

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.256 OF 2021**

**DISTRICT : PUNE**

Dr. [Smt.] Urmila Dhondiram Munde.            )  
Age : 53 Yrs., Working as Medical Officer    )  
attached to General Hospital, Aundh,            )  
District : Pune and residing at C-605,         )  
Sun Universe, Behind Union Bank,             )  
Narhe, Pune – 411 041.                            )**...Applicant**

**Versus**

The State of Maharashtra.                        )  
Through Principal Secretary,                    )  
Public Health Department, Mantralaya,        )  
Mumbai – 400 032.                                )**...Respondent**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

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

**DATE         :   20.08.2021**

**JUDGMENT**

1. The Applicant has challenged the communication dated 15.03.2021 issued by Respondent thereby rejecting her representation for retaining her in Pune Division and posting as Medical Officer in Pune, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is lady Medical Officer who was attached to General Hospital, Aundh, District Pune. By order dated 28<sup>th</sup> May, 2020, she was promoted in the cadre of Medical Officer, Group 'A' and was posted as Radiologist, General Hospital, Gadchiroli on vacant post as temporary promotion. The Applicant made representation on 29.02.2020 stating that at the time of promotion when options were called, she gave option of posting at Pune on the ground that her sole son suffers from 80% disability on account of visual impairment, physical impairment as well as neurological impairment. She further contends that in view of exemption carved out under the revenue division for appointment by nomination and promoted to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 (hereinafter referred to as "Cadre Allotment Rules of 2015' for brevity), she is exempted from operation of these Rules and was required to be posted in Pune. However, her representation stands rejected by order dated 15<sup>th</sup> March, 2021 stating that she is not entitled to exemption in view of opinion given by GAD, which is impugned in the present O.A.

3. Despite enough chances, the Respondents did not file Affidavit-in-reply and ultimately, having found that Respondents are least interested in the matter, the O.A. was fixed for hearing at the stage of admission without reply by order dated 25.06.2021. Even that time also, liberty was granted to the Respondents that it may file reply on the date of hearing. However, no reply has been filed though even thereafter 2/3 times, the matter was adjourned for hearing at the stage of admission.

4. Shri A.J. Chougule, learned P.O. submitted that he made communication with Principal Secretary, Public Health Department from time to time, but no response is received for preparation of reply. He has shown Office letters dated 06.04.2021, 31.05.2021, 25.06.2021 and 05.08.2021 whereby he repeatedly asked Principal Secretary, P.H.D. to

depute responsible Officer for giving instructions so as to prepare Affidavit-in-reply.

5. In view of above, the learned P.O. submitted that the matter be decided on its own merit.

6. The issue posed for consideration is whether the Applicant is entitled for exemption from the option of 'Cadre Allotment Rules of 2015' and impugned order is in consonance with the said Rules.

7. Indisputably, by order dated 28.02.2020, on promotion the Applicant was posted as Radiologist, General Hospital, Gadchiroli on vacant post. After issuance of said posting order, the Applicant has made representation on 29.05.2020 (Page No.32 of P.B.) requesting to continue her at Pune on the ground of serious illness and disability of her son. In O.A, in support of contention, the Applicant has produced Medical Certificates at Page Nos.20 to 28 of P.B. which shows that Applicant's son viz. Advait suffers from Visual Impairment in both eyes and disability assessed of 40% by Medical Board. In Certificate, it is further clarified that the disability is permanent, non-progressing and not likely to improve. Apart, the Applicant has also tendered one more Disability Certificate (Page No.22 of P.B.) which shows that Advait is suffering from Physical Impairment of all four limbs with recurrent seizures with ataxia and disability assessed of 74% by Medical Board. It is further clarified that disability is permanent, non-progressive and not likely to improve. The Applicant has also produced Neurosurgery Discharge Summary which shows that he is diagnosed for the disease by Bilateral Parieto Occipital gliosis with DRE, as seen from Page No.23 of P.B. As per the history, the Applicant is subjected to recurrent seizures. In addition, the Applicant has also produced the Certificate of Unique Disability ID wherein his total disability is assessed 81% permanent disability. As such, all these documents clearly spells that Applicant's son is suffering from permanent disability.

8. Now turning to 'Cadre Allotment Rules of 2015'. These Rules provides for allotment of different divisions on promotion so that there should be equal postings in all the divisions starting from Nagpur, Amravati, Aurangabad, Nashik, Konkan and Pune. As per Rule 5 of 'Cadre Allotment Rules of 2015', before allotting revenue division, every administrative department of a Government shall determine revenue division vice its post of nomination quota and promotion quota in each Group 'A' and Group 'B' cadre. Whereas, as per Rule 6(b), "for appointment to the posts in Group 'A' and Group 'B' by promotion to the officers whose names are included in the select list for promotion Revenue Divisions as mentioned in the schedule shall be allotted to the officers by rotation as per their serial numbers in the select list, by taking into consideration total vacancies in the promotion quota existing at that time in the sequential order of Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions. After all the vacant posts in promotion quota in the above four Revenue Divisions are filled up, the Konkan Division and Pune Division shall be allotted alternatively to the remaining candidates in the select list."

9. Material to note that 'Cadre Allotment Rules of 2015' were amended in 2017 whereby exemption is provided from the applicability of provisions of Rules 4 and 6 in certain situations. Rule 7 is as under :-

**"7.** The following cases shall be exempted from the provisions of rules 4 and 6, namely :-

- (a) An officer who is handicapped ;
- (b) An officer whose spouse or child is mentally retarded or an officer who has taken guardianship of his own mentally retarded brighter or sister.
- (c) A woman officer who is widow or abandoned ;
- (d) An officer who is due for retirement in less than three years from the date on which he is found fit for promotion as per recommendation of the Departmental Promotion Committee.

In such cases, the concerned Administrative Department by taking into consideration above sequence and availability of vacant posts, shall allot a Revenue Division which is convenient to such an officer.”

10. Thus, since Applicant’s son is suffering from physical as well as mental disability, the Applicant was entitled for exemption, as specifically provided under Rule 7(b) of ‘Cadre Allotment Rules of 2015’.

11. Furthermore, Rule 7(b)(2) of ‘Cadre Allotment Rules of 2015’ further provides :

“The Officers in the select list who are falling under cases prescribed in Rule 7, shall be first allotted a Revenue Division convenient to them as per their choice, subject to availability of vacant posts therein”.

12. As such, in view of the scheme and exemption of ‘Cadre Allotment Rules of 2015’ and amended Rules of 2017, an exemption is carved out under Rule 7 as stated above. This being the position, since Applicant’s son is suffering from physical as well as mental disability, she is exempted from the option of ‘Cadre Allotment Rules of 2015’ and she was required to be given posting of her choice viz. Pune Revenue Division.

13. The learned Advocate for the Applicant has further pointed out Office Memorandum issued by Ministry of Personnel, Public Grievance and Pension, dated 05.01.2016 whereby directions were issued as under:-

“The undersigned is directed to refer to this Department’s OM of even number dated 06.06.2014 and 17.11.2014 exempting a Government employee, who is also a care giver of disabled child, from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word ‘disabled’ includes (i) blindness or low vision, (ii) hearing impairment, (iii) locomotor disability or cerebral palsy, (iv) leprosy cured, (v) mental retardation, (vi) mental illness, (vii) multiple disabilities and (viii) autism.”

14. As such, in view of instructions issued by Central Government as well as exception carved out in ‘Cadre Allotment Rules of 2015’ read with amended Rules of 2017, the Applicant’s case ought to have been

considered compassionately, but her representation is rejected mechanically stating that she is not entitled to exemption because of opinion given by the GAD. However, why the Applicant is not entitled to exemption and the reasons for the same are neither forthcoming in impugned order nor by way of reply. A very fact that despite enough chances, the Respondents choose not to file reply itself indicates that they have no justifiable reason to reject the representation of the Applicant. Any way, in the light of exemption carved out in 'Cadre Allotment Rules of 2015', the Applicant's claim for exemption is infeasible. The Respondent – State Government ought to have acted as a model employer with compassion.

15. The totality of aforesaid discussion, therefore, leads me to conclude that the impugned communication dated 15.03.2021 is arbitrary and outcome of total non-application of mind and laws and deserves to be quashed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 15.03.2021 is quashed and set aside.
- (C) The Respondents are directed to give posting to the Applicant in Pune Division in view of exemption to her from the operation of 'Cadre Allotment Rules of 2015' and shall post her on appropriate post within a month from today.
- (D) No order as to costs.

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

Mumbai  
Date : 20.08.2021  
Dictation taken by :  
S.K. Wamanse.

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