

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.527 OF 2019

DIST : RAIGAD

Shri Shrikant H. Bhagat.)
Aged 45 years, Working as Incharge)
Insect Collection in the office of Assistant)
Director, Health Services, Konkan Bhawan)
Navi Mumbai and R/o. Jagdamba Hill)
Views, A/P. Pen, District : Raigad.)...**Applicant**

Versus

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

2. The Joint Director of Health)
Services [Malaria, Filaria, Water Borne)
Diseases], Pune – 6.)

3. The Assistant Director of Health)
Services [Malaria], Mumbai Division,)
Having office at Konkan Bhawan,)
Navi Mumai.)...**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 15.09.2020.

JUDGMENT

1. The Applicant has challenged the transfer order dated 31.05.2019 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant was serving as Incharge Insect Collection (किटक समाहारक) in the office of Assistant Director Health Services, Kokan Bhavan, Navi Mumbai and completed normal tenure of six years. He was due for transfer in general transfers in May, 2019. In terms of G.R. dated 09.04.2018, the Government had taken policy decision to effect transfer by calling options from the employees and by counseling. The options were invited from the employees who were due for transfer. The Applicant had submitted ten options. However, his none of the option were considered and by impugned transfer order dated 31.05.2019, he was transferred at Primary Health Center, Aangaon, Dist. Thane. The Applicant had challenged the impugned transfer order *inter-alia* contending that he had undergone and completed training in the cadre of Incharge Insect Collection (किटक समाहारक). In terms of Government policy vide letter dated 24.04.2009, the employee who had undergone and completed training of Insect Collection were to be transferred on the post of Insect Collector but he is transferred on other post of Health Worker, and therefore, transfer order is unsustainable in law. Furthermore, though he has given ten options in terms of G.R. dated 09.04.2018 and were vacant, the same was not considered rendering the impugned transfer order arbitrary and unsustainable in law.

3. The Respondents resisted the O.A. by filing Affidavit-in-Reply on behalf of the Respondent Nos.2 and 3 *inter-alia* denying that the transfer order suffers from any illegality. The Respondents contend

that the transfer of the Applicant was necessitated at Primary Health Centre, Aangaon, Tal. Bhivandi it being prone to insect borne disease and to tackle such situation. The Respondents further contend that the opinion No.1 of District Malaria Office, Raigad claimed by the Applicant was in nature of inter district transfer, and therefore, the same was not permissible. According to Respondents, Civil Services Board had recommended the transfer of the Applicant in District Malaria Office, Thane and accordingly he is posted at Primary Health Centre, Angaon, Tal. Bhivandi, Dist, Thane.

4. Heard Shri A. V. Bandiwadekar, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

5. At the very outset, it needs to be clarified that the foundation of challenge to the impugned order is based upon two aspects. First aspect is that the Applicant having completed training to perform duties for insect collection, he was required to be posted for the same purpose for virtue of policy decision reflected in the letter issued by Director of Health Services, Mumbai in letter dated 24.04.2009. By such letter, the directions were issued that the post of Insect Collection should be filled in from the employees who have undergone training of insect collection. Second aspect is about the breach of policy decision taken by the Government in terms of G.R. dated 09.04.2018, whereby employees were to be accommodated as per options given by them and by counseling. This being the admitted position, even if transfer is incident of the Government services, it should not be arbitrary or at the whims of executives. The transfers are regulated by the policy decision taken by the Government and it should be in fair and transparent manner adhering policy of the Government. If the transfer is not in consonance of policy of the Government and suffers from unfairness or arbitrariness then it needs to be interfered with by the Tribunal.

6. Admittedly, the Applicant has given ten options in terms of G.R. dated 09.04.2018. There is no denying that the options sought by the Applicant were vacant, however, not a single option from ten options by the Applicant was considered and he was given totally different posting of health worker at Primary Health Centre, Aangaon, Tal. Bhivandi, Dist. Thane. Though, the learned P.O. tried to contend the post of Primary Health Centre, Aangaon are required to be filled in. Admittedly, it is not a post relating to Insect Collection. The Applicant is transferred from the post of Health Worker. As such, there is a breach of directions issued by the Director Health Services, Mumbai in its letter dated 24.04.2009 that the employees who have undergone training in Insect Collection should be posted on the post of Insect Collector.

7. Material to note that though the Applicant had given ten options and those were admittedly vacant, no reason whatsoever are recorded in Minutes of Civil Services Board for not considering the options given by the Applicant. As the matter of record, perusal of Minutes of CSB (Page No.72 of Paper Book) reveals that the CSB had recommended the transfer of the Applicant at Raigad which the Applicant had claimed as option No.1. However, there is overwriting and interpolation in the record whereby word Raigad has been scored and posting shown at Aangaon. Curiously, there is small note in the Minutes of CSB that the change is effected in pursuance of instructions given by the Director. However, no such documents to that effect for change in the Minutes of CSB is forthcoming.

8. As stated above, in terms of G.R. dated 09.04.2018, the transfers were required to be effected considering options given by the Applicant. True, the executive can exercise its own power in the matter of posting and transfer and may ignore or override the options given by the employees provided, there are certain reasons for departure from the instructions contained in G.R. dated 09.04.2018.

However, in the present case, no such reason whatsoever is forthcoming for not considering the options given by the Applicant. This being the position, the manner in which the Applicant is transferred is necessarily not in consonance with the instructions contained in G.R. dated 09.04.2018 and suffers from arbitrariness and unfairness.

9. Learned Counsel for the Applicant rightly referred to the decision rendered by the Tribunal in **O.A.No.507/2018 (Prashant Pawar V/s State of Maharashtra & Ors)** decided on 05.10.2018 arising from similar situation wherein transfer order having found that not in consonance with G.R. dated 09.04.2018, it was struck down and directions were given to consider the options given by the Petitioner. The said decision rendered by this Tribunal has been confirmed by the Hon'ble High Court in W.P. No.10925/2019 decided on 29.11.2019. Suffice to say, where transfer is arbitrary and unfair. The same is liable to be quashed.

10. Learned Presenting Officer for the Respondents sought to contend that the Applicant was harping for the transfer at Raigad as option No.1 and it being inter district transfer, the same is not permissible. However, no G.R. or Rule is pointed out that inter district transfer is not permissible.

11. In view of above, there is no escape from the conclusion that the impugned transfer order dated 31.05.2019 qua the Applicant suffers from arbitrariness and unfairness and resultantly interference by the Tribunal is imperative.

12. During the course dictation, learned P.O. was asked to take instructions from the Respondents as to how many options from the options given by the Applicant are vacant so that appropriate directions can be issued. Accordingly, she took instructions and

submitted that all ten options asked by the Applicant are presently vacant. This being the position, the Applicant needs to be accommodated in terms of options given by him. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 31.05.2019, qua the Applicant, is quashed and set aside.
- (C) The Respondents are directed to consider the options given by the Applicant in terms of G.R. dated 09.04.2018 and to post him at any one of the place within six weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J