

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

**WRIT PETITION NO.8062 OF 2015****Avinash Gunderao Nagure Vs. The Union of India.**

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mr.S.S.Kulkarni, advocate for the petitioner.

Mr.M.B.Bharaswadkar, A.G.P. for the State.

Mr.S.B.Deshpande, Assistant Solicitor General for Respondent Nos.1 to 3.

**CORAM : S.V.GANGAPURWALA AND  
K.L.WADANE, JJ.**

**Date : 14.02.2017.**

**PER COURT :**

1. Heard.

2. Mr.Kulkarni, learned counsel for the petitioner states that the petitioner had successfully passed Junior Telecom Officer examination and ought to have been promoted to the post of Junior Telecom Officer (JTO). The learned counsel submits that only ground on which the petitioner is denied the promotional post is that the petitioner did not submit the medical certificate and/or did not appear before the Medical Board. The learned counsel submits that the condition to submit the Medical Certificate was applicable only to the physically handicapped category candidates. The post

being executive and technical, the Medical Certificate was not required. The learned counsel further submits that the persons appearing from other Circles were not demanded Medical Certificates. The petitioner was discriminated. The same is violative of Article 14 of the Constitution of India. The petitioner even before his retirement had made a grievance with the Respondents, however, no reply was received and only after retirement of the petitioner, the Respondents replied. According to the learned counsel, even the persons of other batches considered for the promotion for the post of JTO were not demanded the Medical Certificates. The petitioner be paid the pensionary benefits considering the petitioner to have retired from the post of JTO.

3. Mr.Deshpande, learned Assistant Solicitor General, submits that the petitioner was directed to appear before the Medical Board on a given date. The petitioner did not appear. The learned ASG states that in the said Circle, the clarification could not reach about the Medical Certificate not being compulsory.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The petitioner had participated in the selection for the 50% post of JTO to be filled in by promotion. Departmental Examination was cleared by the petitioner, however, the petitioner was directed to produce the Medical Certificate and was directed to

appear before the Medical Board. The petitioner did not adhere to the same. It is the contention of the petitioner that the same was not required.

6. It appears that the Circle from where the petitioner appeared had demanded Medical Certificates from all the candidates. It is not that only from the petitioner the Medical Certificate was demanded. Even assuming that it was on erroneous premise, the same was demanded, however, it is not that the other candidates appearing from the said Circle were not demanded the Medical Certificates and only the petitioner was demanded.

7. There is another facet to the case. The selection process is of the year 2008. The petitioner retired on 30.4.2011 and the present petition is filed in July 2015 i.e. almost seven years after the conclusion of the selection process and four years after retirement of the petitioner. The aspect of delay is also not insignificant.

8. Considering the aforesaid aspects, the jurisdiction under Article 226 of the Constitution of India, can not be invoked. The Writ petition accordingly stands disposed of. No costs.

**( K . L . WADANE , J . )**

**( S . V . GANGAPURWALA , J . )**

Dt.14.02.2017.  
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