

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.134 OF 2020

DISTRICT : SOLAPUR

Shri Ram Vitthal Bhandane.)
Age : 46 Yrs., Working as Pharmacy)
Officer in Rural Hospital, Madha,)
District : Solapur and residing at A/P)
Kurduwadi, Tal.: Madha, Dist.: Solapur.)...**Applicant**

Versus

1. The Director of Health Services-2,)
Pune, having office at Heal Services)
Directorate, Central Building,)
Pune – 1.)
2. The Deputy Director.)
Health Services, Pune Circle,)
Central Building, Pune – 1.)
3. The Commissioner.)
Health Services cum Mission)
Director, National Health Mission,)
Having office at Arogya Bhavan,)
In the campus of Saint Georges)
Hospital, P.D' Mello Road,)
Mumbai – 400 001.)
4. The Deputy Director.)
Health Services, Latur Circle,)
Latur.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 19.01.2021

JUDGMENT

1. The Applicant has challenged the communication dated 09.10.2019 issued by Respondent No.1 – Director of Health Services, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts are as under :-

The Applicant is serving as Pharmacist in Rural Hospital, Madha, District Solapur. The Government of Maharashtra took policy decision by G.R. dated 03.06.2011 to facilitate request transfer of Group 'B' (Non-gazetted) and Group 'C' Government servants, which *inter-alia* provides for transfer out of cadre as well. As such, certain guidelines were formulated and requisite conditions were stipulated for inter-district as well as inter-division transfers of Group 'B' (Non-gazetted) and Group 'C' Government servants. It is on the basis of G.R. dated 03.06.2011, the Applicant made an application to Respondent No.2 – Deputy Director, Health Services, Pune for his transfer to Beed citing family difficulties that his parents resides at Beed and except Applicant, there is no one to look after them. Therefore, he requested for inter-division transfer. His present posting Solapur is in Pune Circle whereas District Beed comes within Latur Circle. He has complied with all the requisite conditions set out in G.R. dated 03.06.2011 and was ready to forego his seniority, etc. His proposal was forwarded with No Dues Certificate as well as No Enquiry Certificate. On receipt of proposal, the Respondent No.2 – Deputy Director, Health Services, Pune asked willingness of Deputy Director, health Services, Latur (Respondent No.4) as to whether he is ready to accommodate the Applicant in Latur Circle. Accordingly, Deputy Director, Health Services, Latur by his letter dated 28.04.2018 has conveyed his no objection to accommodate the Applicant in Latur

Circle. Therefore, Respondent No.2 after necessary compliance of the conditions set out in G.R. dated 03.06.2011 forwarded the proposal to Respondent No.1 – Director, Health Services, Pune being Competent Authority by letter dated 14.11.2018. As there was no response from Respondent No.1, the Applicant sent reminder on 17.05.2019 to all authorities, but in vain.

3. To the utter surprise of the Applicant, the Respondent No.1 by belated communication dated 09.10.2019 informed the Applicant that the G.R. dated 03.06.2011 is superseded by another G.R. dated 15.05.2019, and therefore, the Applicant needs to submit a proposal afresh in terms of G.R. dated 15.05.2019. This communication is challenged by the Applicant in the present O.A. contending that it is arbitrary and unsustainable in law.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has pointed out that admittedly, the Applicant has complied with all necessary conditions/stipulations as mentioned in G.R. dated 03.06.2011, and therefore, appropriate orders ought to have been passed on the application made by the Applicant in terms of G.R. dated 03.06.2011 only. According to him, the authorities neglected to take appropriate decision for a long time and in the meantime, new G.R. dated 15.05.2019 came into force thereby imposing more stringent conditions for inter-district or inter-division transfers. He, therefore, submits that as all necessary compliance were done much before issuance of G.R. dated 15.05.2019, the Respondents were under obligation to pass appropriate orders within reasonable time. However, the Respondents sat over the matter and later in view of issuance of fresh G.R. dated 15.05.2019, the legal rights of the Applicant to get transferred in terms of G.R. dated 03.06.2011 are wrongly forfeited. He emphasized that this has caused severe prejudice to the Applicant and impugned order is arbitrary and unsustainable in law.

5. Per contra, Smt. K.S. Gaikwad, learned P.O. submits that as no final order was passed by Competent Authority i.e. Respondent No.1 on the application made by the Applicant and the matter was pending, the G.R. dated 15.05.2019 came into force wherein it is specifically stated that all pending matters will have to be considered in the light of new G.R. dated 15.05.2019 only. This is the only objection raised by the learned P.O.

6. Indisputably, the Applicant by application dated 28.04.2017 complied with all formalities and had also submitted Undertaking as required in terms of G.R. dated 03.06.2011. Furthermore, his appointing authority i.e. Deputy Director, Health Services, Pune did not object for his inter-division transfer and asked his counterpart Deputy Director, Health Services, Latur about his willingness to accommodate the Applicant from the reserved category of OBC. The Deputy Registrar, Health Services, Latur has given no objection and has shown his willingness to accommodate the Applicant in his Circle by order dated 28.04.2018. As such, admittedly, after compliance of necessary conditions, the Deputy Director, Health Services, Pune had forwarded concrete proposal without compliances to Respondent No.1 – Director of Health Services, Pune being Competent Authority for passing appropriate order. Unfortunately, no final decision was taken by Respondent No.1 and he simply sat over the matter. It is nowhere the case of the Respondents that the Applicant did not comply necessary conditions of G.R. dated 03.06.2011 or there were any deficiencies in his proposal.

7. As Respondent No.1 did not take any decision for a long time during the pendency of matter, the Government had issued fresh G.R. dated 15.05.2019 thereby imposing certain stringent conditions for inter-division transfers on request. True, as per Clause 12 of G.R. dated 15.12.2019, it is stated that pending matters which were under consideration in terms of G.R. dated 03.06.2011 will be processed in terms of fresh G.R. dated 15.05.2019. It is on the point of this reference

in new G.R, the Respondent No.1 had asked the Applicant to submit fresh proposal in terms of G.R. dated 15.05.2019 meaning thereby his proposal in terms of G.R. dated 03.06.2011 is impliedly rejected.

8. In view of above, the question posed for consideration is whether the Applicant was required to submit fresh proposal in terms of G.R. dated 15.05.2019 or his case ought to have been processed in terms of G.R. dated 03.06.2011.

9. As stated above, the Applicant had made an application for inter-division transfer on 28.04.2017 which was before two years of coming into existence new G.R. dated 15.05.2019. The record further clearly spells that after necessary compliances, the Deputy Director, Health Services, Pune had forwarded proposal to Director of Health Services, Pune on 14.11.2018. As such, on receipt of proposal dated 14.11.2018, the Respondent No.1 was under obligation to pass appropriate orders, but he sat over the matter. Once concrete proposal with all necessary compliances was received, the Respondent No.1 ought to have passed the appropriate order within reasonable time. Thus, inaction and laxity on the part of Respondent No.1 for not passing any appropriate order is explicit.

10. As rightly pointed out by the learned Advocate for the Applicant that in Chapter III of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity), the provisions are made fixing time limit for every Government servant to discharge his official duties within stipulated time. In this behalf, Section 10 of 'Transfer Act 2005' is material, which is as follows :-

“10. Disciplinary action. - (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible:

Provided that, normally no file shall remain pending with any Government servant in the Department or office for more than seven working days:

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days:

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any willful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate [disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969, the] Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

11. Apart, the Government of Maharashtra had also framed Rules viz. The Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (hereinafter referred to as ‘Rules of 2013’ for brevity) in exercise of powers conferred by sub-section 1 of Section 14 of ‘Transfer Act 2005’. Under Section 14(1) of ‘Transfer Act 2005’, the State Government was required to frame Rules to carry out the aim and object of the provisions of ‘Transfer Act 2005’. Suffice to say, to maintain discipline in all the Departments and to ensure discharge of official duties by a Government servant diligently and expeditiously, certain provisions are made in Section 10 of ‘Transfer Act 2005’ as well as ‘Rules of 2013’. As per Section 10, the time limit is fixed for every stage for

proceeding the matter and the concerned Department is under obligation to take decision in the matter within 45 days and where required to be referred to the Department, the decision and necessary action is required to be taken within three months. As per Section 10(2), any willful or intentional delay or negligence in discharge of official duties in carrying out the official work shall amount to dereliction of official duties inviting disciplinary action under Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

12. As such, the Respondent No.1 – Director of Health Services, Pune was required to pass appropriate order on proposal dated 28.04.2018 forwarded to him by Joint Director, Health Services, Pune on 14.11.2018 within reasonable time. However, he kept it pending for more than seven months and meantime, G.R. dated 15.05.2019 came into force replacing old G.R. dated 03.06.2011. Had Respondent No.1 acted diligently and passed appropriate order within reasonable time, the Applicant would have got the benefit of G.R. dated 03.06.2011 which was existing at a relevant time. However, now in view of impugned communication, the Applicant is deprived of the benefit of G.R. dated 03.06.2011 due to sheer inaction and laxity on the part of Respondent No.1 for his failure of not passing appropriate order within reasonable time. It has certainly caused severe prejudice to the Applicant and has affected his right to be considered in terms of G.R. dated 03.06.2011. This being the position, the impugned communication is definitely arbitrary and unsustainable in law.

13. Indeed, as rightly pointed out by the learned Advocate for the Applicant that as per letter dated 09.08.2019 issued by Under Secretary, GAD where both appointing authorities have given consent, then such matters were required to be considered in terms of G.R. dated 03.06.2011. The contents of said letter are as follows :-

“उपरोक्त विषयाबाबतच्या आपल्या संदर्भाधीन पत्राच्या अनुषंगाने आपणांस कळविण्यात येते की, शासन निर्णय, सामान्य प्रशासन विभाग दि. १५ मे, २०१९ मध्ये सदरहु शासन निर्णय प्रसिध्द झाल्याच्या दिनांकास, जी प्रकरणे

दि.३.६.२०११ च्या शासन निर्णयानुसार विनंतीवरून/ संवर्गबाहय बदलीदेण्यासाठी प्रलंबित असतील ती प्रकरणे या शासन निर्णयातील तरतुदीनुसार निकाला काढली जातील, असे नमूद करण्यात आले आहे. तथापि, ज्या प्रकरणात दोन्ही नियुक्ती प्राधिका-यांची अंतिम मान्यता दि.१५ मे, २०१९ पूर्वी प्राप्त झालेली असेल मात्र, प्रत्यक्षात केवळ आदेश निर्गमित करण्यात आलेले नसतील, अशा प्रकरणी दि.१५ मे, २०१९ मधील तरतुदी लागू राहणार नाही. सदर बाब विचारात घेउन राज्य निवडणूक आयोग कार्यालयाने श्री. नंदलाल कुचे, उच्चश्रेणी लघुलेखक, गट ब (अराजपत्रित) यांच्या संवर्गबाहय बदलीच्या प्रकरणावर कार्यवाही करणे आवश्यक राहिल.’’

14. In the present matter also, only final order was remained to be passed by Respondent No.1, as all formalities and consent were already given by both the appointing authorities i.e. Deputy Director, Health Services, Pune and Deputy Director, Health Services, Latur. This being the position, the final order was required to be passed in terms of G.R. dated 03.06.2011 and there would be no application of G.R. dated 15.05.2019 in such matter. Thus, this clarification issued by GAD i.e. the Department which had issued G.R. dated 03.06.2011 as well as 15.05.2019. Strengthen the contention of the Applicant that his application ought to have been processed by passing final order in terms of G.R. dated 03.06.2011.

15. In view of above, the impugned communication dated 09.10.2019 asking the Applicant to submit fresh proposal in terms of G.R. dated 15.05.2019 is totally arbitrary and unsustainable in law and deserves to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 09.10.2019 is quashed and set aside.
- (C) The Respondent No.1 is hereby directed to pass appropriate order on the proposal forwarded by Deputy Director, Health Services, Pune dated 14.11.2018 in terms of G.R. dated 03.06.2011 within two months from today.

- (D) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (E) No order as to costs.

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

Mumbai

Date : 19.01.2021

Dictation taken by :

S.K. Wamanse.

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