

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 414 OF 2017

[SUBJECT : - TRANSFER]

DISTRICT: - PARBHANI.

Dr. Vithal S/o. Namdeorao Tidke,
Age : - 41 years, Occu: Service as
Medical Officer in Sub District Hospital,
Sailu, District Parbhani, R/o "Parnakuti"
House No. D-73, Dnyaneshwarnagar,
Near Super Market, Parbhani,
District Parbhani.

.. APPLICANT.

V E R S U S

- 1] The State of Maharashtra,**
Through the Secretary,
Public Health Department,
Mantralaya, Mumbai.

(Copy to be served through the
CPO, MAT)
- 2] The Director,**
Public Health Services,
Maharashtra State, Mumbai.
- 3] The Collector,**
Parbhani and the Chairman, District
Internal Transfer Committee,
Parbhani.
- 4] The Civil Surgeon,**
Civil Hospital, Parbhani.
- 5] The Medical Superintendent,**
Orthopedics Hospital, Parbhani. **.. RESPONDENTS**

APPEARANCE : Shri Shamsundar B. Patil – learned Advocate for the applicant.

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

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

DATE : **12TH DECEMBER, 2017**

O R D E R

The applicant has challenged the transfer order dated 19th June, 2017 issued by the respondent No. 3 viz. the Collector, Parbhani and the Chairman, District Internal Transfer Committee, Parbhani and also prayed to direct the respondents to allow the applicant to resume his duty as Medical Officer in Ortho Hospital Parbhani as per the earlier transfer order dated 20.05.2017 or in any other vacant post of Medical Officer in Civil Hospital, Parbhani by filing the present Original Application.

2. The applicant is MBBS, MS (Orthopedics). He was selected by the Maharashtra Public Service Commission (for short “the Commission”) for the “Maharashtra Medical

and Health Services Group A (Class-II)” post and accordingly, he was appointed as Medical Officer, Group ‘A’ on 2.5.2002 and he was posted at Primary Health Centre, Katheneshwar, Taluka Purna, District Parbhani. He worked there during the year 2002 to 2007. Thereafter, he was transferred to Primary Health Centre Dhanora (Kale), where he worked from the year 2007 to 2009. He was selected for the Post Graduate Course as “in-service candidate” for M.S. Orthopedics course in the year 2010. He was admitted as an in-service candidate for PG course in the year 2010 in Government Medical College, Aurangabad. He successfully completed post-graduation course in MS Orthopedics in the year 2014. After completion of post-graduation course in the year 2014 he was transferred as Medical Officer, Group ‘A’ (Class II) in Sub District Hospital, Sailu in the year 2014. He completed his normal tenure of 3 years at Sub District Hospital, Sailu in the year 2017. He was due for transfer in the general transfers of the year 2017.

3. 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 “the Transfer Act of 2005”), the Hon’ble Minister in charge of the department is competent transferring authority for the applicant. But the Government issued Government Resolution dated 6th December, 2014 and delegated the powers of transfer of the Group ‘B’ officers to the Director of Health Services. On 30th November, 2016, the Government of Maharashtra, Public Health Department had constituted a Committee consisting of Collector of the concerned district as a “Chairman” and Chief Executive Officer, Zilla Parishad; District Social Welfare Officer; Civil Surgeon; District Health Officer; AND Assistant Commissioner, Tribal Development Department of the concerned district as “Members” for the transfers of Medical Officers group ‘B’ and other para medical staff within the district.

4. Since the applicant has completed his normal tenure at Sub District Hospital, Sailu and was due for transfer in the general transfers of the year 2017, he submitted request application to the Collector, who is Chairman of

the District Committee, Parbhani, on 29th April, 2017 and requested to transfer him in Orthopedic Hospital, Parbhani or Civil Hospital, Parbhani as Ortho Surgeon Class II; or as Medical Officer Class II at Civil Hospital Parbhani. His application was forwarded by the Medical Superintendent, Sub District Hospital Sailu to the Civil Surgeon, Parbhani, on 29.4.2017 along with his recommendation and also forwarded chart of the vacant posts to be filled. On 8.5.2017, the District Committee held meeting for counseling of the officers and after counseling the transfer order had been issued on 20th May, 2017 and the applicant has been transferred to Ortho Hospital, Parbhani as a Medical Officer, with a direction to the concerned authorities to relieve the transferred officers on 31.05.2017 (AOH) and the transferred officers were directed to join their new duties at the new place immediately and submit compliance report to the office.

5. Accordingly, the applicant was relieved from Sub-District Hospital, Sailu on 30.5.2017 and directed to resume his duties in Ortho Hospital, Parbhani and submit

compliance report. On 2.6.2017, the applicant approached the Medical Superintendent, Ortho Hospital Parbhani, with a request to allow him to join new post, but the Medical Superintendent had not allowed him to join the said post at Ortho Hospital, Parbhani, on the ground that no post of Ortho Surgeon was vacant there. Accordingly, he informed the Collector, Parbhani by the letter dated 2.6.2017. The applicant made a detailed representation on 2.6.2017 to the Collector, Parbhani, and requested to post him in any vacant post of Medical Officer, Class II in the Civil Hospital, Parbhani. The Collector has issued the order dated 19.6.2017 and cancelled the transfer order of the applicant dated 20.5.2017 and reposted him to his original post at Sub District Hospital, Sailu. The said order was served on the applicant on 20.6.2017 by the Civil Surgeon, Parbhani, with a direction to him to join the Sub District Hospital, Sailu. It is the contention of the applicant that the order issued by the Collector, Parbhani on 19.6.2017 is illegal and not in accordance with the provisions of the Transfer Act of 2005. It is his contention that the Collector has no

authority to issue order cancelling his earlier transfer, which has been issued on the basis of decision taken by the Committee headed by the Collector. It is his contention that many posts of Medical Officer, Class-II are vacant in the Civil Hospital, Parbhani and he ought to have been posted there, but the respondent No. 3, the Collector, Parbhani, has not considered his request and reposted him at Sub-District Hospital, Sailu. He has submitted that the impugned order issued by the Collector is without authority and, therefore, it is liable to be quashed and set aside and, therefore, he prayed to quash the said order by filing the present Original Application and also to direct the respondents to post him in Ortho Hospital, Parbhani, or in Civil Hospital, Parbhani, on the vacant post.

6. The respondent Nos. 3 to 5 have filed their separate affidavits in reply and resisted the contentions of the applicant. It is their contention that the applicant has completed his normal tenure of posting at Sailu and, therefore, he has been posted in Ortho Hospital, Parbhani in view of the decision taken in the meeting of the

Committee headed under the Chairmanship of the respondent No. 3, Collector, Parbhani, and accordingly he has been relieved from Sub-District Hospital, Sailu. On 2.6.2017, the applicant approached the Medical Superintendent, Ortho Hospital, Parbhani with a request to allow him to join new post, but no post of Ortho Surgeon was vacant there. Therefore, Medical Superintendent of Ortho Hospital Parbhani, had not allowed him to join on the new post and made a reference to the Collector in that regard. It is their contention that since no post of Orthopedic was vacant in the Ortho Hospital, Parbhani at that time, the Collector, Parbhani passed the impugned order and cancelled the earlier transfer order dated 20.5.2017 by which the applicant has been transferred to Ortho Hospital, Parbhani and reposted him in Sub District Hospital, Sailu. It is their contention that there is no illegality in the impugned order issued by the respondent No. 3 and, therefore, they prayed to reject the present Original Application.

7. I have heard the arguments advanced by Shri Shamsundar Patil, learned Advocate for the applicant and

Smt. Sanjivani Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in replies filed by the respondent Nos. 3 to 5. I have also perused the documents placed on record by both the parties.

8. Admittedly, the applicant was initially appointed as a Medical Officer, Group 'A' on 2.5.2002 and posted at Primary Health Centre, Katheneshwar, Taluka Purna, District Parbhani. Thereafter, he served at various places including Katheneshwar & Dhanora (Kale). In the year 2010 he was selected for Post Graduate Course as "in-service candidate" for M.S. Orthopedics course and he has completed his post graduate course in Government Medical College, Aurangabad during the year 2010-2014. After completion of post-graduation course in the year 2014 he was transferred and posted as Medical Officer, Group 'A' (Class II) in Sub District Hospital, Sailu in the year 2014 and since then he is working there. Admittedly, the applicant has completed his normal tenure of posting

of 3 years at Sub District Hospital, Sailu and he was due for transfer in the general transfers of the year 2017.

9. Admittedly, the applicant has submitted his representation and had given options i.e. places of choice for transfer, to the Collector, who was the Chairman of the Committee constituted for the purpose of transfers of Medical Officers within the district. Admittedly, by an order dated 20.5.2017 issued by the Collector on the basis of decision taken by the Committee, the applicant has been transferred from Sub District Hospital, Sailu to Ortho Hospital, Parbhani and accordingly, he was relieved from Sub District Hospital, Sailu on 31.5.2017. Admittedly, the applicant approached the respondent No. 5, the Medical Superintendent, Ortho Hospital, Parbhani, with a request to allow him to join his new posting on 2.6.2017, but the respondent No. 5 had not allowed him to join the said new post at Ortho Hospital, Parbhani, as no post of Ortho Surgeon was vacant there at that time. Thereafter, the applicant made representation with the respondent No. 3, the Collector, Parbhani, with a request

to post him in any vacant post of Medical Officer in Civil Hospital, Parbhani, but his request has been rejected by the Collector by the impugned order dated 19.6.2017 and the earlier transfer order dated 20.5.2017 has been cancelled and the applicant has been reposted at Sub District Hospital, Sailu, District Parbhani.

10. Learned Advocate for the applicant has submitted that the respondent No. 3 has no powers to cancel the earlier transfer order dated 20.5.2017 issued by him as the earlier decision has been taken by the Committee headed by the respondent No. 3. He has submitted that the respondent No. 3 alone cannot take decision of cancellation of earlier transfer order of the applicant and without placing the representation of the applicant before the Committee, the respondent No. 3, the Collector, Parbhani, had decided to cancel the earlier transfer order dated 20.5.2017 by which the applicant has been transferred to Ortho Hospital, Parbhani and reposted him again in Sub District Hospital at Sailu. He has submitted that the Collector has not considered the representation of

the applicant in which the applicant made a request to the Collector to transfer him on any vacant post of Medical Officer in Civil Hospital, Parbhani and, therefore, he prayed to quash and set aside the impugned order and to direct the respondents to give him posting in view of the earlier transfer order dated 20.5.2017 or on any other vacant post of Medical Officer in Civil Hospital, Parbhani.

11. Learned Presenting Officer for the respondents has submitted that the Committee constituted under the Chairmanship of Collector, had transferred the applicant from Sub District Hospital, Sailu to Orthopedics Hospital, Parbhani by the impugned order dated 20.5.2017, but as there was no vacant post available at Orthopedics Hospital at Parbhani, the respondent No. 5 has not allowed the applicant to join the posting and made report to the respondent No. 3. He has submitted that since the post has not available and vacant in Orthopedics Hospital, Parbhani, the respondent No. 3, the Collector cancelled the earlier transfer order dated 20.5.2017 and reposted the applicant in Sub District Hospital, Sailu. He has

submitted that in fact, the Committee headed by the Collector has no powers to transfer the Medical Officers after 30.4.2017 in view of the letter dated 25.4.2017 issued by the Joint Director, Health Services, Mumbai. He has attracted my attention to the said letter produced by the applicant, wherein it has been mentioned that the Committee headed by the Collector has to make transfers till 30.4.2017 only and thereafter he could not issue transfer orders till the end of June, 2017. He has submitted that since the earlier order dated 20.5.2017 transferring the applicant issued by the Collector, Parbhani, is not legal one in view of the said letter, the applicant cannot claim implementation of the said order and on that ground also he prayed to reject the present Original Application.

12. I have gone through the documents placed on record. On going through the documents on record, it reveals that initially, the power to transfer the Group 'B' employees, were of the Hon'ble Minister. By the Government Resolution dated 6th December, 2014, the said power has

been delegated to the Director, Health Services. By the Government Resolution dated 30th November, 2016, the powers to transfer Medical Officers within district were vested to the Committee headed by the Collector of the concerned district. By the letter dated 25.4.2017, the Government has directed the Collector to make transfers up to 30th April, 2017 only and not to make any transfers thereafter till the end of June, 2017. Therefore, respondent No. 3, the Collector, who was Chairman of the committee constituted in view of the Government Resolution dated 30th November, 2016, has no authority to make transfer of the Medical Officers after 30th April, 2017 & till 30th June, 2017 in view of the letter dated 25.4.2017. Therefore, the initial transfer order issued by the respondent No. 3 transferring the applicant from Sub District Hospital, Sailu to Orthopedics Hospital, Parbhani, is not in accordance with the said Government Resolution. Therefore, the said order cannot be said to be legal. The applicant is relying on the said order, but as the said order is not in accordance with the directions given by the Government and it was the Committee headed by the

Collector, without power/authority, the same cannot be implemented and enforced.

13. The applicant has been relieved in view of the said letter dated 20.5.2017 on 30.5.2017. On 2nd June, 2017, the applicant approached the respondent No. 5 with a request to allow him to join on new post at Orthopedics Hospital, Parbhani, but no post of Ortho Surgeon was vacant and available there at that time and, therefore, the respondent No. 5 had not allowed him to join the said post and reported the said facts to the respondent No. 3. Since no post was vacant in the Government Orthopedics Hospital at Parbhani, the respondent No. 3 cancelled the earlier order dated 20.5.2017 to the extent of transfer of the applicant on the ground that the same cannot be implemented for want of vacancy and the applicant was again reposted at his previous post at Sailu. I do not find illegality in the said order and, therefore, I do not find merit in the present Original Application. Since the order dated 20.5.2017 issued by the respondent No. 3 is without authority and against the directions given by the

Government by the letter dated 25.4.2017, the same cannot be implemented and, therefore, the relief claimed by the applicant in that regard cannot be granted. There is no merit in the present Original Application. Consequently, it deserves to be dismissed.

14. In view of the discussions in the foregoing paragraphs, the present Original Application stands dismissed with no order as to costs.

MEMBER (JUDICIAL)

Place : - Aurangabad

Date : - 12th December, 2017

O.A.NO.414-2017(SB)-HDD-2017-
transfer