

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 399 OF 2021**

**(Subject:-Transfer)**

**DISTRICT: - NANDURBAR**

Dr. Shivaji S/o. Jema Rathod, )  
Age : 55 years, Occu.: Service as )  
Medical Officer at Group –B at )  
District Training Team, Nandurbar, )  
R/o : Plot No. 56, Hariom Nagar, )  
Kokani Hill, Nandurbar, )  
District-Nandurbar. )  
Mob. No. 9420303999 )...**APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through : The Secretary, )  
Public Health Department, )  
G.T. Hospital Building Sankul, )  
8<sup>th</sup> Floor, Mantralaya, Mumai-1. )
2. **The Directorate of Health Services,** )  
Maharashtra State, Aarogya Bhavan, )  
Saint Georges compound, P.D' melo Rd.)  
Mumbai-I. )
3. **The Dy. Director of Health Services,** )  
Super Specialty Hospital Campus, )  
Shalimar Square, Nashik, Dist. Nashik.)
4. **The District Health Officer,** )  
Zilla Parishad, Nandurbar. )  
Dist. Nandurbar. )..**RESPONDENTS**

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**APPEARANCE** : Shri S.D. Joshi, learned Advocate for  
the applicant.  
: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondent Nos.1 to 3.  
: Shri Rakesh Jain, learned Advocate for  
the respondent No.4 (**Absent**).  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**  
**DATE** : **15.12.2022.**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking following reliefs in terms of paragraph No. 8 (A), (B) and (C):-

- “8 (A) This Original Application may kindly be allowed.
- (B) By issue of an appropriate order or direction, the impugned communication dated 28/07/2021 issued by Respondent No.1 thereby excluding the applicant from the process of counseling and effecting his transfer to Primary Health Center, Bilgaon, Tq. Dhadgaon, Dist. Nandurbar may kindly be quashed and set aside.
- (C) By issue of an appropriate order or direction, the respondent No.1 to 3 may kindly be directed to hold the fresh process of counseling afresh by inviting options from the incumbents like applicant.”

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant is qualified as B.A.M.S. He came to be appointed on 15.01.1994 by the Chief Executive Officer, Zilla Parishad, Dhule on the post of Medical Officer. Since then he worked at various places. Since, 04.06.2016 he is working as Medical Officer Group -B at District Training Team, Nandurbar. The services of the applicant and all the persons like him, were under the District Technical Services of Rural Development Department. Under the GR. dated 17.10.2014 as many as 874 Medical Officers came to be absorbed under Public Health Department of the State Government.

(ii) The applicant is working as Medical Officer Group -B at District Training Team Nandurbar. He came to be posed at present post and station under order dated 04.06.2016. As per Section 3 of the Transfer Act, the normal tenure of the applicant being the holder of Group-B post is three years. Due to restriction of percentage, his services could not be transferred in the annual transfer of the year 2019. Due to prevailing Covid-19 pandemic situation, general transfers were not effected in the year 2020. The applicant had completed tenure of 4 years and 11 months which was more

than normal tenure of three years. The applicant being a Medical Officer in Group –B, his transfer would be governed by the parameters laid down in G.R. dated 09.04.2018 (Annex. 'A-2'). This process involves publication of the seniority list in accordance with seniority (tenure wise), inviting 10 options from the employees and recommending the same to the transfer authority and finally issuance of the orders of transfer by the Competent Authority.

(iii) In general transfer of the year 2021, the respondent No.2 i.e. the Director of Health Services prepared the seniority list of 156 employees in the cadre of Medical Officer Group–B. In the said list, the name of the applicant was at Sr.No.97 and the said seniority list published on 26.07.2021 (Annex. 'A-3'). As per the said list, the applicant was called for counseling on 30.07.2021. Accordingly, he remained present on venue at Mumbai on 30.07.2021 at 10.00 am for counseling. However, the applicant was not allowed for counseling on the ground that his name has already been recommended for transfer to Primary Health Center, Bilgaon, Tq. Dhadgaon, Dist. Nandurbar along with some 194 Medical Officers under the communication dated 28.07.2021 (Annex. 'A-1'). When the applicant got hold of the communication

dated 28.07.2021, it was learnt by the applicant that, on the basis of the recommendations received from the Civil Services Board in the past, the Government prepared the proposal of transfers of some 194 Medical Officers. The applicant was shown to be transferred at Primary Health Center, Bilgaon, Tq. Dhadgaon, Dist. Nandurbar that was in total violation of G.R. dated 09.04.2018 (Annex. 'A-2').

(iv) It is further submitted that in fact the applicant had made application/representation dated 16.07.2021 (Annex. 'A-4') to the respondent No.2 seeking retention at his present posting or to give him posting in Health Division, Nandurbar in place of Medical Officer, who was due for transfer therefrom. He made said representation dated 16.07.2021 stating that his son has already undergone Kidney Transplant Surgery and he is also suffering with the disease of High Myopia with Myopic Degeneration with Amblyopia which required daily medical attention and care.

(v) In the circumstances as above, the applicant apprehends his transfer as per impugned communication dated 28.07.2021 at Primary Health Center, Bilgaon, Tq. Dhadgaon, Dist. Nandurbar, which order seems to have been issued without conducting the process of counseling as

contemplated under G.R. dated 09.04.2018 (Annex. 'A-2'). Hence this application.

3. Affidavit in reply is filed on behalf of the respondent Nos.1 to 3 by one Dr. Puna Dagdu Gandal working as the In-charge Deputy Director of Health Services, Nashik Circle, Nashik, thereby he denied adverse contentions raised in the Original Application.

(i) It is specifically submitted that in terms of G.R. dated 09.04.2018, if the employee transferred as per the recommendation of Civil Services Board through counseling, no question arises to invite 10 options from the candidates. However, in case of the applicant it is submitted that as per letter issued by the Government dated 27.07.2021, the request transfer proposal of the applicant was awaited at the Government level. Moreover, in the list attached with communication dated 28.07.2021, the name of the applicant is not recommended for transfer by Civil Services Board and therefore, the applicant was not counseled on 30.07.2021. The apprehension of the applicant is devoid of merit. If according to the applicant, he was not called for counseling, he should have first approached the Government, but instead

the applicant directly filed this Original Application. Hence, it is liable to be rejected.

4. Affidavit in reply is filed on behalf of the respondent No.4 i.e. the District Health Service, Nandurbar by Dr. Govind Pandit Chaudhary working as Administrative officer in the office of respondent No.4. Thereby he denied adverse contentions raised in the Original Application. It is submitted that the applicant is working on his present post at District Training Team, Nandurbar since 04.06.2016. It is admitted that the services of the applicant have been transferred to the State Government by virtue of G.R. dated 17.10.2014 (Exh. 'R-1'). In view of the same, the competent transferring authority of the applicant would be a respondent No.2. The Original Application is devoid of merit and is liable to be dismissed.

5. I have heard at length the arguments advanced by Shri S.D. Joshi, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer representing the respondent authorities on other hand.

6. After having considered the facts and documents on record, it is evident that the applicant is apprehending his

transfer as pre list annexed with communication dated 28.07.2021 (Annex. 'A-1') issued by the respondent No.1 to respondent No.2. In the list annexed with the said communication, the name of the applicant is at Sr.No.174. As per the said list, in the remarks column the department said to have proposed the transfer of the applicant at Primary Health Center, Bilgaon, Tq. Dhadgaon, Dist. Nandurbar and the Civil Services Board said to have accepted the said recommendation, but without allowing the applicant to participate in counseling. In this peculiar circumstances, the impugned order dated 28.07.2021 (Annex. 'A-1') to the extent of the applicant seems to have been issued in contravention of the parameters laid down in G.R. dated 09.04.2018 (Annex. 'A-2').

7. However, in the affidavit in reply filed on behalf of the respondent Nos.1 to 3 in paragraph No.6, it is specifically mentioned that the request transfer proposal of the applicant was awaited at the Government level as per letter issued by Government on 27.07.2021. The copy of the said letter dated 27.07.2021, however is not placed on record. It is admitted by the respondents that the applicant was not counseled in



the counseling held on 30.07.2021. It is also specifically stated in the affidavit in rely in paragraph No.7 that the name of the applicant was not taken into consideration for transfer by the Civil Services Board vide counseling dated 30.07.2021.

8. In these circumstances, the impugned communication dated 28.07.2021 to the extent of the applicant is liable to be quashed and set aside. The applicant, however, has already completed normal tenure at his present posting. In view of the same, the respondent Nos.1 to 3 are at liberty to take appropriate steps for transferring the applicant in accordance with the parameters laid down in G.R. dated 09.04.2018 (Annex. 'A-2'). Hence, the Original Application succeeds. I, therefore, proceed to pass the following order.

### **ORDER**

The Original Application is allowed in terms of prayer clause 8 (B) & (C), which are as follows:-

- (A) "8 (B). By issue of an appropriate order or direction, the impugned communication dated 28/07/2021 issued by Respondent No.1 thereby excluding the applicant from the process of counseling and effecting his transfer to Primary Health Center, Bilgaon,

Tq. Dhadgaon, Dist. Nandurbar may kindly be quashed and set aside.

(C) By issue of an appropriate order or direction, the respondent No.1 to 3 may kindly be directed to hold the fresh process of counseling afresh by inviting options from the incumbents like applicant.”

(B) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:- Aurangabad**

**Date : 15.12.2022**

SAS O.A.399/2021