

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 344 OF 2018**

**DISTRICT: - JALGAON.**

**Shri Dinkar S/o Shivajirao Patil,**  
Age : - 52 years, Occu: Service as  
Assistant Superintendent,  
Rural Hospital, Yawal, Ta. Yawal,  
R/o Gut No. 28, Plot No. 100,  
Near S.M.I.T. College, Muktainagar,  
Jalgaon, Dist. Jalgaon.

**.. APPLICANT.**

**V E R S U S**

- 1. The State of Maharashtra,**  
Through : The Secretary,  
Public Health Department,  
Mantralaya, Mummbai-32.
- 2. The Director of Health Services,**  
Office of Directorate, Maharashtra State,  
'Arogyabhavan', St. Georges Hospital  
Compound, P.D'melo Road,  
Mumbai-1.
- 3. The Deputy Director of Health Services,**  
Nashik, Sandarb Seva Hospital Compound,  
Shalimar Chowk, Nashik-1.
- 4. The Medical Superintendent,**  
Rural Hospital, Yawal,  
Tq. Yawal, Dist. Jalgaon.

**.. RESPONDENTS**

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**APPEARANCE :** Shri S.D. Joshi – learned Advocate  
for the applicant.

: Smt. Sanjivani Deshmukh - Ghate –  
learned Presenting Officer for  
respondents.

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**CORAM** : **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (JUDICIAL)**

**DATE** : **1<sup>ST</sup> NOVEMBER, 2018**  
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### **ORDER**

1. By filing the present Original Application, the applicant is challenging the impugned transfer order dated 31<sup>st</sup> May, 2018 issued by respondent No. 2, the Director of Health Services, Mumbai, transferring him from Rural Hospital, Yawal, District Jalgaon to Rural Hospital, Bodhegaon, District Ahmednagar.

2. The applicant was appointed as a Junior Clerk in the office of respondent No. 3, Deputy Director of Health Services, Nashik, on 16.4.1985. Thereafter, he has been posted at Civil Hospital, Jalgaon. He was promoted as Senior Clerk in the year 2005. On 18.9.2007 he was promoted on the post of Assistant Superintendent at Chopda. He worked at Chopda for four & half years. Thereafter, he was transferred to Rural Hospital, Yawal and since then he is serving there. He has completed his two tenures i.e. 6 years at Yawal. He was due for transfer.

It is his contention that the posting at Yawal is posting in 'difficult area'.

3. The Government issued Resolution dated 9.4.2018 issuing guidelines for the general transfer of the year 2018. In pursuance of the guidelines the office of District Civil Surgeon, Jalgaon called options from the employees working under him for the purpose of general transfer. Medical Superintendent forwarded the name of the applicant for general transfer along with the representation of the applicant dated 16.3.2018, wherein the applicant has requested to retain him at Rural Hospital, Yawal for a further period of one year on the ground that he has to perform marriage of his daughter. Respondent No. 3 sent a proposal for transfer of the applicant on the ground that the post in Yawal is not in 'difficult area'. Thereafter, he has submitted another revised proposal dated 15/16.5.2018 mentioning that posting in Yawal is in 'difficult area'. Thereafter, the applicant was called for counseling on 28.5.2018. He has given undertaking for his retention at Yawal, but thereafter respondent No. 3 issued the impugned order

dated 31.5.2018 transferring him from Rural Hospital, Yawal, District Jalgaon to Rural Hospital, Bodhegaon, District Ahmednagar. It is his contention that prior to that he received telephonic call from the office of the respondent No. 3 to tender an undertaking that during the counseling he had been offered the posting as per his request and the same is accepted. The applicant was asked to put his signature on the undertaking mentioning the date as '28.5.2018', but the applicant refused to put the back date i.e. 28.5.2018 and he put the date as '31.5.2018' on it. It is his contention that the impugned order has been issued in contravention of the resolution issued by the Government. Posting of his choice has not been given to him though he worked at the place of 'difficult area' for 6 years. It is his contention that the respondents ought to have considered his request for retention of one year as he was intending to perform marriage of his daughter. The impugned order has been issued in contravention of the guidelines given by the Government in the G.R. dated 9.4.2018 and, therefore, he

challenged the impugned order by filing the present Original Application.

4. Respondent Nos. 1 to 4 have filed their affidavit in reply and resisted the contention of the applicant. They have denied that contention of the applicant that the impugned order is issued in violation of the guidelines issued by the Government vide Government Resolution dated 9.4.2018. They have denied that the Rural Hospital Yawal is situated at Naxalite affected area. They have denied that they have not considered the request of the applicant. It is their contention that the applicant has completed his normal tenure of posting at Yawal and he was due for transfer in the general transfer of the year 2018. It is their contention that the respondent No. 3 vide letter dated 9.5.2018 informed the Director Health Services, Mumbai that the Yawal is not Naxalite Affected Area or difficult area. In fact Yawal Rural Hospital is not in 'difficult area'. Therefore, the provisions of G.R. dated 9.4.2018 are not attracted to the case of transfer of the applicant. It is their contention that the Government has published the list of District Hospitals, Rural Hospital,

Sub-District Hospitals & Primary Health Centers declaring difficult area for the purpose of selection of Medical Officers for the post-graduation on 19.6.2010 & in Jalgaon District only Sub-District Hospital Chopada & Rural Hospital Raver are Tribal Areas as per the said G.R. It is their contention that at the time of counseling the applicant himself accepted his proposed transfer at Rural Hospital, Bodhegaon, District Ahmednagar, and accordingly he has submitted written undertaking on 31.5.2018. He had no grievance in respect of his transfer at Bodhegaon. On his request his transfer has been made at Bodhegaon District Ahmednagar on the administrative ground. Thereafter, he made request to consider his request for retention at Yawal for one year on the ground of marriage of his daughter. It is their contention that the impugned transfer order of the applicant has been issued in view of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'the Transfer Act of 2005) and there is no illegality. Therefore, they prayed to reject the present Original Application.

5. I have heard Shri S.D. Joshi, learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondents. I have also perused the documents placed on record by both the sides.

6. Admittedly, the applicant was initially appointed as a Junior Clerk in the office of respondent No. 3, Deputy Director of Health Services, Nashik, on 16.4.1985. Thereafter, he was promoted as Senior Clerk in the year 2005. He was promoted on the post of Assistant Superintendent on 18.9.2007. Admittedly, he was posted at Chopda when he was promoted on the post of Assistant Superintendent. He worked there for about four and half years and thereafter, he was transferred to Rural Hospital, Yawal on 31.5.2012. He joined his duties at Yawal on 1.6.2012 and since then he is serving there. Admittedly, he has completed his two normal tenures i.e. 6 years at Yawal and he was due for transfer at the time of general transfer of 2018. Admittedly, options have been called regarding choices of the posting from the applicant. The

applicant has submitted his choice posting for transfer and he has claimed all the postings in Jalgaon District only. Admittedly, no post was vacant at the place of choice submitted by the applicant. Therefore, he has been transferred to Bhdhegaon, District Ahmednagar, on account of administrative exigencies. Admittedly, the applicant was called for counseling on 28.5.2018 by the Civil Services Board in view of the guidelines issued by the Government on 9.4.2018. Admittedly, the applicant initially submitted undertaking to the effect that he will be ready to work at Yawal only on retention. Admittedly, thereafter he gave another undertaking on 31.5.2018 and accepted that he was ready to go to Bodhegaon District Ahmednagar.

7. Learned Advocate for the applicant has submitted that in Jalgaon District Yawal Taluka is declared as difficult Taluka by the Government. The applicant worked in difficult area for 6 years and, therefore, in view of the guidelines given in the G.R. dated 9.4.2018 he would have been given posting of his choice. He has submitted that the report of the committee appointed for review of benefit

to the Government employees working in the Naxalite affected area and tribal area recommended that Yawal Taluka may be declared as 'difficult area'. He has submitted that in view of this, the Civil Services Board, as well as, Competent Transferring Authority ought to have considered the said aspect and granted choice posting to the applicant, but the respondents had not followed recommendation of the Committee. He has submitted that while forwarding his recommendation regarding transfer the concerned office had also informed to the competent authority that Yawal is in 'difficult area' and, therefore, his request can be considered. He has submitted that the competent authority has not considered the said aspect and has wrongly passed the impugned order and, therefore, he prayed to allow the present Original Application.

8. Learned Presenting Officer has submitted that the applicant has not produced the document to show that Yawal Taluka is declared a 'difficult area'. He has submitted that the provisions of G.R. dated 9.4.2018 are not attracted in this case as it was in respect of the list of

Hospitals, Rural Hospitals, District Hospitals, Primary Health Centers situated at Tribal area for the purpose of selection of Medical Officers for post-graduation course. He has submitted that as per the said list only Sub District Hospital, Chopada and Rural Hospital, Raver in Jalgaon district are declared as tribal area and the Yawal has not been declared as difficult / tribal area. Therefore, the applicant is not entitled to get benefit in that regard. He has submitted that initially the applicant misled the concerned respondent authorities stating that Yawal is a difficult area and, therefore, the proposal in that regard has been sent. When the concerned authority learnt about it, the concerned authority sent another proposal stating that the Yawal is not in difficult area and, therefore, the transfer of the applicant at Rural Hospital, Bodhegaon, which has been approved by the Civil Services Board and, thereafter the competent authority issued impugned order. He has submitted that there is no illegality in the impugned order and, therefore, he prayed to reject the present Original Application.

9. On perusal of the record it would reveals that the applicant has completed his normal tenure at Yawal. The applicant is claiming that Yawal Taluka is difficult area and the benefit available to the employees working in the tribal area and naxalite affected area can be extended to him. The applicant has placed reliance on the recommendation of the committee, which is placed on record by the learned Advocate for the applicant. The said report is incomplete. Moreover, there is nothing on record to show that the Government has accepted the said recommendation and committee declared Yawal as difficult area for the purpose of extending the benefit available to the Government employees working in the difficult, tribal and naxalite area. Therefore, the same cannot be considered. Not only this, but the applicant has not filed any document to show that the Government has declared the Yawal Taluka as difficult area for the purpose of extending benefit to the Government employees working in the tribal and naxalite area. In the absence of the documents, the contention of the applicant that Yawal is difficult area and he served in the difficult area for the

period of six years cannot be accepted. Since the applicant has not served at difficult area he cannot claim benefit available to the Government employee, who served in tribal and naxalite area. Therefore, the provisions made in the G.R. dated 9.4.2018 in that regard are not attracted in this case.

10. The respondent has considered all these aspects and effected transfer of the applicant and posted him at Rural Hospital, Bodhegaon, District Ahmednagar, on account of administrative exigency. There is no violation of the provisions of transfer Act of 2005. Therefore, I do not find any illegality or irregularity in the impugned order. The competent authority has rightly rejected the request of the applicant for retention at Yawal on the ground that the service of the applicant is required at Rural Hospital, Bodhegaon, District Ahmednagar on account of administrative exigency. Therefore, I do not find substance in the submission of the learned Advocate for the applicant in that regard.

11. Considering the documents on record, it is crystal clear that the impugned order is in accordance with the

provisions of Transfer Act of 2005. There is no violation of the Transfer Act, as well as, GRs. Therefore, no interference in the impugned order is called for. There is no merit in the present Original Application. Hence, it deserves to be dismissed.

12. In view of the discussion in the above paragraphs, the present Original Application stands dismissed without any order as to costs. Interim relief granted earlier stands vacated.

**PLACE : AURANGABAD**  
**DATE : 1<sup>ST</sup> NOVEMBER, 2018**

**(B.P. PATIL)**  
**MEMBER (J)**

O.A.NO.344-2018(SB)-HDD-2018-  
transfer