

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 52 OF 2016**

**DISTRICT :- LATUR**

**Dr. Waman S/o. Chandrakant Rathod,**

Age-47 years, Occ- Medical Officer,

Presently posted and working at

Ayurvedic Dispensary, Wadval,

Tq. Chakur, District Latur

**.. APPLICANT.**

**V E R S U S**

1. **The State of Maharashtra,**  
Through, Principal Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.
2. **Director of Health Service,**  
Arogya Bhavan, St. Georges  
Hospital Campus,  
Near C.S.T. Mumbai.
3. **Deputy Director of Health Services,**  
Latur Circle, Latur.
4. **The Chief Executive Officer,**  
Zilla Parishad, Latur. **.. RESPONDENTS.**

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APPEARANCE : Shri J.S. Deshmukh, learned  
Advocate for the applicant.

Shri V.R. Bhumkar, learned  
Presenting Officer for respondent  
nos. 1 to 3.

Shri P.R. Tandale, learned Advocate  
for respondent no. 4.

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**CORAM: HON'BLE SHRI B.P. PATIL, MEMBER (J).**

**DATE : 27.06.2017.**  
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**ORAL ORDER**

Heard Shri J.S. Deshmukh, learned Advocate for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for respondent nos. 1 to 3 and Shri P.R. Tandale, learned Advocate for respondent no. 4.

2. The applicant has challenged the transfer order dated 31.05.2015, by which he has been transferred as Medical Officer, Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur, from the post of Medical Officer, Primary Health Center, Kurula, Tq. Kandhar, Dist. Nanded. It is contention of the applicant that he has completed B.A.M.S. in the year 1992 and then he has appointed as Medical Officer Group-C, Health Services-3, District Technical Cadre. Thereafter, he has been regularized as Medical Officer, in the District Technical Services Class-III under Zilla Prishad. The Medical Officer, in the District Technical Cadre and who has passed B.A.M.S. qualification were brought at par with M.B.B.S. Medical Officer, in view of the G.R. dated 17.10.2014, w.e.f. 28.05.2001, in the pay scale Rs. 8000-13500/- w.e.f. 1.1.1996 and Rs. 15600-39100 G.P. Rs. 5400/- w.e.f. 1.1.2006. Accordingly, the applicant and other similarly situated Medical Officers were absorbed in

the regular service by G.R. dated 17.10.2014. They were absorbed as Medical Officers Group-B w.e.f. 28.05.2001. The Medical Officers of District Technical Cadre are posted at Primary Health Centre till availability of M.P.S.C. selected candidates, as per G.Rs. dated 18.07.2007 and 13.11.2007. Thereafter, they are regularly posted at Primary Health Centre as per G.R. dated 11.09.2009. Accordingly, the applicant has been posted as Medical Officer, Primary Health Centre, Kurula Tq. Kandhar, Dist. Nanded, by order dated 18.07.2007. Since then he was working there. In the year 2015, he was due for transfer and therefore, he had given options for transfer in the Primary Health Centers namely Hadarguli, Wadavna & Hadolti in the Latur district. But the respondents had not considered the options given by him and transferred him as Medical Officer, Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur, mentioning that his transfer has been effected on his request. It is the contention of the applicant that the respondents had not considered his request and options given by him, while making his posting in the Latur District. It is his further contention that the applicant is working as Medical Officer in Primary Health Centre in the Nanded District for about 7 years, but his experience had not been considered by the

respondents and he has been transferred as Medical Officer, Ayurvedic Dispensary, Wadval, Tq. Chakur, Dist. Latur, which is downgraded post. Therefore, he has challenged the said impugned transfer order dated 31.05.2015, issued by the respondent no. 2 by filing the present Original Application.

3. The respondent nos. 1 to 3 have filed affidavit in reply and refuted the allegations made by the applicant. They have admitted the fact that the applicant was initially appointed as a Medical Officer in the District Technical Services Class-III under Zilla Parishad and he along with similarly situated Medical Officers was absorbed in the Government service by giving the status as Medical Officer Class-II w.e.f. 28.05.2001. They have further admitted that by the Government notification dated 17.10.2014, the said Medical Officers were absorbed in the Public Health Department as Group-III Medical Officer from 2001. It is their contention that in view of the G.R. dated 2.7.2002, the post which are non-gazetted before this classification are again treated as Non Gazetted Post and they are not entitled as Gazetted post even if their pay scales are restructured as a Gazetted Post. It is their contention that it is specifically mentioned in the

G.Rs. dated 18.07.2007 and 13.11.2007, due to non-availability of M.B.B.S. Medical Officer in Aarogya Pathak, the regular B.A.M.S. Medical Officers can be transferred in that place. He has submitted that the applicant has been transferred at Primary Health Centre because of non-availability of M.B.B.S. doctors. Once, M.B.B.S. doctors are available and nominated by M.P.S.C., the Medical Officers who passed B.A.M.S. has to be posted at Aurvedic Dispensaries. It is their contention that the applicant was posted at Primary Health Centre, Kurla, Tq. Kandhar, Dist. Nanded, as Medical Officer, due to non-availability of M.P.S.C. selected/nominated Medical Officer. The applicant has completed his normal tenure of posing and he is due for transfer in the year 2015. Therefore, options /choices of places for posting have been called from the applicant and the applicant had given his options/choices of places of Primary Health Centers in Latur District. The applicant was B.A.M.S. and therefore, he has been posted at Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur, as a Medical Officer. It is their contention that there is no irregularity and illegality in the impugned order of transfer dated 31.05.2015 and therefore, they have prayed to reject the present O.A.

4. The learned Advocate for the applicant has submitted that the applicant has no grievance regarding his transfer from Primary Health Center, Kurula, Tq. Kandhar, Dist. Nanded, in the general transfer of the year 2015. He has submitted that the applicant has submitted posting of his choice by exercising options, which is at paper book page no. 20 and opted for the posting as Medical Officer at Hadarguli, Wadavna & Hadolti in the Latur district. He has submitted that the impugned transfer order dated 31.05.2015 (Annexure-A, paper book page no. 13) shows that the applicant has been transferred on his request, but he has been posted as Medical Officer in Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur, instead of options exercised by him, which is at paper book page no. 20. He has submitted that the applicant has a experience of 7 years' working at Primary Health Centre. The respondents ought to have considered his experience and ought to have posted him at any Primary Health Centre instead of Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur. Therefore, he prayed to quash and set aside the impugned transfer order, so far as the applicant is concerned and to change his posting.

5. Learned Presenting Officer has submitted that the applicant was due for transfer in the year 2015, and the options of the Medical Officers, who were due for transfer had been called and accordingly, the applicant had given options, which is at paper book page no. 20. He has submitted that the applicant is B.A.M.S. and he was posted as Medical Officer, Primary Health Centre because of non-availability of M.B.B.S. Medical Officer nominated by M.P.S.C. at the time of general transfer of the year 2015. The Medical Officer, who passed M.B.B.S. and nominated by M.P.S.C. were available and therefore, those M.B.B.S. Medical Officers had been posted at Primary Health Centre and the applicant being B.A.M.S. Medical Officer posted at Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur. He has submitted that at the time giving posting to the applicant as Medical Officer, he was aware about the fact that he will be posted elsewhere on availability of the M.B.B.S. passed Medical Officer and therefore, the applicant cannot claim his posting as Medical Officer at Primary Health Centre. He has submitted that impugned order is issued in view of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short the "Transfer Act 2005") and

there is no illegality therein. He has submitted that the applicant has been posted in Latur district considering options given by him and therefore, he prayed to dismiss the present O.A.

6. On perusal of record, it reveals that the applicant has passed B.A.M.A. and he was posted as Medical Officer, Group-C and thereafter, he was absorbed in the Government service in Public Health Department, as Medical Officer Group-B in view of the different Government G.Rs. Medical Officers who passed B.A.M.S. had been posted as Medical Officer at Primary Health Centre due to non-availability of M.B.B.S. passed doctors nominated by M.P.S.C. It is made clear in the G.R. dated 17.10.2014, those Group-C Medical Officers shall be given posting as Medical Officer at Primary Health Centre, because of non-availability of M.B.B.S. passed candidates. It is also made clear by the G.R. dated 18.07.2007 that on availability of M.P.S.C. nominated M.B.B.S. Medical Officer, B.A.M.S. Medical Officer should be transferred to the Ayurvedic Dispensary, but the said condition has been cancelled by the Government, by issuing G.R. dated 11.09.2009. By the G.R. dated 17.10.2014, the Medical Officers, who has passed B.A.M.S. have been absorbed in



the Government service as Medical Officer Group-B. Their services are at par who have passed the M.B.B.S. examination. There is nothing on the record to show that the posting of the Medical Officer at Ayurvedic Dispensary is degraded posting than the Medical Officer posted at Primary Health Center. From the G.R. it reveals that the Medical Officer who has passed B.A.M.S. can be posted at anywhere. Therefore, in these circumstances, in my opinion, there is no substance in the contention of the applicant. He has been degraded by giving him appointment as Medical Officer at Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur.

7. As regards the contention of the applicant that choice of places for the posting exercised by him had not been considered by the respondents. It is crystal clear that it is for the respondents to consider the choice of posting given by the Medical Officers, who were due for transfer. If the vacant posts are available and it is mandatory on the respondents to post incumbent Government Officers on the place of choice given by them. The applicant has exercised his options and opted for posting in three different Primary Health Centres in Latur district, but those posts were not available and therefore, the

respondents have posted him in the Latur district in Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur. Therefore, in my opinion, there is no illegality in the impugned order of transfer passed by the respondents. No fault can be attributed to the respondents for transferring the applicant as Medical Officer at Ayurvedic Dispensary, Wadval, Tq. Chakur Dist. Latur. There is no merit in the present O.A. Therefore, it deserves to be dismissed.

8. In view of the above circumstances, the Original Application stands dismissed with no order as to costs.

**MEMBER (J)**

**KPB O.A. No. 52 of 2016 June 2017**