

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 557 OF 2021****WITH****MISC. APPLICATION NO. 08 OF 2022****DISTRICT : NANDED**

Dr. Sannjay S/o Khakyappa Kasralikar,)
 Age : 51 years, Occu.: Service as Medical)
 Officer (Group-A) at Primary Health Centre,)
 Mugat, Tq. Mudkhed, Dist. Nanded,)
 R/o. 61, Godai, Bank Colony, Parvana Nagar,))
 Nanded-431605, Mob. No. 9420414114)

.... **APPLICANT****V E R S U S**

- 1. The State of Maharashtra,**)
 Through its Chief Secretary,)
 Public Health Department,)
 10th Floor, Gokulas Tejpal Hospital,)
 Sankul Building, Mantralaya,)
 Mumbai-400 001.)
- 2. The Commissioner,**)
 Commissioner of Health Services,)
 Aarogya Bhavan, St. George Hospital)
 Premises, P. Demilo Road, Mumbai-400001.)
- 3. The Director of Health Services,**)
 Aarogya Bhavan, St. George Hospital)
 Premises, P. Demilo Road, Mumbai-400001.)
- 4. The District Health Officer,**)
 ZillaParishad, Nanded.)
- 5. Dr. Venkatesh S/o Narayan Ellod,**)
 Age- Major, Service as Medical Officer)
 At Primary Health Centre, Panshewadi,)
 Tq. and Dist. Nanded.)

6. The Principal Secretary,)
Public Health Department,)
Govt. of Maharashtra, Room No. 108,)
Mantralaya, Mumbai – 400032.)

... RESPONDENTS

APPEARANCE : Ms. Poonam Bodke Patil, Advocate for the
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
Respondent Nos. 1 to 3 & 6.

: Shri Ashish Shinde, Advocate for respondent
No. 4.

: Shri Avinash Deshmukh, Advocate for
respondent No. 5 (applicant in M.A. 08/2022).

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

DATE : **06.06.2022.**

ORDER

1. This Original Application is filed by invoking jurisdiction of this Tribunal under the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 i.e. the Director of Health Services, Mumbai and the impugned transfer order dated 17.09.2021 (Annexure A-3) to the extent of respondent No. 5

issued by the respondent No. 1 i.e. the State of Maharashtra, Public Health Department.

2. On the first date of hearing, after hearing the learned Advocate for the applicant and learned Presenting Officer for the respondents on 21.09.2021, interim relief was granted to the extent of staying both the impugned orders of transfer till filing of the affidavit reply by the respondents and the said order is extended from time to time. In view of the same, M.A. No. 08/2022 is filed by the original respondent No. 5 for vacating the interim stay to the impugned order of his transfer dated 17.09.2019. Similar contentions are raised by the respondent No. 5 in his affidavit in reply resisting the Original Application. In view of the same, both the M.A. and O.A. can be disposed of by this common order.

3. The facts in brief giving rise to this applicant can be summarized as follows :-

(a) The applicant is working as Medical Officer. He is holding the degree in BAMS (Bachelor of Ayurveda, Medicine and Surgery). At the time of filing the present Original Application, the applicant was working as Medical Officer, at Primary Health Centre, Mugat, Tq. Mudkhed, Dist.

Nanded since before 04.01.2016. He is Group-A Medical Officer and his pay scale is S-23 (67700-208700). The same is reflected in the Government order dated 04.01.2016 (part of Annexure A-1 at page No. 18-A of the paper book) issued by the respondent No. 1, by which the earlier transfer order of the applicant dated 09.09.2015 issued by the Chief Executive Officer, Zilla Parishad, Nanded transferring him from P.H.C., Mugat, Dist. Nanded to P.H.C. Vai (Bazar) was cancelled pursuant to the order dated 09.03.2015 passed in O.A. No. 604/2014 and confirmed by the Hon'ble High Court Mumbai, Bench at Aurangabad by order dated 09.09.2015 in W.P. No. 3248/2015. Pay slips of the applicant are also produced at Annexure A-1 collectively. It is the case of the applicant that the documents annexed at Annexure A-1 collectively would show that the applicant is being accepted as Group-A officer in the 5th Pay Scale of Rs. 15600-39100 with Grade Pay of Rs. 5400/-. In view of the same, according to him his competent transferring authority is the respondent No. 1.

(b) It is further contended that all of a sudden, the respondent No. 3 i.e. the Director of Health Services, Mumbai issued impugned transfer order of the applicant

dated 06.08.2021 (Annexure A-2) mentioning the applicant under the head of Group-B category, though the applicant belongs to Group-A category. The said impugned order is issued by the respondent No. 3, who is not the competent transferring authority of the applicant. In view of the same, the said impugned order of transfer is illegal. Consequently, before the applicant was relieved from his present posting, the respondent No. 1 issued transfer order dated 17.09.2021 (Annexure A-3) transferring the various Medical Officer in Group-A category, thereby the respondent No. 5 is shown at Sr. No. 253. He is being transferred from P.H.C. Panshewadi, Tq. and Dist. Nanded to the post held by the applicant i.e. PHC Mugat, Tq. Mudkhed, Dist. Nanded in place of the applicant. Immediately thereafter, the applicant submitted his representation dated 19.09.2021 (Annexure A-4 collectively) on Email to the respondent No. 4 i.e. the District Health Officer, Zilla Parishad, Nanded, who is the relieving authority of the applicant and incidentally the joining authority of the respondent No. 5 pointing out illegality committed by issuing the impugned transfer order dated 06.08.2021 and thereafter immediately

filed the present Original Application seeking various reliefs.

(c) It is the further contention of the applicant that the respondent No. 1 itself has issued the Government order dated 04.01.2016 (part of Annexure A-1 collectively) showing that the applicant is a Group-A Medical Officer. In view of the same, the respondent No. 3 i.e. the Director of Health Services, Mumbai, who issued the impugned order of transfer of the applicant is not the competent transferring authority of the applicant and therefore, the impugned transfer order of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 is illegal and is liable to be quashed and set aside. Consequently, the impugned transfer order of the respondent No. 5 issued by the respondent No. 1 is being consequential transfer order in place of the applicant is also liable to be quashed and set aside. The competent transferring authority of the applicant is the respondent No. 1. Hence, the present Original Application.

4. As stated earlier on the first date of hearing on 21.09.2021, after hearing the learned Advocate for the applicant and learned

Presenting Officer, interim relief of stay was granted to the impugned order of dated 06.08.2021 (Annexure A-2) in respect of the applicant and transfer order of the respondent No. 5 dated 17.09.2021 (Annexure A-3) till filing of the affidavit in reply by the respondents. In view of the same, the respondent No. 5 filed M.A. No. 08/2022 seeking relief to vacate the said interim order of stay dated 21.09.2021. He also filed his affidavit in reply in the O.A. resisting the same.

5. In nutshell it is the contention of the respondent No. 5 in his affidavit in reply in O.A., as well as, in M.A. is that the applicant is a Group-B Medical Officer. The applicant was absorbed in Group-B officer category vide G.R. dated 17.10.2014 (page No. 95 of the paper book) and the name of the applicant is shown at Sr. No. 728. He denied that the applicant is Group-A Medical Officer. In view of the same, according to him the respondent No. 3 is the competent transferring authority of the applicant and the impugned transfer order of the applicant dated 06.08.2021 is issued in accordance with law and more particularly after counseling the applicant in accordance with law. In the said counseling, the applicant himself opted for his transfer at Ayurvedic Dispensary at Kamjalga, Tq. Mukhed, Dist. Nanded as reflected in document of counseling at Annexure R-1

collectively (page Nos. 55 and 56 of the paper book) in O.A. The respondent No. 5 admittedly is holding degree in MBBS (Bachelor in Medicine and Bachelor in Surgery) and he is Group-A Medical Officer and he is rightly transferred by the respondent No. 1 by the impugned order dated 17.09.2021 (Annexure A-3) in accordance with law in place of the applicant being fallen vacant on applicant's transfer by order dated 06.08.2021 (Annexure A-2). In view of the same, both the impugned orders are legal and proper and are issued by the respective competent transferring authorities and therefore, the Original Application is liable to be dismissed and the interim order passed by this Tribunal is also liable to be quashed and set aside.

6. The affidavit in reply on behalf of respondent Nos. 1 to 3 & 6 is filed jointly at page Nos. 89 to 124. Separate affidavit in reply is filed by the respondent No. 4 at page No. 84 to 88 of the paper book by one Dr. Balaji Marutirao Shinde, working as District Health Officer, Zilla Parishad, Nanded.

7. It is the contention of the respondent No. 4 i.e. the District Health Officer Nanded that he is only the relieving authority of the applicant and incidentally joining authority of the respondent No. 5, as the P.H.C. Mugat, Tq. Mukhed, Dist. Nanded is being

run under the respondent No. 4. The applicant has been transferred being Group-B Medical Officer by the respondent No. 3. It is admitted that the applicant is working as Medical Officer at PHC Mugat, Tq. Mudkhed, Dist. Nanded since 04.01.2016. It is further submitted that the said post of Medical Officer at P.H.C. Mugat, Tq. Mudkhed, Dist. Nanded is of Group-A category and that earlier order dated 04.01.2016 indicated that the present applicant is from the Group-A category. This respondent has no any role to play for deciding the Group-A and Group-B of Medical Officer.

8. The affidavit in reply on behalf of respondent Nos. 1 to 3 and 6 is filed by one Dr. Balaji Marutirao Shinde, Health Officer, Zilla Parishad, Nanded. He denied all the adverse contentions raised in the Original Application. It is specifically stated that the applicant was previously Medical Officer in District Technical Services Group-C cadre. He was absorbed in Group-B Medical Officer cadre vide G.R. dated 17.10.2014. His name is at Sr. No. 728. The applicant was posted at PHC, Mugat, Tq. Mudkhed, Dist. Nanded vide order dated 04.01.2016 as a result of the Hon'ble Court's order. Since then, the applicant is working at that Group-A post irrespective of he being a Group-B Medical Officer temporarily. There exists no Government order showing

the applicant being recruited or promoted in Group-A cadre. It is further submitted that the applicant is Group-B Medical Officer and he was working on Group-A Medical Officer post since 2011. The applicant was due for transfer and was transferred vide order dated 06.08.2021 at Ayurvedic Dispensary at Kamjalga, Tq. Mukhed, Dist. Nanded. In view of the same, contentions raised by the applicant assailing his transfer order dated 06.08.2021 are baseless. On the other hand, the impugned order of transfer of respondent No. 5 is legal and proper, as he belongs to Group-A category. Therefore, the present Original Application is liable to be dismissed.

9. (a) The affidavit in rejoinder is filed by the applicant at page Nos. 125 to 169 of the paper book, thereby he denied all the adverse contentions raised in the affidavit in reply filed on behalf of respondent Nos. 1 to 3 and 6. It is the contention of the applicant that initially vide recruitment rules dated 30.10.2000, the Public Health Department, Mantralaya, Mumbai framed the Rules of the post of Medical Officer in Maharashtra Medical and Health Service, Group-A in the directorate of Health Services the appointment to the post of Medical Officer, in Maharashtra

Medical and Health Service, (MMHS), Group-A Recruitment Rules, 2000. Rule 3 of the said rule is as follows :-

“Rule 3. Appointment to a post of Medical Officer in Maharashtra Medical and Health Services, Group-A, under the directorate shall be made either –

(b) by promotion of suitable person on the basis of the seniority subject to fitness from amongst the person holding posts in Maharashtra Medical and Health Services Group-C, having not less than three years.....”

Thereafter, as per the Finance Ministry's G.R. dated 27.02.2006 (Annexure R-2), the applicant was granted pay scale in the pay band of Rs. 8000-13500 as per 5th Pay Commission. In view of the same, the applicant was actually granted pay scale of Group-A Medical Officer. Thereafter, the Government issued two G.Rs. dated 18.07.2007 and 12.11.2007 (Annexure R-3 collectively). By the said G.Rs., the applicant was granted regular posting at the Primary Health Centre as Group-A Medical Officer. G.R. dated 18.07.2007 (Annexure R-3 at page No. 148 of the paper book) provided temporary posting in Group-A till regular Medical Officer for regular posting is available.

However, this arbitrary rule was deleted vide G.R. dated 11.09.2009 (Annexure R-4, page No. 152 of the paper book). Thereafter, vide G.R. dated 11.02.2013 (Annexure R-5, page No. 153 of the paper book), the Finance Ministry vide 6th Pay Commission, fixed the pay scale of the Medical Officers at par with Group-A Medical Officer i.e. 15600-39100 + G.P. 5400.

(b) It is further submitted that vide notification dated 18.07.2013 (Annexure R-6, page No. 167 of the paper book) Recruitment Rules, of 2000 came to be amended and reamed as 'Maharashtra Medial and Health Services Group A Recruitment (Third Amendment) Rules, 2013' vide its clause 3 provided for absorption of the Group-C DTS Medical Officers in Group-A Medial Officers since 28.05.2019. Despite both the recruitment Rules and various G.Rs. the Government did not take any pain to implement any of its recruitment rules or G.Rs. No doubt, the Government subsequently issued the G.R. 17.10.2014 (produced by the respondent No. 5 in M.A. No. 8/2022 at page No. 23 to 52 of the paper book). The department did not take into consideration the pay scale of DTS Medical Officers which was mentioned in the letter dated

21.04.2008 of Rural Development Department or the Government Notification dated 18.07.2013. In these circumstances, the said G.R. dated 17.04.2014 was erroneously issued. The wrong submissions are being made on behalf of respondents and more particularly on behalf of respondent Nos. 1 to 3 and 6, denying the right of the applicant that he belongs to Group-A cadre and has also worked as such by way of present posting.

10. I have heard the arguments at length advanced by Ms. Poonam Bodke Patil, learned Advocate for the applicant on one hand, Shri V.R. Bhumkar, learned Presenting Officer for respondent Nos. 1 to 3 & 6, Shri Ashish Shinde, learned Advocate for respondent No. 4 and Shri Avinash Deshmukh, learned Advocate for respondent No. 5 on the other hand.

11. Considering the rival pleadings on record, it is evident that the applicant is claiming that he belongs to Group-A category having been drawing pay as per 5th Commission Pay scale of Rs. 15600-39100 with Grade Pay of Rs. 5400/-. On the other hand, the respondents are stating that the applicant belongs to Group-B category officer and pay scale of the applicant is irrelevant for that purpose. The respondents heavily placed reliance on the

G.R. dated 17.10.2014 produced by the respondent No. 5 in M.A. No. 08/2022 at page No. 23 to 52 of the paper book. Alternatively, in this regard, the applicant filed affidavit in reply in M.A. 08/2022 and produced on record a copy of the judgment and order dated 04.01.2022 passed in the O.A. No. 496/2012 with O.A. 682/2013 with O.A. No. 879/2015 by the Principal Seat of this Tribunal at Mumbai dealing with the G.R. dated 17.10.2014. Operative part of the said matter is as under :-

- “(a) The Original Applications are partly allowed.*
- (b) All the Applicants who are District Technical Service Medical Officers, placed in Group-B by virtue of G.R dated 17.10.2014 with retrospective effect from 28.5.2001 are eligible and entitled to recruitment to Group-A from the date of the G.R dated 18.7.2013 when the Rules were amended. Thus, they are recruited in Group-A from 18.7.2013 with all consequential benefits.*
- (c) The applicants are entitled to pay scale in the pay band of Rs.15600-39100 with Grade pay of Rs.5400, with effect from 18.7.2013.*
- (d) The payments made, if any, earlier from 2006 in the pay band of Rs.15600-39100 with grade pay of Rs.5400, should not be recovered from the applicants.”*

12. Learned Advocates for the respondents however in this regard submitted that the said decision cannot be said to have attained the finality. However, at this stage, nothing is produced on record to show that the finding of the abovesaid decision is stayed by challenging the same before the higher forum.

13. Perusal of the facts of the case in hand would show that admittedly the applicant is working on the post of Medical Officer at PHC Mugat, Tq. Mukhed, Dist. Nanded since before 04.01.2016. Admittedly, the said post is of Group-A Medical Officer as contended by the respondent No. 4 in its affidavit in reply. Status of the applicant in Group-A is being denied by the respondents only on the basis of the G.R. dated 17.10.2014, in which G.R. the name of the applicant is shown at Sr. No. 728. It is also admitted position that since about 2011, the applicant is working on Group-A Medical Officer post. That apart at least Medical Officers shown in G.R. dated 17.10.2014 in Group-B cadre are held to be entitled in Group-A category from 18.07.2013 with all consequential benefits. On 18.07.2013 amended Recruitment Rules came into existence. The applicant is already drawing salary of the post of Group-A Medical Officer in the pay scale of Rs. 15600-39100 + Grade pay of Rs. 5400/- in 5th Pay Commission. Nothing is shown or demonstrated on

behalf of respondents that he got the said pay scale on account of some advance increments. It is also a fact that while dealing with his earlier transfer, the respondent Government has stated that the applicant is a Group-A Medical Officer and accordingly, the order dated 04.01.2016 came to be issued by the respondent No. 1.

14. It is true that the impugned order dated 06.08.2021 (Annexure A-2) of the applicant is issued by the respondent No. 3. Record shows that the applicant was subjected to counseling procedure, which is applicable to Group-B, C and D category employees as per the relevant G.R. dated 09.04.2018 (page Nos. 57 and 58 of the paper book). There is also document of counseling at page Nos. 55 & 56 of the paper book. In the said counseling, the applicant gave option to transfer at Ayurvedic Dispensary, Kamjalga, Tq. Mukhed, Dist. Nanded and accordingly, the applicant was transferred. To that extent, it can be said that the applicant was subjected to counseling process applicable to Group-B, C and D Government employees.

15. It is a matter of record that subsequently in the impugned order dated 06.08.2021 (Annexure A-2) the applicant has been treated as Medical Officer Group-B, though in fact, earlier

transfer order he was stated Group-A Medical Officer having pay scale of Rs. 15600-39100 with Grade Pay of Rs. 5400/-. In the background of the rival submissions as regards groups of Government servants and their pay scales, it is seen that the pay of Rs. 15600-39100 with Grade pay of Rs. 5400/- is applicable to Group-A Government officers as per the Section 6 of the Transfer Act, 2005. No any provision of law is shown on behalf of the respondents to demonstrate actually as to on what other basis the Government officers of Group A, B, C & D are divided apart from pay scale. In the decision of the Principal Seat of this Tribunal at Mumbai dated 04.01.2022 in O.A. No. 496/2012 with O.A. 682/2013 with O.A. No. 879/2015, Medical Officers like the applicant are already protected and declared to be Group-A Medical Officer w.e.f. 18.07.2013 with all consequential benefits and pay scale in the pay band of Rs. 15600-39100 with Grade pay of Rs. 5400/- w.e.f. 18.07.2013. The applicant is already drawing the said pay scale. At the cost of repetition, it is stated that in the earlier transfer order, it appears that the applicant is treated as Group-A Government officer and he was being transferred by the respondent No. 1, being the competent transferring authority. No record is shown by the respondents to suggest that the applicant was allowed to hold the post of

Medical Officer at Mugad, Tq. Mukhed, Dist. Nanded, which is Group-A post, though he belonged to Group-B category and more particularly after issuance of G.R. dated 17.10.2014. In view of the same, in my considered opinion, though the applicant participated into counseling process and gave option of Ayurvedic Dispensary at Kamjalga, Tq. Mukhed, Dist. Nanded, it cannot be said that he gave up his right to claim Group-A category, of which the respondent No. 1 is the competent transferring authority and not the respondent No. 3. The impugned transfer order is issued by the respondent No. 3.

16. In view of the aforesaid discussions in foregoing paragraphs, in my considered opinion, the impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 is not legal and proper, as it is not issued by the competent transferring authority and the same is liable to be quashed and set aside. However, the said impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) is being issued in the General Transfers of the year 2021, as the applicant was due for transfer. The competent transferring authority is at liberty to issue transfer order in accordance with law. Subsequently, the impugned transfer order of the respondent No. 5 dated 17.09.2021 (Annexure A-3) is also liable

to be quashed and set aside, as the respondent No. 5 is posted at the place and post held by the applicant. I therefore, proceed to pass following order :-

ORDER

1. The Original Application No. 557 is allowed in following terms :-

(A) The impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 i.e. the Director of Health Services, Mumbai and the impugned transfer order dated 17.09.2021 (Annexure A-3) to the extent of respondent No. 5 issued by the respondent No. 1 i.e. the State of Maharashtra, Public Health Department are hereby quashed and set aside.

(B) There shall be no order as to costs.

(2) In view of above, M.A. No. 08/2022 does not survive and hence, the same stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 06.06.2022.

(V.D. DONGRE)
MEMBER (J)