

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.459 OF 2020

(Subject :- Transfer / Deputation)

DISTRICT :- NANDURBAR

Priti Jaising Patale,)
Age:- 32 years, Occ. Service as Medial Officer,)
R/o: At. Post. Suman Nagar,)
Shahada Road, Tq. Taloda,)
Dist. Nandurbar.)....**Applicant**

V E R S U S

1. **The Director of Health Services,**)
(Maharashtra State), Arogya Bhavan,)
St. George's Hospital, Compound,)
P.D. Mello Road, Mumbai-400 001.)
2. **The Deputy Director of Health Services,**)
Health Services, Nashik Mandal,)
Nashik, Dist. Nashik.)
3. **The Assistant Director of Health Services,**)
Health Services, Leprosy & T.B., Pune,)
Dist. Pune.)
4. **The Commissioner & Director,**)
Health Services and National Health Program)
Mumbai, Dist. Mumbai.)
5. **The Assistant Director,**)
Health Services, Leprosy, Nandurbar,)
Dist. Nandurbar.)
6. **The District Collector,**)
Nandurbar.)...**Respondents**

APPEARANCE : Shri Amit S. Savale, learned Advocate
for the Applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**
DATE : **07.01.2022**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking to challenge the impugned order dated 24.06.2020 (Annex. 'A-14) issued by the respondent No.2 i.e. the Deputy Director of Health Services, Nashik Mandal, Nashik, Dist. Nashik whereby the applicant has been transferred on deputation at Civil Hospital, Nashik until further orders from her present post of Medical Officer, Civil Hospital, Nandurbar.

2. **The facts in brief giving rise to this application are as follows:-**

- (i) The applicant is Medical Officer. She was serving at Civil Hospital, Nandurbar, at the relevant time when the impugned order dated 24.06.2020 (Annex. 'A-14') was issued. The applicant is having three years old daughter and she is the daughter-in-law of the age old parents-in-laws.

- (ii) It is contended that prior to handling of the said charge of Medical Officer, the applicant has handled the charge of Assistant Director, Health Services, Leprosy, Nandurbar. She has discharged her duties honestly. While handling the charge of Assistant Director, there were irregularities on the part of the other employees on the establishment. The applicant courageously reported all those irregularities by various communication dated 17.07.2019, 13.08.2019 and 19.08.2019 (Annex. 'A-1' collectively), to the higher authority. The applicant was also appointed as a Nodal Officer for Dhadgaon and Taloda Taluka for Leprosy Program vide communication dated 10.10.2019 (Annex. 'A-2'). Even though, bills and remuneration were not being disbursed by the District Account Officer in time, the applicant spent for petrol and other charges for carrying out the national mission effectively which can be seen from communication dated 01.11.2019 and 16.12.2019 (Annex. 'A-3' collectively).
- (iii) It is further contended that in or about December, 2019, the applicant suffered from "Right Shoulder

Dislocation". In view of same, the applicant was required to proceed on Medical Leave from 17.12.2019 to 23.02.2020. In view of that, she submitted application for leave dated 16.12.2019 and fitness certificate dated 24.02.2020 (Annex. 'A-4' collectively). Since 24.02.2020, she joined the duties and worked at Nandurbar which is reflected in attendance record, movement register record, photographs and screenshot of whatsapp group and copy of order dated 16.03.2020 and 20.03.2020 (Annex. 'A-5' collectively).

- (iv) It is further contended that the applicant received communication dated 13.03.2020 (part of Annex. 'A-6' collectively) from the respondent No.5 i.e. the Assistant Director, Health Services, Leprosy, Nandurbar, Dist. Nandurbar stating that the applicant has not joined the duties and simply tendered her joining letter without medical certificate and signed muster register from 24.02.2020 to 23.03.2020 forcibly. In view of same, the applicant received show cause notice dated 07.04.2020 (part of Annex. 'A-6' collectively) from the respondent No.2 i.e.

the Deputy Director of Health Services, Nashik Mandal, Nashik, Dist. Nashik alleging various misconducts as listed above. The applicant, thereafter, submitted application dated 20.04.2020 (Annex. 'A-7' collectively) reiterating that she joined the duties on 24.02.2020 and further placed on record that she did not receive salary since February, 2020. Further she placed on record communication dated 24.04.2020 (part of Annex. 'A-8' collectively) and again placed on record that she has not received salary and therefore, she is facing difficulties economically and mentally. The applicant further sent communication dated 24.04.2020 (part of Annex. 'A-8') to the Deputy Collector, Nandurbar ventilating her grievances.

- (v) It is further contended that thereafter the respondent No.2 issued order dated 30.04.2020 (Annex. 'A-9' collectively) in respect of transfer of certain medical officers in view of the exigency occurred pursuant to the Covi-19 Pandemic situation by which certain medical officers who are transferred to Malegaon. The name of the applicant was not included in that list.

The applicant, however, suddenly on 11.05.2020 (Annex. 'A-11' collectively) was transferred to Malegaon. Thereafter, the applicant tendered her explanation dated 05.05.2020 to the show cause notice dated 07.04.2020 (Annex. 'A-6' collectively). She further sent letter dated 05.05.2020 (Annex. 'A-9' collectively) to the respondent No.3 i.e. the Assistant Director of Health Services seeking reimbursement for the amount spent by her. The District Collector, Nandurbar forwarded her application dated 24.04.2020 to the Zilla Parishad, Nandurbar for further action. The applicant, thereafter, made application dated 12.05.2020 (Annex. 'A-12' collectively) to the respondent No.5 for disbursement of her salary. The applicant received reply dated 18.05.2020 (Annex. 'A-12' collectively).

- (vi) It is further contended that the applicant repeatedly made various applications to the respondent No.5 as well as Zilla Parishad, Nandurbar for payment of her salary (Annex. 'A-13' collectively) and irregularities committed by certain officers in denying salary. However, thereafter, the respondent No.2 issued

impugned order dated 24.06.2020 (Annex. 'A-14') deputing her at Civil Hospital, Nashik until further orders. The said order is punitive in nature where it is stated that suspension and departmental enquiry is proposed against the applicant. The applicant accordingly joined her duties at Civil Hospital, Nashik on 26.06.2020 by making joining application dated 26.06.2020 (Annex. 'A-15' collectively). Thereafter, she proceeded on leave by placing on record application dated 26.06.2020 itself for leave (part of Annex. 'A-15' collectively). The applicant, thereafter, made various representations to the respondent No.4 i.e. Commissioner & Director, Health Services and National Program, Mumbai as well as concerned Minister of Public Health in July, 2020 for ventilating her grievances and seeking cancellation of deputation order dated 24.06.2020 but in vain.

- (vii) In view of above, it is the contention of the applicant that the impugned order of deputation is impermissible in the eyes of law. Transfer/deputation cannot be the matter of punitive action without any enquiry. Secondly, it is midterm order without

following Rules and procedures. The respondents have unauthorizedly stopped her salary since February, 2020. In the circumstances, she seeks to quash and set aside the impugned order dated 24.06.2020 (Annex. 'A-14') and also sought directions to disburse the salary of the applicant from February, 2020 onwards.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 6 by Dr. Abhijeet Ashok Golhar at present working as Assistant Director of Health Services (leprosy), Nandurbar, District Nandurbar, thereby the adverse contentions raised by the applicant in the O.A. are denied. It is, however, not disputed that the applicant till passing of impugned order was working at Civil Hospital, Nandurbar. According to the respondents, pre and post impugned order period, the functioning of the applicant is detrimental to the public at large as she is remaining absent from duty unauthorizedly. Even after availing the leave on medical ground while working at Civil Hospital, Nandurbar from 17.12.2019 to 23.03.2020 without actually joining the duties on 24.02.2020, she simply submitted joining application and signed muster roll forcibly without discharging the duties. Because of that, the work in the hospital is suffered during pandemic

situation. Even after issuance of transfer order, the applicant has proceeded on leave by simply tendering application. The conduct of the applicant is of such nature that the disciplinary action such as suspension and departmental enquiry are being contemplated. However, the applicant has been deputed on duty at Civil Hospital, Nashik until further orders under the exigencies of Pandemic situation and in accordance with the Disaster Management requirements. The allegations levelled by the applicant are devoid of merit, vague and baseless. The impugned order is not transfer order, but temporary deployment by way of deputation under the exigencies of the Pandemic situation and as per the disaster management requirements.

4. It is further contended that the respondent No.2 in fact has proposed the suspension and disciplinary action against the applicant as per proposal dated 05.05.2020. Even the joining of the applicant at Civil Hospital, Nashik is questionable. In the circumstances, the Original Application is liable to be dismissed.

5. I have heard the arguments at length advanced by the learned Advocate for the applicant Shri Amit S. Savale on one hand and the argument advanced by the learned Presenting Officer for the respondents on other hand.

6. Learned Advocate for the applicant at the outset submitted that the impugned order dated 24.06.2020 (Annex. 'A-14') deputing the applicant at Civil Hospital, Nashik until further orders is against the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as Transfer Act, 2005) by which the transfers of the Government servants is governed. Moreover, the impugned order according to the respondents is passed by invoking the provisions of Epidemic Diseases Act, 1897. It is unsustainable in the eyes of law in view of ratio laid down in the case law reported in 2021(3) ABR 452 in the matter of **State of Maharashtra Vs. Dr. Ashok Ramchandra Anand** delivered by the Hon'ble Bombay High Court. He further submitted that the applicant has not been paid her due salary since 24.02.2020 till date. The impugned order is illegal and therefore, the applicant would be entitled for due salary for the period in question in view of ratio laid down in the citation of the Supreme Court of India in the matter of **Somesh Tiwari Vs. the Union on India and Ors.** reported in **2009 2 Supreme Court Cases 592.**

7. As against that the learned P.O. for the respondents while opposing the submissions made on behalf of the applicant submits that the behavior of the applicant throughout is detrimental to public at large as practically the applicant is not discharging the duties as

Medical Officer since 27.12.2019 onwards till date. According to him, apart from unauthorized absence, the applicant has only left the joining letter firstly on 24.02.2020 in Civil Hospital, Nandurbar upon she joined the duties after medical leave and forcibly singed the muster roll and even at the Civil Hospital, Nashik, where the applicant is deputed, she simply left the joining letter and has not worked.

8. He further submits that the impugned order of deputation at Civil Hospital, Nashik is justifiable considering the Covid-19 pandemic situation and considering the powers vested in respondents under the Disaster Management Act.

9. In the background of rival submissions, if the impugned order dated 24.06.2020 (Annex. 'A-14') is considered, it is seen that the applicant has been deputed at Civil Hospital, Nashik until further order. It is pertinent to note that it is not stated by the applicant as to since when she was working at Civil Hospital, Nandurbar. But considering the date of impugned order, it can be said to be midterm order. The applicant has not averred that it is midterm transfer. Perusal of impugned order dated 24.06.2020 (Annex. 'A-14') would show that the proposal for suspension and disciplinary action against the applicant was submitted by the respondent No.2 to the office of Respondent No.1.

10. According to the respondents, there was dearth of the Medical Officers in Covid-19 pandemic situation. Hence instead of putting the

applicant under suspension, by treating the applicant's leave period without pay she can be deployed on deputation at Malegaon or Nashik and accordingly she has been deputed at Civil Hospital, Nashik till further orders.

11. In the affidavit-in-reply the respondents have raised specific contention that the respondent No.3 i.e. the Assistant Director of Health Services, Health Services, Leprosy & T.B., Pune, Dist. Pune communicated to the District Collector, Nandurbar about the misconduct, unauthorized absence from duty, misbehavior and arrogance of the applicant with the superior authorities and as per the Epidemic Act, 1897 and the Disaster Management Act, 2005, District Collector, Nandurbar i.e. the respondent No.6 directed Civil Surgeon, Nandurbar to take action of suspension and proposed departmental enquiry against the applicant. Accordingly, the respondent No.2 i.e. the Deputy Director of Health Services informed to the respondent No.4 i.e. the Commissioner and Director, Health Services and National Health Program Mumbai, Dist. Mumbai vide letter dated 05.05.2020. In view of that the Joint Director of Health Services (Finance and Administration), Mumbai vide his office letter dated 16.06.2020 informed the Principal Secretary, Public Health Department, (Seva-4), Mantralaya, Mumbai and directed the respondent No.2 that the conduct and behavior of the applicant is inexcusable. However, in the circumstances of pandemic situation, there is short fall of Medical Officers and due to this reason, instead of putting the applicant under

suspension, her unauthorized absence from duty should be treated as without pay and her services should be temporarily deputed at District Hospital, Malegaon or District Hospital, Nashik and accordingly, her services have been deputed to the District Hospital, Nashik in the pandemic situation.

12. It is further specifically contended in the affidavit-in-reply that by the impugned order, the applicant is not transferred but she is deputed to Civil Hospital, Nashik on account of Pandemic situation. The Government has power to utilize the emergency services at anytime, anywhere to provide health services to needy and common people and it is not punitive action of the respondents.

13. In view of above, it is evident that the impugned deputation order is passed in the background of Covid-19 Pandemic situation which is to be dealt with by the Government as per provisions of the Epidemic disease Act, 1897 as well as the Disaster Management Act, 2005. Thereby it is crystal clear that the provisions of Transfer Act, 2005 by which the Government Servant like the applicant is governed is not invoked. In view of same, the ratio laid down in the citation relied upon by the learned Advocate for the applicant in the matter of **State of Maharashtra Vs. Dr. Ashok Ramchandra Anand** (cited supra) would be useful in appreciating the legality of the impugned order. In the said citation case by invoking the Epidemic Disease Act, 1897 read with Maharashtra Covid-19 Regulations 2020, the

respondent therein was deputed at Swami Ramanad Teerth Rural Government Medical College, Ambejogai which order was under challenge. At that point of time, the respondent therein was discharging his duties as Professor and Head of the Department of Gynecology and Obstetrics of Grant Government Medical College and Sir J.J. Group of Hospitals (hereafter “the GGMC”, for short). In the said citation case, in paragraph Nos. 12 and 13 it is laid down as under:-

“12. We inquired of Mr. Kumbhakoni as to whether the word “deputation” has been defined either in the Transfer Act or the Maharashtra Services (General Conditions of Service) Rules, 1981 or in any other Rule framed under Article 309 of the Constitution. He answered in the negative. Drawing guidance from the decision in Inder Singh (supra), deputation of an employee is service on a post which is outside his cadre or outside his parent department, and that too with his consent. In the present case, neither has Dr. Anand been posted outside his cadre nor outside his department. Consent of Dr. Anand was also not taken. The order dated August 5, 2020, although is camouflaged as an order of deputation, is on the face of it an order of transfer. An order of transfer could have been passed only in accordance with the terms of the Transfer Act and not otherwise. By describing the order

dated August 5, 2020 as an order of deputation and not transfer, the Director took recourse to an action which the law abhors and such action appears to us to be plainly indefensible.

13. Finally, we record our agreement with the contention of Ms. Sonal that the inquiry report dated May 14, 2020 formed the foundation for Dr. Anand's transfer to SRTR Medical Hospital and has civil consequences. The transfer was directed not purely in public interest or administrative exigency, but treating the Inquiry Committee's report as sacrosanct without Dr. Anand being given an opportunity of defending the allegations levelled against him and without giving him the chance to respond to such report. Mere handing over of a questionnaire for eliciting views on certain queries is no part of due process of law. It has transpired from the materials on record that Dr. Anand had been quarantined for quite some time and as a result thereof he was not regularly available for discharge of his duties at GGMC. If indeed such absence affected the hospital administration as well as there was lack of proper health care facilities for patients, nothing prevented a simplicitor transfer order posting Dr. Anand to SRTR Medical Hospital being issued without casting any stigma on his reputation or performance of duties. The impugned

order dated August 5, 2020 waxes eloquent on how Dr. Anand was found to be remiss in discharging duties, triggering the transfer. A Government servant, holding a transferable service, can be transferred from one post to another having regard to administrative policy or practice or because of administrative reasons is beyond any shadow of doubt. When reasons for transfer are administrative in nature and the appropriate authority acts bona fide, the Court has to stay at a distance and not interfere with such administrative order of transfer. However, an order of transfer could be labelled as mala fide if it is used as a cloak for punishment. Unless a case of mala fide is pleaded and proved, it may not be appropriate for the Court to review the expediency and propriety of an administrative order to transfer a Government servant from one post to the other. Whenever a transfer order is proved to have been issued mala fide or when such an order has penal consequences, the Court ought not hesitate to strike down the transfer order.

14. In my considered opinion, the facts in the citation case and the case in hand are of similar nature, wherein the order under challenge is styled as deputation and it was issued in the background of the Covid-19 Pandemic situation and by resorting

the provisions of Transfer Act, 2005 by which Government servants like applicant is governed. In such situation, it has to be held that the impugned order in the case in hand is issued in contravention of the provisions of Transfer Act, 2005 by which the applicant's transfer is governed. In the case in hand, further even if the exigencies of Covid-19 Pandemic situation is pleaded behind issuances of the impugned order, in clear terms, it is sated that alleged misconduct is of such nature that she is required to be suspended and face disciplinary action. But that is all together different issue. This Tribunal has limited jurisdiction and at this juncture I do not wish to express any opinion on that aspect of the matter. But if the impugned order of deputation is examined, it cannot be recognized under the parameters of Transfer Act, 2005, when it is clear cut midterm transfer and there is no mention of invocation of provisions of Transfer Act, 2005. In such circumstances, ratio laid down in the above citation would be aptly applicable. Therefore, the impugned order of deputation dated 24.06.2020 (Annex. 'A-14') is liable to be quashed and set aside.

15. That apart, the applicant has also sought the relief of payment of salary from February, 2020. From the contentions raised in the application it is seen that the applicant claimed that

after availing medical leave on account of discharging the duties, she joined the services at Civil Hospital, Nandurbar on 24.02.2020 and worked till 23.3.2020. The said contention of the applicant is denied by the respondents and it is submitted that the applicant has created false record by signing muster roll forcibly. However, the applicant has pleaded that after issuance of impugned deputation order dated 24.06.2020 (Annex. 'A-14') she joined her duties at Civil Hospital, Nashik on 26.06.2020 as per joining report dated 26.06.2020 (part of Annex. 'A-15' collectively) and immediately on the same day, made application seeking leave on account of ill health of her daughter from 29.06.2020 till 02.07.2020. Thereafter, she made various representations for cancellation of impugned order of deputation to various authorities from time to time as discussed while narrating the facts. The respondents have denied that she joined the duties at Civil Hospital, Nashik on 26.06.2020 and worked and proceeded on medical leave on 29.06.2020. According to the respondents, the applicant has not worked.

16. In view of contentions raised by the applicant, learned Advocate for the applicant has placed reliance on citation of Hon'ble Supreme Court of India in the matter of **Somesh Tiwari Vs. Union of India and Others reported in 2009 (2) Supreme**

Court Cases 592 to avail the salary which is due to the applicant since February, 2020 onwards or at least from the date of her joining the duties at Civil Hospital, Nashik on 26.06.2020 onwards. For that purpose, the learned Advocate for the applicant invited my attention to the contents of paragraph Nos. 16, 22 and 24 which are as follows :-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of

transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

22. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.

24. We, keeping in view the fact, that on the one hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be subserved if during the period from 28th December, 2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly.

17. I have already dealt with the illegality of impugned order by holding that it is not sustainable in the eyes of law. However, so

far as payment of salary is concerned, in the case in hand, the applicant has specifically contended that before passing the impugned order she has worked from 24.02.2020 to 23.3.2020 at Civil Hospital, Nandurbar as well as after issuance of impugned order she has worked at Civil Hospital, Nashik from 26.06.2020 to 28.06.2020 and proceeded on medical leave from 29.06.2020 onwards.

18. In view of same, the respondents are required to deal with the salary aspect of the matter as per Leave Rules. The applicant can claim her right of receiving the salary in accordance with law. In my humble opinion, the observations made in the abovesaid citation would not be applicable when the facts of the present case are different as after issuance of impugned order, the applicant has claimed that she joined her duties at Civil Hospital, Nashik on 26.06.2020. In the circumstances, in my opinion, in that regard only directions can be issued to the respondents to consider the payment of salary of the applicant by taking into consideration admissible leave available to the applicant. I, therefore proceed to pass following order:-

ORDER

- (i) The Original Application No.459 of 2020 is partly allowed.

- (ii) The impugned order dated 24.06.2020 (Annex. 'A-14') issued by the respondent No.2 i.e. the Deputy Director of Health Services is quashed and set aside and the respondents are directed to repost the applicant at Civil Hospital, Nandurbar within a period of 15 days from the date of this order.
- (iii) The respondents are further directed to consider the claim of the applicant for salary from the month of February, 2020 in accordance with law within a period of 15 days from the date of this order.
- (iv) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad

Date :- 07.01.2022

SAS. O.A.No.459/2019. Transfer /deputation