

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.323/2016.

Sanjay Raghoji Manwatkar,
Aged about 53 years,
Occ-Service as Jr. Clerk,
Daga Memorial Govt. Hospital, Nagpur.
R/o 52, Thawre Colony, Subhedar Layout,
Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Principal Secretary,
Department of Public Health,
Mantralaya, Mumbai-440 032.
- 2) The Director of Health Services (M.S.),
%Arogya Bhavan+, St. Georges Hospital Compound,
P. Danello Road, Mumbai-1.
- 3) The Dy. Director of Health Services,
Nagpur Circle, Mata Kacheri, Shraddhanandpeth,
Nagpur-22.
- 4) Daga Memorial Govt. Hospital,
Through its Medical Superintendent,
Ganjakheth, Gandhi baugh, Nagpur-22.

Respondents

Shri A.S. Tiwari, Ld. Counsel for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 13th day of April 2017.)

Heard Shri A.S. Tiwari, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents.

2. The applicant was appointed as a Watchman in Leprosy Control Unit, Bramhapuri, District Chandrapur on 2.4.1985. It was a Class-IV post. He came to be promoted to the post of Junior Clerk in the office of respondent No.4 i.e. Daga Memorial Govt. Hospital, Nagpur on 7.4.2010. Vide order dated 31.5.2016, the applicant has been transferred from the post of Junior Clerk from the office of respondent No.4 i.e. Daga Memorial Govt. Hospital, Nagpur to Rural Hospital, Parseoni, Distt. Nagpur. The said order has been challenged in this O.A. The applicant has claimed that the said order dated 31.5.2016 issued by respondent No.2 i.e. the Director of Health Services (M.S.), Mumbai to the extent of applicant, be quashed and set aside and the respondents be directed to transfer the applicant to any Health Centre / Unit falling within the jurisdiction of respondent No.3 in Nagpur city.

3. According to the applicant, he is a physically handicapped person and suffers locomotor / locomotion disability. He

requested respondent No.3 to transfer him to any institution falling within the jurisdiction of respondent No.3 in Nagpur city. However, his request was not considered. It is stated that impugned order of transfer is against the mandate of G.R. dated 15.12.2014 issued by General Administration Department of Govt. of Maharashtra, which clearly states that the physically handicapped person should be transferred only near his residence. It is stated that respondent No.4 has available vacancies on its establishment at the hospital of respondent No.4 i.e. in the office of Chief Medical Officer, Rashtriya Shayrog Niyantaran and Prashikshan Kendra, Nagpur, Paryavekshak Nagri Kushtarog Pathak, Nagpur and Arogya va Kutumb Kalyan Kendra, Nagpur. The applicant has various health problems. Parseoni is around 40 Kms. from Nagpur and 50 Kms. from the residence of the applicant. There is no facility of western commode and western water closet at Parseoni and, therefore, he be transferred at the place of his choice posting.

4. Respondent Nos. 2 and 3 have resisted the claim and submitted that the applicant was posted on promotion at Daga Memorial Govt. Hospital, Nagpur as Jr. Clerk from 7.4.2010 and till today he is working there. He has completed his tenure. The applicant was relieved on 4.6.2016 and his transfer is as per the provisions of the

Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act"). His posting was on administrative ground. The applicant has completed 11 to 12 years in Nagpur itself. It is stated that the applicant has to stay at his transferred place i.e. at the headquarters and can get accommodation as per his convenience. The applicant is unnecessarily avoiding to obey the order dated 31.5.2016.

5. The applicant has filed rejoinder-affidavit and submitted that the respondents can very well accommodate the applicant in Nagpur and that there is a post vacant in supervisory Urban Leprosy Control Unit No.2. One Mrs. Smita Jayant Nandurkar has taken voluntary retirement on 7.11.2016 and that post is also lying vacant. It is stated that the transfer of the applicant is against the fundamental rights and is discriminative in nature. One Mrs. A.H. Badwaik is in Nagpur since 2005. She is physically fit and still she is not considered for transfer. The applicant has also placed on record the photograph showing that the Rural Hospital where the applicant has been transferred, has no facility for physically handicapped persons.

6. From the argument put forth, it will be clear that there is no dispute that the applicant was due for transfer and, therefore, he has been transferred. It is not disputed that the applicant is a physically handicapped person. He has also served as a Watchman and thereafter as a Junior Clerk at Nagpur and, therefore, technically the order of transfer cannot be said to be illegal.

7. The learned counsel for the applicant has invited my attention to one G.R. dated 15.12.2004 (A.5) from which it seems that the Government has taken a decision that as far as possible physically handicapped persons shall be transferred nearby the place of their residence. It is, of course, subject to the administrative convenience and not as of right. It seems that Section 20 (5) of the Rights of Person with Disabilities Act, 2016 states that the appropriate Government may frame policy for posting and transfer of employees with disabilities. The Ld. counsel submits that the applicant is a physically handicapped person, the respondents ought to have consider his request for his transfer at the place nearby Nagpur. The applicant has filed one representation on 22.2.2016 to the Dy. Director of Health Services, Nagpur (R.3) and requested that he be transferred at any of the four places mentioned by him in his rejoinder.

8. In the rejoinder-affidavit, the applicant has stated that one Mrs. Smiti Jayant Nandurkar has taken voluntary retirement from service on 7.11.2016. It seems that the said Mrs. Smita Jayant Nandurkar was serving at Nagpur. The said post seems to be vacant. In the rejoinder-affidavit, the applicant has stated that there are no facilities of rooms for physically handicapped persons in the hospital at Parseoni. This aspect can also be considered. It is true that the transfer is a routine course of service and an employee gets residential accommodation or house rent allowance at the place where he is transferred. However, so far as the applicant is concerned, he is admittedly physically handicapped and has special right as per the provisions of Section 20 (5) of the Rights of Person with Disabilities Act, 2016 and this aspect cannot be ignored particularly when the posts are vacant at Nagpur.

9. Considering the fact that the representation filed by the applicant is already pending coupled with the fact that one post of Mrs. Smita Jayant Nandurkar is vacant on account of her voluntary retirement, I feel that the respondents will not face any difficulty in considering the representation filed by the applicant on its own merit. In such circumstances, though the impugned order of transfer of the applicant cannot be said to be absolutely illegal, there is a scope to

reconsider the same by considering the representation of the applicant.

Hence, the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to consider the representation of the applicant dated 22.2.2016 coupled with the fact that the post of Mrs. Smita Jayant Nandurkar is vacant and pass necessary order on the same.
- (iii) Decision on the representation filed by the applicant shall be taken within one month from the date of this order and shall be communicated to the applicant in writing.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)