

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.467 OF 2021
(Subject:- Transfer)**

DISTRICT: - Ahmadnagar.

Dr. Mohan Popat Shinde,)
Age- 50 years, Occ- Medical Officer,)
Presently working as Taluka Health)
Officer, Shrirampur,)
Tq. Shrirampur, Dist. Ahmadnagar.)
Cell No.9422940007.)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through Principal Secretary,)
Public Health Department,)
8th Floor, G.T. Hospital Building,)
New Mantralaya, Mumbai-1.)
 2. **The Commissioner of Health**)
and Director N.H.M.)
3rd Floor, Arogya Bhavan,)
St. Georges Hospital Campus,)
Near C.S.T. Mumbai-1.)
 3. **The Joint Director of Health,**)
Services (Finance & Administration),)
5th Floor, Arogya Bhavan,)
St. Georges Hospital Campus,)
Near C.S.T. Mumbai-1.)
 4. **The Deputy Director of Health Services,**)
Nasik Circle, Nasik, Shalimar Chowk,)
Trimbak Road, Nasik -422001.)
 5. **The Chief Executive Officer,**)
Zilla Parishad, Ahmadnagar,)
Dist. Ahmadnagar.)...**RESPONDENTS**
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APPEARANCE : Shri J.S. Deshmukh, learned Advocate
for the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent Nos.1 to 4.
: Shri Vinayak P. Narwade, learned
Advocate for the respondent No.5.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **22.09.2022**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned transfer order of the applicant dated 06.08.2021 (Annex. 'A-1'), whereby the applicant has been transferred from the post of Taluka Health Officer, Panchayat Samiti, Shrirampur, Dist. Ahmadnagar to the post of Epidemic Officer, Zilla Parishad, Ahmadnagar.

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

(i) The educational qualification of the applicant is B.A.M.S. (Bachelor of Ayurveda Medicine and Surgery).

Initially he was appointed on the post of Ayurvedic Vaidya in

District Technical Cadre, Group 'C' under Zilla Parishad, Dhule. Subsequently on consistent demand made by the Medical Officers through their Association to the State of Maharashtra, the Government issued G.R. dated 28.05.2001 (Annex. 'A-2'), taking a policy decision and conferring the status of Gazetted Officers Group 'B' to those Medical Officers, working under Zilla Parishad in District Technical Cadre Group 'C' of non-revised pay scale of Rs.2000-3500/- and revised pay scale of Rs.6500-10500/-.

(ii) It is further submitted that by notification dated 30.10.2000, Medical Officers in Maharashtra Medical and Health Services (MM & HS) Group-A (recruitment) Rules, 2000 were framed. Before that, the Medical Officers of MM & HS were in Group 'B'. The applicant and the persons like him possessing B.A.M.S degree are eligible and entitled for being appointed as Medical Officer in MM & HS Group 'A'.

(iii) It is further submitted that prior to the issuance of G.R. dated 28.05.2001 (Annex. 'A-2'), the persons governed by the said G.R. were getting their salary in the scale of Rs.6500-10,500/-. They raised grievance for getting higher salary. The Government appointed "Sharad Kale Committee" who recommended scale of Rs.8000 to 13,500 to all the posts of

Medical Officers which required the qualification of degree in any "Indian Medicine System". The Finance Department belatedly issued policy decision by G.R. dated 27.02.2006 (Annex. 'A-4'), granting pay scale of Rs.8000-13,500 as per recommendation of the committee vis-a-vis those Medical Officers drawing the unrevised pay scales of Rs.2000-3500 with revised pay scale of Rs.6500-10,500. Accordingly the applicant's pay fixation was carried out in the scale of Rs.8000 to 13,500.

(iv) It is further submitted that G.R. dated 02.07.2002 (Annex. 'A-5') issued by the G.A.D. would show the classification of Government posts in Category A,B,C and D as per pay scale firstly maximum pay scale not less than Rs.11,500, secondly minimum pay scale not less than Rs.9000/- but not more than Rs.11,500 and thirdly minimum pay scale not less than 4,400 but not more than 9,000 and fourthly maximum pay scale less than Rs.4,400 respectively. In view of the said G.R. dated 02.07.2002, the applicant belongs to Group 'A' category.

(v) It is further contended that the applicant and similarly situated Medical Officers were placed in the pay scale of Rs.8000 to 13,500 as per the 5th Pay Commission. As per the

recommendation of Pay Anomaly Committee, the Finance Department of the State Government granted pay scale of Rs.15,600 to 39,100/- with Grade pay of Rs.5400/- w.e.f. 01.01.2006 to the Medical Officers, who were lawfully absorbed under Public Health Department from District Technical Cadre.

(vi) It is further submitted that vide G.R. dated 17.10.2014 (part of Annex. 'A-6' collectively, page Nos.38 to 41 of P.B.) in all 869 Medical Officer including the applicant in District Technical Cadre were absorbed w.e.f. 28.05.2001 respectively under Public Health Department as Group -B Medical Officers. Though they are absorbed as Group -B Medical Officers, the respondent No.1 i.e. the State Government vide it's communication dated 15.11.2014 (part of Annex. 'A-6' collectively, page Nos.42 to 45 of P.B.) has admitted that such Medical Officers though absorbed as Group -B Medical Officers, they are entitled for pay scale of Rs.15,600-39,100/- with Grade pay of Rs.5400/- as that of Group-A employee.

(vii) It is further submitted that the Public Health Department vide notification dated 18.07.2013 (Annex. 'A-7') amended the Medical Officer in Maharashtra Medical and Health Services Group-A (Recruitment) Rules, 2000 giving

status of Group-A to the Medical Officers who were absorbed from District Technical Cadre 'Group C'. However, the applicant and such other similarly situated Medical Officers were not granted the said status of Group 'A'. Infact the applicant is entitled for the status of Group -A, in view of the pay scale of Rs.15,600-39,100/- with Grade pay of Rs.5400 to him. The applicant has placed on record his pay slip for the month of January, 2019 (Annex. 'A-8') showing that he is drawing salary in the pay scale of Rs.15,600 to 39,100/-.

(viii) It is further submitted that the respondent No.3 i.e. the Joint Director of Health Services (Finance & Administration), Mumbai issued notification dated (Annex. 'A-9') along with the list of the officers due for transfer in general transfer in the cadre of Medical Officer Group-B and called them for counseling on 30.07.2021. The name of applicant appeared at Sr.No.70 in the said list. The transfer procedure for Government servant in the cadre of Group-B,C and D is incorporated in G.R. dated 09.04.2018.

(ix) It is further submitted that as per pay scale made applicable to the applicant, the applicant belongs to Group-A though he and others have been absorbed as Group-B Medical officer under Public Health Department. Group-B

BAMS Medical Officers drawing grade pay of Rs.4600/- are governed by way of counseling and not Group-B Medical Officers like the applicant placed in the pay scale of Group-A Medical Officers drawing grade pay of Rs.5400/- or Rs.6600/. Moreover, previous transfer order of the applicant and others dated 01.12.2016 (Annex. 'A-10') would show that it was issued by the respondent No.1 i.e. the State government. In view of the abovesaid reason, the respondent No.3 i.e. the Joint Director of Health Services, Mumbai is not the competent transferring authority of the applicant as the applicant is holding Group-A status pursuant to the pay scale drawn by him. The State Government is only the competent transferring authority to issue transfer of the applicant. In view of the same, the impugned transfer of the applicant dated 06.08.2021 (Annex. 'A-1') issued by the respondent No.3 is without having any jurisdiction and in violation of Section 6 of the Transfer Act and is liable to be quashed and set aside. In view of the same, this Original Application came to be filed.

3. Respondent Nos.1 to 3 filed their affidavit-in-reply jointly, whereas the respondent Nos.4 & 5 filed their respective affidavit-in-replies separately. Thereby all of them

denied the adverse contentions raised in the Original Application.

(i) It is denied that the respondent No.3 i.e. the Joint Director of Health Services, Mumbai in concurrence of the respondent No.2 is not the competent transferring authority of the applicant and that the respondent No.1 is only the competent transferring authority for transferring as stated by the applicant. The applicant is having the status of Group-B Medical Officer and the same is not changed only because he is getting the pay scale of Rs.15,600-39100/- with Grade pay of Rs.5400/- and above. The applicant is getting the said pay scale of Group-A Medical Officer only as per Assured Career Progression Scheme (ACPS).

(ii) Moreover, vide communication dated 04.08.2021 (Exh. 'R-1', page No.116 of P.B.), the respondent No.1 i.e. the State Government has delegated its power of transfer to the Respondent No.2 i.e. the Commissioner of Health and Director N.H.M., Mumbai in respect of Medical Officers having grade pay below S-20 (56100-177500) or (old Pay Scale 9300-34800+Grade Pay 5400/- or below). Therefore, the impugned order issued by the respondent No.3 in concurrence of the respondent No.2 is in accordance with law. The said

impugned order is issued after placing the matter before the requisite Civil Services Board and following the procedure. In the circumstances, the impugned order of transfer of the applicant is legal and proper and no interferences can be caused.

4. I have heard at length the arguments advanced by Shri J.S. Deshmukh, learned Advocate for the applicant on one hand, Shri V.R. Bhumkar, learned Presenting Officer representing the respondent Nos.1 to 4 and Shri Vinayak P. Narwade, learned Advocate representing the respondent No.5 on other hand.

5. It is the contention of the learned Advocate for the applicant that the case of this applicant is governed by the decision of this Tribunal in O.A.No.557/2021 With M.A.No.08/2022 in the matter of **Dr. Sanjay Khakyappa Kasralikar** decided on 06.06.2022. Learned P.O. for the respondent Nos.1 to 4 and learned Advocate for the respondent No.5 opposed the said submissions in view of contentions raised in the affidavit-in-reply.

6. In the Original Application No.557/2021 decided on 06.06.2022, the transfer of the applicant therein Dr. Sanjay

Khakyappa Kasrilikar dated 06.08.2021 issued by the respondent No.3 therein i.e. the Director of Health Services, Mumbai was challenged. The applicant therein is working as Medical Officer holding degree in BAMS. He claimed that he is Group-A Medical Officer being his pay scale is S-23 (67700-208700) (old Pay Scale of Rs.15600-39100 with grade pay of Rs.5400/-). The contention of the applicant therein was resisted by the respondents on the similar footing as that raised in the present litigation. During pendency of the said O.A.No.555/2021 before this Tribunal, O.A.No. 496/2021 with O.A.No.682/2013 with O.A.No.879/2015 were decided by the Principal Seat of this Tribunal at Mumbai by order dated 04.01.2022, whereby the Medical officers like the applicant therein were protected and declared to be Group –A Medical Officers w.e.f. 18.07.2013 with all consequential benefits and were granted pay scale in the pay band of Rs.15600-39100 with Grade pay of Rs.5400 w.e.f. 18.07.2013. In view of the same, transfer order of the applicant therein dated 06.08.2021 issued by the respondent No.3 therein i.e. the Director of Health Services, Mumbai was quashed and set aside not being competent transferring authority.

7. In the case in hand, the respondents have placed reliance on communication dated 04.08.2021 (Exh. 'R-1', page No.169 of P.B.), whereby for transfer of Medical officers in Group-B (Gazetted), the respondent No.1 delegated the powers to the authority of Commissioner of Health and Director, Mumbai. The pay scale referred to of such Medical Officers Group-B was stated to be 56100-177500/- and old Pay Scale 9300-34800+Grade Pay 4500/-. The old pay scale claimed by the applicant in the case in hand is of Rs.15,600-39,100/- with Grade pay of Rs.5400/-.

8. In the circumstances as above, the observations made in O.A.No.557/2021 decided by this Tribunal by order dated 06.06.2022 would be relevant to reproduce herein below:-

“13. Perusal of the facts of the case in hand would show that admittedly the applicant is working on the post of Medical Officer at PHC Mugat, Tq. Mukhed, Dist. Nanded since before 04.01.2016. Admittedly, the said post is of Group-A Medical Officer as contended by the respondent No. 4 in its affidavit in reply. Status of the applicant in Group-A is being denied by the respondents only on the basis of the G.R. dated 17.10.2014, in which G.R. the name of the applicant is shown at Sr. No. 728. It is also admitted position that since about 2011, the applicant is working on Group-A

Medical Officer post. That apart at least Medical Officers shown in G.R. dated 17.10.2014 in Group-B cadre are held to be entitled in Group-A category from 18.07.2013 with all consequential benefits. On 18.07.2013 amended Recruitment Rules came into existence. The applicant is already drawing salary of the post of Group-A Medical Officer in the pay scale of Rs. 15600-39100 + Grade pay of Rs. 5400/- in 5th Pay Commission. Nothing is shown or demonstrated behalf of respondents that he got the said pay scale on account of some advance increments. It is also a fact that while dealing with his earlier transfer, the respondent Government has stated that the applicant is a Group-A Medical Officer and accordingly, the order dated 04.01.2016 came to be issued by the respondent No. 1.

14. It is true that the impugned order dated 06.08.2021 (Annexure A-2) of the applicant is issued by the respondent No. 3. Record shows that the applicant was subjected to counseling procedure, which is applicable to Group-B, C and D category employees as per the relevant G.R. dated 09.04.2018 (page Nos. 57 and 58 of the paper book). There is also document of counseling at page Nos. 55 & 56 of the paper book. In the said counseling, the applicant gave option to transfer at Ayurvedic Dispensary, Kamjalga, Tq. Mukhed, Dist. Nanded and accordingly, the applicant was transferred. To that extent, it can be said that the applicant was subjected to counseling

process applicable to Group-B, C and D Government employees.

15. It is a matter of record that subsequently in the impugned order dated 06.08.2021 (Annexure A-2) the applicant has been treated as Medical Officer Group-B, though in fact, earlier transfer order he was stated Group-A Medical Officer having pay scale of Rs. 15600-39100 with Grade Pay of Rs. 5400/-. In the background of the rival submissions as regards groups of Government servants and their pay scales, it is seen that the pay of Rs. 15600-39100 with Grade pay of Rs. 5400/- is applicable to Group-A Government officers as per the Section 6 of the Transfer Act, 2005. No any provision of law is shown on behalf of the respondents to demonstrate actually as to on what other basis the Government officers of Group A, B, C & D are divided apart from pay scale. In the decision of the Principal Seat of this Tribunal at Mumbai dated 04.01.2022 in O.A. No. 496/2012 with O.A. 682/2013 with O.A. No. 879/2015, Medical Officers like the applicant are already protected and declared to be Group-A Medical Officer w.e.f. 18.07.2013 with all consequential benefits and pay scale in the pay band of Rs. 15600-39100 with Grade pay of Rs. 5400/- w.e.f. 18.07.2013. The applicant is already drawing the said pay scale. At the cost of repetition, it is stated that in the earlier transfer order, it appears that the applicant is treated as Group-A Government officer and he was being transferred by the respondent No. 1, being the

competent transferring authority. No record is shown by the respondents to suggest that the applicant was allowed to hold the post of Medical Officer at Mugad, Tq. Mukhed, Dist. Nanded, which is Group-A post, though he belonged to Group-B category and more particularly after issuance of G.R. dated 17.10.2014. In view of the same, in my considered opinion, though the applicant participated into counseling process and gave option of Ayurvedic Dispensary at Kamjalga, Tq. Mukhed, Dist. Nanded, it cannot be said that he gave up his right to claim Group-A category, of which the respondent No. 1 is the competent transferring authority and not the respondent No. 3. The impugned transfer order is issued by the respondent No. 3.

16. In view of the aforesaid discussions in foregoing paragraphs, in my considered opinion, the impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 is not legal and proper, as it is not issued by the competent transferring authority and the same is liable to be quashed and set aside. However, the said impugned order of transfer of the applicant dated 06.08.2021 (Annexure A2) is being issued in the General Transfers of the year 2021, as the applicant was due for transfer. The competent transferring authority is at liberty to issue transfer order in accordance with law. Subsequently, the impugned transfer order of the respondent No. 5 dated 17.09.2021 (Annexure A-3) is also liable to be quashed and set aside, as the

respondent No. 5 is posted at the place and post held by the applicant. I therefore, proceed to pass following order :-

ORDER

1. *The Original Application No. 557 is allowed in following terms :-*

(A) *The impugned order of transfer of the applicant dated 06.08.2021 (Annexure A-2) issued by the respondent No. 3 i.e. the Director of Health Services, Mumbai and the impugned transfer order dated 17.09.2021 (Annexure A-3) to the extent of respondent No. 5 issued by the respondent No. 1 i.e. the State of Maharashtra, Public Health Department are hereby quashed and set aside.*

(B) *There shall be no order as to costs.*

(2) *In view of above, M.A. No. 08/2022 does not survive and hence, the same stands dismissed with no order as to costs.”*

9. In the background of the abovesaid observations if the facts of the present case are considered, the facts of the present case are similar in nature and to the some extent identical with that case. In view of above, this case will be governed by the view taken in the decision of this Tribunal in O.A.No.557/2021. In the circumstances, the transfer order of

the applicant is not legal and proper being issued by the respondent No.3 in concurrence of the respondent No.2 being not competent transferring authority of the applicant. The competent transferring authority of the applicant is the respondent No.1 i.e. the State Government only and therefore, the same is liable to be quashed and set aside. Hence I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned transfer of the applicant dated 06.08.2021 (Annex. 'A-1') issued by the respondent No.3 i.e. the Joint Director of Health Services, Mumbai is hereby quashed and set aside.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 22.09.2022
SAS O.A.467/2021