

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1082 OF 2015

DISTRICT : PUNE

Dr Rahul Murlidhar Joshi,)
Working as Medical Officer, Group-A,)
Transferred from Mobile Ophthalmic)
Unit, S.R.D Unit, Aundh Civil Hospital)
Campus, Pune, R/o: 401, Shri Gopal)
Vihar, Mayur Colony Road, Kothrud,)
Pune-38.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Public Health Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. The Director of Health Services,)
[M.S], Mumbai, having office)
At Aarogya Bhavan, in the campus)
of St. Georges Hospital,)
P.D Mello Road, Mumbai 400 001.)

3. The District Civil Surgeon,)
 General Hospital, Aundh,)
 Pune-27.)
4. The District Ophthalmic Surgeon,)
 Having office at Aundh Civil)
 Hospital Campus, Pune.)
5. Dr Sachin D. Das,)
 Service as Medical Officer/)
 Ophthalmic Expert, posted in)
 Mobile Ophthalmic Unit,)
 S.R.D Unit, Aundh Civil Hospital,)
 Pune.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 01.09.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.

2. This Original Application is filed by the Applicant challenging the order dated 31.5.2015 passed by the Respondent no. 1 transferring him from the post of Medical Officer, Rural Hospital, Ghodegaon, Dist-Pune to Sub-District Hospital, Kalambani, Dist-Ratnagiri.

3. Learned Counsel for the Applicant argued that the Applicant was posted as Ophthalmic Expert, Mobile Ophthalmic Unit, Civil Hospital, Aundh, Pune and was on deputation to Rural Hospital, Ghodegaon, Dist-Pune. The Applicant was posted to Mobile Ophthalmic Unit in July 2007 and by order dated 1.10.2010, he was sent on deputation to the Rural Hospital, Ghodegaon. In March, 2015, someone sent an on-line request application, purportedly on behalf of the Applicant to the Respondent no. 3 seeking transfer to Ratnagiri district. This application bears mobile number 9822875630, which is the mobile number of the Respondent no. 4. The Respondent no. 2, without verifying the genuineness of the so called request of the Applicant, forwarded the proposal of transfer of the Applicant to the Respondent no. 1. The Respondent no. 1 issued transfer order of the Applicant on 31.5.2015, which is impugned in the present Original Application. Learned Counsel for the Applicant stated that he had never made any request for transfer to Ratnagiri district. He has lodged complaint with the Deputy Director of Health Services, Pune on 1.6.2015 in this regard and also to the Respondents no. 1 and the

Respondent no. 2 on 18.6.2015. As no cognizance of the complaint of the Applicant was taken by the Respondents, the Applicant filed a criminal complaint against the Respondent no. 4, with the Commissioner of Police, Pune on 19.6.2015. Learned Counsel for the Applicant stated that the Respondent nos 1 & 2 have not taken any action on the complaint of the Applicant that some imposter had filed on-line application requesting his transfer to Ratnagiri. As the Applicant was transferred on the basis of a fabricated document, the Respondent nos 1 & 2 were obliged to cancel the impugned transfer order. The Applicant has been given temporary posting at Rural Hospital, Ghodegaon in Mobile Ophthalmic Unit, pursuant to the interim order of this Tribunal. Learned Counsel for the Applicant prayed that this posting may be confirmed and the period when the Applicant was without posting should be treated as compulsory waiting.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 to 4 that there is no evidence that the Respondent no. 4 had filed request application posing as Applicant. This is alleged by the Applicant to defame the Respondent no. 4. In fact, it was not possible for anyone but the Applicant to submit is request for transfer. There is no merit in this Original Application and it may be dismissed.

5. I have carefully considered the record of this case. The case of the Applicant is that he had never filed any online application for transfer to Ratnagiri. It is alleged by the Applicant that this was the mischief of the Respondent no. 4. The Applicant had filed a criminal complaint also in this regard. In such circumstances, it is surprising that no affidavits in reply have been filed by the Respondents no 1 to 3. The Respondent no. 4, who is alleged to have fabricated online application for request transfer posing as Applicant, has been authorized by these Respondent nos 1 to 3 to file affidavit on their behalf. In such circumstances, it is not possible that the truth will come out. Least that was expected from the Respondent nos 1 to 3 was that an enquiry into the allegations made by the Applicant would be ordered. The Applicant's transfer order was issued on 31.5.2015. On 18.6 .2015, the Applicant had sent email to the Respondent no. 2 (Exhibit-E, page 26 of the Paper Book) stating that he had not made any request to transfer him to Ratnagiri. On the same date, he had made a similar request to the Respondent no. 1. These facts are mentioned in para 6.7 of the Original Application. Para 8 of the affidavit in reply filed on behalf of the Respondent nos 1 to 4 on 25.1.2016, deals with this issue. The whole attempt is to defend the Respondent no. 4. Nothing is said about the action taken by the other Respondents, especially the Respondent nos 1 & 2, about the contention of the Applicant that he had not filed any

online application for transfer. No enquiry seems to have been ordered, or at least, this Tribunal was not apprised of any action by the Respondent no 1 to 3. It has to be presumed that they did not think it fit to take any action in the complaint of the Applicant. The Applicant had made a Police complaint on 19.6.2016, which seems to be under investigation. It appears that there was no reason for the Applicant to seek transfer to Ratnagiri. It was necessary for the Respondent nos 1 to 3 to take the cognizance of the Applicant's complaint, but they do not seem to have taken any steps in this matter. This Tribunal has passed a detailed interim order on 21.12.2015, which should be read along with this order. The transfer order dated 31.5.2015 qua the Applicant was stayed. As the Respondent no. 5 had already joined the post from which the Applicant was transferred, it was ordered that the Applicant may be accommodated in another vacant post. Accordingly, by order dated 14.3.2016, the Applicant was given posting in the Mobile Ophthalmic Unit at Ghodegaon. As already stated the Respondent nos 1 to 3 have not taken any steps to inquire into the complaint of the Applicant, and matter is simply left unattended.

6. This Original Application cannot be kept pending indefinitely. The only course open is to direct the Respondents no 1 & 2 to treat the order dated 14.3.2016 as the regular transfer order. Though the

transfer order dated 31.5.2015 was stayed by order of this Tribunal dated 21.12.2015, that order was implemented only on 14.3.2016. This period from the date of interim order dated 21.12.2015 to the date of actual joining of the Applicant at Ghodegaon pursuant to order dated 14.3.2016 will be treated as compulsory waiting, as the delay is fully attributable to the Respondent nos 1 & 2. This Original Application is disposed of accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 01.09.2016
Dictation taken by : A.K. Nair.