

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.493 OF 2018

DISTRICT : Pune

Dr.Tanuja G. Kulkarni)
Medical Officer, District Training Centre,)
(Health Department), Aundh Camp, Pune)
Dist. Pune -411027.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Through the Principal Secretary,)
Public Health Department, 10th floor,))
G.T. Hospital Compound,)
Mumbai 400 32.)
2. Commissioner of Health and Family)
Welfare and Mission Director)
National Health Mission, Aarogya)
Bhavan, 3rd floor, St.Georges)
Hospital Compound, M.S.)
Mumbai 400 001.)
3. Dr.Gauri M. Jadhav, Primary Health)
Centre (PHC), Perene Phata, Pune)...**Respondents**

Smt. Lata Patane, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.03.2020

JUDGMENT

1. Heard Smt. Lata Patane, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the impugned transfer order dated 31.05.2018 whereby she was transferred from the post of

Medical Officer, District Training Centre (Health Dept), Aundh Camp, District Pune to Primary Health Centre (PHC), Katewadi, Tal.Baramati, Dist. Pune invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

3. The Applicant is serving on the post of Medial Officer (Class B). In general transfer of 2018, she was due for transfer having completed normal tenure. At the time of transfer, she had given options of various posts in an around Pune. However, none of the options was considered and by impugned transfer order dated 31.05.2018, she was transferred to Katewadi, Tal. Baramati, Dist. Pune. The Applicant contends that her husband is serving in Delhi and requires to take care of her parent-in-law, and therefore, her option for Pune in terms of Government policy was required to be considered. She further contends that at the time of impugned transfer order, two years period was left for retirement, and therefore, family difficulties ought to have been considered for giving choice posting.

4. Learned Counsel for the Applicant sought to assail the impugned order on the ground that the options given by the Applicant was not sympathetically considered by the Respondent in light of G.R. dated 09.04.2018 therefore, impugned order is arbitrary. She further submits that in view of the representation citing family difficulties, there was no reason to reject any one of the choice posting. On this line of submission, she prayed to quash the impugned transfer order. She further submits that at present also there are so many vacancies at Pune, and therefore, Applicant can be accommodated in Pune.

5. Material to note that during the course of O.A., the Applicant though transferred to Katewadi, Dist. Pune by order dated 31.05.2018 she is deputed in Pune for last one and half years. Adverting to this aspect, learned Counsel for the Applicant submits that vacancies exist

at Pune, and therefore, Respondents be directed to consider for her regular posting at Pune instead of deputation.

6. Per contra, Smt. Kranti Gaikwad, learned P.O. sought to justify the impugned transfer order contending that major period of the service of the Applicant was in Pune city, and therefore, it was not possible to give her posting in Pune again. She submits that posting given at Katewadi is also in Pune district and challenge to the impugned transfer order is devoid of merit.

7. In view of above, short question posed for consideration is whether the impugned transfer order dated 31.05.2018 can be faulted with and the answer is in negative.

8. Needless to mention that Government servant has no vested right to claim any particular post for particular period as the transfer is incidence of Government servant. Now, the transfers are regulated by Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005'). It is well settled that unless the transfer is in violation of express provisions of law or malafide, the same cannot be interfered with by Court/Tribunal.

9. Undisputedly at the time of impugned transfer order, the Applicant was due for transfer and it is the case of general transfer. The Applicant is serving on the post of Medical Officer. Perusal of details of previous posting given by the Applicant (page 71 of PB) reveals that for substantial and major period, she was in Pune. Record shows that she was at PHC Kadus, Dist. Pune from 20.04.1992 to 15.09.1994. Then she was transferred to District Satara, only for one year. Again she was brought back to Rural Hospital, Saswad, Dist. Pune from 24.12.1997 to 18.08.2002. Thereafter, she was transferred to Primary Health Centre, Kadus from

19.08.2002 to 08.07.2005. She was in Zilla Parishad Civil Hospital, Pune from 09.07.2005 to 09.06.2014. She was at District Training Centre, Pune from 10.06.2014 to the date of impugned order of transfer i.e. 31.05.2018. Thus, for 29 years, she was in Pune or around Pune. Despite this position, she wants to stick up in Pune, and therefore, has given options only from Pune District. No other options are given. At the time of general transfer, matter was placed before Civil Services Board and considering her previous service record and places where she served, she was transferred to PHC Katewadi, Tal. Baramati, Dist. Pune. As such, too much extent her request was accepted by retaining her in Pune District. The perusal of impugned order dated 31.05.2018 shows that Medical Officers were transferred in several parts of State of Maharashtra at different places. Suffice to say, the Applicant's case was considered sympathetically by keeping her in Pune District. However, she wants to stay in Pune, as if she has got legally vested right to stay in Pune.

10. Insofar as G.R. dated 09.04.2018 is concerned, those are only administrative instructions and as far as possible options are required to be considered by the Executive. Those are in the form of guidelines/instructions and that itself does not create right in favour of employee. It is for the Executive to see appropriate place of posting of the employee considering the service record as well as places where employee earlier served. In the present case, as stated above, the Applicant has served in an around Pune for 29 years and this aspect seems to have weighed the Executive while transferring the Applicant to Katewadi. As such, it cannot be said that impugned transfer order suffers from any arbitrariness or illegality.

11. Indeed, during pendency of O.A., the Applicant is deputed in Zilla Parishad, Pune and she is serving there. As such, she seems to have been accommodated to much extent even after her transfer to PHC Katewadi, Tal. Baramati, Dist. Pune.

12. In view of above, I have no hesitation to sum up that challenge to the impugned transfer order is devoid of merit and O.A. deserves to be dismissed.

ORDER

Original Application is dismissed with no order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 06.03.2020.
Dictation taken by : VSM
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