

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3196 OF 2016

[Dr. Nandkishor Gunwantrao Raut .vs. State of Maharashtra and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.S. Kaptan, Senior Counsel with Shri P.S. Khubalkar, Counsel for the
petitioner,
Smt. N.P. Mehta, Assistant Government Pleader for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 27, 2016.

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 16.1.2015 dismissing the Original Application filed by the petitioner.

The petitioner was working as a Lecturer in Ophthalmology in Government Medical College, Akola. By filing the Original Application, the petitioner sought a direction against the respondents to grant regular promotion to the petitioner on the post of Associate Professor in Ophthalmology with effect from 28.9.1999 and also grant him deemed seniority. The petitioner also challenged the advertisement dated 11.11.1999, by which the post of Associate Professor in Ophthalmology was earmarked for the open category. According to the petitioner, by the advertisement dated 11.11.1999, the post of Associate Professor in Ophthalmology should have been earmarked for the Other Backward Classes (Physically Challenged). On hearing the parties, the Maharashtra Administrative Tribunal, by the impugned order, dated 16.1.2015, dismissed the Original Application filed by the petitioner. The said order is impugned in the instant petition.

On hearing the learned counsel for the parties, we find that there is no scope for interference with the impugned order passed by the Tribunal. The Departmental Promotional Committee/Establishment Board had considered the claim of the petitioner for promotion in the year 1999, but the claim was rejected, as the committee did not find the petitioner to be fit for promotion. The Tribunal found that though the minutes of the meeting of the Departmental Promotional Committee were not available, it was clear from the proceedings of the meeting held on 12.7.2007 that the Establishment Board/Departmental Promotional Committee had considered the case of the petitioner and it did not find him to be fit for promotion in view of the confidential reports. The Establishment Board found that the confidential reports of the petitioner for the years 1996-1997 to 2001-2002 were below B+ and hence the petitioner was not entitled to be promoted. The Tribunal observed that the confidential reports of the years 2002-2003 to 2006-2007 were not communicated to the petitioner and Establishment Board did not rely on these reports. The Tribunal found that the Establishment Board rightly relied on the confidential reports of the years 1996-1997 to 2001-2002 that were communicated to the petitioner, as per the affidavit filed on behalf of the respondents before the Tribunal. The petitioner had not filed an affidavit before the Tribunal to controvert or deny the statement of the respondents about the communication of the confidential reports of the years 1996-1997 to 2001-2002 to the petitioner. The Establishment Board could have relied on the confidential reports of the years 1996-1997, 1997-1998 and 1998-1999 while considering the petitioner's claim for promotion. As the confidential reports were below B+, the Tribunal found that the Establishment Board did not commit any error in not promoting the petitioner to the post of Associate Professor. The finding of

the Tribunal appears to be just and proper. The Tribunal also found and rightly so, that though the ratio for filling up the posts by promotion and nomination was 50:50, the Government could, under certain circumstance, relax this ratio. The Tribunal, therefore, held that the petitioner could not have challenged the advertisement on the ground that 50:50 ratio was not strictly followed, while filling up the posts by promotions and nomination. The petitioner had applied from the open category as per the advertisement and since the petitioner was less meritorious than the candidates that were selected from the open category, the petitioner was not selected and appointed in pursuance of the advertisement of the year 1999.

As the order of the Tribunal is just and proper, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE