

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.272 OF 2020

DISTRICT : PUNE

Dr. Kalyan Shriniwas Deshpande.)
Age : 58 Yrs., Occu.: Medial Officer,)
Primary Health Centre Lasurne,)
Tal.: Indapur, District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)
2. The District Health Officer.)
Zilla Parishad, Pune and having)
Office at New Administrative Building)
Health Department, Pune.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 08.12.2021

JUDGMENT

1. The Applicant has challenged the order dated 14.10.2020 whereby the period from 04.06.2019 to 17.10.2019 (136 days) was ordered to be treated as Earned Leave under Rule 50(1)(2)(3) of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules of 1981' for brevity) instead of treating the said period as duty period.

2. Following are the undisputed facts giving rise to this application :-
- (i) Applicant is serving in the cadre of Medical Officer and by order dated 31.05.2019, he was transferred from the post of Medical Officer in Yerwada Central Jail, Pune to Primary Health Center, Shel Pimpalgaon, District Pune.
 - (ii) The Applicant has challenged transfer order dated 31.05.2019 by filing O.A.No.519/2019 *inter-alia* contending that he is due to retire within next three months and was entitled to extension under the provisions 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 Tribunal by order dated 10.06.2019, therefore, stayed the transfer order dated 31.05.2019.
 - (iii) Later Dr. Mule who was posted in place of Applicant at Central Prison, Yerwada, Pune as well as Government had filed M.A.No.346/2019 and 3046/2019 respectively for vacating stay order on the ground that Applicant was not due to retire in view of extension of 2 years' service in terms of G.R. dated 29.08.2018 and obtained stay on misrepresentation.
 - (iv) The Tribunal by order dated 11.07.2019 disposed of O.A.No.519/2019 being withdrawn by the Applicant in view of extension of service.
 - (v) The Applicant then filed O.A.No.804/2019 before this Tribunal *inter-alia* contending that he is kept without posting since at Shel Pimpalgaon, Dr. Mohite was already working in view of his posting on 20.10.2018 and there is no post available for joining to him.
 - (vi) When O.A.No.804/2019 was taken up for admission, the Tribunal has passed following order.

“2. At the very outset, it needs to be mentioned that due to sheer lack of coordination or negligence, the Applicant is left without posting and kept in abeyance for more than ten weeks. By order dated 31.05.2019, he was transferred from the post of Medical Officer, Yerwada Central Prison, Dist. Pune to Medical Officer, Shelpimpalgaon, Tal. Khed, Dist. Pune. Accordingly, the Applicant was relieved from the present post but when he went to join at the place of posting given to him, he was told that another person namely Dr. Rajendra Mohite was already posted there by order dated 11.10.2018 and already joined on 20.10.2018. Accordingly, the District Health Officer, Zilla Parishad, Pune forwarded the report to the Government on 29.07.2019, pointing out the position and requested for necessary orders. Thereafter, the Applicant had also made representation to the Government on 30.07.2019 stating out the facts that the post at Shelpimpalgaon is already filled in and, therefore, requested to post him at Nashik, Taloja, Ratnagiri or Thane. However, till date no action is taken. It is on this background, the Applicant is constrained to approach this Tribunal.

3. It is rather surprising that the Government was not aware that the post at Shelpimpalgaon was already filled in by giving posting to Dr. Mohite. As such, lack of coordination or negligence is obvious. Apart even after the report made by the District Health Officer, Pune dated 29.07.2019 as well as representation made by the Applicant on 30.07.2019, no remedial measures taken by the Government to rectify its own mistake.

4. In view of above, the Respondent is directed to consider the representation made by the Applicant on 30.07.2019 for posting him at Central Prison, Nasik, Taloja, Ratnagiri or Thane and to pass appropriate order within two weeks from today.

5. At the same time, the Respondent is directed to file Affidavit as to how the Applicant was given posting at Shelpimpalgaon by transfer order dated 31.05.2019 though the said post was already filled in by giving posting to Dr. Mohite. Affidavit be also filed within two weeks.”

(vii) In terms of above order passed by this Tribunal, the Principal Secretary, Public Health Department filed Affidavit on 13.09.2019 and tendered unconditional apology admitting that there was failure on the part of his Office in verifying the fact before issuance of order of transfer. He further submits that file is under process for issuing fresh posting order. Taking note of mess in the administration, the Tribunal disposed of O.A.No.804/2019 on 20.09.2019 giving direction to the Respondent to pass posting order of the Applicant within two weeks. While disposing O.A.No.804/2019, the Tribunal observed as under :-

“4. The Principal Secretary, Public Health Department accordingly filed Affidavit on 13.09.2019 and tendered unconditional apology and admits that there is failure on part of his office to verify the fact before issuance of order of transfer. He further submits that file is under process for issuing fresh posting orders. Therefore, matter was adjourned for issuance of appropriate orders. But till date no orders are issued.

5. Today, learned C.P.O. submits that the file is in process and necessary orders will be passed soon.

6. It is appalling to note that employee is kept out of posting for more than four months without work which is loss of public money as he will be entitled to the salary without doing any work because of lapses on the part of administration. It appears that the Respondents are not taking the orders passed by the Tribunal seriously and the Tribunal is inclined to allow the O.A. with cost.

7. However, learned C.P.O. submits that Tribunal should not impose cost and assures that the Respondents will pass appropriate orders soon.

8. The Tribunal hope that the Respondents would realize the seriousness of the matter and pass appropriate orders without loss of time.”

3. Thereafter, the Respondent belatedly issued posting order dated 16.10.2019 thereby giving posting to the Applicant at Primary Health Centre, Lasurne, Taluka Indapur, District Pune. Pursuant to it, the Applicant immediately joined on 18.10.2019.

4. It is on the above background, the Applicant has again filed this O.A. for declaration that the period from 04.06.2019 to 17.10.2019 be treated as a duty period or waiting period since he was kept out of posting due to sheer negligence and lapses on the part of Respondents. During the tendency of O.A, the Government has passed order dated 14.10.2020 thereby treating the said period as Extra-ordinary leave in terms of Rule 50(1)(2)(3) of 'Leave Rules of 1981'. The Applicant, therefore, amended O.A. and challenged this order *inter-alia* contending that it is totally bad in law and Applicant should not be held responsible for the same by treating the period from 04.06.2019 to 17.10.2019 as Extra-ordinary leave.

5. Shri Bandiwadekar, learned Advocate for the Applicant has pointed out that in view of orders passed by the Tribunal reproduced above, blame squarely lies with the Respondents for not issuing proper posting order, and therefore, the said period is required to be treated as compulsory waiting period/duty period instead of treating it as Extraordinary leave, which is detrimental to the Applicant.

6. Per contra, learned P.O. sought to support the impugned order *inter-alia* contending that the Applicant has not made *bonafide* and honest efforts to join in terms of transfer order. According to him, even if after Mr. Mohite was posted at Shel Pimpalgaon, the Applicant was required to bring this aspect to the notice of Respondents immediately, so as to rectify the mistake and to give another proper posting. In this behalf, he referred to Clause No.5 of transfer order, which is as under :-

“५. या आदेशान्वये बदली करण्यात आलेल्या वैद्यकीय अधिका-यांची दुहेरी पदस्थापना झाल्यास सदर बदली आदेशानुसार प्रथम हजर होणा-या वैद्यकीय अधिका-यास पदस्थापना देण्याची कार्यवाही करण्यात यावी. तसेच, इतर दुहेरी पदस्थापना झालेल्या वैद्यकीय अधिका-यांना आरोग्य संस्थेची निकड लक्षात घेऊन संबंधित परिमंडळातील इतर संस्थेत रिक्त असलेल्या पदावर तात्पुरती पदस्थापना देऊन सदर वैद्यकीय अधिका-यांना नियमित पदस्थापना देण्याबाबतचा प्रस्ताव शासनास सादर करण्याची दक्षता सर्व उपसंचालकांनी घ्यावी.”

7. The learned P.O. further invited attention to the application made by the Applicant dated 29.07.2019 wherein Applicant himself stated that he was on medical leave from 04.06.2019 to 26.07.2019 on account of injury to leg. He has further pointed out that initially the Applicant has misrepresented the Tribunal while obtaining stay to the transfer order in O.A.No.05.09.2019. On this line of submission, he tried to justify the impugned order treating period from 04.06.2019 to 17.10.2019 as Extraordinary leave.

8. At the very outset, it needs to be stated that when Applicant was transferred and posted at Shel Pimpalgaon by order dated 31.05.2019, the post of Shel Pimpalgaon on which Applicant was transferred was already occupied by Dr. Mohite. He was there since 20.10.2018. Admittedly, the Applicant was relieved on 03.06.2019 but the post of Shel Pimpalgaon being already occupied by Mr. Mohite, he could not join

there. Noticing these factual aspects, the Tribunal in O.A.No.804/2019 passed speaking orders that Applicant was posted at Shel Pimpalgaon without confirming vacancy and Principal Secretary, Public Health Department was directed to explain it. Pertinent to note that, Principal Secretary accordingly filed Affidavit and tendered unconditional apology for the mistake and admits that there was failure on the part of his Office to verify the fact before issuance of order of transfer. Curiously, despite this position, no further remedial measure was taken immediately for issuance of another posting order so that Applicant could join there. The Tribunal has expressed serious displeasure in order dated 20.09.2019 that if a Government servant is kept without work for no fault on his part, the Respondents will be liable to pay his pay and allowances.

9. In so far as joining to Shel Pimpalgaon is concerned, material to note that in impugned order dated 14.10.2020, the Respondents admit that Applicant went to Shel Pimpalgaon for joining on 27.07.2019. Here, important to note that the Applicant addressed letter dated 29.07.2019 to District Health Officer, Z.P, Pune stating that he was on leave from 04.06.2019 to 26.07.2019 due to injury to leg and went to Shel Pimpalgaon on 27.07.2019 for joining but he was not allowed to join since there was no vacancy (that post on which Applicant was transferred was already occupied by Mr. Mohite). He, therefore, requested to issue suitable posting order. However, even thereafter also, no transfer order was issued expeditiously and it was issued belatedly on 16.10.2019 thereby posting the Applicant at Lasurne.

10. In letter dated 29.07.2019 which is taken on record during the course of hearing and marked by letter 'X', the Applicant stated as under:-

“महोदय,

मी, डॉ. के.एस. देशपांडे, अस्थिव्यंग अपंग वैद्यकीय अधिकारी, येरवडा मध्यवर्ती कारागृह, पुणे आपणास कळवू इच्छितो की दि. ४/६/२०१९ ते दि. २६/७/१९ पर्यंत माझ्या डाव्या पायाचा जुनाट जखमेचा उपचार व पाठपुरावा कारणासाठी वैद्यकीय रजेवर असताना दि. २७/७/१९ रोजी प्राथमिक आरोग्य केंद्र, शेल पिंपळगाव (ता. खेड, जि. पुणे) येथे हजर होण्यासाठी गेलो असताना तेथील वैद्यकीय अधिकारी श्रीमती डॉ. पारखे यांनी सदर प्रा.आ.

केंद्रामध्ये रिक्त पद नसल्याचे सांगितले व जिल्हा आरोग्य विभाग, पुणे येथे संपर्क साधण्याचे सूचित केले व रुजू करून घेण्यास असमर्थता दर्शविली. तरी आपणास नम्र विनंती आहे की मा. प्रधान सचिव, सार्वजनिक आरोग्य विभाग, मंत्रालय, पुणे यांचेकडून पदस्थापनेचे सुधारित पदस्थापना मिळण्यासाठी मला मा. प्रधान सचिव, सार्वजनिक आरोग्य विभाग, मंत्रालय, मुंबई यांना उद्देशून लिहिलेल्या पत्राची एक प्रत मला मिळावी.”

11. As such, even if Applicant claims to have been on medical leave from 04.06.2019 to 26.07.2019, there is no denying that he went to Shel Pimpalgaon on 27.07.2019 for joining, but he was not allowed to join since said post was already occupied by another Medical Officer.

12. Insofar as the interim stay granted by the Tribunal to the transfer order dated 31.05.2019 in O.A.No.519/2019 is concerned, the stay was vacated and O.A. was disposed of by order dated 11.07.2019. The Applicant was transferred from Yerwada, Pune to Shel Pimpalgaon and after he was relieved, Dr. Mule joined there. Whereas, the post of Shel Pimpalgaon was already occupied by Dr. Mohite. The Applicant approached the Department by making application dated 29.07.2019 making it clear that he is left without posting. Despite this position, he was kept in abeyance and belatedly by order dated 16.10.2019, he was posted at Lasurne where he joined on 18.10.2019. As such, even if the period from 04.06.2019 to 26.07.2019 is treated as Medical Leave, still there is no escape from the conclusion that there was no post where Applicant was to join and this happened due to sheer negligence on the part of transferring authority. Suffice to say, transfers were made without verifying the vacancy and consequently, the Applicant was kept in waiting. Indeed, Principal Secretary of the Department in Affidavit admits the mistake and tendered apology.

13. Thus, what transpires that no immediate remedial measures were taken by the Respondents to give another suitable posting to the Applicant. In terms of Para No.5 in order dated 31.05.2019, it was incumbent on the part of concerned to give some other posting temporarily to the Applicant, but no such step was taken. Even despite

application dated 29.07.2019 made by the Applicant, the period of more than 2 and half month was taken for issuance of posting order.

14. It is thus manifest that the Applicant was kept without posting for no fault on his part, but his request to treat the said period as compulsory waiting period has been turned down and the said period has been treated as Extra-ordinary leave quoting Rule 50(1)(2)(3) of 'Leave Rules of 1981'. Interestingly, Rule 50 provides about admissibility of Earned Leave to a Government servant in Department other than vacation department upto the sealing of 300 days. This provision has nothing to do with the present issue. Indeed, it is Rule 63 which provides for grant of Extra-ordinary leave in the circumstances mentioned therein. Whereas, in the present case, the Government treated the said period as Extra-ordinary leave, blaming him as if penalty. Be that as it may, when there was no fault on the part of Applicant and he was kept out of service due to sheer negligence on the part of transferring authority, the order of treating the said period as Extra-ordinary leave is totally arbitrary and bad in law. This is nothing but an attempt to cover one's own lapses. The impugned order, therefore, deserves to be quashed. However, it is made clear that the period from 04.06.2019 to 26.07.2019 shall be treated as Medical Leave and rest of the period deserves to be treated as compulsory waiting period/duty period for all consequential service benefits. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The order dated 14.10.2020 is quashed and set aside.
- (C) The period from 04.06.2019 to 26.07.2019 be treated as Medical Leave and necessary order shall be issued within a month from today.

- (D) The period from 27.07.2019 to 17.10.2019 shall be treated as compulsory waiting period/duty period for all consequential service benefits and necessary orders be passed within a month from today.
- (E) No order as to costs.

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

Mumbai

Date : 08.12.2021

Dictation taken by :

S.K. Wamanse.

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