

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 405 of 2021 (S.B.)

Dr. Arun Yashwantrao Humne,
Aged about 61 years,
Occ. Service Dean,
R/o Honey Archana Complex, Wing B-1,
Untakhana, Medical College Road, Nagpur.

Applicant.

Versus

1) State of Maharashtra,
through its Secretary,
Medical Education and Drugs Department,
Government of Maharashtra, Gokuldas Tejpal
Hospital Campus, Mantralaya, 9th floor,
B-Wing, Lokmanya Tilak Marg, Mumbai-400 001.

2) The Director,
Medical Education and Research,
4th floor, govt. Dental College Building,
St. George's Hospital Campus, CST,
Mumbai-400 001.

Respondents.

Dr. Arun Humne, the applicant in person.
Shri S.A. Deo, learned C.P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 29th November,2022.

Date of Pronouncement of Judgment : 12th December, 2022.

JUDGMENT

(Delivered on this 12th day of December,2022)

Heard the applicant Dr. Arun Humne in person and Shri S.A. Deo, learned CPO for respondents.

2. The applicant in person Dr. Arun Humne has filed this O.A. for the following reliefs –

“(i) In view of Government Resolution No. सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक : एसआरव्ही-२०२१/प्र.क्र.२०/कार्या-१२, मंत्रालय, मुंबई, दिनांक १० मे, २०२१, the impugned, illegal, fabricated and malicious transfer order No. वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, शासन आदेश क्रमांक : बदली-२०२१/प्र.क्र.९८/२०२१/वैसेवा-१, दिनांक १९/०४/२०२१, issued by the respondent no.1 on the basis of recommendation of the respondent no.2, may please be quashed and set aside, as it is issued in contravention of the captioned Government Resolution and without authority;

(ii) The impugned order No. वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, शासन आदेश क्रमांक : बदली-२०२१/प्र.क्र.९८/२०२१/वैसेवा-१, दिनांक २८/०४/२०२१, issued by the respondents directing the applicant to hand over the charge of the post of Dean to Dr. Avinash Tekade is illegal, fake, fabricated, malicious and hence may please be quashed and set aside ;

(iii) direct the respondent no.1 to issue order / corrigendum for placement of the applicant as Dean, Government Medical College, Chandrapur or alternatively if the respondents are reluctant to cancel the fake and forged transfer order dated 15/04/2021, then their Lordships may direct the respondents to transfer the applicant as a Dean of Government Medical College, Nagpur by virtue of the Government Circular No. शासन परिपत्रक क्रमांक - टिआरएफ २०००/एम-८/प्र.क्र.३/१२, दिनांक ११ जूले, २०००, as the applicant has completed two years in Chandrapur District, which is declared as Adiwasi District and the respondent no.2 has already submitted the letter dated 7/4/2021 to the respondent no.1 for appropriate decision of transfer of the applicant from the Government Medical College, Chandrapur to the Government Medical

College, Nagpur and this transfer of the applicant is permissible as per provision enunciated in the Government Resolution dated 10/05/2021.

(iv) In view of the provision enumerated at serial 2 (1) in the Government Resolution No. सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक : एसआरव्ही-२०२१/प्र.क्र.२०/कार्या-१२, मंत्रालय, मुंबई, दिनांक १० मे, २०२१, direct the respondent no.1 to transfer the applicant as Dean, Government Medical College, Nagpur, as the post of Dean is lying vacant due to voluntary retirement of Dr. Sajal Mitra, because as per the provision the transfer on vacant post due to retirement is permissible currently upto 30th June, 2021 ;

(iv-A) Quash and set aside the impugned posting order No. बदली-२०२१/प्र.क्र. १५१/२०२१/वैसेवा-१, दिनांक ०७/०९/२०२१, as it is contrary to the Government policy and non sustainable in law.”

3. The case of the applicant in short is as under –

The applicant was working as a Professor in the Government Medical College, Chandrapur. He was posted on deputation to Government Medical College, Jalgaon as per order dated 11/06/2020. The applicant made representation on 13/06/2020 (Anex-A-3) requesting the respondents to post him on the post of Dean. The applicant had filed the O.A. No. 874/2019 and as per order dated 18/11/2019 he was to be posted on the post of Dean. The applicant was posted on the post of Dean, Government Medical College, Chandrapur as per the order dated 24/09/2020.

4. It is the case of applicant that after taking over the charge of the post of Dean, there were various complaints against then

Incharge Dean Dr. More and other Professors of Government Medical College, Chandrapur, therefore, he started inquiries against them. The applicant was discharging his duty properly, but without any reason the impugned order dated 11/06/2020 was passed by the Director of Medical Education and Research, Mumbai. The impugned order dated 15/04/2021 was issued by the Joint Secretary, Government of Maharashtra, Medical Education and Drugs Department, Mumbai. In the said order, it is mentioned that the applicant has not handled the spreading of Covid,19 in Chandrapur District properly and therefore he is transferred. The charge of his post was directed to be given to Dr. Rajendra Surpam.

5. It is the case of the applicant that he was not given posting, only it is mentioned that he was transferred. The charge was handed over to one Dr. Avinash Tekade who was junior. It was not proper. It is submitted that the impugned transfer is malafide, hence, liable to be quashed and set aside. During the pendency of this O.A., another posting order dated 07/09/2021 was issued by the Government of Maharashtra / respondents and posted the applicant on the post of Dean at Government Medical College, Nandurbar. Therefore, he prays to quash the order dated 07/09/2021.

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant had made wild allegations in absence of

Dr. Tekade, Dr. More etc. They are not party to this O.A. The applicant is fighting in the Court in person instead of discharging his duty in the Government Medical College. It is submitted that there was a report from the Director of Medical Education and Drugs Department, Mumbai stating that the applicant has not handled Covid,19 situation properly at Chandrapur. The Government has made available grant of 11 Crores in the financial year 2020-2021, but the applicant has not paid the salary of the employees working in the Government Medical College. Therefore, the employees were on strike. They did not join on their duties and therefore there was many difficulties for Covid,19 patients. On the report of Director of Medical Education and Research, Mumbai, there was immediate need of withdrawing the charge of the post of Dean from the applicant. It is submitted that the charge was withdrawn and the applicant was kept waiting for the posting.

7. It is submitted that it was not a transfer, because, the applicant was not given any posting and therefore the O.A. itself is not maintainable.

8. It is submitted that the applicant is praying for cancellation of the impugned transfer order. If the impugned transfer is cancelled, then result will be that he will be posted as a Dean at Government Medical College, Chandrapur. During the pendency, Dr. Nitware is posted as a regular Dean at Government Medical College,

Chandrapur, he is not made party, therefore, he is necessary party. Hence, the O.A. is liable to be dismissed. It is submitted that the transfer order dated 07/09/2021 was issued by the Government / respondents after the decision of Civil Services Board. The matter was placed before the Civil Services Board and it was recommended by the Civil Services Board to post the applicant as a Dean, Government Medical College, Nandurbar. Accordingly, it was placed before the authority. Concerned Minister / Secretary of the Medical Education and Health Department approved the transfer order. Thereafter, the transfer order dated 07/09/2021 is issued. There is a compliance of provisions of the Section 4 (4) & 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfers Act,2005"). Hence, the O.A. is liable to be dismissed.

9. Heard the applicant in person. He has filed various documents on record to show that he started inquiry against Dr. More who was then Incharge Dean and other Doctors / Professors, therefore with a malafide intention he is transferred. He has filed written notes of arguments. The applicant has pointed out the Judgment in O.A.No. 1159/2016, dated 15/12/2016. The Judgment in the case of **State of Punjab Vs. Davider Pal Singh Bhullar and**

others.,2011 (14) SCC,770 and Dr. Ramesh Chandra Tyagi Vs. Union of India, 1994 SCC (L&S), 562. The applicant has argued in person and pointed out various Judgments to show that his transfer is malafide, therefore, liable to be quashed.

10. Heard learned CPO for the respondents. When the argument was opened on 12/09/2022, the learned CPO submitted that preliminary objection is to be decided first. In the reply, the respondents have raised preliminary objection stating that Dr. Nitnaware is working as a Dean at Government Medical College, Chandrapur, he is not made party in this O.A. He is necessary party and therefore the O.A. is liable to be dismissed on preliminary issue. Again preliminary objection application was filed. This Tribunal orally directed the applicant to make Dr. Nitnaware as party respondents, because, he will be affected if the transfer order is cancelled. But Dr. Humne, the applicant in person not made him party and argued finally on merit.

11. It is the submission of applicant that first transfer order is issued by the Director of Medical Education and Research Department without following the procedure. Hence, it is liable to be dismissed. The applicant was not given posting. In support of his submission pointed out the decision of M.A.T., Principal Bench, Mumbai in O.A.No. 1159/2016. It was not a final decision. It was the

interim order by which the stay was granted. In the said case posting was not given. It is not a final decision and therefore it cannot be considered. Even if it is considered, then it appears that the definition of transfer is not considered in the said order.

12. The learned CPO has pointed the definition of transfer in Section 2 (i) of the Transfers Act,2005. As per the submission of learned CPO, only charge was withdrawn. The applicant was not given any posting and therefore it was not a transfer.

13. The definition of transfer is given in Section 2 (i) of the Transfers Act,2005 which is as under –

*“2 (i) **“Transfer”** means posting of a Government servant from one post, office or Department to another post, office or Department.”*

14. As per the definition ‘transfer’ means posting of a Government servant from one post, office or Department to another post, office or Department. The applicant was not given posting anywhere from one office to other office or from one department to another department. His charge was directed to be given to Dr. Surpam. As per the submission of the respondents, Dr. Surpam was on medical leave and there was emergency to withdraw the charge from the applicant. Hence charge of applicant was given to Dr. Avinash Tekade.

15. It is clear from the impugned transfer order that the applicant was not given any posting. It is only mentioned that he is transferred, but he was not transferred from one post, office or department to another post, office or department as defined in the Transfers Act, 2005. Therefore, it is not a transfer. He was kept waiting. Hence, the O.A. itself is not tenable.

16. Dr. Arun Humne, the applicant in person submitted that the order dated 15/04/2021 withdrawing the charge of the post of Dean and transferring him is not legal and correct. He has pointed out the G.R. dated 10/05/2021 in which it has been mentioned in para-1 that the transfer season for the financial year 2021-22 will be upto 30/06/2021. He has submitted that in view of the G.R., the malafide transfer order is liable to be quashed and set aside.

17. It is pertinent to note that the G.R. is dated 10/05/2021 and the impugned order is dated 15/04/2021, therefore, it is clear that the said order was issued before the G.R. dated 10/05/2021. Hence, the G.R. dated 10/05/2021 is not applicable.

18. Dr. Arun Humne, the applicant in person has submitted that the status-quo was granted on 27/05/2021 i.e. on the first date. During the status-quo, another order dated 07/09/2021 was issued, therefore, it is illegal. It is pertinent to note that the O.A. itself is not

maintainable, because, only charge was withdrawn as per the order dated 15/04/2021, same was handed over to Dr. Avinash Tekade. As per the definition of 'transfer' in the Transfers Act, 2005, it is not a transfer and therefore the O.A. itself is not maintainable.

19. In respect of preliminary objection, the respondents have specifically raised the preliminary objection stating that Dr. Nitnaware is posted as a Dean at Government Medical College, Chandrapur. If the transfer order is cancelled, then he will be affected. Hence, he is a necessary party in this O.A.

20. Heard the applicant in person. He has submitted that Dr. Nitnaware is not a necessary party. He has pointed out reliefs prayed in the O.A.

21. During the course of argument, the learned CPO has submitted that no post of Dean is vacant at Nagpur, therefore, he cannot be posted. The learned CPO vehemently argued that Dr. Nitnaware who is working as a regular Dean at Government Medical College, Chandrapur, is a necessary party.

22. It appears that there is substance in the submission of respondents. Dr. Nitnaware is a necessary party in this O.A., because, if the impugned orders are cancelled, then Dr. Nitnaware will

be affected. Hence, he is a necessary party. The O.A. is liable to be dismissed on this ground only, but the O.A. is decided on merit.

23. In respect of the transfer order dated 07/09/2021, it is clear that this order of posting / transfer was passed by the respondents after the report of the Civil Services Board. The copy of report of the Civil Services Board is at Page no.612. It was approved by the Minister of Medical Education Department and Secretary of the Medical Education Department, etc. Therefore, it is clear that there is a compliance of Section 4 (4) & 4 (5) of the Transfers Act,2005. Hence, the impugned transfer order dated 07/09/2021 is legal and proper. The cited decision filed by the applicant in the case of **State of Punjab Vs. Davider Pal Singh Bhullar and others.** (cited supra) is in respect of criminal case, therefore, it is not applicable to the case in hand. In the case of **Dr. Ramesh Chandra Tyagi Vs. Union of India** (cited supra) in para-6 of the Judgment, it appears that there were two transfers.

24. In the present case, the first order withdrawing the charge and only it is mentioned as a transfer, but posting was not given. In view of the definition of the 'transfer' it was not a transfer. The second order dated 07/09/2021 is as per the recommendation of the Civil Services Board by following due procedure of Section 4 (4) & 4 (5) of

the Transfers Act, 2005, is legal and proper. Hence, cited decisions are not applicable to the case in hand.

25. Both the sides have filed various documents to show against each others. The applicant has filed various documents about the allegations made against Dr. More and other Doctors / Professors working in the Government Medical College, Chandrapur, whereas, the respondents have filed the documents to show that because of the applicant, there was hue and cry in the working employees. Though the grant of 11 Crores was made available, their payments were not made by the applicant. The applicant has harassed the employees of Government Medical College, Chandrapur. There was a March/ Andolan / strike made by the employees, therefore, there was critical situation to handle the Covid,19 in Chandrapur District. The respondents have filed various news papers cuttings. The applicant has also filed various documents.

26. Those documents are not material. This Tribunal has to record its findings whether the transfer order is legal and proper. As per the above discussion, the first order issued by the respondents directing to handover the charge of the post of Dean to one Dr. Surpam and mentioning that the applicant is transferred, but no posting was given. In view of the definition of 'transfer', it is not a transfer, therefore, the O.A. itself is not maintainable.

27. The second transfer order dated 07/09/2021 is perfectly legal, because, it is as per the compliance of the Section 4 (4) & 4 (5) of the Transfers Act,2005.

28. The O.A. is liable to be dismissed on the preliminary issue raised by the respondents. The applicant had not made party to Dr. Nitnaware who is presently working as a Dean at Government Medical College, Chandrapur. This Tribunal has orally directed the applicant to make him party, even though he is not made party. If the O.A. is allowed and transfer order is cancelled, then Dr. Nitnaware will be affected. The result will be to post the applicant in place of Dr. Nitnaware. Hence, Dr.Nitnaware is necessary party. Therefore, the O.A. is liable to be dismissed on this ground.

29. The reliefs prayed by the applicant in the O.A. cannot be granted. He has prayed many reliefs. The relief clause no.1 cannot be granted, because, the order dated 15/04/2021 (P-162) is not a transfer as defined under the Transfers Act, 2005.

30. In respect of relief clause no.2, the respondents prayed to “quash the impugned order dated 28/04/2021 directing the applicant to hand over the charge of the post of Dean to Dr. Avinash Tekade is illegal, fake, fabricated, malicious and hence it be quashed and set aside.”

31. It is submitted by the side of respondents that in the order dated 15/04/2021 the applicant was directed to handover charge to Dr. Surpam, but he was on medical leave, therefore, again order was passed on 28/04/2021 (P-168) directing Dr. Tekade to take the charge from the applicant.

32. Looking to the situation, it cannot be said that handing over charge to Dr. Tekade by the applicant, is illegal. Hence, relief cannot be granted.

33. In relief no.(iii) the applicant prayed "to direct the respondents for issuing order of placement of the applicant as a Dean of Government Medical College, Chandrapur or at Government Medical College, Nagpur in view of the G.R. dated 06/08/2002." It is pertinent to note that the applicant had not completed two years in the naxalite area, therefore, he cannot claim the benefit of G.R. dated 6/8/2002. This relief cannot be granted, because, Dr. Nitnaware who is working as a Dean at Government Medical College, Chandrapur is not made party. The post of Dean at Government Medical College, Nagpur is not available. Regular Dean is posted and therefore this relief cannot be granted.

34. In relief no.(iv), the applicant has prayed "to direct the respondent no.1 to transfer the applicant as Dean, Government Medical College, Nagpur as the post of Dean is lying vacant due to

retirement of Dr. Sajal Mitra.” The learned CPO has submitted that after the retirement of Dr. Sajal Mitra, Dr. Gupta was appointed as a Dean. The transfer order dated 07/09/2021 was approved by the Competent Authority. In the said order, the posting of Dr. Gupta is shown as a Dean at Government Medical College, Nagpur.

35. The learned CPO has submitted that now Dr. Gajbhiye is posted as a Dean, Government Medical College, Nagpur. Therefore, this relief cannot be granted.

36. In respect of relief Clause no.(iv-A) to quash and set aside the impugned posting order dated 07/09/2021. It is pertinent to note that this order is issued after complying the due procedure as laid down in Section 4 (4) & 4 (5) of the Transfers Act, 2005. Hence, the relief cannot be granted. In the result, following order is passed –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 12/12/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 12/12/2022.

Uploaded on : 12/12/2022.

**ok