

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 812 OF 2017

(Subject – Transfer)

DISTRICT: JALNA

Shri Shrishail s/o Prabhakarappa)
Sadegaokar,)
 Age: 32 years, Occu. : Service,)
 R/o Bansilal Nagar, Behind Prayag)
 Hospital, Railway Station Road,)
 Jalna , Dist. Jalna.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai.)
- 2) **Director of Health Services,**)
 M.S., Aarogya Bhawan,)
 St. Georges Hospital Compound,)
 P. Dimelo Road, Mumbai 400001.)
- 3) **Deputy Director of Health Services**)
 Aurangabad Region, Station Road,)
 Aurangabad.)
- 4) **Civil Surgeon,**)
 Civil Hospital, Jalna.)

.. RESPONDENTS

APPEARANCE : Shri N.P. Dube, Advocate for the Applicant.

: Shri V.R. Bhumkar, Presenting Officer for the
 Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 23.08.2018.

ORDER

1. The applicant has challenged the impugned order dated 31.10.2017 issued by the respondent No. 3 transferring him on the establishment of Rural Hospital, Pishor, Dist. Aurangabad on the post of X-ray Technician after reinstatement in the service by revoking the suspension order and prayed to quash and set aside the said order and also prayed to direct the respondent Nos. 3 and 4 to allow him to continue to work as X-ray Technician at Civil Hospital, Jalna by filing the present Original Application.

2. The applicant is serving as a X-ray Technician. In the month of May 2013, he was transferred to Civil Hospital, Parbhani to Civil Hospital, Jalna and thereafter, on 15.10.2013 he was sent on deputation to work in Medical Reimbursement Section in Civil Hospital, Jalna and since then he was working there.

3. On 13.01.2015, one Shri Devanad Ashok Chitral has filed complaint against the applicant with the Anti-Corruption Bureau, Jalna alleging that he demanded bribe of Rs. 1000/- for clearing the file of medical reimbursement bill of his wife. On the basis of complaint filed by Shri D.A. Chitral, a trap was arranged

against the applicant and thereafter, the applicant was trapped and arrested. FIR was registered against him under Section 7 of the Prevention of Corruption Act. Therefore, the applicant was suspended on 28.01.2015 and his headquarter was kept at Civil Hospital, Hingoli during the suspension period. The said order came to be modified on 09.02.2015 and his headquarter was kept at Civil Hospital, Soygaon, Dist. Aurangabad. Accordingly, the applicant joined his new headquarter.

4. It is contention of the applicant that the Special Case filed against him for the offences punishable under section 7 of the Prevention of Corruption Act has been tried and he came to be acquitted by the Additional Judge-3 and Special Judge (ACB) Jalna on 13.07.2017. Thereafter, the applicant had moved an application to the Deputy Director of Health Services, Aurangabad on 04.08. 2017 and requested to reinstate him by revoking his suspension order at his earlier Headquarter i.e. Rural Hospital, Jalna on the vacant post. The applicant has also requested that his wife is serving at Zilla Parishad, Jalna and therefore, he requested the respondent No. 3 to post him at Jalna in view of the policy decision taken by the Government to keep the husband and wife at the same place. It is his contention that on 10.11.2017 he received a letter about his reinstatement

and relieving him from Rural Hospital, Soygaon and directing him to join his earlier headquarter i.e. Civil Hospital, Jalna. It is his contention that instead of reposting him at Civil Hospital, Jalna, the respondent No. 3 issued the impugned order of transfer and transferred him as X-ray Technician at Rural Hospital, Pishore, Dist. Aurangabad. It is his contention that the impugned order is in contraventions of the provisions of the G.Rs. issued by the Government from time to time. It is his contention that he was falsely implicated in the criminal case and after acquittal, he is entitled to be reposted at Civil Hospital, Jalna, but the respondent No. 3 has not considered the said aspect and issued the impugned order of transfer, which is illegal. Therefore, he has challenged the said impugned order by filing the present Original Application and prayed to quash and set aside the same and also prayed to direct the respondent Nos. 3 and 4 to repost him at Civil Hospital, Jalna.

5. The respondent No. 3 has filed his affidavit in reply and resisted the contentions of the applicant. He has not disputed the fact regarding the suspension of the applicant and criminal case registered against him. He has also not disputed the fact that the headquarter of the applicant had been kept at Soygaon. He has not disputed the fact that the wife of the

applicant is working in Zilla Parishad, Jalna and the policy of the Government to transfer the husband and wife at the same station. It is his contention that the criminal case was instituted against the applicant for serious offence and therefore, the applicant was placed under suspension and his headquarter was changed. It is his contention that after acquittal of the applicant from the criminal case, he has been reinstated in the service by revoking the suspension order and accordingly, he has been transferred and posted at Rural Hospital, Pishore, Dist. Aurangabad as per the guidelines given by the Government in the G.R. dated 20.04.2013. It is his contention that as per the said G.R., if the employee working in the Divisional Cadre, then he should be reinstated in other district than the original district where he is suspended. He has submitted that in view of the guidelines given by the Government in the G.R. dated 20.04.2013, the impugned order has been issued and the applicant has been transferred. It is his contention that there is no illegality in the impugned order and therefore, he prayed to reject the present Original Application.

6. I have heard Shri N.P. Dube, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for

the respondents. I have perused the documents produced on record by both the parties.

7. Admittedly, the applicant was serving as a X-ray Technician in Civil Hospital, Jalna in the year 2013 and thereafter, he was sent on deputation to work in Medical Reimbursement Section, Civil Hospital, Jalna. Admittedly, on the basis of complaint filed by one Shri D.A. Chitral, trap has been arranged against the applicant by the Anti-Corruption Bureau, Jalna and after the trap, FIR has been registered and the criminal case for the offences punishable under Section 7 of the Prevention of Corruption Act has been registered against him. On registration of the criminal case against the applicant, the applicant came to be suspended by the order dated 28.01.2015 and his headquarter has been kept at Civil Hospital, Hingoli. Thereafter, on the basis of request application filed by the applicant on 30.01.2015, his headquarter has been changed from Civil Hospital, Hingoli to Rural Hospital, Soygaon, Dist. Aurangabad. Admittedly, the Special Case No. 112015 for the offences punishable under section 7 of the Prevention of Corruption Act, 1988 has been ended in the acquittal of the applicant on 13.07.2017. Thereafter, the applicant moved an application on 04.08.2017 for reinstatement and revocation of

the suspension order. Accordingly, the respondent No. 3 issued the impugned order and posted the applicant as X-ray Technician in Rural Hospital, Pishore, Dist. Aurangabad.

8. Learned Advocate for the applicant has submitted that the applicant has been suspended because of the FIR and criminal case registered against him for the offences punishable under section 7 of the Prevention of Corruption Act, 1988. He has submitted that the said case has been registered on the basis of complaint filed by one Shri Devanad Ashok Chitral. He has submitted that the Shri D.A. Chitral is in habit of filing the false complaint against the Government servant. He has been falsely implicated in the criminal case. After full-fledged enquiry, the applicant came to be acquitted on 13.07.2017 by the Additional Sessions Judge-3 and Special Judge (ACB), Jalna, as there was no sufficient evidence against him. He has submitted that after revocation of suspension, the applicant was reinstated in service. He has argued that on reinstatement in service, the applicant ought to have been posted at his earlier place of posting i.e. in the Civil Hospital, Jalna, but the respondent No. 3 has transferred him to the Rural Hospital, Pishore, Dist. Aurangabad. He has submitted that the wife of the applicant is serving in Zilla Parishad, Jalna and therefore, the applicant

requested the respondent No. 3 to repost him at Jalna in view of the policy of the Government to post the husband and wife at the same place. He has submitted that the respondent No. 3 has not followed the Government policy and wrongly transferred the applicant at Rural Hospital, Pishore, Dist. Aurangabad. He has submitted that the impugned transfer order is illegal. Therefore, he prayed to allow the present Original Application and to set aside the impugned order dated 31.10.2017.

9. Learned Presenting Officer has submitted that the impugned order has been issued by the respondent No. 3 in view of the guidelines issued by the Government in the G.R. dated 20.04.2013. He has submitted that the said G.R. provides that after reinstatement, the suspended employee should be posted in a district other than the district wherefrom he has been suspended. The applicant has been transferred accordingly and he is posted in Rural Hospital, Pishore, Dist. Aurangabad by impugned order. Therefore, there is no illegality in the impugned order of transfer. He has submitted that the applicant was involved in the serious offence under the provisions of Corruption Act and therefore, in the interest of administration, he cannot be posted at Civil Hospital, Jalna, wherefrom he has been suspended and therefore, the impugned order has been

issued by the respondent No. 3 in view of the provisions of G.R. dated 20.04.2013. He has submitted that there is no illegality in the impugned order and therefore, he prayed to reject the present Original Application.

10. On perusal of the record, it reveals that the applicant has been suspended, when he was working as X-ray Technician at Civil Hospital, Jalna and his headquarter kept at Hingoli. Thereafter on his request, his headquarter has been changed and kept at Soygaon, Dist. Aurangabad. After acquittal of the applicant from the Criminal case, he has been reinstated in the service and the order of suspension has been revoked.

11. The Government has issued G.R. dated 20.04.2013 and issued guidelines while passing the order of reinstatement. Paragraph No. 2 of the said G.R. is material, which provides as follows:-

“

विभागीय चौकशी/शिस्तभंगविषयक
कार्यवाही करताना निलंबित शासकीय
सेवकांना पुनःस्थापित करणेबाबत.

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन परिपत्रक क्रमांक :निप्रआ-१११२/प्र.क. ८२/११-अ

मंत्रालय, मुंबई- ४०० ०३२

तारीख : २० एप्रिल, २०१३

वाचा -

१).....

शासन परिपत्रक -

१).....

२. उपरोक्त परिस्थिती विचारात घेऊन, निलंबित शासकीय कर्मचा-यांच्या अधिका-याच्या पुनस्थापनेबाबत कार्यवाही करण्याकरीता खालीलप्रमाणे मार्गदर्शक सूचना देण्यात येत आहेत.

अ) राज्यस्तरीय संवर्गातील अधिकारी/कर्मचरी यांना त्यांचा मूळ महसूली विभाग (Division) व ज्या पदावर कार्यरत असताना निलंबित केले तो महसूली विभाग वगळून अन्यत्र अकार्यकारी पदावर नियुक्ती करण्यात यावी.

ब) विभागीय संवर्गातील कर्मचा-यांना पुनःस्थापित करताना त्यांचा मूळ जिल्हा व ज्या जिल्ह्यात कार्यरत असताना निलंबित केले तो जिल्हा वगळून अन्य जिल्ह्यात अकार्यकारी पदावर नियुक्ती करण्यात यावी.

क) जिल्हा संवर्गातील कर्मचा-यांना पुनःस्थापित करताना त्यांचा मूळ तालुका व ज्या तालुक्यात कार्यरत असताना निलंबित केले असेल तो तालुका वगळून अन्य तालुक्यामध्ये अकार्यकारी पदावर नियुक्ती करण्यात यावी.

ड) सर्व विभागांनी त्यांच्या अधिपत्याखालील विभागातीय अकार्यकारी पदे शोधून त्यांची यादी तयारी करावी.

सही/-
(पां.जो. जाधव)
उपसचिव, महाराष्ट्र शासन”

12. The provisions of paragraph No. 2(B) of the said G.R. is attracted in the instant case and considering the said provisions, the respondent No. 3 has rightly transferred the applicant and posted him in the district other than district wherefrom he has been suspended. The said provision has been made to protect the image of the Government and therefore, in

my opinion, there is no illegality in the impugned order issued by the respondent No. 3 transferred the applicant and posted at Rural Hospital, Pishore, Dist. Aurangabad.

13. The applicant is claiming that as per the Government policy he has to be posted at Civil Hospital, Jalna, as his wife is serving there. No doubt, as per the Government policy, spouse convenience has to be considered while making the transfer of the Government servant. The husband and wife can be accommodated at one and same place. It is not mandatory on the part of the Government or the transferring authority to transfer the husband and wife at the same place, if it is causing inconvenience to the administration. In the instant case, the applicant was suspended on the allegation of accepting bribe of Rs. 1000/- in the Civil Hospital, Jalna. Therefore, the respondent No. 3 did not think it proper to repost him in Civil Hospital, Jalna. Moreover, as per the guidelines given in the G.R. dated 20.04.2013, the respondent No. 3 transferred the applicant out of Jalna District and posted him as X-ray Technician in Rural Hospital, Pishore, Dist. Aurangabad. Therefore, I do not find illegality in the impugned order. Hence, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

14. The impugned order has been issued in accordance with the provisions and guidelines given in the G.R. dated 20.04.2013 and there is no illegality in it. Therefore, no interference is called for in the impugned order. There is no merit in the Original Application. Consequently, the Original Application deserves to be dismissed.

15. In view of the discussions in foregoing paragraphs, the O.A. stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 23.08.2018.

(B.P. PATIL)

MEMBER (J)

KPB S.B. O.A. No. 812 of 2017 BPP 2018 Transfer