

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.770 OF 2019

Shri Sanjay Bhaskar Mahajan,)
Aged 52 years, Worked as Chief Pharmacy)
Officer, Civil Hospital, Nashik)
R/o. Shyam-Sankul, Hirawadi, Pachvati,)
Nashik.)
Address for Service of Notice)
Shri Arvind V. Bandiwadekar, Advocate,)
Having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim, Mumbai 16) **..Applicant**

Versus

1. The Director of Health Services,)
Pune, having office at Central)
Building, Pune 1)
2. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department,)
Having Office at Mantralaya,)
Mumbai 400 032.) **...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 31.08.2020

J U D G M E N T

1. The Applicant has challenged the transfer order dated 31.05.2019 mainly on the ground of competency of Respondent No.1, Director of Health Services, Pune invoking jurisdiction of this Tribunal under Section 19 the Administrative Tribunal Act, 1985.

2. The Applicant was serving on the post of Pharmacist, Group-C and at the time of impugned transfer order. He was at Civil Hospital, Nashik. He was due for transfer having completed six years tenure and had given 7 options. However, by order dated 31.05.2019 he was transferred at the place of 7th option namely Manmad without considering his option No.1 to 6. Apart, transfer order dated 31.05.2019 has been challenged mainly on the ground of competency of Respondent No.1, Director of Health Services, Pune contending that it is not in consonance with Section 7 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. (hereinafter referred as Transfer Act, 2005 for brevity).

3. Having heard by Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents, the present O.A. can be decided on the point of competency alone in view of the decision rendered by this Tribunal in O.A.No.575/2019, Shri Dattatraya A. Bharmade Vs. The Director of Health Services & Ors. dated 17.02.2020. In so far as non consideration of option No.1 to 6 are concerned, I find no substance in the contention raised by the Applicant that Respondents ought to have considered the option No.1 to 6 in chronological order so as to accommodate him at the options in preferential manner. By transfer order dated 31.05.2019 he was transferred from Civil Hospital, Nashik to Sub District Hospital, Manmad, District Nashik. He has given Manmad which was option No.7. Needless to mention that options are called so that minimum inconvenience is caused to Government servant but that does not invest

right in favour of Government service to claim first or second options in transfer. Transfer is incident of service and Government servant has no right to ask for particular place as of right. Therefore, on that point, I see no illegality in the impugned transfer order.

4. However, in so far as ground of competency of Respondent No.1, Joint Director, Pune is concerned, ex-facie, it is not in consonance with the provisions of 'Transfer Act 2005'. The Applicant being Group-C employee, the Head of the Department is competent transferring authority as per table below Section 6 of 'Transfer Act 2005'. Whereas as per Section 7 of 'Transfer Act 2005' it requires publication of competent authority by the Administrative Department of Mantralaya. It would be apposite to reproduce Section 7 of 'Transfer Act 2005' which is as follows:

“7. Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act.”

5. It is thus explicit from the claim of 'Transfer Act 2005' that the Head of Department is competent transferring authority for general transfer and every administrative Department was required to publish list of Head of Department and to notify authorities as competent authority to make transfer within their jurisdiction.

6. Material to note that by Notification dated 14.03.2014 (page 31 of P.B.) the Government of Maharashtra had appointed Director, Health Services, Mumbai as Head of the Department for the purpose of the implementation of provision of 'Transfer Act 2005'. There is specific mention in Notification dated 14.03.2014 that it is issued in terms of Section 7 of 'Transfer Act 2005'. However, in present matter impugned transfer order has been issued by the Director Health Service, Pune which is created for the first time by G.R. dated 06.03.2019. However,

there is no notification in the name of Director Health Services, Pune under Section 7 of 'Transfer Act 2005'.

7. Prior to the issuance of G.R. dated 06.03.2019, Director Health Services, Pune was the only authority and it was accordingly notified as competent transferring authority vide G.R. dated 14.03.2014. But later by G.R. dated 06.03.2019 the post of Director Health Services, Pune has been created. The perusal of G.R. dated 06.03.2019 reveals that the Director Health Services, Mumbai is given nomenclature as Director Health Services-1, Mumbai and Director Health Services, Pune which was post created afresh with nomenclature as Director Health Services-2, Pune. Thus, G.R. dated 06.03.2019 is about the creation of posts only and does not have any reference of the provisions of 'Transfer Act, 2005'. G.R. dated 06.03.2019 is totally silent that the Director Health Services Pune is declared as competent transferring authority for the purpose of 'Transfer Act, 2005'. This being the position unless the notification is issued in terms of Section 7 of 'Transfer Act, 2005' declaring Director Health Services, Pune as competent authority the said authority cannot be said legally competent authority to transfer applicant. Suffice to say transfer order dated 31.05.2019 is not in consonance with the mandatory requirement of Section 7 of 'Transfer Act, 2005', on the ground of competency therefore O.A. deserves to be allowed.

8. Indeed the issue of competency of Director of Health Services, Pune is already decided by this Tribunal in O.A.No.575 of 2019 (cited supra) wherein transfer order issued by the Director of Health Services, Pune was quashed on the ground of competency in similar situation. Learned P.O. fairly conceded that the judgment delivered in O.A.No.575/2019 has attained finality and is implemented.

9. In view of above, there is no escape from the conclusion that the impugned transfer order dated 31.05.2019 deserves to be quashed on the ground of incompetency. Hence, following order :-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 31.05.2019 qua applicant is hereby quashed and set aside.
- (C) Applicant be reposted on the posts he was transferred from within two weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER-J

prk

E:\PRK\31.08\O.A.770-19 Transfer.doc