

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.655 OF 2020

DISTRICT : PUNE

Dr. Kalyan Shriniwas Deshpande.)
Age : 59 Yrs., Working as Medical Officer)
Group-A, P.H.C, Lasurne, Tal.: Indapur,)
District : Pune and R/o. Medical Officers')
Quarter No.1, Indapur-Baramati Road,)
P.H.C, Lasurne, District : Pune and)
having permanent address at Row House)
No.173/1, Survey No.29, "Shrikrupa)
Sahakari" Housing Society, Ramling,)
Tal.: Shirur, District : Pune.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Health Department, Mantralaya,)
Mumbai – 400 032.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 21.10.2021

JUDGMENT

1. Initially, this Original Application has been filed for direction to the Respondent to transfer him as per the o

Options given by him in his representation dated 01.10.2020 but during the pendency of O.A, the representation has been decided and rejected by order dated 11.02.2021 which is also challenged by making amendment in O.A. 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 under :-

The Applicant is serving in the cadre of Medical Officer, Group-A. He joined Government service in the year 1995, since date of appointment he is serving in Pune District though at difference stations. In 2019, he was Medical Officer, Yerwada Central Prison, Pune and due for transfer. By order dated 31.05.2019, in general transfer, he was transferred to Shel-Pimpalgaon, Tal. : Khed, District Pune. However, that post was found not vacant, and therefore, his posting order was modified by giving him posting at Lasurne, Tal.: Indapur, District : Pune and joined there on 18.10.2019. After joining there, he made representation dated 01.10.2020 and 19.10.2020 stating that he suffers from 46% disability as well as from heart ailment, and therefore, requested to transfer him at Daund. In this behalf, he referred Circular dated 15.04.2004 issued by GAD wherein it is stated that as far as possible, a handicapped Government servant be accommodated near his place of residence, subject to administrative convenience. However, representations were not responded to. Therefore, he has filed the present O.A. for direction to post him at Daund on the vacant post. During the pendency of O.A, the Government by order dated 11.02.2021 rejected his representation stating that since joining service he served in Pune District only and secondly, at Lasurne he is provided Government

quarter which is in the campus of Hospital, and therefore, the question of inconvenience or hardship does not survive. The Applicant, therefore, amended the O.A. and challenged the order dated 11.02.2021.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order dated 11.02.2021 *inter-alia* contending that in view of policy decision taken by the Government in the form of Circular dated 15.04.2004, the Applicant being suffering from 46% disability, he was required to be posted near his native place Shirur. He submits that his present posting at Lasurne is 120 k.m. away from his native place Shirur and in view of physical disability and heart ailment, he was required to be accommodated at Daund as per the options given by him in representation. He has further pointed out that Applicant is retiring in 2013. On this line of submission, he submits that the impugned order dated 11.02.2021 is arbitrary and against Circular dated 15.04.2004.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that since joining of service, the Applicant is accommodated in Pune District only and secondly, Lasurne where he is presently posted, there is Government quarter in the campus of Government Hospital itself and the question of inconvenience or hardship in commuting does not survive. According to him, the Circular dated 15.04.2004 would apply to the cases where a Government servant is required to commute from the place of his residence and in the present case, it being not so, there is no contravention of Circular dated 15.04.2004.

5. Needless to mention that transfer is an incidence of service and no Government servant can claim particular post or tenure as vested right since it falls within the domain of executive to make transfers considering the requirement and administrative exigencies. True, by Circular dated 15.04.2004, the Government has given instructions to the concerned Departments to accommodate handicapped Government

servant as far as possible near the place of his residence, subject to administrative convenience. The Circular reads as under :-

“शासकीय सेवेतील अपंग कर्मचा-यांच्या बदल्या सहानुभूतीचा दृष्टिकोन ठेवून त्यांच्या राहत्या ठिकाणाजवळ करण्याबाबत संदर्भाधीन परीपत्रकान्वये सूचना देण्यात आल्या होत्या. तथापि या सूचनांची व्यवस्थित अंमलबजावणी होत नाही असे निदर्शनास आल्यामुळे या परिपत्रकान्वये मंत्रालयीन विभाग व त्यांच्या नियंत्रणाखालील विभाग प्रमुख / कार्यालय प्रमुख यांना पुन्हा सूचना देण्यात येत आहेत की, शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन करण्यासाठी शासनाने दिनांक १६ जानेवारी २००४ रोजी प्रस्थापित केलेल्या अध्यादेशास अधीन राहून शासकीय सेवेतील अपंग कर्मचा-यांच्या बदल्या शासकीय सोयीनुसार शक्य असल्यास त्यांच्या राहत्या ठिकाणाजवळ कराव्यात.”

6. The Applicant has produced Handicap Certificate dated 13.02.2014 which shows that he is suffering from 46% permanent disability due to left leg shortening. He has also produced Medical Certificate dated 24.03.2019 to show that he suffers from hypertension with Ischemic Heart Disease and was advised to take 8 sittings for Arterial Clearance Therapy in OPD. On this basis, after his joining at Lasurne, he made representations for giving posting at Daund on vacant post which came to be rejected by order dated 11.02.2021.

7. Admittedly, since joining of service, the Applicant has served only in Pune District though at different stations. Thus, for around 25 years, he is in Pune District though he is transferable throughout Maharashtra. Thus, it appears that on the ground of physical disability, he is already accommodated in Pune District only for around 25 years. Now, he is transferred to Lasurne which is also in Pune District.

8. True, his native place seems to be Shirur in Pune District. He has given choice for the post at Daund which is 60 kms. from Shirur. Whereas, Lasurne where he is presently posted is 120 kms. away from his native place Shirur. Material to note that it is nowhere his case that he is always required to go to his native place Shirur, and therefore, posting at Lasurne is inconvenient to him. All that, he is harping on the Circular dated 15.04.2004 reproduced above. The object behind this Circular is to minimize hardship or inconvenience to Government servants who are required to commute from their home. Whereas, in the

present case, the Applicant is provided with Government accommodation in the same campus at Lasurne. He was not required to commute from home to Hospital. Therefore, the question of any such hardship does not survive. The decision rendered in **O.A.No.577/2016 (Smt. Jyoti Markale Vs. State of Maharashtra) decided by this Tribunal on 19.01.2017** relied by the learned Advocate for the Applicant have no application in the present situation, since in that case, the Applicant who was physically disabled was required to attend work place by local train or city Bus. She was suffering from 60% disability and requested for Panvel. She was residing at Belapur, but posted at Uran. Therefore, in fact situation, the directions were given to the Respondents to post the Applicant at Panvel in the light of Circular referred to above. Whereas, in the present case, there is no issue of commuting by public transport since Applicant is living in the quarter in the same campus. Suffice to say, reliance placed on the decision in **O.A.No.577/2016** (cited supra) is totally misplaced.

9. Apart, Circular dated 15.04.2004 is by way of concession to accommodate a Government servant as far as possible who suffers from physical disability near home so that they should not suffer hardship in commuting. It is also subject to administrative convenience and not as a vested right.

10. As stated above, the Applicant has served more than 25 years in Pune District itself, though his post is transferrable inter-district throughout Maharashtra and now also he is posted at Lasurne, which is also in Pune District. As such, the Applicant is already accommodated by giving him a posting at Lasurne. I, therefore, see no such contravention of any express provision of law in impugned order dated 11.02.2021. Suffice to say, the challenge to the impugned order is devoid of law and O.A. is liable to be dismissed. However, it is clarified that since Applicant would be retiring in 2023, his case be considered for

transfer in next general transfers of 2022, since by that time, he will be completing two and half year at Lasurne. Hence, the following order.

ORDER

- (A) The Original Application is dismissed with no order as to costs.
- (B) However, the Respondents may consider his case for transfer in general transfers of 2022 considering his retirement in 2023 for accommodating him as per the options given by him.
- (C) The Applicant is at liberty to make representation to that effect in general transfers of 2022.

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

Mumbai
Date : 21.10.2021
Dictation taken by :
S.K. Wamanse.

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