

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 620 OF 2023

DISTRICT:- JALNA

Smt. Anita Jagdish Bhartilak
Age : 51 years, Occ: Staff Nurse,
District Tuberculosis Centre, Jalna
R/o. Sainagar, Jalna-431203.

.. **APPLICANT.**

V E R S U S

1. The State of Maharashtra
Through its Secretary,
Public Health Department,
G.T. Hospital Campus, Mantralaya,
C.S.T. Mumbai-400 001.
2. The Director of Health Services,
Maharashtra State, Central Building,
Pune-411 001
3. The Deputy Director of Health Service,
Mahavir Chowk, Near Baba Petrol Pump,
Rly. Station Road, Aurangabad Circle,
Aurangabad-431 001.

.. **RESPONDENTS.**

APPEARANCE : Shri A.D. Sugdare, learned counsel for the
applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 12.09.2023

ORAL-ORDER

Heard Shri A.D. Sugdare, learned counsel for the applicant
and Shri V.R. Bhumkar, learned Presenting Officer for the
respondent authorities.

2. The applicant has filed the present Original Application seeking following reliefs: -

“A The Original Application may pleased be allowed:

B By order or directions by this Tribunal the impugned transfer order dated 17.02.2023 in respect of applicant issued by the respondent no. 3 may pleased by stayed to the extent of applicant.

C. By order or directions the respondent no. 2 may be directed to take decision on the recommendation letter dated 30.06.2023 forwarded by the respondent no. 3 in respect of partial modification of the transfer on promotion order in favour of the applicant expeditiously within a week.

D. Pending hearing and final disposal of this O.A. respondent no. 2 be directed to take decision on the recommendation letter dated 30.06.2023 submitted to him in respect of modification of order dated 17.02.2023 to the extent of applicant.”

3. It is the case of the applicant that after she was promoted to the post of Parisevika and was given posting at Gangahed District Parbhani, she had approached the authorities concerned and had also submitted the written representation seeking change in the posting order on her medical ground and has sought her posting at Jalna on the post which was likely to become vacant because of retirement of the person working on the said post on 31.8.2023. It is the grievance of the applicant that the respondents did not consider the said request and have rejected the said request on some unsustainable grounds by

making wrong interpretation of the relevant provisions. The applicant though was promoted and was also transferred on promotion vide order dated 17.2.2023 she was not relieved from her existing post till 1.8.2023. As has been contended in the O.A. when she was relieved from her existing post on 1.8.2023, there was no post vacant to which she was transferred on promotion vide the impugned order. In the meanwhile some other employee was given posting at the said place and in such circumstances she could not resume the charge of the said post.

4. Shri A.D. Sugdare, learned counsel appearing for the applicant submitted that at the time of giving posting after promotion though counseling was held insofar as other employees are concerned, no counseling was done in the matter of the applicant. Learned counsel submitted that the applicant is having genuine difficulties in joining at the transferred place i.e. at Gangakhed or at Parbhani. Learned counsel submitted that all the relevant documents were produced by the applicant before the authority concerned. Learned counsel pointed out that the then Deputy Director was fully convinced as about the difficulties of the applicant in joining at Gangakhed or at Parbhani or at any other place and he has recommended the competent authority to consider the request of the applicant favourably by giving her

posting at the place desired by her. Learned counsel submitted that if the impugned order is perused, it apparently reveals that many of the employees even on promotion are kept at their existing place and have not been transferred. Learned counsel further submitted that it will also reveal that the requests of most of the employees are favourably considered by the respondents. He further argued that the discrimination is made only in respect of the applicant for the reason that she is involved in the union activities and had started hunger strike in the past making a demand of the promotions which were not made at the appropriate time. Learned counsel submitted that the promotions granted to the employees due for such promotion vide the impugned order is the result of the hunger strike, which was undertaken by the applicant. Learned counsel submitted that keeping grudge in the mind of the activities so undertaken by the applicant that she has not been given posting at the place for which she has given her option. Learned counsel submitted that the rule which has been cited in regard to creation of vacancy on retirement of an employee has been wrongly interpreted by the respondents. Learned counsel submitted that the case of the applicant was considered in the previous meeting of the Departmental Promotion Committee (DPC) and, as such, there shall not be any bar for giving posting to the applicant on the post

which has become vacant on retirement of the employee from the said post on 31.8.2023. Learned counsel in the circumstances prayed for allowing the Original Application filed by the applicant.

5. Respondent No. 3 has filed short affidavit in reply and has opposed the contentions raised in the Original Application, as well as, prayers made therein. It is the contention of the respondents that once the employee is promoted, ordinarily he cannot be kept at the place where he was working and on promotion if he has been transferred, he shall not deny such transfer. It has also been stated that the post on which the applicant is seeking her accommodation, cannot be done for the reason that appointment on the said post which has become vacant on retirement of the concerned employee on 31.8.2023, can be considered only in the next DPC meeting. Learned P.O. in his arguments reiterated the contentions raised in the affidavit in reply. He further submitted that there is no substance in the allegation made by the applicant that she has been discriminated. He further submitted that it's a matter of record that the applicant is working at Jalna for more than 12-13 years. It is further contended that the counseling was held even in the case of the applicant and only thereafter the impugned order was issued.

6. Learned P.O. submitted that in the affidavit in reply it has been specifically stated by the respondents that counseling was held even in the case of applicant and the applicant has not denied or disputed the said fact by filing any rejoinder in that regard. According to the learned P.O. in the circumstances the averments taken by the respondents in their affidavit in reply shall be deemed to have accepted by the applicant. Learned P.O. further submitted that action has been initiated against the officer who did not relieve the applicant within the stipulated time. According to the learned P.O. the reason has been given for declining the request made by the applicant is strictly as per the provisions under the relevant provisions. Learned P.O. submitted that the transfer order has now been modified and the applicant has now been posted at Parbhani. Learned P.O. submitted that the applicant may not have any difficulty in taking treatment even at Parbhani. Learned P.O. submitted that the respondents have acted strictly within their limits and *bona fide*. Learned P.O. in the circumstances prayed for rejecting the Original Application being without any merit.

7. I have duly considered the submissions made on behalf of the applicant and the respondent authorities. It is not in dispute that till 1.8.2023 the applicant was not relieved from her

existing post so as to join on the promotional post though the order was issued in the month of February, 2023. The contention of the applicant that after she was relieved from her existing post even if she should have decided to join at the place at which she was transferred, it was not possible for her to resume the charge of the said post, for the reason that some other employee was transferred and has resumed the charge of the said post. In the circumstances as another employee is posted at the place on which the applicant was transferred, it was not possible to the applicant to resume duties and as such, the applicant is undergoing the compulsory waiting period.

8. The documents on record show that the Deputy Director under whom the applicant was working has made positive recommendation for considering the request of the applicant on medical grounds to give her posting at the place which was likely to become vacant on retirement of the employee working on the said post. The respondents have not disclosed why recommendation has not been accepted by the authorities concerned when it was quite possible to give posting to the applicant at the place desired by her. As has been explained by the learned counsel appearing for the applicant by referring to the documents filed on record as about the health problem being

suffered by the applicant. It is revealed that the applicant is suffering from disease for which regular treatment requires to be taken by her which can conveniently be done only at Jalna or the place nearby Jalna. In view of the submission made on behalf of the applicant that while giving the posting after promotion, several officers are retained at their existing places at their request is found to be correct. The request of the applicant has been considered on the ground that the guidelines which are laid down for giving posting to the Government employee after his promotion and more particularly in view of the provisions under clause 3.1.4 it was not possible to give posting to the applicant. I deem it appropriate to reproduce the said rule as it is, which reads thus:-

*“३.१.४ निवडसूची वर्षाच्या अखेरच्या तारखेस रिक्त होणारे पद - दि. ३१ ऑगस्ट रोजी सेवानिवृत्त होणा-या कर्मचा-यांचे रिक्त पद पुढील निवडसूचीकरीता म्हणजे दि. ०१ सप्टेंबर रोजी चालू होणा-या वर्षाकरीता विचारात घ्यावे.
उदा. समितीची बैठक १ सप्टेंबर २०१७ ते ३१ ऑगस्ट २०१८ या निवडसूची वर्षामध्ये आयोजित करण्यात येणार आहे. अशावेळी त्याआधीच्या निवडसूची वर्षातील (दिनांक १ सप्टेंबर २०१६ ते ३१ ऑगस्ट २०१७) शेवटच्या दिनांक पर्यंतची म्हणजेच दि. ३१ ऑगस्ट २०१७ पर्यंतची सर्व प्रत्यक्ष रिक्त पदे तसेच, चालू निवडसूची वर्षातील (दि. १ सप्टेंबर २०१७ ते दि. ३१ ऑगस्ट २०१८) दिनांक ३० ऑगस्ट, २०१८ पर्यंतची संभाव्य रिक्त पदे अशा एकूण रिक्त पदांची संख्या विचारात घ्यावयाची आहे.”*

9. This rule has been interpreted by two different ways. Learned P.O. has interpreted it to mean that the post which has become vacant after retirement of an employee working there on 31.8.2023 will remain vacant and somebody will be appointed only after the DPC meeting of the next year is held. The interpretation as has been made by the learned P.O. has been

disputed by the learned counsel appearing for the applicant. Learned counsel reading out the aforesaid rule submitted that it may not apply to the case of applicant, since decision of her promotion was taken in the meeting of DPC, which had held last year. According to the learned counsel, there was no impediment for giving posting to the applicant on the said place, having regard to the ailment which the applicant is suffering from last few days. Learned counsel has also submitted that the earlier Deputy Director had duly considered the case of the applicant and has also made positive recommendation and some other person took over the charge of the said post that the said decision has been changed. The recommendation made by the earlier Deputy Director is there on record. The respondents have not explained or given any justification as to why the said recommendation was not timely considered.

10. As noted by me hereinabove though the transfer order was issued after promotion in the month of February, 2023, admittedly the applicant was not relieved from her existing post till 1.8.2023. As has been further recorded by me hereinbefore when the applicant was relieved from her existing post, the post at Gangakhed, District Parbhani was already occupied by another employee who was in the meanwhile transferred and posted at the

said place. The respondents have also not come out with any explanation when the applicant was already given posting on her promotion at the said place why other employee was transferred in her place. In view of the facts as aforesaid, the respondents should have considered the request made by her on medical grounds, which appears to be genuine and in such circumstances, could have given her posting at the place, which has become vacant after retirement of an employee on 31.8.2023, may be for a temporary period.

11. Perusal of the impugned order reveals that requests of many employees have been favourably considered by the respondent authorities. It is thus not the case that everyone, who was promoted, was made to join at some different place.

12. After having considered the entire facts and circumstances involved in the present matter, though the objections raised by the applicant do not appear to be groundless, it cannot be lost sight of that the applicant does not have any vested right to insist for her posting at a particular place and on a particular post. At the same time, the respondent i.e. the State being a model employer has to ensure that no injustice is being caused to any of its employee. The applicant has already submitted a representation for her retention at Jalna on medical

grounds. Having regard to the fact that the applicant has been granted promotion in the meeting of DPC held in the last year, the respondents shall consider the request of the applicant for her posting at District Hospital at Jalna on the post which has become vacant on 31.8.2023. If it is not possible, the respondents shall give the posting to the applicant at a place nearby Jalna, so that the applicant can continue her treatment at Jalna. Such exercise shall be carried out within next three weeks.

13. With the observations and directions as above, the Original Application stands disposed of without any order as to costs.

VICE CHAIRMAN