

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 384/2019 (S.B.)

Aruna D/o Baliram Rathod,
(Mrs. Aruna W/o Parag More),
Aged 37 years, Occ. Service,
R/o Kanta Nagar Govt. Colony,
Mahananda Building, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
10th floor GT Hospital Campus Building,
New Mantralaya, Fort, Mumbai-01.
- 2) Director of Public Health (2),
Directorate of Public Health,
Central Building, Pune-411 001.
- 3) Deputy Director of Health Services,
Akola Region, Lady Hospital Compound,
Akola.
- 4) Civil Surgeon,
General Hospital, Amravati.

Respondents.

S/Shri N.D. Thombre, S.P. Chavan, Advocates for the applicant.

Shri P.N. Warjurkar, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of decided of Judgment : 19th September, 2019.

JUDGMENT

(Delivered on this 19th day of September,2019)

Heard Shri N.D. Thombre, Id. counsel for the applicant and Shri P.N. Warjurkar, Id. P.O. for the respondents.

2. The learned P.O. files today affidavit-in-reply on behalf of respondent nos. 2 to 4. It is taken on record and copy is served on the learned counsel for the applicant.

3. The applicant was appointed as Staff Nurse on 20/01/2004 and she was posted at Cottage Hospital, Achalpur, District Amravati. The applicant was thereafter transferred to General Hospital, Amravati and she was working there since August, 2012.

4. On 09/04/2018 the respondents called options of the staff Nurses, as per the G.R. dated 9/4/2018 for their transfers. The applicant submitted options/choice posting, she gave option at Amravati as her husband was serving at Amravati and as there was premature delivery of the applicant.

5. It is case of the applicant that on 25/5/2019 during course of counselling she made request to the respondents to transfer her on any post at Amravati, but it was in vain and she was transferred to Trauma Care, Achalpur.

6. This transfer order is challenged mainly on the ground that her personal difficulties were not taken into account by the respondents. The second ground of attack is that the respondents have retained the other Staff Nurses who had completed period of six years and therefore undue favour was shown by the respondents to other Staff Nurses. It is submitted that by giving indifferent treatment to the applicant, the applicant is transferred and therefore the exercise of jurisdiction was malafide. During the course of arguments, the learned counsel for the applicant submitted that the respondents have violated the provisions under the G.R. dated 9/4/2018, as the respondents did not consider the options and personal difficulties of the applicant. It is submitted that it was necessary to retain the applicant at Amravati as her husband was serving there and considering her illness due to premature delivery. Thus, it is submitted that action of the respondents is malafide.

7. The applicant has amended the O.A. and raised contention that the transfer order passed by the respondent no.2 is without jurisdiction, he was not competent to transfer the applicant and for this reason the impugned transfer order dated 31/5/2019 be quashed and set aside.

8. The respondents have filed their reply which is at page no.55. It is contention of the respondents that since 2012, the

applicant was posted at Amravati and as the applicant completed two normal tenures at Amravati, therefore, she was overdue for transfer. The second submission of the respondents is that considering the options given by the applicant, she was posted at Trauma Care, Achalpur and therefore, no illegality was committed by the respondents. So far as retention of other Staff Nurses at Amravati, it is submitted by the respondents that the Civil Services Board at the time of counselling examined the case of each candidate and thereafter decision was taken by the Board. It is submitted that there is no substance in the application, consequently it is liable to be dismissed.

9. The learned counsel for the applicant submitted that the candidates at Sr.Nos. 4,17,18,19,20 & 32 were retained at Amravati, though they had completed period more than six years. It is submission of the applicant that there is violation of the G.R. dated 9/4/2018. The learned counsel for the applicant has also filed the list of the members of staff who were due for transfer. It is submitted that the candidates at Sr.Nos.2,17,31 and 45 had completed period more than six years and they were posted for a period more than the period during which period the applicant was posted at Amravati, but they were not transferred.

10. Firstly, I would like to point out that opportunity was given to the applicant to submit her options and accordingly 10 options were given by the applicant. The respondents have transferred the applicant to Trauma Care Hospital, Achalpur, District Amravati. It was option no.4 given by the applicant. The respondents have filed the form recorded by the Members of the Civil Services Board which is at page no.63. This form is also signed by the applicant and at the time of counselling the applicant accepted posting at Trauma Care, Achalpur and also accepted that the posting was as per her own request. It is pertinent to note that when the applicant learnt that some other Nurses were retained at Amravati, consequently, she filed this application and challenging her own transfer.

11. Though it is contention of the applicant that the other Nurses who have completed two normal tenures, are retained at Amravati and therefore she should have been retained at Amravati is concerned, I would like to point out that action of the respondents giving extension to candidates at Sr.Nos. 4,17,18,19, 20 & 32 is contrary to the provisions under Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfers Act,2005"). The Section 3(1) proviso says that when such employee is from the non-secretariat services, in Group-C, such employee shall be

transferred from the post held on his completion of two full tenures at that office or Department to another office or Department. It appears that the candidates at Sr.Nos. 4,17,18,19 & 20 were transferred from one Department to another Department and not retained on the same post. Once it is accepted that the applicant is transferred as per her own option, it does not lie in the mouth of the applicant that the respondents have acted illegally.

12. So far as challenge to the transfer on the ground that the husband of the applicant is serving at Amravati is concerned, I would like to point out that the provisions in G.R. dated 9/4/2018 are directory in nature, similarly transfer of a Government servant and illness of the wards of the Government servant is concerned, this provision is also directory in nature and not mandatory. It seems that the applicant completed two normal tenures, she submitted her options and considering her options she was posted at Achalpur. Under these circumstances, I do not see any merit in this application. Hence, the following order –

ORDER

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

Dated :- 19/09/2019.

(A.D. Karanjkar)
Member (J).

*dnk..

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 Member (J).

Judgment signed on : 19/09/2019.
and decided on

Uploaded on : 23/09/2019.