

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 626 of 2017

Dr. Vivek S/o Ramchandra Phadke,
Aged about 55 years,
Occ. Medical Officer-II, Sub District Hospital,
Murtizapur, District Akola
R/o Plot no.19, "Ramkujan",
Khedkar Nagar, Akola.

Applicant.

Versus

- 1) State of Maharashtra,
Through Upper Chief Secretary,
Ministry of Public Health Services-3,
Mantralaya, Mumbai-32.
- 2) The Director Public Health,
Arogya Bhavan, Saint George Hospital Campus,
C.S.T., Mumbai.
- 3) Deputy Director,
Public Health Lady Hardin Hospital Campus,
Akola Division, Akola.
- 4) The District Civil Surgeon,
Government Medical Hospital,
Akola, Tah and District Akola.
- 5) The Medical Superintendent,
District Hospital for Women, Akola
Tah. and District Akola.
- 6) The Medical Officer-cum-Administrative Officer,
Including Additional Charge Dr. Radha B. Jogi
(w.e.f. 12/4/2017 to 25/5/2017).

Respondents

Shri U.A. Dhabe, Advocate for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 9th day of November,2017)

Heard Shri U.A. Dhabe, Id. Counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

2. The applicant is a Medical Officer Class-II Grade. He was serving in Women Hospital at Akola. Vide order dated 5/5/2017 the applicant has been transferred from District Women Hospital, Akola to Primary Health Center, Wadegaon. Thereafter vide order dated 26/5/2017 the applicant has been transferred from Primary Health Center, Wadegaon to Sub District Hospital at Murtizapur on his request. According to the applicant both these orders of transfer are illegal, irregular, malafide and bad in law. Therefore he has requested that both these orders be quashed and set aside and the respondents be directed to transfer the applicant to District Hospital for Women at Akola. The respondent nos. 3&4 justified the orders passed by the respondent authority and submitted that the applicant has been transferred on his own request to Murtizapur. The respondents denied that the orders are not passed by the competent authority.

3. The learned counsel for the applicant has invited my attention to the letter dated 25/4/2017 issued by the Joint Director, (Finance and Administration), Health Services, Mumbai. The copy of the said letter is placed on record at Annex-A-14 at P.B. page nos. 49&50 (both inclusive). Vide said letter the respondents authorities have been directed that the transfer order shall be issued till 30/4/2017 and thereafter no transfer order shall be issued till end of June,2017. It is stated that the said instructions have not been followed and transfer orders have been issued in the month of May,2017 and therefore the order is illegal. Perusal of the letter shows that it is in the form of guidelines however that itself will not mean that the orders are illegal. As per The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "Transfers Act") the annual general transfers can be issued in the month of April / May and therefore the order passed by the respondents dated 5/5/2017 and 26/5/2017 cannot be said to be illegal or against the provisions of Transfers Act on this ground only. The learned P.O. has invited my attention to the fact that the applicant has been transferred to Murtizapur on his own request. The respondents have placed on record copy of the representation filed by the applicant which is at Annex-R-IV at P.B. page no.88. In the said representation the

applicant himself requested the competent authority that on medical ground he may be retained at Akola or in the alternative the place of his posting may be modified and he be transferred at Murtizapur. In consequence of this representation the impugned order dated 26/5/2017 has been issued whereby the applicant has been transferred to Murtizapur on his own request. Thus it is clear that the respondent authorities have considered the request of the applicant and have transferred him to Murtizapur and therefore it cannot lie in the mouth of applicant that the respondent authorities were having malafide against him. On the contrary the applicant's request has been considered favourably. Thus the respondent authority has modified the order dated 5/5/2017 whereby the applicant was transferred from Akola to Wadegaon and on applicant's request the applicant has been re-posted at Murtizapur.

4. The learned counsel for the applicant invited my attention to one Chart. Copy of which is at P.B. page nos. 42&43. The applicant wants to submit that numbers of officers who are senior to the applicant are working at District Women Hospital at Akola. From the said Chart it seems that one Dr. Priya Y. Meshram, Dr. Archana V. Phadke, Dr. Vilas T. Sonone, Dr. Khudeja Begam are serving in the said Hospital for more than 9 years and 10 months. Whereas one Dr. Shital P. Mehta, Pradhnya M. Walde (Warthe) and Dr. Vrushali S.

Khode are serving at Akoal in Women Hospital for more than 7 years and 10 months. As against this the applicant has served for 5 years and 11 months only and therefore these Medical Officers should have been considered first for transfer from Akola to other place. Merely on this ground the applicant's transfer cannot be said to be illegal. Admittedly, the applicant has completed his tenure at Akola and was due for transfer. He was accordingly transferred to Wadegaon and this transfer to Wadegaon was never challenged by the applicant. On the contrary the applicant joined and then filed application for change of modification of the transfer order. He requested that he may be transferred to Murtizapur and his request has been accepted. The applicant has therefore no right to challenge the orders of his transfer dated 5/5/2017 and 26/6/2017.

5. The learned counsel for the applicant submits that the order is passed by the Collector and not by competent authority. However the respondents have placed on record the G.R. dated 30/11/2016 from which it is clear that the respondent no.1 has delegated the power of transfer to the Committee of six Officers as mentioned in the G.R. and the Collector is the President of such Committee and the impugned orders have been issued in pursuance of the said delegation of power. The impugned orders of transfer are therefore legal and proper.

6. The learned counsel for the applicant submits that the applicant has been transferred to Murtizapur and has undergone surgery and it is difficult for him to travel from Akola to Murtizapur since his family is residing at Akola. The applicant is a senior Medical Officer and can very well shift his family to Murtizapur if he is unable to undergo travelling and this cannot be a ground to quash and set aside the orders of transfer. In view of the discussions in forgoing paras, I pass the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

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

dnk.