

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 322 OF 2021
(Subject – Transfer)**

DISTRICT : AURANGABAD

Kantilal Kondiram Naglod,)
Age : 37 years, Occu. : Service as (Asst. Superintendent)
Class-3) at Rural Hospital, Bodhegaon,)
Tq. Shevgaon, Dist. Ahmednagar.)
R/o. Lalwan Post Nidhone, Tq. Phulambri,)
Dist. Aurangabad.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Public Health Department, Mantralaya,))
Mumbai, G.T. Hospital Compound,)
10th Floor, Mumbai - 32.)
2. **The Jt. Director of Health Services,**)
(Malaria, Filariasis & Water Born Diseases,))
Central Building, Sasoon Road, Pune-411001.)
3. **The Deputy Director of Health Services,))**
Indira Gandhi Chowk, Shalimar,)
Nashik-422001.)
4. **The Deputy Director of Health Service,))**
Mahavir Chowk, Near Baba Petrol Pump,))
Adalat Road, Aurangabad-431005.) ... **RESPONDENTS**

APPEARANCE : Shri Jiwan Patil, Advocate for the Applicant.

: Shri I.S. Thorat, Presenting Officer for Respondents.

: Shri S.B. Solanke, Advocate for Intervenors.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**
DATE : **13.09.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned communication dated 09.06.2021 (Annexure A-3) issued by the respondent No. 4 i.e. the Deputy Director of Health Services, Aurangabad refusing to give No Objection for inter divisional transfer of the applicant from Nashik Division (Circle) to Aurangabad Division (Circle).

2. The facts in brief giving rise to this Original Application can be stated as follows :-

(a) The applicant is a Government servant. At present he is working as Assistant Superintendent, which is Class-III post at Rural Hospital, Bodhegaon, Tq. Shevgaon Dist. Ahmednagar, which comes under the Nashik Division. The applicant initially joined the service of the Health Department in the year 2014. He firstly served as Senior Clerk at Nandurbar. Thereafter, he was promoted and

transferred to the post of Assistant Superintendent at Rural Hospital, Bodhegaon, Tq. Shevgaon, Dist. Ahmednagar in the year 2019.

(b) It is contended that the wife of the applicant is working as Assistant Teacher at Zilla Parishad School at Village Tad Pimpalgaon, Devgaon Rangari, Tq. Kannad, Dist. Aurangabad.

(c) It is further submitted that the applicant is permanent resident of Aurangabad and he has to maintain his entire family, which resides at Aurangabad, which includes his old aged parents and minor daughter and son. The mother of the applicant is always ill and requires medical treatment frequently and last year she has undergone surgery. The applicant, who is working far away, is therefore, unable to take medical care of his mother and to look after other family members. Considering the same, the applicant submitted application dated 22.07.2020 (part of Annexure A-1, page No. 15 of the paper book) to the respondent No. 3 i.e. the Deputy Director of Health Services, Nashik for transfer from Nashik Division to Aurangabad Division i.e. inter divisional

transfer through the Medical Superintendent, Rural Hospital, Bodhegaon and the District Civil Surgeon, General Hospital, Ahmednagar. Thereafter, the said Medical Superintendent, Rural Hospital, Bodhegaon, Dist. Ahmednagar forwarded proposal dated 23.07.2021 (part of Annexure A-1, page No. 14 of paper book) to the respondent No. 3 i.e. the Deputy Director of Health Services, Nashik Circle, Nashik for inter divisional transfer of the applicant and in turn the respondent No. 3 i.e. the Dy. Director of Health Services, Nashik Division, Nashik submitted proposal dated 19.03.2021 (part of Annexure A-1, page Nos. 13 to 99 of the paper book) to the respondent No. 2 i.e. the Director of Health Services, Pune.

(d) It is further submitted that after receipt of the above-said proposal dated 19.03.2021 (part of Annexure A-1, page No. 13 of the paper book) by the respondent No. 2 from the respondent No. 3, no objection certificate was asked from the respondent No. 4 i.e. the Dy. Director of Health Services, Aurangabad vide letter dated 04.06.2021 (Annexure A-2). In response to that, the respondent No. 4 issued the impugned letter / communication dated 09.06.2021 (Annexure A-3). It is averred that the said

impugned letter is issued without properly going into the matter and without verifying the record. Thereby the respondent No. 2 declined to give No Objection Certificate to transfer and absorb the applicant in Aurangabad Region on inter divisional transfer contending that there are many employees waiting to be promoted for the said post of Assistant Superintendent in Aurangabad Division and transferring the present applicant directly to the said post would cause injustice on such employees and therefore, No Objection Certificate could not be given.

(e) It is further submitted that while declining the NOC for the applicant's transfer, the respondents have failed to consider the provisions of G.R. dated 29.03.2001 (Annexure A-4), which provides for couple convenience. Moreover, the Government of Maharashtra has also issued Government Circular dated 11.07.2000 (Annexure A-5) as regards transfer of persons who have worked in Tribal area for three years. As per the said G.R., such employee is required to be given choice posting after having worked for three years in Tribal area with satisfactory record. The same is also not considered while issuing the impugned letter.

(f) It is further submitted that inter divisional transfers are governed by G.R. dated 15.05.2019 (Annexure A-6) issued by the General Administration Department Government of Maharashtra. By considering the said G.R., more particularly clause 3 of the said G.R., the applicant is very much ready to abide by the conditions as mentioned in the said G.R. dated 15.05.2019.

(g) It is further submitted that even after all above mentioned facts, the respondent No. 4 failed to consider the case of the applicant for giving No Objection Certificate for inter divisional transfer. The post of Assistant Superintendent is available in Aurangabad division. By the impugned letter, the rights of the applicant are being defeated without any plausible reasons.

(h) It is further submitted that by the letter dated 01.09.2020 (Annexure A-7), the Deputy Director of Health Services, Akola Division, Akola had given NOC for inter divisional transfer of one Shri Sachin Maroti Wankhede working on the post of Assistant Superintendent and was given inter divisional transfer from Nashik Division to Akola Division. Subsequently, the said Sachin Maroti Wankhede

by the order dated 18.03.2021 (page Nos. 119 to 120 of the paper book) issued by the Director of Health Service, Pune-1 was transferred from Nashik Division to Akola Division. In the circumstances, the impugned letter dated 09.06.2021 (Annexure A-3) issued by the respondent No. 4 is not legal and proper and the same is liable to be quashed and set aside.

3. The present Original Application is resisted by filing affidavit in reply on behalf of contesting respondent No. 4 i.e. the Deputy Director of Health Services, Aurangabad of one Dr. Eknath Maloji Bhosale, working as Chief Administrative Officer in the office of respondent No. 4. Thereby he denied all the adverse contentions raised in the Original Application and specifically contended that the applicant is seeking inter divisional transfer from Nashik Division to Aurangabad Division on the promotional post of Assistant Superintendent. There are many employees in the cadre of Senior Clerk, who are waiting to be promoted to the post of Assistant Superintendent in the Aurangabad Division. In view of inter divisional transfer of the applicant at Aurangabad, injustice is likely to be caused to the said employees. The Association of the said employees has given representation dated 16.05.2019 (Annexure R-1, page Nos. 127

to 129 of the paper book) to this respondent No. 4 raising objection about inter divisional transfer, as the same is likely to adversely affect the employees working in Aurangabad Division, who are waiting for promotion to the post of Assistant Superintendent. Moreover, the posts of Assistant Superintendent are available only by way of promotion from the employees of Senior Clerk. Hence, this respondent is justified in issuing impugned communication dated 09.06.2021 (Annexure A-3) refusing to give NOC for inter divisional transfer of the applicant from Nashik Division to Aurangabad Division. Hence, the present Original Application is liable to be dismissed.

4. The applicant has filed his rejoinder affidavit denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the Original Application. He also placed on record documents showing vacancies of the post of Assistant Superintendent in Aurangabad Division being document dated 19.07.2021 (Annexure P-1). In view of the same, it is stated that the applicant is seeking inter divisional transfer on the vacant post of Assistant Superintendent. The NOC refused by the respondent No. 4 is not legal and proper in view of the policy of the Government reflected in the Circular dated 29.03.2001

(Annexure A-4), which is binding on the respondents and also in view of the G.R. dated 11.07.2000 (Annexure A-5).

5. It is a fact that during pendency of the present O.A., M.A. No. 299/2022 in this Original Application was filed by the applicants therein, who are working as Senior Clerks in Aurangabad Division and their post is feeder post for promotion to the post of Assistant Superintendent in Aurangabad Division, on which post the applicant is seeking inter divisional transfer.

This Tribunal by the order dated 12.07.2022 dismissed the said M.A. No. 299/2022 in O.A. No. 322/2021. The applicants therein challenged the said order dated 12.07.2022 by filing W.P. No. 7864/2022 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. By the order dated 28.07.2022, the said W.P. No. 7864/2022 was disposed off. Thereby the Hon'ble High Court was pleased to set aside the order of this Tribunal dated 12.07.2022 and was further pleased to allow the applicants therein to intervene.

In view of above, the said intervenors filed affidavit in reply (page Nos. 131 to 146 of the paper book) inter-alia contended that the applicant before completing five years requisite tenure on the post of Assistant Superintendent has sought inter divisional transfer in contravention of G.R. dated 15.05.2019 and

moreover that the inter divisional transfer of the applicant is likely to affect the promotional chance of one Sr. Clerk in Aurangabad Division causing injustice on their cadre and the case of the applicant is not fit for inter divisional transfer.

6. I have heard the arguments advanced at length by Shri Jiwan Patil, learned Advocate for the applicant on one hand, Shri I.S. Thorat, learned Presenting Officer for the respondents and Shri S.B. Solanke, learned Advocate for intervenors on the other hand.

7. Considering the rival pleadings and submissions of both the sides, it is evident that the applicant, who is presently working on the post of Assistant Superintendent (Group-C) at Rural Hospital, Bodhegaon, Tq. Shevgaon, Dist. Ahmednagar is seeking inter divisional transfer mainly on three grounds viz. :-

- (i) The couple convenience, as the wife of the applicant is working in Zilla Parishad School at Tad Pimpalgaon, Centre Devgaon Rangari, Tq. Kannad, Dist. Aurangabad as Assistant Teacher in terms of Government Circular dated 29.03.2001 (Annexure A-4), as well as, G.R. dated 15.05.2019 (Annexure A-6) and G.R. dated 09.04.2018.
- (ii) Constant illness of his old aged mother.

(iii) Being working in Tribal area for five years in terms of G.R. dated 11.07.2000 (Annexure A-5)

8. Undisputedly, the applicant was appointed as Senior Clerk vide appointment letter dated 27.01.2014 (part of Annexure A-1 at page Nos. 29 and 30 of the paper book) and was posted at the office of District Malaria Officer, Nandurbar under Nashik Division. He worked there till his promotion to the post of Assistant Superintendent as per the promotion order dated 21.06.2019 (part of Annexure A-1 at page Nos. 27 and 28 of the paper book), thereby he was posted at Rural Hospital, Bodhegaon, Tq. Shevgaon, Dist. Ahmednagar. He was working on the said post as on the date of filing of the present Original Application on 22.06.2021 and continued to work on the said post.

9. Further undisputedly, the applicant made application dated 22.07.2020 (part of Annexure A-1 at page No. 15 of the paper book) to the Deputy Director of Health Services, Nashik Division, Nashik, through his immediate superior authority i.e. the Medical Superintendent, Rural Hospital, Bodhegaon seeking transfer on all above three grounds, as stated earlier. The said Medical Superintendent, Rural Hospital, Bodhegaon submitted proposal dated 23.07.2020 (part of Annexure A-1 at page No. 14 of the

paper book) to the respondent No. 3 for consideration of inter divisional transfer of the applicant. The respondent No. 3 in turn submitted proposal dated 19.03.2021 (part of Annexure A-1 at page Nos. 13 to 99 of the paper book) to the Director of Health Services, Pune mentioning that the applicant has completed five years of service in Nashik Division and his application for inter divisional transfer can be considered on account of reason of couple convenience and illness of his parents in view of the G.R. dated 15.05.2019 (Annexure A-6).

10. In view of above, the case of the applicant is required to be considered in view of the Government Circular dated 29.03.2001 (Annexure A-4) relating to policy of couple convenience for transfer, G.R. dated 11.07.2000 (Annexure A-5) dealing with choice transfer to the Group-C and Group-D employees, who have performed good work for three years in tribal area, G.R. dated 15.05.2019 (Annexure A-6) dealing with policy of inter divisional transfer of the Government servant in the cadre of Group-C and G.R. dated 09.04.2018 issued by the General Administration Department, Maharashtra State relating to policy of counseling for general transfers.

11. The case of the applicant is of the inter divisional transfer and hence it will be mainly governed by the G.R. dated

15.05.2019 (Annexure A-6). Perusal of the said G.R. would show that while in supersession of the earlier G.R. dated 03.06.2011 relating to inter divisional transfer, this G.R. dated 15.05.2019 is issued. In this G.R. dated 15.05.2019 (Annexure A-6), in column No. 2 it is stated that the Government servant seeking inter divisional transfer should have completed five years of service in the cadre seeking transfer. It is pertinent to note here that while sending the proposal dated 19.03.2021 (part of Annexure A-1 at page No. 13 of the paper book) it is mentioned that the applicant has completed five years of service in Nashik Division. Record would show that as on the date of application made on 22.07.2020 (part of Annexure A-1 at page No. 15 of the paper book), the applicant had completed service of about one year on the post of Assistant Superintendent. Moreover, on 22.07.2020, the applicant was working on the post of Assistant Superintendent at Rural Hospital, Bodhegaon, Dist. Ahmednagar. It is nobody's case that the applicant's posting of Assistant Superintendent was in tribal area. The applicant in fact, was working in tribal area from the initial date of his appointment on the post of Senior Clerk on 27.01.2014 till his promotion on 21.06.2019. The applicant is seeking inter divisional transfer mainly on the basis of the G.R. dated

11.07.2000 (Annexure A-5). In para No. 2 (C) of the said G.R. it is as stated as follows :-

“२.
 (अ)
 (ब)
 (क) वरील प्रमाणे पसंतीच्या जिल्हयांत बदली मिळण्यासाठी, आदिवारी क्षेत्रात काम करणा-या अधिकारी / कर्मचारी यांनी उपरोक्त विहित कार्यकाळ संपण्यापुर्वी किमान ३ महिने आधी यांच्या पसंतीच्या जिल्हयाची तीन नावे सक्षम प्राधिका-यांना काळवावीत व त्याची प्रत तो कार्यरत असलेल्या क्षेत्राच्या जिल्हाधिकारी / विभागीय आयुक्त यांना देण्यात यावी.”

This shows that the application for choice posting is to be made at least about three months before completion of normal tenure in tribal area. The applicant has not made application for inter divisional transfer while working in tribal area. In terms of the above-said provisions in G.R. dated 11.07.2000, he made application for inter divisional transfer only after his transfer on promotion by the order dated 21.06.2019. He made that application for inter divisional transfer only on 22.07.2020 (part of Annexure A-1 at page No. 15 of the paper book)

12. If the case of the applicant is considered in view of the G.R. dated 15.05.2019 (Annexure A-6), it is evident that the said G.R. mentions about no objection of divisional office where the transfer is sought as per the clause 8(2), which is as follows :-

“८. कायमस्वरूपी समावेशनासाठी अटी व शर्ती :-

(१)

(२) संबंधित कर्मचारी ज्या कार्यालयात कार्यरत असेल, त्या कार्यालयातील त्याच्या नियुक्ती प्राधिका-यांची, त्याचे अन्य कार्यालयात कायमस्वरूपी समावेशन करण्यास, तत्त्वतः मान्यता मिळणे आवश्यक राहिल. तसेच, ज्या शासकीय कार्यालयात कायमस्वरूपी समावेशन करण्याची विनंती केली आहे, त्या कार्यालयाच्या नियुक्ती प्राधिका-यांनी या संदर्भात ना-हरकत प्रमाणपत्र देणे आवश्यक राहिल.”

In terms of the same, the no objection certificate was sought from the office of the respondent No. 4. The respondent No. 4 however, by the impugned communication dated 09.06.2021 (Annexure A-3) refused to give no objection stating therein that while filing vacancy of promotional post of Assistant Superintendent by inter divisional transfer, it is likely to adversely frustrate the interest of Government servants in the cadre of Senior Clerk, who are entitled for promotion on the post of Assistant Superintendent. In this regard, the respondent No. 4 referred to the representation dated 16.05.2019 submitted by the Maharashtra State Health Administrative Employees Association, Aurangabad Division, Aurangabad.

13. In the present O.A., the said government servants, who are working in the cadre of Senior Clerk were allowed to intervene as per the order of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad dated 28.07.2022 passed in W.P. No.

7864/2022. The said intervenors filed affidavit in reply of one Shri Ajaykumar Sahebrao Chilke, raising various objections and more particularly contending that the inter divisional transfer of the applicant is likely to affect the promotional chance of at least one Senior Clerk, who would be entitled for promotion to the post of Assistant Superintendent.

14. This G.R. dated 15.05.2019 (Annexure A-6) refers to the reasons for inter divisional transfer by way of Schedule -1. As per the said Schedule, the inter divisional transfer can be sought on five grounds viz. :-

- (i) The Government servants, who are covered under the Rights of Persons with Disabilities Act, 2016.
- (ii) The Government servants, who are the parents of specified disability of their wards.
- (iii) Illness of dependents of the Government servant.
- (iv) The Government servant, who is widow or widower.
- (v) The couple convenience.

In this Schedule-I, the choice transfer of Government servants working in tribal area are not covered. In view of the same, learned Advocate for the applicant strenuously urged before me that the applicant's case is to be considered separately and distinctly on the basis of the G.R. dated 11.07.2000

(Annexure A-5) on the basis of his service tenure of three years working satisfactorily, having permanency certificate and against the clear vacancy in the cadre under which the applicant is selected originally and by giving requisite undertaking to give up seniority. According to him, the applicant has produced on record the requisite documents and therefore, he is entitled for inter divisional transfer. But according to him the respondent No. 4 without any plausible reasons, issued the impugned communication refused to give no objection certificate, which is liable to be quashed and set aside.

15. To substantiate the said submissions, he has placed reliance on **O.A. No. 335/2018** in the matter of **Suresh S/o Mohanlal Jumani Vs. The Additional Chief Secretary and Anr.** decided on 07.01.2019. In the said case, the applicant was working on the post of Office Superintendent at Dhule since 30.12.2011 and at Nandurbar since the year 2015, which both the districts are tribal districts. He sought transfer either in Mumbai or Thane on account of couple convenience, as his wife was serving as Junior Telegraph Officer in BSNL Office at Mumbai. He sought inter divisional transfer in view of the G.R. dated 11.07.2000. His request was not considered and instead he was transferred to Jalna. He challenged the said order. The said

O.A. was allowed by quashing and setting aside the impugned transfer order dated 18.05.2018 transferring the applicant from Nandurbar to Jalna and the respondents were directed to transfer the applicant at the place of his choice either at Mumbai or at Thane as per the guidelines in G.R. dated 06.08.2002 immediately. In the said case, the applicant therein was making applications for transfer while working in tribal area at Nandurbar.

16. In the background of the above-said decision, if the facts of the present case are considered, it can be seen that the applicant has not made application for transfer, while working in tribal area at Nandurbar till his transfer on promotion in the year 2019. Instead, he made application in July, 2020 i.e. on 22.07.2020, when he was working in Rural Hospital, Bodhegaon, Tq. Shevgaon, Dist. Ahmednagar. The same is not in consonance with clause 3 of the G.R. dated 11.07.2000, which is already reproduced.

17. The facts of the O.A. No. 335/2018 in the matter of Suresh S/o Mohanlal Jumani Vs. The Additional Chief Secretary and Anr. relied upon by the applicant would show that there is reference of G.R. dated 09.04.2018, whereas there is provision of

taking into consideration the options given by the Government servants working in tribal area first as per the choice given by them. The said provision is mentioned in Step No. 5(I) of the said G.R., which is as follows :-

“टप्पा क. ५ : समुपदेशनाद्वारे बदलीसंदर्भात नागरी सेवा मंडळाने अनुसरावयाची कार्यपध्दती :-

(I) अवघड क्षेत्रात कार्यरत असणा-या व बदलीस पात्र असणा-या कर्मचा-यांची प्रसिध्द केलेली यादी प्रथम विचारात घेउन सदर यादीतील कर्मचा-यांची विवरणपत्र-२ मध्ये नमूद केलेल्या प्राधान्यकमानुसार बदलीद्वारे पदस्थापनेबाबत शिफारस करावी.”

18. In view of the same, applicability of the G.R. dated 11.07.2000 (Annexure A-5) is to be considered in the background of the G.R. dated 09.04.2018. However, in my considered opinion, the facts of the present case would show that the applicant does not fulfill the condition of making application while working in tribal area as mentioned in G.R. dated 11.07.2000. On the other ground if the applicant's case is to be considered, it can be seen that the applicant has not completed five years' service in tribal area on the post of Assistant Superintendent, in which cadre he is seeking inter divisional transfer to Aurangabad division / circle. It is true that the applicant has relied upon the instance of inter divisional transfer of one Shri Sachin Maroti Wankhede, who is working on the post of Assistant Superintendent and was given inter divisional

transfer from Nashik Division to Akola Division. In this regard, the applicant has produced no objection given by the Deputy Director of Health Services, Akola Division, Akola dated 01.09.2020 (page No. 118 of the paper book) and order of his inter divisional transfer dated 18.03.2021 issued by the Director of Health Services, Pune. However, mere reading of these two documents, do not reveal that what were the facts of case of Shri Sachin Maroti Wankhede and whether the facts were similar. Hence, the said instance may not be useful to the applicant.

19. It is true that though as per the policy laid down as per the G.R. dated 11.07.2000 (Annexure A-5) inter divisional transfer is to be considered by giving choice positing to the Government servant, who is working in Tribal area satisfactorily. In the case in hand, the applicant is seeking inter divisional transfer on the promotional post of Assistant Superintendent. The said transfer is likely to affect one eligible candidate from the cadre of Senior Clerk. However, only on that ground if no objection is refused, it cannot be a reasonable ground. But in the case in hand, the case of the applicant is be considered in it's entirety including the eligibility for his inter divisional transfer. From the facts on record, it is apparent that the applicant does not fulfill the

criteria of G.R. dated 11.07.2000 (Annexure A-5) in its proper perspective. In view of the same, in the first place, he has applied for inter divisional transfer while he was not working in tribal area. He has sought transfer after one year of leaving the posting in tribal area. In the circumstances, considering the legality of impugned letter dated 09.07.2021 (Annexure A-3) issue by the respondent No. 4 would be totally misplaced and the question does not arise. If such no objection is considered in view of the G.R. dated 15.05.2019 (Annexure A-6), then in that case, the applicant does not fulfill the criteria of completion of five years in the cadre of Assistant Superintendent seeking inter divisional transfer. In view of the same, the Original Application must fail. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 322 of 2021 stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 13.09.2022.

(V.D. DONGRE)
MEMBER (J)