

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.516 OF 2018

DISTRICT : PUNE

Dr. (Mrs.) Jayashri V. Nandanvankar.)
Age : 59 Yrs., Presently Working as Medical)
Officer (Gr.A), PHC, Perane Phata, Pune and)
Residing at 263/A, Flat No.15, Sakshi Om)
Gurudeo Apartment, Rasta Peth,)
Pune – 411 011.)...Applicant

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Public Health Department, Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner, Health Services,)
& Director (NHM), 10th Floor, Arogya)
Bhavan, St. George's Hospital Compound)
Mumbai – 400 001.)
3. The Director, Health Services, 1st Floor,)
Arogya Bhavan, St. George's Hospital)
Compound, Mumbai 400 001.)...Respondents

Mr. A.R. Joshi, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.02.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 31st May, 2018 whereby she was transferred from Railway Police Hospital, Khadki, Pune to Primary Health Centre, Perne Phata, 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 follows :

The Applicant is serving as Medical Officer (Group 'A'). At the time of impugned order, she was serving at Khadki Railway Police Hospital and was due for transfer. By impugned transfer order dated 31.05.2018, she was transferred to Primary Health Centre, Perne Phata, District Pune. She was due to retire on attaining the age of superannuation on 31.05.2019. She, therefore, contends that the impugned transfer order is in violation of Section 5(1)(a) 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") which provides for extension of Government servants who are due for retirement within less than period of one year. She further contends that, in November, 2017, she met with an accident and was operated for shoulder injury in Sanchiti Hospital, Pune. Primary Health Centre, Perne Phata is 35/40 kms. away from the place of residence. On account of injury, she could not ride two wheeler, and therefore, new place of posting is inconvenient to her. With these pleadings, she contends that the impugned transfer is illegal and prayed to set aside the same.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.31 to 36 of the Paper Book) *inter-alia* denying that the impugned transfer suffers from any illegality. The Respondents contend that she was transferred in Pune itself, that too, on the recommendation of Civil Services Board (CSB). Her

services are required at Primary Health Centre, and therefore, she was transferred at Primary Health Centre, Perne Phata, Pune. In respect of Section 5(1)(a) of 'Transfer Act 2005', the Respondents contend that it applies only in exceptional cases where employees due for retirement in a period within less than year. Whereas, in the present case, the Applicant was transferred by order dated 31.05.2018 and she had got one year full tenure before retirement. Therefore, Section 5(1)(a) of 'Transfer Act 2005' is not applicable to the present situation.

4. The Respondents further contend that during the pendency of this application, as per the directions issued by this Tribunal, the matter was again placed before CSB to consider her request for consideration of transfer. However, CSB rejected the request on the ground that there is no change in Head Quarter and secondly, on the point of continuity of Medical Services at Primary Health Centre, her posting at Primary Health Centre, Perne Phata, pune need not be disturbed. The Respondents, therefore, prayed to dismiss the application.

5. Shri A.R. Joshi, learned Advocate for the Applicant urged that the only issue to be considered in this O.A. pertains to non-compliance of Section 5(1)(a) of 'Transfer Act 2005'. He urged that his case falls within the said exception, and therefore, the impugned order is unsustainable in law. He further sought to contend that, though the transfer order is passed on 30.05.2018 and it was served upon the Applicant on 04.06.2018, and therefore, the Applicant had left less than one year for retirement on the date of receipt of transfer order.

6. Per contra, Ms. N.G. Gohad, learned Presenting Officer for the Respondents submitted that the provisions of Section 5(1) are not mandatory, but directory. She emphasized that no Government servant can insist for the extension on the basis of Section 5(1)(a) and it is for the Government to consider it in appropriate cases. According to her, the discretion has been exercised

properly as on the date of impugned transfer order, there was complete one year for retirement of the Applicant and on that ground also, the Applicant cannot take benefit of Section 5(1)(a) of 'Transfer Act 2005'.

7. At this juncture, it would be appropriate to reproduce Section 5(1) & (2) of 'Transfer Act 2005' which is as follows.

"5.(1) The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely :-

- (a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement;
- (b) the employee possesses special technical qualifications or experience for the particular job and a suitable replacement is not immediately available; and
- (c) the employee is working on a project that is in the last stage of completion, and his withdrawal will seriously jeopardize its timely completion.

(2) Notwithstanding anything contained in section 3 or any other provisions of this Act, to ensure that the Government work is not adversely affected on account of large scale transfers of Government servants from one single Department or office, not more than thirty percent of the employees shall be transferred from any office or Department at a time, in a year."

8. At the very outset, it may be noted that, on the date of impugned transfer, there was complete one year left with the Applicant for retirement, as she was due to retire on 30.05.2019. Whereas, the perusal of Section reveals that, it is applicable only where the period of less than one year is left for retirement. That means, in case where there is period of one year or more for retirement, Section 5(1)(a) of 'Transfer Act 2005' could not apply. This being the position, strictly speaking, the Applicant's case does not fall within this exception for the simple reason that he had complete one year for retirement.

9. Furthermore, Section 5 is directory and not mandatory. Ultimately, it is for the Government to exercise discretion and where discretion is shown

exercised without any bias or *malafides*, then such transfer order cannot be interfered with. Needless to mention that the transfer is an incidence of Government service and no Government employee has vested right to claim particular place or detention over the permissible tenure.

10. In so far as ground of hardship raised by the Applicant is concerned, true, she seems to have been operated for shoulder surgery. The Certificate issued by Sanchiti Hospital shows that she was admitted on 06.01.2018 and after small surgery, discharged on the very next day. Except this Certificate, there is no other medical evidence to substantiate the contention that due to said injury, she is unable to commute daily to new place of posting from residence or there is any physical disability. In absence of any such evidence, it can be assumed that there is no such continuous physical disability.

11. It is well settled that the Tribunal should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of provisions of statute. The transfer of an employee is not only an incidence inherent in terms of appointment, but also implicit as an essential condition of service in absence of any specific indication to the contrary. Courts should not relieve the transfer orders, as if they are appellate authorities over such orders which could assess the niceties of the administrative needs and the requirement of the situation concerned. Suffice to say, except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

12. In this behalf, I am guided by the Judgment of Hon'ble Bombay High Court in **V.B. Gadekar, Deputy Engineer Vs MHADA : 2007 (6) BOM CR 579**, wherein it has been held as follows :

“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”

13. Indeed, the Applicant has already joined at Primary Health Centre, Perne Phata, District Pune and now due for retirement within three months. Therefore, at this juncture, it would not be appropriate to interfere with the transfer order which again cause inconvenience to the people for getting medical services at Primary Health Centre. She was transferred from Khadki Railway Police Hospital to Primary Health Centre, Perne Phata in Pune District itself. As such, in my considered opinion, there is no violation of legal right of the Applicant, so as to quash the impugned transfer order.

14. The necessary corollary of aforesaid discussion leads me to sum-up that the application is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai
Date : 28.02.2019
Dictation taken by :
S.K. Wamanse.