

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.257 OF 2016**

**DISTRICT : PUNE**

Dr. Sudhir Bhaskarrao Dube. )  
Professor in Surgery, B.J. Medical College,) )  
Pune and residing at 259/B-3, ) )  
Brahmanand Apartment, Narangi Baug ) )  
Road, Pune 411 001. )...**Applicant**

**Versus**

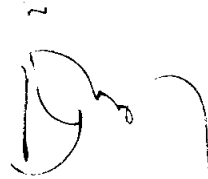
1. The Addl. Chief Secretary. )  
Medical Education & Drugs Dept., )  
Mantralaya, Mumbai - 400 032. )
2. The Director. )  
Medical Education & Research, )  
St. George Hospital, C.S.T, )  
Mumbai 400 001. )
3. The Dean. )  
B.J. Medical College, Pune. )...**Respondents**

**Mr. D.B. Khaire, Advocate for Applicant.**

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

**P.C. : R.B. MALIK (VICE-CHAIRMAN)**

**DATE : 12.09.2017**

  
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## JUDGMENT

1. This Original Application (OA) is brought by a Professor in Surgery who came to be transferred from Pune to Dhule which ultimately was set aside by this Tribunal (the then Member-A) in **OA 339/2014 (Dr. Sudhir B. Dube Vs. The Secretary, Medical Education and Research, dated 8<sup>th</sup> August, 2014)**. The period from 5.6.2012 to 9.4.2014 was treated as "Extra Ordinary Leave Without Pay" and also that period was to be so treated as to cause prejudice to the Applicant in the matter of his pension and retiral benefits. The Applicant is stung thereby and is up before me by way hereof.

2. I have perused the record and proceedings and heard Mr. D.B. Khaire, the learned Advocate for the Applicant and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents. The 1<sup>st</sup> Respondent is the Government in Medical Education and Drugs Department, the 2<sup>nd</sup> Respondent is the Director, Medical Education and Research and the 3<sup>rd</sup> Respondent is the Dean, B.J. Medical College, Pune.

3. The Applicant was serving as a Professor in Surgery in B.J. Medical College, Pune. On 5.6.2012, he came to be transferred to Bhausaheb Hiray Medical



College, Dhule. On 7.6.2012, he made representation thereagainst which elicited no response with the result he presented **OA 1127/2013 (Dr. Sudhir B. Dube Vs. Additional Chief Secretary and others)**. That OA was disposed of with directions to decide the representations in two months which deadline was not kept. However, by an order of 25.3.2014, the said representation came to be rejected and on 9.4.2014, the Applicant reported at Hiray Hospital, Dhule. In the meanwhile, he brought OA 339/2014 (supra). I shall have an occasion to read in extenso that particular order of this Tribunal.

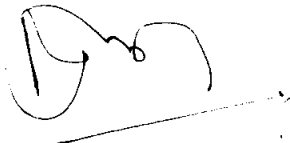
4. In so far as the present OA is concerned, after summarizing the facts hereinabove discussed and some discussion which may not be necessary for me to delve into a prayer was made initially for directions to decide the representations of the Applicant on 28.1.2015 and 8.3.2016 and for declaration that the above referred period from 5.6.2012 to 9.4.2014 be treated as "period spent on duty" and for necessary directions in the matter of the release of pay, allowances, etc.

5. By way of amendment, Para 7.7 was impleaded wherein it is pleaded that, in OA 339/2014 in Para 20, this Tribunal held that the representations of the Applicant



came to be treated with casualness and also the statutory provisions were violated. In the meanwhile, an order dated 4.6.2016 which is at Exh. 'D' (Page 40-A of the Paper Book (PB)) came to be made. It refers to the facts above discussed in the first four lines and then mentions that the period above referred to, of 667 days was treated as 'absence' and as 'Extra-Ordinary Leave' without pay and that period would not be included while computing the pension, etc. Further, directions were given to comply by the Government in Medical Education Department to the Director of Medical Education and Research. By way of amendment (Schedule 'C') this particular communication is introduced.

6. One Shri Ganesh N. Badadare, Chief Administrative Officer in the Office of Respondent No.2 has filed an Affidavit-in-reply. He has given out various dates on which the Applicant came to be transferred, etc. and the burden of song is that the Applicant did not report in time to the place of transfer, and therefore, the impugned action was legal and proper. This is the long and short of the 13 page Affidavit-in-reply of the said deponent to which a Rejoinder has been filed.

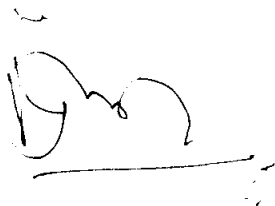
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7. The Affidavit-in-reply has also been filed on behalf of Respondent No.1 by Mr. Sanjay D. Kamlakar, Deputy Secretary in Medical Education and Drugs Department.

8. The above discussion must have made it very clear as to what the ambit hereof is all about. I have already indicated above that the Judgment of this Tribunal in OA 339/2014 (supra) would be of central significance in deciding this particular OA. At this stage itself, it will be proper in my view to read it. Therein, the impugned order was dated 5.6.2012 and there was an impugned letter dated 25.3.2014 whereby the representations of the Applicant came to be rejected. It was further observed that, by an order of 5.6.2012, the Applicant came to be transferred from Pune to Dhule. That order was challenged by way of OA 1127/2013 as discussed above. His representations were directed to be considered in the last mentioned OA and the Joint Director, Health Services informed the Applicant that the representation was considered carefully (the Marathi words being "साकल्याने विचार केलेला असून"). It was rejected and the Applicant was directed to report at Dhule. The said order in the OA 339/2014 then referred to, a letter of 21.3.2014 of Medical Education and Drugs Department intimating *inter-alia* the rejection of



the representation and a direction that the Applicant should report to the concerned Hospital at Dhule. In Para 5, this Tribunal in the said order held that there was a marked reluctance in so far as the Respondents were concerned in the matter of production of record and it was noted as to how twice orders were made to secure compliance. It was further noted that, even on 31.7.2014, the record was not produced and the matter was required to be adjourned to 6.8.2014. Thereafter, in Para 6 in OA 339/2014, the points raised in the representations were summarized. In Para 7, it was found that the said representation had been considered in a casual manner and in support thereof, an extract in Marathi was quoted which *inter-alia* also recited that, in order to ensure that the separation from spouse did not take place even the wife of the Applicant was transferred to Dhule. It appears that the wife of the Applicant also is a Doctor and servicing the State of Maharashtra. The Tribunal found that, no reasons whatsoever were mentioned as to why the transfer of the Applicant could not be cancelled and the reasons advanced therefor were evaluated and were found to be in a manner of speaking hollow. The case of the Applicant was considered in *juxta-position* with some other colleagues of the Applicant including one Dr. Thakur and it was reiterated that the Respondents had turned a blind eye to a



very significant factual feature and the representation had not been considered objectively.

9. Further, in OA 339/2014 while considering the 2<sup>nd</sup> representation of the Applicant of 8.3.2013, the gist of the representation was noted in Para 8. It was further found that the Applicant had addressed another communication to the Chief Secretary on 30.9.2013 and the contents therein in Marathi were reproduced. Pertinently, after that quote, the Tribunal observed that the Respondents had not produced any record for perusal of the Tribunal to show that the last mentioned representation had been duly considered by them as directed by this Tribunal and it appeared to the Tribunal that the same had not even been put up for consideration of the competent authorities.

10. In Para 10, it was clearly and unambiguously found by the Tribunal that the claim of the Respondents that the representation of the Applicant had been duly considered was hollow and unacceptable. Instead of seriously looking into the grievance of the Applicant, a routine reply had been given which cannot be treated as compliance of this Tribunal's order. Further, whatever

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letter was sent by the Respondents was in fact factually wrong in view of the earlier observations of this Tribunal.

11. In Para 11, certain provisions of “the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005” (Transfer Act) were referred to and some earlier Judgments of this Tribunal were also relied upon. In Para 13, it was found that the Respondents did not take into cognizance the fact that the Applicant was a P.G. Guide and his transfer would jeopardize the interest of his students and that would be more so because the number of students had been raised from 11 to 15 as per the M.C.I. guidelines. The Tribunal held that, these averments were uncontroverted. Pertinently, it was held that, though the Applicant was a very senior Professor and Surgeon but he had been asked to perform the duties of an Undergraduate Teacher and this does not befit his status. Some other Judgments of this Tribunal were then relied upon and discussed and then it was held on internal page 18 of the said Judgment that the transfer of the Applicant was clearly violative of the directions that were set out in Para 19 of the said Judgment. Paras 20 and 21 of the said Judgment of this Tribunal in fact need to be fully reproduced for a proper focus.





**“20.** Thus,

a) In pursuance of the order dated 29.1.2014 of this Tribunal, the representations were to be properly considered and an appropriate decision arrived at. The representations were casually dealt with. It is not a proper compliance of this Tribunal's order.

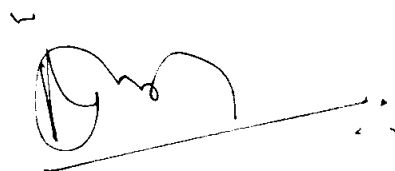
b) The provisions of Section 4(2) of the Transfer Act, 2005 were not followed.

c) The applicant has rightly relied on the judgments dated 22.1.2013 of this Tribunal in OAs No.551 and 553 of 2014. The same are applicable in the case of the applicant.

d) The applicant is also eligible to get the benefits of Section 5(1)(a), (b) and (c) of the Transfer Act.

e) Thus, statutory provisions of the Act have been violated.

f) The applicant has been discriminated in having been identified for transfer, though he has attained the age of 60 years and is due to retire shortly, though a person of much longer tenure was available.

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g) The applicant's transfer is in violation of the directions issued by the Hon'ble High Court in the judgment cited in Para 19 supra.

h) Why persons of longer tenure than the applicant were not transferred while considering request transfers and the applicant was identified specifically for transfer is not explained. It is against the principles of natural justice and is arbitrary.


i) The applicant's transfer did not follow the principles laid down in the note sheet as regards the methodology to be followed in preparing the transfer proposals and executing the same. There was a drastic disconnect between the principles proposed for consideration of transfer proposals and actual orders issued, evidently at least in the case of the applicant.

**21.** In view thereof, OA No.339 of 2014 is allowed. The impugned orders and transfer order of the applicant from Pune to Dhule are quashed and set aside. The applicant should be reposted to B.J. Medical College, Pune within one month of the date of this order. No order as to costs."

12. The above Judgment would make it very clear that the Tribunal came down very heavily on the



Respondents for the manner in which they dealt with the issue of the transfer of the Applicant. The Applicant made representations and the matter was all along before this Tribunal in one form or the other, and therefore, in my opinion, the kind of treatment which was almost penal was meted out to the Applicant and it is completely unacceptable. Mrs. K.G. Gaikwad, the learned Presenting Officer no doubt contended that the Applicant should have joined at Dhule and if he did not join there, it was more a fault on his part, and therefore, on the basis of the principles of "no work no pay", his period of absence has rightly been treated in the manner, it has been. In support of her contention, the learned PO referred me to **Sukhdeo Pandey Vs. Union of India : Appeal (Civil) 3888 of 2007, dated 24.8.2007.** Now, the context in which Their Lordships laid down the principles on facts was entirely different. It is not necessary to set out in detail the factual edifice thereof. That apparently was a matter where the Applicant came to be reverted or in any manner was put to disadvantage in service. There was an element of deliberate negligence on his part. I am very clearly of the view that the person cannot be blamed for any of such action or omission. He was perfectly within his rights to make the representations and also to invoke the jurisdiction of this Tribunal as he did, and therefore, by no



stretch of imagination, can it be said that the Applicant was liable to be treated in the manner he has been. In the context of the peculiar set of facts such as they are, I am in agreement with Mr. D.B. Khaire, the learned Advocate for the Applicant that the impugned action of treating the period as "Extra-Ordinary Leave Without Pay" is unsustainable.

13. The upshot is that the impugned action cannot be sustained and is liable to be interfered with. The communication dated 4.6.2016 (Exh. 'D', Page 40-A of the PB) stands hereby quashed and set aside. The Respondents are directed to treat the period from 12.6.2012 to 9.4.2014 (667 days) as a 'period spent on duty' by the Applicant and treat it as such even for the purposes of pensionary and other post retiral benefits. Compliance within two months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**VICE-CHAIRMAN**  
**12.09.2017**

12.09.17

Mumbai

Date : 12.09.2017

Dictation taken by :

S.K. Wamanse.