

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1104/2022 (S.B.)

Dr.Shamim Akhtar Dilawar,
Aged about 55 years, Occu.: Service,
R/o Plot No.16, Gazal Apartments, Katol Road,
Chhaoni, Opposite to MOIL Office, Nagpur -13.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
Gokul Tejpal Bhawan,
10th Floor, A Wing,
Mantralaya, Mumbai-32.
- 2) The Director,
Public Health Department,
Office of Directorate of Public Health Office,
3rd Floor, Arogya Bhawan,
CST Terminal, St.Geroge Hospital Premises,
P.D. Melo Raod, Mumbai -01.
- 3) Dr.Nivrutti Rathod, (Civil Surgeon)
Indira Gandhi Medical College & Hospital,
Central Avenue, Nagpur-440018.

Respondents

Shri A.P.Sadavarte, Id. Counsel for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents 1 & 2.

None for the respondent no.3.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated :- 23.11.2023.

JUDGEMENT

Heard A.P.Sadavarte, ld. counsel for the applicant and Shri M.I.Khan, ld. P.O. for the Respondents 1 & 2. None for the respondent no.3.

2. Case of the applicant in short is as under-

The applicant was appointed as Medical Superintendent, Class-I, at Ramtek on 03.03.2011. She was selected by M.P.S.C. for the said post. On 09.06.2015 the applicant was transferred and posted as Medical Superintendent, Class-I at Deolapur in district Nagpur, in the cadre of District Civil Surgeon. The applicant has made representation on 12.11.2021 and requested that on 31.12.2021 the post on District Civil Surgeon, Nagpur is going to vacant due the retirement and she be posted on the said post. The applicant has made representation that the post of District Civil Surgeon, Nagpur is vacant so she being the senior most eligible for the said post as per representation dated 21.02.2022. The applicant is not transferred and posted at Nagpur on the post of District Civil Surgeon. The respondent no.3 is transferred and posted as District Civil Surgeon, I.G.M.C. and Hospital Nagpur. Therefore, the applicant has challenged the transfer and posting of respondent no.3. The applicant has prayed following reliefs-

- (i) quash and set aside the impugned transfer order dated 11.11.2022 thereby transferred and posted the respondent no.3 on the post of District Civil Surgeon at District Hospital, Nagpur;*
- (ii) Held and declare that the procedure adopted by respondent No.1 in impugned transfer order dated 11.11.2022 in favor of Respondent No.3 is illegal, bad in law.*
- (iii) direct the respondents to transfer and post the applicant on the post of District Civil Surgeon, District Hospital at Nagpur;*
- (iv) held and declare that the applicant is a suitable candidate to transfer and post as a District Civil Surgeon at Nagpur as she was serving as a Medical Superintendent Group-A, Class-1 at tribal areas since 2011:*

3. The O.A. is strongly opposed by the respondents. It is submitted that from the initial posting of the applicant. She is working in the Nagpur District. The respondent no.3 was eligible and therefore, he is posted at Nagpur on the post of District Civil Surgeon. The applicant cannot claim as of right that she be posted at Nagpur only.

4. During the course of submission, learned counsel for the applicant has pointed out the G.R. dated 06.08.2002. The material portion of the G.R. is reproduced below-

२) आदिवासी क्षेत्रात किमान २ वर्षे चांगले काम केलेल्या गट 'अ' व 'ब' च्या अधिका-यांना देखिल त्यांच्या पसंतीच्या जिल्हयांत सोईनुसार नेमणूका देण्यात याव्यात.

- ३) वरीलप्रमाणे पसंतीच्या जिल्हयांत बदली मिळण्यासाठी, आदिवासी क्षेत्रात काम करणाऱ्या अधिकारी/कर्मचारी यांनी उपरोक्त विहित कार्यकाळ संपण्यापूर्वीच किमान ३ महिने आधी त्यांच्या पसंतीच्या जिल्हयांची तीन नावे सक्षम प्राधिका-यांना कळवावीत व त्याची प्रत तो कार्यरत असलेल्या क्षेत्राच्या जिल्हाधिकारी/विभागीय आयुक्त यांना देण्यात यावी.
- ४) मात्र, महसूल व पोलिस विभागातील अधिकारी/कर्मचाऱ्यांना त्यांच्या स्वतःच्या किंवा कुटुंबियांच्या नावे स्थावर मालमत्ता असलेली ठिकाणे वगळून त्यांच्या पसंतीच्या अन्य जिल्हयातील ठिकाणी नेमणूक देण्यात याव्यात.)
- ५) आदिवासी विकास विभाग व आदिवासी विकास महामंडळातील अधिकारी/कर्मचारी यांच्या सेवा आदिवासी क्षेत्राकरीताच असल्यामुळे त्यांना तसेच स्थानिक रहिवाशी असलेल्या इतर विभागातील कर्मचारी यांना वरील सवलतीचा लाभ मिळणार नाही.
- ६) अधिकारी/कर्मचारी यांचेकडून बदलीसाठी पसंतीक्रम प्राप्त होताच सक्षम प्राधिका-यांनी संबंधितांचा विहित कार्यकाल संपताच त्यांच्या पसंतीच्या जिल्हयात बदलीसाठी आवश्यक ती कार्यवाही करावी. काही प्रशासकीय कारणास्तव पसंतीच्या जिल्हयात लगेचच बदली करणे शक्य नसल्यास सक्षम प्राधिकाऱ्याने अशी प्रकरणे तातडीने वरिष्ठांचे शासनाचे निदर्शनास आणून देवून त्यांचे आदेश प्राप्त करावेत व संबंधितास तसे कळवून त्यांना अन्यत्र बदली द्यावी. मात्र, असे करताना संबंधितांनी बदलीसाठी दिलेला पसंतीचा हक्क पुढील तीन वर्षांपर्यन्त कायम ठेवून या वाढीव कालावधीत पसंतीच्या जिल्हयात बदली देणे आवश्यक राहिल.

5. As per the submission of learned counsel for the applicant, she has worked in the Tribal area i.e. Ramtek and Deolapar and,

therefore, she is entitled to get choice posting as per the G.R. dated 06.08.2002. It is pertinent to note that the applicant was working in the Nagpur district. As per the G.R. dated 06.08.2002, after completion of two years satisfactory service in the Tribal area the employee who is due for transfer may give three choices posting of the three districts before three months of the transfer order. The applicant had not given any three districts of choice posting. The applicant is claiming for the posting at Nagpur. From the beginning of her service she is in the Nagpur district. As per G.R. dated 06.08.2002, the said employee who worked in the Tribal area cannot claim the choice posting in the same district but choice posting at three other districts can be claimed. The applicant was working in the Nagpur district she had not given any choice of three other districts.

6. Applicant has challenged the transfer and posting of respondent no.3.

7. During the pendency of this O.A., the learned counsel for the applicant made some submissions that some posts are vacant at Nagpur. Therefore, this Tribunal has directed the applicant to make representation and respondents were directed to decide the same.

7. The respondents have decided the representation of the applicant on 11.04.2023. As per this order, the respondents have stated that in the coming general transfer order the representation may be

considered, if she is ready to work as a Civil Surgeon in any other district.

8. The Civil Servant / employee cannot claim as of right that he or she shall be posted permanently till the retirement at a particular place. The applicant was working in the Nagpur district from the very beginning of her service. During the pendency of this O.A., she is transferred to Mumbai. The applicant has not challenged her transfer order dated 11.08.2023.

9. The learned counsel for the applicant has pointed out the decision of this Tribunal in O.A. no.468/2023, O.A.No.633/2019 and O.A.No.744/2023. The decision in the said O.A. is on different footing. The applicant cannot claim / insist to post her in Nagpur only. The applicant is employee of State Government. Transfer is a condition of service. The employee has to follow the condition. The applicant has not challenged her transfer order dated 11.08.2023 by which she is transferred to Mumbai. The applicant has challenged transfer of respondent no.3. As per the decision taken by the respondents dated 11.04.2023, the applicant will be posted in other district if she is interested to work. The applicant cannot claim that she shall be posted in the Nagpur only. The applicant cannot challenge the transfer and posting of respondent no.3. Respondent no.3 was due for transfer and as per procedure he was transferred and posted at Nagpur on the post of

Civil Surgeon. Hence, there is no illegality. Therefore, the following order is passed-

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated :- 23/11/2023.
rsm

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 23/11/2023.
and pronounced on