not recognized by the Medical Council of India which is the governing body for Medical Education in India.

5. Ld. Advocate for the applicant challenges the decision of the respondents to not allow her to pursue Post Graduate Degree Diploma in Dermatology, Venereology and Leprosy (DVD) in the admission process as an in-service candidate.

6. Ld. Advocate for the applicant refers to the notification dated 22.1.2018 issued by the Ministry of Health and Family Welfare. This notification states that Diploma in Anesthesiology (DA) given by College of Physicians and Surgeons (CPS) of Bombay the heading "Recognized Medical Qualifications" shall be deleted. He refers to the fact that the diploma of the applicant not being recognized medical qualification was admitted by the respondents in their affidavit in reply. He states that the prevailing GR dated 19.3.2019 in its clause (8) seeks to disallow medical officers from applying and pursuing Post Graduate Degree or Diploma in any other stream if they possess a degree or diploma in a different stream will not be applicable to the applicant as the diploma obtained by the applicant from the CPS is not recognized. He pointed out this fact was not argued and pointed out before the Tribunal in its earlier hearing so this point was considered in the order dated 13.7.2022.

7. Ld. CPO fairly conceded that the Diploma in Anesthesiology given by College of Physicians and Surgeons of Bombay has been derecognized. She further pointed out that the said course was deleted from the recognition. Ld. CPO pointed out that similar challenge is raised through W.P. (St) No.10477/2023 which is pending for final disposal before the Hon'ble Bombay High Court.

8. We have considered the submissions of both the sides. It is a fact that when the earlier order dated 13.7.2022 was passed in the above OA the fact regarding the Diploma in Anesthesiology given by 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.

9. Considering the above facts and circumstances of the case, we pass the following order.

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.

Sd/-

(Medha Gadgil)
Member (A)
30.4.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
30.4.2024

Dictation taken by: S.G. Jawalkar.