

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

**ORIGINAL APPLICATION NO. 760 OF 2023
(Subject – Transfer)**

DISTRICT : JALNA

Dr. Abdul Moiz Siddiqui,)
Age : 48 years, Occu. : L.D.O. Class-I,)
At Sukhapuri, Tq. Ambad, Dist. Jalna.)
.... **APPLICANT**

V E R S U S

- 1. State of Maharashtra,**)
Through the Principal Secretary,)
Agriculture, Animal Husbandry, Dairy)
Development and Fisheries Department,)
Mantralaya, Mumbai- 400 032.)
- 2. Regional Joint Commissioner,**)
Animal Husbandry, Khadkeshwar,)
Aurangabad.)
... **RESPONDENTS**

APPEARANCE : Shri K.P. Rodge, counsel holding for Shri Ajay
Deshpande, Counsel for Applicant.

: Shri V.G.Pingle, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **27.02.2024**

DATE : **18.03.2024**

O R D E R

1. Heard Shri K.P. Rodge, learned counsel holding for Shri Ajay Deshpande, learned counsel appearing for the applicant and Shri V.G. Pingle, learned Presenting Officer appearing for respondent authorities.

2. By filing the present Original Application, the applicant is seeking direction to respondent No. 1 to consider his representation dated 15.05.2023 coupled with the recommendations of respondent No. 2 in order to ensure best utilization of the applicant's service as an expert by posting him at Veterinary Polyclinic, Aurangabad or any of the existing vacancies at or nearby Aurangabad.

3. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) The applicant has joined the service as Livestock Development Officer (hereinafter called as "LDO") in October 1990 upon his selection through MPSC and since then, he has been working as such at various places. The applicant holds Post Graduate degree in Surgery i.e. MVSC (Surgery) and as such, holds higher qualification than the qualification required to be possessed for the post of LDO-Group 'A'. The applicant has completed his Post Graduate studies in Surgery while in service by seeking due permission of the Department as in-service candidate. The applicant had to execute a Bond therefor, undertaking to serve the department for a period of two years.

(ii) It is further case of the applicant that he was working at Jamkhed, Tq. Ambad, Dist. Jalna since 2019 and being holding of Group-A post, he had become due for transfer and as such, he had submitted representation for posting him at or nearby Aurangabad in order to enable him to cater to the needs his ailing old aged father, who is of 76 years of age and has been residing at Aurangabad. The applicant has lost his mother in the year 2018 and since then he is looking after his ailing old aged father at Aurangabad. Further the applicant's elder daughter is also undergoing internship at IIMSR, Varudi, Badnapur, whereas his younger daughter is a student of Maulana Azad College, Aurangabad in 11th Std.

(iii) It is further case of the applicant that the applicant has submitted representation on 03.04.2023 to respondent No. 1 requested therein for posting him at (a) LDO Group 'A' Veterinary Hospital, Grade I, Ladsawangi, Tq. & Dist. Aurangabad, (b) LDO Group 'A' Veterinary Hospital, Grade I, Chauka, Tq. & Dist. Aurangabad, (c) LDO Group 'A' Veterinary Hospital, Grade I, Adul, Tq. Paithan, Dist. Aurangabad and (d) LDO Group 'A' Veterinary Polyclinic / General Hospital, Aurangabad as lying vacant. The

applicant has also categorically stated that he would join at the given places at his own expenses and requested to post him against any of the four vacancies mentioned therein in order to enable him to cater to the needs of his old aged ailing father at Aurangabad.

(iv) It is further case of the applicant that since the four posts at Aurangabad were lying vacant, it was moderately expected by him that he would be posted against any of four vacancies then during the transfer season of the year 2022-23. However, unfortunately, in the order of transfer effected by respondent No. 1 on 15.05.2023, the applicant stood transferred from Jamkhed, Tq. Ambad, Dist. Jalna to Sukhapuri, Tq. Ambad, Dist. Jalna.

(v) It is the case of the applicant that even after the order of transfer dated 15.05.2023 (Annexure A-2), the post of LDO at Veterinary Polyclinic, Khadkeshwar, Aurangabad, Mini Polyclinic at Paithan, Veterinary Dispensary at Manoor, Tq. Vaijapur, Dist. Aurangabad and Mini Polyclinic, Gangapur, Dist. Aurangabad are lying vacant, for which considering the academic qualification of the applicant and expertise being MVSC (Surgery), he is the

most suitable incumbent to be posted on the said posts. The applicant has therefore, submitted representation to the respondent No. 1 on 15.05.2023 and prayed for partial modification in his order of transfer by pointing out his personal difficulties and also his expertise in Surgery. He has requested to post him in Veterinary Polyclinic at Aurangabad and subsequently, has added two more posts at Manoor and Paithan in the representation submitted to respondent No. 1 on 15.05.2023 (Annexure A-3).

(vi) It is the case of the applicant that the respondent No. 2, who happens to be his immediate superior, has also recommended his posting in Veterinary Polyclinic by effecting partial modification in the order of transfer dated 15.5.2023 itself. The said communication of respondent No. 2 addressed to respondent No. 1 is marked as Annexure A-4.

(v) The applicant further contended that there were few similarly placed incumbents from Aurangabad or nearby, who were working in Jalna District and were willing to join at the place of their choice in the adjoining districts. Even though, their claim for choice posting has been considered,

whereas the request of the applicant has not been considered, although there are vacant posts available.

(vi) It is the case of the applicant that the post of LDO Group-A in Veterinary Polyclinic at Aurangabad is still lying vacant and has yet not been filled up even by order of transfer dated 30.6.2023. Thus, considering the academic qualification and expertise gained by the applicant, it would be in fact more conducive so also in administrative convenience to post him there. Hence, the present Original Application.

4. Learned counsel for the applicant submits that the applicant has completed his Post Graduate studies in Surgery while in service and he had executed Bond therefor, undertaking to serve the department for a period of two years. Learned counsel submits that the very object of seeking bound from the applicant to avail the benefit of expertise, which he acquired while undergoing in-service Post Graduate studies in Surgery.

5. Learned counsel for the applicant submits that the applicant is posted in Veterinary Dispensary and he is deployed either in the State cadre itself or under the Zilla Parishads in the State, although the status of the applicant as a holder of a Civil

Post under the State continues. The applicant when deployed to work in Veterinary Dispensary has to undertake regular checkup and treatment to the Livestocks in the area and to ensure prevention of pandemic especially in rainy season. Learned counsel submits that Graduate in Veterinary Science is good enough to discharge the duties of LDO on the field at times the LDOs are required to deal with emergent situation during delivery period of the Livestocks in the area and only in rarest of rare case the expertise acquired by the applicant during his Post Graduation is utilized while discharging the duties in Veterinary Dispensaries in rural area. Learned counsel submits that major surgeries and critical surgeries are seldom undertaken in Veterinary Dispensaries in the rural area and those surgeries are predominantly undertaken in the polyclinics, which are by and large at a District place or at such a station, where the number of Live-Stocks are notably more and especially in Mini Polyclinics.

6. Learned counsel for the applicant submits that the respondent No. 1 has not followed the procedure in terms of the provisions of Section 4(2) and (3) of the Transfer Act, 2005. The Government is obliged under law to adhere to the statutory provisions, which mandates preparation of the list of Government servants, who are due for transfer, which enables the

incumbents to make representations, if any, pointing out their personal difficulties. Notwithstanding failure on the part of Government, the applicant has submitted representation well in advance on 03.04.2023 and even after the impugned transfer order has been effected, which has been strongly recommended by Regional Authority, in order to ensure best utilization of the services and the knowledge acquired by the applicant. Unfortunately, this has not been considered by the respondent No. 1, resulting in miscarriage of justice, warranting intervention of this Tribunal.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that the permission for joining the in-service post graduate degree in Surgery has been granted to the applicant vide letter dated 26.08.2016. Learned Presenting Officer submits that on acquiring the Post Graduate degree, the applicant has executed bond (Annexure R-3). On careful perusal of the said bond, it appears that in fact if the applicant has not served the department after acquiring the Post Graduate degree or that if he has resigned within stipulated period or retired or that he has been removed from the service on account of his behavior, which is unbecoming to the Government servant, the amount under the

bond shall be forfeited and the applicant will liable to pay the said amount along with interest. Learned P.O. submits that there is nowhere stated in the bond that the very object of seeking bond from the applicant is avail benefit of the expertise which, the applicant has acquired while undergoing in-service Post Graduate studies in Surgery.

8. Learned Presenting Officer submits that the Veterinary Dispensary Grade-1 is located at Taluka level, Taluka Mini Veterinary Polyclinic is located at Taluka Level and District Veterinary Polyclinic is located at District level. In view of the same, targets are given to all of these institutes for carrying out major and minor surgeries. The copy of the annual target of major and minor surgery assigned to Veterinary Grade-1 Jamkhed and VD Grade-1 Sukhapuri in Taluka Ambad, Dist. Jalna for the year 2021-22 and 2022-23 are annexed with the affidavit in reply as Annexure R-4 collectively. Learned P.O. submits that the targets of major and minor surgery are assigned to the said veterinary institutes with a view to provide the required surgical aid at the location nearest to the animal owner.

9. Learned Presenting Officer submits that the submission of the applicant that the major surgeries and critical

surgeries are seldom undertaken in Veterinary Dispensary in the rural area and such critical and major surgeries are predominantly undertaken in polyclinics by and large at a District place is not correct and therefore, denied.

10. Learned Presenting Officer submits that the transfer process is governed by the Transfer Act, 2005. The applicant has completed tenure of four years and two months at VD Grade-I, Jamkhed, Tal, Ambad, Dist. Jalna as required under Section 4(1) of the Transfer Act, 2005. The transfer order has been issued as per the provisions laid down under the Transfer Act, 2005. The list of eligible officers for the transfer in the year 2023 was submitted to the Civil Services Board and subsequent recommendations to the competent authority. There is no provision in the in the Act for submission of options regarding posting and giving consideration on family difficulties during the process of transfer. The applicant has been appointed in the cadre of Livestock Development Officer Group-A and his services are transferable in all over Maharashtra. Learned P.O. submits that there is right of posting to the transferee. Further the recommendation of posting for the officer under zone of consideration is submitted by the Civil Services Board and the final decision is taken by the competent authority as stipulated

under Section 6 of the Transfer Act, 2005. The applicant stood transferred from Jamkhed, Tq. Ambad, Dist. Jalna to Sukhapuri, Tq. Ambad, Dist. Jalna.

11. Learned Presenting Officer submits that the applicant has appointed in the cadre of Livestock Development Officer Group-A and the Government in the department of Animal Husbandry has approved the policy of consideration of educational specialization for posting in consideration of working targets on technical posts under various institutes of Animal Husbandry Department vide G.R. dated 09.02.2023. Learned P.O. submits that academic qualification of the applicant and expertise being MVSC (Surgery) is not coinciding with the above policy.

12. Learned Presenting Officer submits that the applicant has performed 78 major surgeries and 51 minor surgeries during the year 2021-22 and 63 major surgeries and 55 minor surgeries during the year 2022-23 at Veterinary Dispensary Grade-I, Jamkhed. Therefore, the submission of the applicant to consider the academic qualification and expertise gained is not maintainable. The applicant has already joined his posting on

04.08.2023 and as such, there is no substance in the present Original Application.

13. Learned counsel for the applicant on the basis of additional affidavit submits that in Veterinary Science, there is no further specialization available in Surgery, which the applicant possesses. Unlike Human Science, no different specialties in the field of surgery are available and the Surgeon in Veterinary Science has to treat and operate small pet animals like cat, dogs, rabbit etc. to reptiles like snakes, crocodiles etc., as also milking animals like Cows, Buffalos, Bullocks, as well as, wild animals like Camel, Tigers, Elephants etc. Learned counsel submits that the Post Graduate Degree has to undertake all types of operations of different limbs of the body and there has been no further specialization in this regard also. At times, even a Graduate Veterinary practitioner / doctor is required to undertake similar operations, however, when it involves special expertise, a Post Graduate candidate is required

14. Learned counsel for the applicant submits that though the applicant at his present place of posting has been performed surgeries, those are bye and large routine in nature, which can be performed even by a Graduate Veterinary Doctor

and hardly involves any expertise. Learned counsel submits that the expertise services of the applicant can be better used in Polyclinics or mini-Polyclinics rather than Veterinary Dispensaries at Rural areas.

15. I have carefully gone through the pleadings, Annexures and rival submissions made on behalf of the applicant and the respondent authorities. Admittedly, the applicant has completed Post Graduate degree in Surgery while in service by obtaining due permission of the department. Even though there is no specific clause in the bond executed by the applicant, however, execution of the bond itself indicates that the Government is keen to utilize the expertise gained by the Government servant in service and in the eventuality as detailed in the said bond, if the Government is not able to utilize the said expertise service, then the amount of bond shall be forfeited and executant of bond is bound to pay the amount along with interest to the Government.

16. It further appears that the Veterinary Dispensary Grade-1 is located at Taluka level, Taluka Mini Veterinary Polyclinic is located at Taluka Level and District Veterinary Polyclinic is located at District level. It further appears that even

though the applicant has acquired Post Graduate degree in MVSC (Surgery), by order of transfer dated 15.05.2023 issued by respondent No. 1 the applicant came to be transferred from the post of LDO, Grade-I, Veterinary Dispensary, Jamkhed, Tq. Ambad, Dist. Jalna to LDO, Grade-I, Veterinary Dispensary, Sukhapuri, Tq. Ambad, Dist. Jalna. There is no need to possess any expertise to understand the difference between the setup at Veterinary Dispensary at Village level and setup at Taluka Mini Veterinary Polyclinic and District Veterinary Polyclinic. It is true that the being Livestock Development Officer working at village level, the applicant has performed various major and minor surgeries, however as per the additional affidavit submitted by the applicant those are the routine surgeries. It appears that the every LDO working at village level has to perform the said minor and major surgeries as and when the occasions so arise. However, the less occasions would arise to utilize the expertise gained by the applicant by acquiring Post Graduate Degree in Surgery. I understand that there are no different specialties in the field of surgery Unlike Human Science and the Surgeon in Veterinary Science has to treat and operate small pet animals, reptiles and also milking animals. Further the LDO, who possesses Post Graduate Degree, has to undertake all types of

operations of different limbs of the body and there has been no further specialization. It is further convincing that even the Graduate Veterinary practitioner / doctor is required to undertake similar operations, however, when it involves special expertise, a Post Graduate candidate is required. It appears that the Government in the department of Animal Husbandry has approved the policy of consideration of educational specialization for posting on the specific posts under various institutes of Animal Husbandry Department by issuing G.R. dated 09.02.2023. There is no reason to deny the considerations as specified in the G.R. dated 09.02.2023.

17. Furthermore, I do not agree with the contentions in the affidavit in reply filed on behalf of respondent Nos. 1 and 2 that the request of the applicant on certain grounds for his transfer cannot be considered, as the same has not been considered in the Transfer Act, 2005. In fact, there are certain Government Resolutions issued by the Government in this regard to consider the request transfer of the Government employees on various grounds, which includes ill health of the parents, educational difficulties of children, couple convenience etc. Further in sub-section (4) of Section 4 of the Transfer Act, 2005, such exceptional circumstances or special reasons for the

transfer of the employee can also be considered at any time in the year.

18. Thus considering the entire aspect of the case, I am of the opinion that the respondent authorities should consider the representation of the applicant in the ensuing Annual General Transfers of the year 2024 in the positive manner and also in terms of the G.R. dated 09.02.2023. Hence, the following order :-

ORDER

- (i) The Original Application is partly allowed.
- (ii) The respondent No. 1 is hereby directed to consider the representation of the applicant dated 15.05.2023 coupled with the recommendations of respondent No. 2 in the ensuing Annual General Transfers of the year 2024 in order to ensure best utilization of the applicant's service as an expert and also his personal difficulties.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) Accordingly, the Original Application stands disposed of.

PLACE : Aurangabad.
DATE : 18.03.2024

(Justice V.K. Jadhav)
Member (J)