

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 229 OF 2020

DIST. :DHULE

Dr. Manik Prabhakar Sangale,)
Age.59 years, Occu. Service as)
District Civil Surgeon, Civil Hospital,)
Dhule, District – Dhule.) -- **APPLICANT**

V E R S U S

(1) The State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
Gopal Tejpal Hospital Parisar,)
Sankul Building, 10th Floor,)
Mantralaya, Mumbai – 400 001.)

(2) The Director of Health Services,)
Aarogya Bhavan, Saint George)
Hospital, Chhatrapati Shivaji)
Terminus Area, Fort, Opp. CST,)
Mumbai – 400 001.) -- **RESPONDENTS**

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for the
respondents.

CORAM : **Hon'ble Shri Bijay Kumar, Member (A)**

DATE : **27.10.2021**

O R D E R

1. This Original Application No. 229 of 2020 has been filed by
the original applicant Dr. Manik Prabhakar Sangale on

27.07.2020 challenging the impugned orders dated 6.9.2019 (page 20-A of paper book) issued by respondent no. 2 and letter dated 23.10.2019 issued by the respondent No. 1, enclosed at page 20 of paper book.

2. **The background facts of the case are as follows:-**

(a) The applicant was transferred from the post of Medical Superintendent, Sangli to the post of Civil Surgeon, Civil Hospital, Dhule, District Dhule vide transfer order dated 15.07.2016. Thereafter, by another transfer order dated 05.08.2017 the applicant was transferred from Dhule to District Aurangabad on the vacant post of Assistant Director, Health Services (Medical), Aurangabad.

(b) The applicant being aggrieved by midterm and mid tenure transfer filed O.A. No. 541 of 2017 before this Tribunal. It is a matter of record that no interim relief was granted to the applicant.

(c) This Tribunal passed order on 15.12.2017 whereby impugned transfer-order dated 05.08.2017 was quashed and set aside. The Tribunal further directed the respondents to repost the applicant as District Civil Surgeon, Civil Hospital, Dhule and to make suitable adjustment in respect of

another Doctor namely Dr. Mohan Yashwant Patil, who was posted in place of the applicant and was joined as respondent No. 4 in the said Original Application, but who did not participate in the proceedings before this Tribunal.

(d) The private respondent i.e. respondent no. 4 had filed a writ petition against the order passed by this Tribunal in O.A. No. 541 of 2017 which was dismissed in the month of June, 2018. Thereafter, the respondent authorities had issued the posting order of the present applicant on the post of Civil Surgeon, Dhule vide order dated 31.08.2018.

(e) The applicant had made representation on 19.4.2019 to the Principal Secretary, Public Health Department, Mumbai to treat period of his absence from duty from 7.8.2017 to 30.8.2018 as duty period. Accordingly the respondent no. 1 directed the respondent no. 2, vide his letter dated 13.05.2019, to examine the representation made by the applicant and submit suitable proposal. In response, respondent No. 2 replied by impugned letter dated 06.09.2019, suggesting to respondent No. 1 that powers to sanction the period of absence from duty as duty period are vested with respondent No. 1 only.

(f) The respondent No. 1 considered the fact that there was no interim stay to the impugned transfer order posting the applicant to the post of Assistant Director, Health Services, (Medical), Aurangabad and the said post was vacant; therefore, instead of defying the said transfer order during pendency of the O.A. No. 541 of 2017, the applicant was duty bound to join on the said post until revised posting order had been issued in compliance with the order of this Tribunal in O.A. No. 541 of 2017. As the applicant on his own accord decided not to join duty in accordance with the impugned transfer order he cannot be treated as “*on duty*”. Accordingly, the respondent no. 1 directed the respondent No. 2 vide impugned communication dated 23.10.2019 to sanction earned-leave to the applicant for the period of his absence from duty and in case, period of absence exceeds earned-leave balance then the balance period may be sanctioned as extra-ordinary leave.

3. **Relief sought** - The applicant has, by amended prayer clause 24(B) of this O.A. sought relief of quashing and setting aside letter of respondent no. 2 dated 6.9.2019 and impugned decision communicated by respondent no. 1 vide impugned order dated 23.10.2019 and issue of direction to the respondents for treating the period of his absence from

duty till he was reposted to the post of Civil Surgeon, Dhule i.e. from 07.08.2017 to 30.08.2018 as “duty period”. Amended prayer clauses are reproduced below for ready reference:-

“(24) Relief(s) sought:

- (A) *This Original Application may kindly be allowed.*
- (B) *To quash and set aside the order dated 06.09.2019 and 23.10.2019 issued by the respondent authorities treating the period of applicant on the post of Civil Surgeon, Civil Hospital, Dhule w.e.f. 7.8.2017 to 30.8.2018 as Extraordinary Leave (without pay) period and for that purpose issue necessary orders to the extent of applicant.*
- (C) *To hold and declare the applicant is entitled for treating the period as a duty period i.e. from 07.08.2017 to 30.08.2018 on the post of District Civil Surgeon, Civil Hospital, Dhule and to pay all the consequential benefits along with pay and allowances to which the applicant is entitled forthwith and for that purpose issue necessary orders.*
- (D) *To grant any other relief in favour of the applicant in the interest of justice.”*

4. Grounds for seeking Relief-

The applicant is seeking reliefs prayed for on grounds which is being summed up as follows –

(a) Respondent authorities have not applied their mind in respect of rules 10, 11, 26 and 30 of the Maharashtra Civil Services (Leave Period) Rules, 1981 and had only taken in to consideration the Maharashtra Civil services (General Conditions of Services) Rules, 1981.

(b) Respondents did not obey order of Tribunal in respect of taking corrective steps of posting the applicant on his original post, in spite of order passed on 15.12.2017 by this Hon'ble Tribunal and waited till 31.08.2018. This period is delayed by the respondent authorities and for that the applicant should not suffer and period from 07.08.2017 to 30.08.2018 had to be treated as duty period.

(c) The respondent no. 1 intentionally and also in bias mind has passed orders dated 06.09.2019 and 23.10.2019 treating the period as a compulsory waiting period (perhaps the applicant wanted to say 'earned leave and extra-ordinary leave').

(d) That the Tribunal had granted stay at very first day at principal seat of the Tribunal in similar cases. Same had to be implied in this case too.

5. **Pleadings and arguments –**

Respondent no. 1 and 2 had filed affidavit in reply on 25.02.2021. Rejoinder to affidavit in reply was filed on 24.03.2021 on behalf of the applicant. The respondents filed sur-rejoinder to the rejoinder filed by the applicant on 12.10.2021. As the pleadings were complete, the matter was taken for final hearing on 12.10.2021. On conclusion of arguments by the two contesting sides, the case was reserved for order on 12.10.2021.

6. **Analysis of Facts –**

(i) The applicant believes that stay granted by the principal seat of this Tribunal at Mumbai in similar set of case should be implied in the present case too. However, in para 6 of the order passed by the Tribunal in O.A. No. 541/2017, dated 15.12.2017 it is clearly mentioned that – *“The record would show that in the present application along with 6 other O.As. no interim relief was granted.”* In absence of interim relief, the applicant was under obligation to comply with the impugned transfer orders by joining on the post of Assistant Director, Public Health (Medical), Aurangabad subject to outcome of this O.A. However, he had decided to abstain from joining and rendering public service relating to Public Health and therefore, his claim that

the period of his absence from duty be treated as 'On Duty' can, at the best be his wish without merit.

(ii) The applicant has pleaded that rules 10, 11, 26 and 30 of the M.C.S. (Leave) Rules, 1981 are applicable in the instant matter. However, on perusal of these rules, it is clear that:-

- a. *Rule 10 deals with Right to Leave,*
- b. *Rule 11 deals with consideration for sanctioning of leave on application.*
- c. *Rule 26 deals with verification of title to leave*
- d. *Rule 30 deals with grant of leave and payment of leave salary to a Government servant transferred from one Department / office to another while on leave.*

On perusal of these rules, it is observed that they are not applicable in the instant matter.

(iii) As the respondent no. 4 had challenged the Order of the Tribunal in O.A. No. 541 of 2017, I see valid administrative reason behind decision of respondent no. 1 to wait for the outcome of writ petition filed by respondent No. 4 challenging the order of this Tribunal in O.A. No. 541 of 2017.

7. **Conclusion –**

The applicant who is a class-1 Medical Officer of the rank of Civil Surgeon has willfully absented himself from complying with

the order till his transfer order was modified in compliance with the order passed by this Tribunal in O.A. no. 541 of 2017 as a result public health services could not get benefit of expert services of the applicant. The applicant had been posted by impugned transfer order on a post which was vacant and therefore, he should have joined his duties and waited for revised order of posting. The basic principle of treating absence from duty as *Duty Period* is to compensate a government servant when he is not given a posting when legally entitled to get it or, he is given posting on a post which is not vacant. Therefore, in my considered opinion, there is no merit in this original application.

ORDER

After considering all the facts before me, I hereby pass following order –

- (A) The Original Application No. 229 of 2020 is, hereby, dismissed for reason of being devoid of merit.
- (B) No order as to costs.

(BIJAY KUMAR)
MEMBER (A)

Place : Aurangabad
Date : 27.10.2021.