

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.337/2017.

(S.B.)

Dr. Shivhari Vitthalrao Ghorpade,
Aged about 62 years,
Occ-Service,
R/o Plot No.15, Medical Employees
Co-operative Housing Society, Vasant Nagar,
Medical Colony, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Medical Education and Drugs,
G.T. Hospital Complex, 9th floor, B-Wing,
New Mantralaya, Mumbai-01.
2. The Director of Medical Education & Research,
(M.S.), 4th floor, Dental College Building,
St. Georges Hospital Compound,
C.S.T. , Mumbai-01.
3. The Dean,
Govt. Medical College, Nagpur.
4. Dr. Sushant Meshram,
Professor in Tuberculosis and Chest Diseases Deptt.,
B.J. Medical College, Pune.
5. Dr. Sanjay Gaikwad,
Tuberculosis and Chest Diseases Deptt.,
Shri Bhausahab Hire Govt. Medical College,
Dhule.

Respondents

Shri N.D. Thombre, the learned counsel for the applicant.
Shri M.I. Khan, the Ld. P.O. for the respondent Nos. 1 to 3.
None appeared for respondent Nos. 4 and 5.

**Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 20th day of November 2017).

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondent Nos. 1 to 3. None appeared for respondent Nos. 4 and 5.

2. The applicant is working as Professor in Tuberculosis and Chest Diseases. He was working as such in the Govt. Medical College and Hospital, Nagpur since June 2011.

3. After completion of tenure of three years, the applicant filed representations on 20.1.2014 and 9.3.2015 and requested the respondent No.1 to transfer him at B.J. Medical College, Pune, as his wife was serving as Psychiatrist, Class-I at Regional Mental Hospital, Yervada, Pune. However his request was not considered. Vide impugned order dated 7.6.2017, the applicant has been transferred to Shri Bhausahab Hire Govt. Medical College, Dhule in place of respondent No.5 by respondent No.1. In the said transfer order, respondent No.4 has been transferred at Nagpur in place of the applicant and respondent No.5 has been transferred to

Pune in place of respondent No.4. Being aggrieved by the said order of transfer, the applicant has preferred this O.A.

4. The learned counsel for the applicant submits that the applicant has applied for his transfer at Pune in place of respondent No.4 and respondent No.4 also requested that he may be transferred at Nagpur in place of the applicant. The competent authority recommended mutual transfer of the applicant and respondent No.4. However, instead of considering their mutual request, the applicant has been transferred to Dhule. The applicant has joined under protest at Dhule on 12.6.2017. It is also an admitted fact that, respondent Nos.4 and 5 have also joined at their respective places of transfer.

5. Vide separate affidavits-in-reply filed by respondent Nos. 1 and 4, it is admitted that the applicant and respondent Nos. 4 case was recommended for mutual transfer. It is, however, stated that the recommendation was considered by the competent authority i.e. before the Civil Services Board in the meeting dated 30.4.2017 under the Chairmanship of Principal Secretary, Department of Medical Education and Drugs, Mantralaya, Mumbai and thereafter the proposal was sent to the competent authority i.e. the Hon^{ble} Minister of the concerned department and the Hon^{ble} Chief Minister for giving approval. Approval was given for posting of the applicant at Shri Bhausahab Hire Govt. Medical College, Dhule. It is submitted that the

recommendation for transfer cannot be binding on the competent authority i.e. the Hon'ble Minister of the concerned department and the Hon'ble Chief Minister. It is stated that the transfer from place to another is a general condition of service and an employee has no choice in the matter. Transfer is an incidence of service and the employee cannot question the transfer, if it is made within four corners of law.

6. From the submission made by the learned counsel for the applicant as well from the reply affidavit and rejoinder affidavit, it will be clear that there is no dispute of the fact that the applicant was due for transfer from Nagpur. The applicant, being a Class-I officer is liable to be transferred at any place in Maharashtra State. Admittedly, applicant's transfer to Pune was recommended by the competent authority to the higher authority and there was recommendation that respondent No.4 shall be transferred in place of the applicant and the applicant be transferred in place of respondent No.4 at Pune. However, the said recommendation cannot be said to be binding on the Hon'ble Minister of the concerned department and the Hon'ble the Chief Minister.

7. The learned P.O. has placed on record the minutes of the meeting as regards transfer of Medical Officers like the applicant in the year 2017. It seems that even though the applicant's transfer at

Pune was recommended by respondent No.2, the said transfer was considered by the Civil Services Board consisting of Principal Secretary, Department of Medical Education and Drugs, Mantralaya, Mumbai and the Joint Director of Medical Education, Mumbai in its meeting and while finalizing the transfer orders of number of officers, it was decided to transfer the applicant at Dhule instead of Pune and this proposal has been approved by the Committee and thereafter it was approved by the Hon^{ble} concerned Minister and the Hon^{ble} Chief Minister. There is nothing on record to show that, the respondent authorities were having any prejudice against the applicant or they deliberately transferred the applicant at Dhule for some ulterior motive and, therefore, the decision taken by the competent authority cannot be said to be illegal.

8. The learned counsel for the applicant invited my attention to the impugned transfer order (Page 13) dated 7.6.2017. In the said order, it is mentioned that the applicant will not be entitled to transfer allowance and TA and DA, since the applicant's transfer was on his request. The learned counsel for the applicant submitted that the applicant never requested for his transfer to Dhule. Admittedly, the applicant has requested for his transfer at Pune and not at Dhule and, therefore, the order so far as non-granting transfer allowance and TA and DA to the applicant as per condition No.2 in the transfer order

dated 7.6.2017, cannot be said to be legal. The order, therefore, can be modified to that effect and the respondents can be directed to pay the applicant the transfer allowance and TA and DA for his transfer to Dhule.

9. The learned counsel for the applicant submitted that the applicant and respondent No.4 have submitted request letters for mutual transfer. Copies of the said letters are at page Nos. 55 & 56 (both inclusive). By the said letter, the applicant requested that he may be transferred to Pune and respondent No.4 requested for his transfer to Dhule.

10. Respondent No.4 has filed additional submission on 21.8.2017 and requested that instead of disturbing all the transfers from one place to another, the respondent authorities be directed to transfer the applicant and respondent No.5 by directing the Government to transfer respondent No.5 from Pune to Dhule and the applicant may be transferred from Dhule to Pune. Respondent No.5, however, has not filed any reply affidavit.

11. It is true that the applicant's wife is serving at Pune in Mental Hospital and, therefore, he requested that his case for transfer be considered for Pune. However, his individual convenience cannot bypass administrative convenience and it is for the competent authority to consider as to whether such requests can be considered.

Admittedly, the applicant and respondent Nos. 4 and 5 have joined at their respective place of postings, even though the applicant had joined under protest at Dhule. The applicant was admittedly due for transfer and cannot insist that he shall be posted at a particular place. However, if he files fresh representation for his transfer to Pune, the competent authority may consider it within a stipulated period or at the time of Annual General Transfers of April-May 2018 as per its own merits. In view of the aforesaid circumstances, I do not find any illegality in the order of transfer of the applicant at Dhule vide impugned order, except that the applicant will be entitled to transfer allowance and TA and DA. Hence, the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) Condition No.2 so far as the applicant is concerned, in the impugned order dated 7.6.2017 is quashed.
- (iii) Respondent No.1 shall pay the transfer allowance and TA and DA as per rules for his transfer at Dhule.
- (iv) The applicant will be at liberty to file fresh representation for his transfer to Pune.
- (v) Respondent No.1 may consider such representation as per its own merits at the time of Annual General Transfers of April-May

2018, without being influenced by any of the observations made in this order.

(vi) No order as to costs.

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

Dt. 20.11.2017.

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