

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.68 OF 2023

DISTRICT : PUNE

Sub.:- Transfer

Dr. Vinayak Pandurang Kale.)
Age : 57 Yrs, Working as Dean,)
B.J. Government Medical College)
and Sassoon General Hospital, Pune,)
R/o. VVIP Guest House, Queens Garden,)
Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Drugs Dept.,)
9th Floor, G.T. Hospital Campus,)
L.T. Marg, New Mantralaya,)
Mumbai – 400 001.)
2. Dr. Sanjeev Thakur.)
Dean, Dr. V.M. Government Medical)
College, Solapur, Dist.: Solapur.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondent No.1.

Smt. Punam Mahajan, Advocate for Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.07.2023

JUDGMENT

1. The Applicant has challenged the transfer order dated 13.01.2023 whereby he is transferred from the post of Dean, B.J. Government Medical College, Pune to the post of Director, Maharashtra Institute of Mental Health, Pune and also challenged another order dated 13.01.2023 under which Government transferred Respondent No.2 from the post of Dean, Dr. V.M. Government Medical College, Solapur in his place as Dean of B.J. Government Medical College, Pune, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

At the time of impugned transfer order, the Applicant was serving as Dean, B.J. Government Medical College, Pune. He was posted there in view of his promotion in the cadre of Dean by Government in terms of order dated 08.04.2022. Thus, he was entitled for three years' normal tenure in terms of 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). However, Government by impugned transfer order dated 13.01.2023 abruptly transferred the Applicant as Director-Professor, Maharashtra Institute of Mental Health, Pune and in his place posted Respondent No.2 though he was not due for transfer. The Applicant has, therefore, challenged both the transfer orders dated 13.01.2023 *inter-alia* contending that it is in contravention of the provisions of 'Transfer Act 2005' and service conditions.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in reference to pleadings made in O.A. raised following grounds to challenge the transfer orders.

- (i) The transfer of the Applicant is made-term and mid-tenure and there is no such special reason or administrative exigency to transfer him as contemplated under Section 4(5) of 'Transfer Act 2005'.
- (ii) The Applicant is transferred mid-term and mid-tenure only to accommodate Respondent No.2 rendering it unsustainable in law.
- (iii) The transfer of the Applicant from the post of Dean to the post of Director, Maharashtra Institute of Mental Health, Pune is on ex-cadre post carrying less pay with different nature of duties and responsibilities resulting in change of service conditions prejudicial to the Applicant and unsustainable in law.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer for Respondent No.1-State and Smt. Punam Mahajan, learned Advocate for Respondent No.2 sought to justify the impugned transfer orders inter-alia contending that the post of Director, Maharashtra Institute of Mental Health, Pune was lying vacant for a long time and in the interest of public as well as administration, it was required to be filled-in from the person having MD in Psychiatry and sufficient experience to hold the said post. They further submit that the transfer of the Applicant was accordingly vetted by Civil Service Board (CSB) and approved by Hon'ble Chief Minister being next competent authority for such transfers. As regard change of service conditions, they submit that the pay of the Applicant has been protected after his transfer as Director, Maharashtra Institute of Mental Health, Pune and there is no such monetary loss. They further sought to contend that the decision taken by the Government in public interest cannot be substituted by the Tribunal in its limited jurisdiction of judicial review in the matter of transfer. They emphasized that it is purely administrative exigency and cannot be termed mala-fide or stigmatic, so as to challenge the same in the

Tribunal. In this behalf, reliance is placed on the Judgment of Hon'ble High Court in **2009(4) Mh.L.J. 163 [State of Maharashtra Vs. Ashok Kore]**. As regard transfer of Respondent No.2 in place of Applicant, it is contended that it was consequential order of posting of Respondent No.2 and allegation of favoritism made by the Applicant have no substance.

5. In view of submissions, the issue posed for consideration is whether impugned transfer order dated 13.01.2023 transferring the Applicant from the post of Dean, B.J. Government Medical College, Pune to Director, Maharashtra Institute of Mental Health, Pune and consequent posting of Respondent No.2 in place of Applicant is sustainable in law. In my considered opinion, the answer is in emphatic negative.

6. True, transfer being an incidence of Government service, Government servants have no legally enforceable right to claim a particular post for a specific period and it is for the competent authority to decide who should be transferred where. The Court should not interfere with the transfer orders which have made in public interest and for administrative reasons unless transfer orders are made in violation of statutory rules or mala-fide. As such, the Court cannot substitute its own decision in the matter of transfer for that of competent authority. Suffice to say, except for convincing reasons, no interference could be made with an order of transfer. But at the same time, now transfers being governed by the provisions of 'Transfer Act 2005', it should be in conformity with the Act. If transfer is found in violation of statutory provisions or it has effect of directing Government servants to discharge the duties of inferior post carrying less pay scale and nature of duties are different, prejudicial to Government servants, in such event, interference of the Tribunal is inevitable.

7. There is no denying that the transfer of the Applicant was vetted by CSB and it has been approved by Hon'ble Chief Minister. Note was

placed before CSB that the post of Director, Maharashtra Institute of Mental Health, Pune was required to be filled-in full time from the point of administrative exigencies and Note was approved by CSB. CSB also approved the transfer of Respondent No.2 from the post of Dean, Government Medical College, Solapur in place of Applicant as Dean, B.J. Government Medical College, Pune. Notably, the post of Director, Maharashtra Institute of Mental Health, Pune was never filled-in as a full time and for a long time, additional charge of the said post was kept with others. Therefore, if Government thought to have full time Director to take care of the administration, then such decision being in public interest can hardly be interfered with. However, in the present case, there are different contours which needs to be looked into.

8. As stated above, the Government by order dated 08.04.2022 promoted the Applicant in the cadre of Dean and post at B.J. Government Medical College, Pune. The post of Dean and the post of Director, Maharashtra Institute of Mental Health are two different and distinct posts. The appointment to the post of Director, Maharashtra Institute of Mental Health, Pune is governed by the Rules viz "Director-Professor in the Maharashtra Institute of Mental Health, Pune i.e. Medical Education and Drugs Department of the Government of Maharashtra Rules, 2017". These are Draft Rules and admittedly not yet approved by the competent authority. Leaving aside the issue of non-approval of the Draft Rules, it provides for appointment by nomination from the candidate not more than 50 years possessing MD in Psychiatry or MD in Psychological Medicine or MD in Medicine with Diploma in Psychological Medicine with minimum experience of 10 years of teaching in post not below to the rank of Associate Professor and out of which at least 5 years' experience should be in the post of Professor in a Medical College or Institute. Whereas, recruitment to the post of Deputy Director, Medical Education and Research and Dean, Government Medical Colleges in Maharashtra Medical Education and Research Services are governed by the Rules called as "Deputy Director, Medical

Education and Research and Dean, Government Medical College (Recruitment) Rules, 1988. Thus, there are different Recruitment Rules for the post of Director-Professor, Institute of Mental health, Pune and for the post of Dean, Government Medical College.

9. Notably, the post of Dean is feeder cadre for further promotion to the post of Joint Director of Medical Education and Research, as seen from Recruitment Rules for the post of Joint Director of Medical Education and Research notified on 4th June, 1974 by the Government. Suffice to say, the post of Director-Professor, Institute of Mental health, Pune and the post of Dean, Government Medical College are altogether distinct posts with different nature of duties and responsibilities. That apart, admittedly, as per 7th Pay Commission, the post of Dean is in S-30 pay matrix carrying pay scale of 1,44,200-2,18,200. Whereas, pay scale of Director-Professor, Institute of Mental health falls in S-29 pay matrix carrying pay scale of 1,31,100-2,16,600. This is the admitted position. This being so, *ex-facia*, the post of Director-Professor, Institute of Mental health is inferior to the post of Dean, Government Medical College. The submission advanced by Smt. Mahajan, learned Advocate for Respondent No.2 that the transfer of the Applicant from the post of Dean to Director-Professor, Institute of Mental health, Pune is on equivalent post is totally incorrect and fallacious. True, after transfer order, the Government realized the mistake and protected the pay of the Applicant which he was getting as a Dean, Government Medical College, as seen from Government Order dated 13.02.2023. Only because subsequently Applicant's pay is protected, that would not legalize his transfer from the post of Dean, Government Medical College to Director-Professor, Institute of Mental health, Pune. The pay protection is one aspect and transfer on another post, which is totally distinct in the nature of duties and responsibilities as well as service conditions is totally different aspect. By transferring the Applicant to the post of Director-Professor, Institute of Mental health, Pune, the chances of promotion of Applicant are definitely jeopardized. In terms of Recruitment Rules to the post of Joint

Director, Medical Education and Research, the Dean falls in feeder cadre, but his chances of promotion are now seriously affected.

10. As rightly pointed out by learned Advocate for the Applicant that as per 'Director-Professor, Institute of Mental health (Recruitment) Rules, 2017, the appointment should be from the candidates in the cadre of Professor having MD Psychiatry/MD Psychological Medicine with five years' experience of teaching in the post of Professor in Medical College. Thus, the selection to the post of Director-Professor, Institute of Mental health, Pune is from the suitable candidate amongst Professor. Whereas, the post of Dean is higher to the Professor. The Government by order dated 08.04.2022 promoted the Applicant from the post of Professor to the post of Dean in Government Medical College and accordingly, he was posted at B.J. Medical College, Pune. This being so, asking the Applicant by impugned transfer order to work on the post of Director-Professor, Institute of Mental health, Pune is tantamount to down-grading in the nature of pay scale as well as post. Such course of action is totally impermissible.

11. Shri Bandiwadekar, learned Advocate for the Applicant in this behalf rightly referred to the observations made by Hon'ble High Court in **2022(6) Mh.L.J. [Dattatray K. Pawar Vs. Union of India]**. In that case, while dealing with the order of transfer of Central Government employees, in Para No.17, it has been held as under :-

"17. By way of reiteration, we observe that an order of transfer would amount to a punishment if by reason thereof the officer/employee has been asked to discharge duty of a post lower than that he had been holding or if his pay has been downgraded or his promotional prospects are jeopardized or if the order is stigmatic, in the sense that he would have to carry an indelible stain for the rest of his service career without there being any finding of guilt recorded against him. None of these incidents is present in the case of the petitioner's transfer. We, therefore, cannot hold his transfer as punitive."

12. In that case, there was no such transfer on lower post, and therefore, transfer was held not punitive. However, the principles laid

down holds the field that where employee has been asked to discharge the duties of a post lower than he had holding or if his pay has been downgraded or his promotional aspects are jeopardized or the order is stigmatic, in that event, it amounts to punishment.

13. Indeed, this issue of transfer on post carrying less pay was subject matter in **O.A.1179/2022 [Vasant Helavi Vs. State of Maharashtra] decided on 13.04.2023**. In that case, the Applicant was transferred from the post of Principal, Elphinstone College, Mumbai as a examination coordinator (higher education), State Common Entrance Test Cell (CET), Mumbai on the ground of serious financial irregularities committed by him. In that case also, later pay of the Applicant was protected, since the post on which he was transferred was carrying less pay scale. The Tribunal allowed the O.A. and transfer order was quashed and set aside. In that case, there was one more legal defect of absence of recommendations of CSB. The Government implemented the order passed by the Tribunal without challenging the same to the higher forum.

14. Reliance placed on **Ashok Kore's** case (cited supra) is totally misplaced. There could be no dispute about the proposition of law expounded in the said Judgment that Tribunal cannot substitute its opinion for that of competent authorities of the State in the matter of transfer. In that case, transfer was found necessitated for administrative exigencies i.e. to complete Irrigation Projects undertaken by the Government, but delayed by the concerned employee who was transferred and substituted by another competent person. In that case, there was no issue of transfer on altogether different lower post carrying less pay scale and affecting promotional chances of the employee. Therefore, this Judgment is of no help to the Respondents in the present set of facts.

15. That apart, as rightly pointed out by learned Advocate for the Applicant, there are reasons to say that only to accommodate Respondent No.2 at Pune, the Applicant is displaced. Admittedly, Applicant had served at Pune for near about 25 years in total service of 30 years. While he was serving as Dean, Government Medical College, Solapur, he was transferred to Government Medical College, Aurangabad by order dated 08.04.2022, but he did not join. He got his transfer order cancelled on 09.05.2022 and continued at Solapur. Thereafter, by impugned transfer order dated 13.01.2023, he was posted in place of Applicant.

16. Be that as it may, strikingly no reason is forthcoming as to why Government has not posted someone from the cadre of Professor as Director, Institute of Mental Health, Pune though available. During the course of hearing, learned Advocate for the Applicant has pointed out from the record that there are at least five candidates with required qualification of MD in Psychiatry and anyone of them could have been transferred and posted as Director-Professor, Institute of Mental Health, Pune which indeed would have been in terms of Recruitment Rules for the post of Director-Professor, Institute of Mental Health, Pune, since the said post is required to be filled-in amongst the Professors. However, Government chose the Applicant though he was working on higher post of Dean carrying higher pay scale with different nature of duties and responsibilities.

17. In this view of the matter, I have no hesitation to sum-up that impugned transfer order transferring the Applicant on the post of Director, Institute of Mental Health, Pune is totally arbitrary having effect of change of service conditions, downgrading to lower post is totally unsustainable in law and liable to be quashed. He is required to be reposted on the post of Dean, B.J. Medical College, Pune. Consequently, transfer order of Respondent No.2 as Dean, B.J. Medical College, Pune is

also liable to be quashed making way for posting of the Applicant.
Hence, the order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order of Applicant dated 13.01.2023 as well as impugned transfer order of Respondent No.2 dated 13.01.2023 are quashed and set aside.
- (C) Applicant be reposted on the post he was transferred from within two weeks.
- (D) The Government is at liberty to give appropriate suitable posting to Respondent No.2.
- (E) No order as to costs.

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

Mumbai

Date : 12.07.2023

Dictation taken by :

S.K. Wamanse.

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