

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1014 OF 2019

DISTRICT: PUNE

Shri Dilip Gangadhar Wagh,)
Ages 49 yrs, Working as Craft Instructor (Fitter))
Government I.T.I. Dindori, Dist. Nashik,)
R/o. 16, Vastu Anmol, Ganeshnagar, Dwarka,)
Nasik – 11.)... **Applicant**

Versus

- 1) The Joint Director of Vocational Education))
And Training, Regional Office at R.P. Marg,)
P.B. No.456, Nashik-2.)
- 2) The State of Maharashtra,)
Through Principal Secretary,)
Skilled Development and Entrepreneurship)
Department, Having Office at Mantralaya,)
Mumbai – 400 032.)... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 08.09.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for challenging order dated 09.07.2019, wherein it has been observed that the Applicant was unauthorizedly absent from 27.01.2016 to 05.12.2016 and

directions were issued to Principal, I.T.I., Nashik to take the Application for Extra Ordinary Leave from the Applicant and to forward the same to the Office of Joint Director of Vocational Education and Training for further orders.

2. Shortly stated facts giving rise to Original Application are has under:-

The Applicant was serving as Craft Instructor (Fitter), I.T.I., Jalgaon. He was posted at Jalgaon by order dated 29.05.2013 and joined there on 05.06.2013. In 2015 he tendered an application for request transfer giving option Satpur, Dindori and Igatpuri on the ground of illness of wife and education of children. Respondent No.1 - Joint Director of Vocational Education and Training by order dated 31.12.2015 however transferred him to I.T.I. Dhule, though the said place was not in the option given by the Applicant. Though he was transferred to Dhule by order dated 31.12.2015, he did not join at Dhule. He therefore made representation to the Respondent that he is not willing to join at Dhule and he be posted as per the options given by him. Respondents did not consider his representation. The Applicant has therefore filed O.A. No. 1092/2016 before this Tribunal challenging transfer order dated 31.12.2015. However during the pendency of O.A. No.1092/2016 the Applicant came to be posted at Nashik by order dated 05.12.2016, and therefore, the O.A. came to be disposed of on the basis of statement made by the learned Advocate for the Applicant that he is satisfied with the order of transfer dated 05.12.2016. Thus he did not choose to join at Dhule and was absent from 27.01.2016 to 05.12.2016. In terms of posting order at Nashik, he joined there on 05.12.2016. Thereafter, he made representations on 23.03.2017 and 02.11.2018 stating that his absence from 27.01.2016 to 05.12.2016 be treated as duty period with all consequential service benefits, but it is turned down by impugned order.

3. In O.A. the Applicant has challenged the order dated 09.07.2019 inter-alia contending that his absence from 27.01.2016 to 05.12.2016 cannot be treated as unauthorized absence and he is not liable to submit any such application for Extra Ordinary Leave for the said period.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that the Applicant was not due for transfer in first place and secondly he was not given posting as per his option of Satpur, Dindori, Igatpuri. Instead of giving posting as per option, Respondent No.1 transferred him to Dhule. Adverting to this aspect learned Advocate for the Applicant submits that transfer order dated 31.12.2015 was bad in law, and therefore, the Applicant was not required to comply the same by joining at Dhule. He, therefore, submits that during the pendency of O.A. No.1092/2016 which was filed challenging transfer order dated 31.12.2015, the Respondent at their own accommodated the Applicant at Nashik by issuance of transfer order dated 05.12.2016 and accordingly, the Applicant joined at Nashik. Thus, the sum and substance of the submission is that there was no fault on the part of the Applicant for not joining at Dhule, and therefore, he cannot be compelled to apply for Extra Ordinary Leave for the said period.

5. Per contra, learned P.O. submits that O.A. No.1092/2016 filed by the Applicant challenging the transfer order was withdrawn by the Applicant being satisfied with the posting at Nashik and there is no adjudication on merit in O.A. No.1092/2016 to hold that impugned transfer order was bad in law. According to him the Applicant himself remained absent unauthorizedly from 27.01.2016 to 05.12.2016, and therefore, by impugned order he was rightly informed to apply for Extra Ordinary Leave, in terms of G.R. dated 02.06.2003.

6. The factual aspect as noted are not at dispute. True the Applicant was not due for transfer but requested for transfer in 2015 giving

options of Satpur, Dindori, Igatpuri. However Respondent No.1 by order dated 31.12.2016 transferred him to Dhule in place of Shri Gite, however, Applicant did not join at Dhule. Admittedly, the Applicant did not join at Dhule in terms of transfer order dated 31.12.2015 and absent from duty from 21.01.2016 to 05.12.2016. Therefore, the question is whether in facts and circumstances of the case, the Applicant's absence from 27.11.2016 to 05.12.2016 could be treated as a duty period and whether impugned order dated 09.07.2019 whereby the Applicant was asked to submit application for Extra-Ordinary Leave for the said period suffers from any legal infirmity.

7. Even if the Applicant was not due for transfer and he was given posting at Dhule which was not in option as claimed by him, the fact remains that by order dated 31.12.2015, he was transferred to Dhule where he did not join. True, he had challenged the order dated 31.12.2015 by filing O.A.No.1092/2016, but during the pendency of that O.A, he was posted at Nashik by order dated 05.12.2016 and O.A. came to be disposed of in view of the statement made by the learned Advocate that he is satisfied with the order of posting in Nashik District. As such, O.A.No.1092/2016 was not adjudicated on merit so as to say that the transfer order dated 31.12.2015 posting the Applicant at Dhule was illegal. In absence of any such adjudication on merit, particularly when the said O.A. is already disposed of on satisfaction of the Applicant with his posting in Nashik District. Indeed, in view of transfer of the Applicant at Dhule, he was under obligation to join at Dhule without prejudice to his contentions and it does not lie in his mouth to contend that since he was not given posting as per the option, he can remain absent from duty and defy the transfer order with impunity. Needless to mention, once a Government servant is transferred, he is bound to join at a place where his transfer subject to outcome of O.A. if filed challenging the legality of transfer order. Admittedly, there was no such stay to the transfer order dated 31.12.2015 in O.A.No.1092/2016 filed by him.

8. At this juncture, it would be also material to reproduce the order passed by the Tribunal in O.A.No.1092/2016 on 21.12.2016 while disposing O.A. which is as under :-

“Heard Shri P.S. Pathak, learned advocate for the applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

Learned Advocate Shri Pathak places on record copy of order dated 5.12.2016 posting the Applicant in Nashik district. Learned Advocate Shri Pathak stated that the Applicant is satisfied with this order.

Considering the fact that the grievance of the Applicant no longer survives, this Original Application is disposed of accordingly with no order as to costs.”

9. It is thus manifest that the Applicant was satisfied with his posting in Nashik District and in view of the statement made by his Advocate, the O.A. was disposed of. Suffice to say, there is no such adjudication of O.A.No.1092/2016 on merit so as to hold that transfer order dated 31.12.2015 was bad in law. The submission advanced by the learned Advocate for the Applicant that such adjudication in respect of transfer order dated 31.12.2015 can be done in this O.A. is totally misconceived and fallacious for the simple reason that O.A.No.1092/2016 is already disposed of, particularly on the statement made by the Applicant's Advocate that his grievance no longer survives. Therefore, now, it is not open to the Applicant to challenge the legality of transfer order dated 31.12.2015 in this manner in the present O.A.

10. This is not a case where a Government servant was prevented from joining the duty so that he could be said not at fault. Since there was no stay to the order dated 31.12.2015, the Applicant was bound to join at Dhule, but he choose to remain absent from 31.02.2016 to 05.12.2016. It is only after getting posting in Nashik District, he joined. Now a days there is growing tendency amongst the Government servant to not join at a place, if it is not as per their options and to defy orders of transfers. Such tendency needs to be curbed otherwise it would be amounting to encourage such tendency to remain absent and thereafter to contend

that the said period be treated as duty period. It is on this background, the Respondent No.1 by impugned order dated 09.07.2019 asked the Applicant to submit an application for Extra-Ordinary Leave so that it could be treated as Extra-Ordinary Leave in terms of G.R. dated 02.06.2003. As such, I see no such illegality in impugned order.

11. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merits and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Mumbai
Date : 07.09.2021
Dictation taken by :
S.K. Wamanse.

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