

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1166 OF 2019

DISTRICT : PALGHAR

Dr. Amol Ramesh Patil.)
Age : 40 Yrs., Occu.: Service,)
R/o. Doctor Quarter Primary Health)
Center, Vasa, Tal.: Talasari,)
District : Palghar.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 001.)
2. District Health Officer.)
District Council, Palghar,)
Health Department, Court Road,)
Palghar – 400 404.)...**Respondents**

Ms. Savita T. Suryawanshi, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 18.06.2021

JUDGMENT

1. The Applicant has challenged the order dated 20.07.2019 whereby he was absorbed and posted as Medical Officer (Group 'B') at Primary

Health Centre, Vasa, Tal.: Talasari, District Palghar, invoking Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was appointed as Ad-hoc Medical Officer. The Government had taken decision to absorb 738 Ad-hoc Medical Officers in regular service. Accordingly, by order dated 20.07.2019, the Applicant as also absorbed and he was given posting at Primary Health Centre, Vasa, Tal.: Talasari, District Palghar.

3. The Applicant has challenged his posting at Vasa, Tal.: Talasari, District Palghar contending that in counseling, he had given options, but the same was not considered, and therefore, posting given to him at Vasa, Tal.: Talasari, District Palghar is in contravention of policy of counseling adopted by Government. His wife is Ad-hoc Medical Officer at Jalgaon, and therefore, he had given five options from Jalgaon only.

4. Ms. S.T. Suryawanshi, learned Advocate for the Applicant sought to contend that since the Applicant has given options, those were required to be considered in counseling in view of policy of Government that husband and wife should live together. She has further pointed out that one post namely of Epidemic Medical Officer, District Jalgaon was vacant, but it was not displayed vacant and still not filled-in. The Applicant made representations for the said post, but those are not considered. Thus, the entire emphasis of the learned Advocate for the Applicant is for transfer as Epidemic Medical Officer, Jalgaon.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer submits that as per counseling policy, the postings were required to be given in terms of seniority and accordingly, postings were given on the basis of seniority only. She has further pointed out that Applicant's serial number in the seniority list is at 625 and the options given by the Applicant were already allotted to the seniors except Epidemic Medical Officer, Jalgaon, and therefore, the question of breach of policy did not

arise. As regard Epidemic Medical Officer, Jalgaon, she submits that the said post was not vacant at the time of counseling.

6. Basically, this is not a matter of transfer in strict sense, since it is posting in view of absorption of Medical Officers. Indisputably, initially, the Applicant was Ad-hoc Medical Officer (Group 'B') and it is in terms of Government decision, 738 Ad-hoc Medical Officers were absorbed. A decision was taken to give them posting by counseling. The vacancies were displayed on Website. The candidates were asked to give their options. As per one of the condition of counseling, as seen from Circular dated 16.07.2019, postings were to be given in terms of seniority and where senior had already opted for the said place, then it would not be available to his juniors. In this behalf, following is the relevant clause from Circular dated 16.07.2019.

“कोणत्याही कारणास्तव उमेदवारास समुपदेशनाच्या ठिकाणी पोहचण्यास विलंब झाल्यास व त्यामुळे त्याचा जेष्ठताक्रम हुकल्यास त्यास तो उमेदवार स्वतः जबाबदार राहिल. अशा उमेदवारांचे समुपदेशन करतांना त्यांच्या अपेक्षित पंसतीचे ठिकाण आदीच्या उमेदवाराने घेतले असल्यास त्यास उपलब्ध होणार नाही व शिल्लक जागांमधूनच त्याला एका जागेची निवड करणे बंधनकारक राहिल.”

7. Whereas, the Applicant by his letter dated 10.06.2019 has given following options.

- १) साथरोग वैद्यकीय अधिकारी, आरोग्य विभाग, जळगाव
- २) वैद्यकीय अधिकारी, सामान्य रुग्णालय, जळगांव
- ३) आर्युर्वेद दवाखाना, हरताळा, ता.मुक्ताईनगर, जि.जळगाव
- ४) आयुर्वेद दवाखाना, तांदलवाडी, ता.रावेर, जि. जळगाव
- ५) प्रा.आ.केंद्र लोहारा, ता. रावेर, जि. जळगाव गट - ब'

8. Thus, it is explicit that postings were to be given in terms of seniority and if particular place is already given to senior, then junior cannot claim the said post. The Respondents have placed on record the Affidavit at page No.156, which shows that Option Nos.3 to 5 asked by the Applicant was given to the Medical Officers who were quite seniors to the Applicant. It is not the case of the Applicant that any of the option asked by him was given to the Medical Officer junior to him. Suffice to say, in so far as Option Nos.2 to 5 are concerned, those were given to the

Medical Officers who were quite senior to the Applicant. As such, it is *ex-facie* in consonance with the policy of counseling whereby postings were given in terms of seniority.

9. As stated above, the options given by the Applicant i.e. Option Nos.3, 4 and 5 were filled-in by Medical Officers who were at Serial Nos.181, 413 and 279 in the seniority list. Option No.2 i.e. Medical Officer, General Hospital, Jalgaon was not vacant, and therefore, the question of posting of the Applicant on that post did not survive. As regard Option No.1 viz. Epidemic Medical Officer, Jalgaon, it was not filled-in.

10. As regard Option No.1 - Epidemic Medical Officer, Jalgaon, the learned Advocate for the Applicant submits that those posts were vacant but those were not shown in vacancy position. In this behalf, she referred two letters of District Health Officer, Zilla Parishad, Jalgaon dated 17.07.2019 and 01.08.2019 (Page Nos.46 and 47 of P.B.). Whereas, learned P.O. has placed on record vacancy position at Page No.162 of P.B, wherein the post of Epidemic Medical Officer, Jalgaon is shown not vacant. Even assuming that the post of Epidemic Medical Officer, Jalgaon was vacant, admittedly, it was not filled-in in the said process. This being the position, the Applicant cannot ask for a particular place as of his legally vested right. It was for the Department where to fill-in particular post or to keep it vacant, having regard to necessity and other administrative exigencies.

11. Needless to mention that transfer is an incidence of Government service and a Government servant has no legally vested right to ask for a particular place or post. It is prerogative of executive/Department to fill-in a particular post and transfer cannot be interfered with unless it is in contravention of express provisions of law or *malafide*. Here, there is no such case.

12. Basically, in the present case, it is not a matter arising from transfer order but it is posting on absorption. Apart, at the time of absorption, policy of counseling was adopted and postings were given in terms of seniority. There is absolutely nothing on record to indicate or to establish that any of the options from Option Nos.1 to 5 claim claimed by the Applicant in his letter dated 10.07.2019 were given to anybody else junior him. Therefore, the question of discrimination or breach of counseling policy does not survive.

13. It further appears from the record that at the time of counseling, the Applicant himself accepted the posting at Vasa, since options given by him were not available to him.

14. The totality of aforesaid discussion leads me to sum-up that challenge to the impugned order dated 20.07.2019 is devoid of merit and O.A. deserves to be dismissed. At this stage, learned Advocate for the Applicant requested for liberty to make a representation in general transfer. She is at liberty to do so. It be considered in accordance to Rules. Hence, the following order.

ORDER

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

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

Mumbai
Date : 18.06.2021
Dictation taken by :
S.K. Wamanse.

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