

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 997 of 2023 (S.B.)**

Dr. Amol S/o Rambhau Gite,
Aged about 46 years, Occupation : Service
District Health Officer Buldhana, R/o Office of the District Health
Officer, Buldhana.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Department of Public Health Department,
Government of Maharashtra, Mantralaya, Mumbai-32.
- 2) Chief Executive Officer,
Zilla Parishad, Buldhana.
- 3) Dr. Charushila Shyam Patil,
Aged about 50 years, Occ- Service
R/o Assistant Director of Health Service Leprosy, Buldhana,
Tal, Dist: Buldhana.

Respondents.

Smt. R.S., S.V. Sirpurkar, Advocates for the applicant.
Shri H.K. Pande, learned P.O. for respondent no.1.
Shri S.K. Jagirdar, Advocate for respondent no.2.
S/Shri H.S. Chitaley, Kaustubh Kadasne, Adv. for resp.no.3.

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

Date of Reserving for Judgment : 27th October,2023.

Date of Pronouncement of Judgment : 3rd November,2023.

JUDGMENT

(Delivered on this 3rd day of November,2023)

Heard Smt. R.S. Sirpurkar, learned counsel for the
applicant, Shri H.K. Pande, learned P.O. for respondent no.1, Shri

S.K. Jagirdar, learned counsel for respondent no.2 and Shri H.S. Chitale, learned counsel for respondent no.3.

2. The case of the applicant in short is as under –

The applicant was promoted to the Class-I post of the District Health Officer cadre on 21/02/2013 as a District RCH Officer. He functioned there for three years and was transferred as a District Health Officer, Jalna on 31/05/2016. Thereafter, the applicant was transferred on 16/10/2018 as a District Health Officer, Aurangabad. Subsequently, he was transferred as a District Health Officer, Beed on 21/01/2022.

3. The applicant was transferred on 30/06/2023 in the annual general transfer as District Health Officer, Buldhana on a vacant post. In the said order, it was wrongly mentioned that it was a request transfer. The applicant never requested for transfer.

4. The respondent no.3 was initially discharging her duties as a Medical Officer, Buldhana. She was promoted and posted at Amravati as Assistant Director, Health Services in May,2023. As per the order dated 18/05/2023, respondent no.3 was transferred and posted as Assistant Director (Leprosy) at Buldhana on her request. Respondent no.3 barely worked for about two months after the transfer from Amravati to Buldhana. Respondent no.3 is transferred on

the post of District Health Officer in place of applicant as per the order dated 28/08/2023. The respondent nos.1 and 2 malafidely and to show favouritism to respondent no.3 issued the impugned transfer order dated 28/08/2023. The applicant was not due for transfer, there was no reason to transfer him from the post of District Health Officer, Buldhana. Hence, the applicant approached to this Tribunal to quash and set aside the impugned transfer order dated 28/08/2023.

5. Respondent no.2 filed written submission and submitted that respondent no.3 was transferred as per the order of respondent no.1. He has to obey the order of respondent no.1, therefore, the respondent no.3 was relieved to join the new posting as District Health Officer. It is further submitted that the process of giving charge i.e. movement order was completed and sent to the District Health Officer Office, but could not be reached to respondent no.3 and to the Petitioner with due formalities completed from inward outward section of the District Health Officer Office. Meanwhile, on the next date itself, i.e., on 01/09/2023 the Court granted the status-quo in this case. Hence, the direction given by the Court was followed by respondent no.2 and the status-quo was maintained.

6. Respondent no.3 filed reply. It is submitted that the applicant is not transferred. The respondent no.3 has been transferred from the post of Assistant Director (Leprosy), Buldhana to the post of

District Health Officer, Buldhana. It is submitted that the applicant cannot claim that impugned order is transfer, because no posting is given to the applicant. The transfer order was approved by the Chief Minister and therefore there is a compliance of Section 4 (4) and 4 (5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (In short "Transfer Act,2005"). Hence, the O.A. itself is liable to be dismissed. The applicant was directed to report to the office of Deputy Director of Health Services, Akola Circle, Akola. He was not given any posting and therefore the impugned transfer order is not a transfer of the applicant, therefore, he cannot challenge the same before this Tribunal. It is submitted that respondent no.3 made several representations. Those were considered by respondent no.1. Hence, the present O.A. is liable to be dismissed.

7. This Tribunal not granted any interim relief on the ground that the impugned transfer order is not a transfer as defined under the Section-2 (i) of the Transfer Act,2005. The applicant approached to the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble Bombay High Court, Bench at Nagpur directed the respondents to maintain status-quo as per the order dated 01/09/2023. The said Writ Petition came to be disposed of on 10/10/2023. The status-quo

granted by the Hon'ble Bombay High Court, Bench at Nagpur dated 01/09/2023 is continued by this Tribunal till date.

8. Heard Mrs. R.S. Sirpurkar, learned counsel for the applicant. She has pointed out the transfer order dated 30/06/2023. As per this order, the applicant was transferred from the post of District Health Officer, Beed to the post of District Health Officer, Buldhana. The respondent no.3 was transferred from the post of Additional District Health Officer, Amravati to the post of Assistant Director (Leprosy), Buldhana as per the order dated 18/05/2023. There is no dispute that the applicant and respondent no.3 joined at the respective posts at Buldhana, as per their transfer orders. The respondent no.1 issued transfer order dated 28/08/2023 by which the respondent no.3 is transferred from the post of Assistant Director (Leprosy), Buldhana to the post of District Health Officer, Buldhana in place of the applicant. The applicant was directed to hand over the charge to respondent no.3 and directed him to report the Deputy Director of Health Services, Akola.

9. The main contention of the applicant that there was no any reason to transfer him from the post of District Health Officer, Buldhana and to give charge to respondent no.3 of the said post. He was transferred on the post of District Health Officer, Buldhana as per the order dated 30/06/2023. He had joined on the said post. Within

two months, he cannot be transferred without following the provisions of the Transfer Act,2005. There was no any proposal for transfer by respondent no.2. There was no any allegation / complaint against the applicant. Respondent no.1 should not have been transferred him from the post of District Health Officer, Buldhana.

10. The learned counsel for applicant Smt. R.S. Sirpurkar has submitted that till date the applicant is working on the said post. She has pointed out several documents to show that he is working on the said post.

11. The learned counsel for respondent no.3 Shri H.S. Chitale pointed out some documents which show that respondent no.3 was relieved from the post of Assistant Director (Leprosy), Buldhana. She has joined on the post in place of the applicant.

12. The applicant and respondent no.3 both have filed documents to show that they are working on the post of District Health Officer, Buldhana. There is no dispute that the applicant approached to this Tribunal on 30/08/2023. This Tribunal not granted any interim relief. The applicant approached to the Hon'ble High Court. The Hon'ble High Court has granted the status-quo and it is continued till date. The material documents filed by the applicant show that he is the Drawing and Disbursing Officer (DDO). He has filed the copies of

the pay bills etc. which show that he has signed the pay bills of the employees working under him.

13. In respect of the impugned transfer order whether it is legal or not is to be decided. The Section-4 of the Transfer Act,2005 is reproduced below -

“4. Tenure of transfer. –

(1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under subsection (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be:

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

(i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave;

(ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.

(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior [approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

14. As per Section 4 (4) of the Transfer Act, 2005, the transfer of Government servant shall ordinarily be made only once in a year in the month of April or May. The impugned transfer order is a mid-term transfer order. The applicant was transferred as per the order dated 30/06/2023. Thereafter, he has joined at Buldhana on the post of District Health Officer. There is nothing on record to show as to why respondent no.3 is transferred by the impugned order in place of applicant. There is nothing on record to show that the Competent Authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing.

15. The learned counsel for the applicant has submitted that the applicant is still working on the said post. The impugned transfer

order is malafide. It is in contravention of the Sections 4 (4) & 4 (5) of the Transfer Act,2005. Therefore, it is liable to be quashed and set aside.

16. The learned P.O. has submitted that respondent no.1 approved the transfer of respondent no.3 as per the minutes / note sheet, dated 25/08/2023.

17. Heard Shri S.K. Jagirdar, learned counsel for respondent no.2. As per his submission, respondent no.2 has followed the direction issued by respondent no.1.

18. The learned counsel for respondent no.3 Shri H.S. Chitaley submits that the O.A. itself is not maintainable. It is not a transfer. The applicant was not transferred to any post and therefore he cannot claim for relief.

19. Respondent no.1 has submitted in the reply before the Hon'ble High Court and before this Tribunal also that the applicant is transferred by the impugned order from the post of District Health Officer, Buldhana. Therefore, it is admitted by respondent no.1 that the applicant is transferred from the post of District Health Officer, Buldhana. He was directed to hand over the charge to respondent no.3 and directed him to join in the office of Deputy Director of Health Services, Akola Circle Akola. Therefore, it is clear that the applicant is

transferred from one place to other. Moreover, respondent no.1 in the reply has admitted that the applicant is transferred from the post of District Health Officer, Buldhana. Therefore, it is a transfer as defined under Section 2 (i) of the Transfer Act,2005.

20. The learned counsel for respondent no.3 has pointed out the several Judgments. He has pointed out the Judgment in the case of ***Union of India Vs. H.N. Kirtaniya (1989) 3 SCC,445***. The Hon'ble Supreme Court has held that " transfer of employee on administrative ground or in public interest not open to Court's or Tribunal's interference unless malafide, illegal or in violation of statutory rules are shown." The cited Judgment is not applicable, because, the Transfer Act,2005 enacted by the Government of Maharashtra to regulate the transfers of Government servants, therefore, the provisions are made as to how the transfers are to be made. As per the Section 3 of the Transfer Act,2005 the tenure of transfer is three years. Before completion of the tenure of three years, the transfer cannot be made. The applicant is transferred within two months without any reason recorded by the Transferring Authority. As per Section 4 (4) (ii) of the Transfer Act,2005 the reasons are to be recorded with the prior approval of the next higher authority for the transfer in mid-term. No such exercise is done by respondent nos.1 and 2. Therefore, it appears that it is a malafide transfer. Respondent nos.1 and 2 not

complied the provisions of the Section 4 (4) and 4 (5) of the Transfer Act,2005. Hence, the cited decision is not applicable to the case in hand.

21. The learned counsel for respondent no.3 has pointed out the Judgment in the case of **State of M.P. & Ano. Vs. S.S. Kourav & Ors. (1995) 3 SCC,270**. The Hon'ble Supreme Court has held as under –

“The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court.”

22. The learned counsel for respondent no.3 has pointed out the Judgment in the case of the **Chief General Manager (Telecom) N.E. Telecom Circle & Ano. Vs. Rajendra Ch. Bhattacharjee & Ors., (1995) 2 SCC,532**. The Hon'ble Supreme Court has held that “transfer on administrative grounds or in the public interest. In absence of strong and compelling grounds rendering the transfer order improper or unjustified it cannot be stayed / quashed.”

23. In the case of **State of U.P. and Ors. Vs. Gobardhan Lal (2004) 11 SCC 402**. The Hon'ble Supreme Court has held that “Court should not normally interfere in the transfer order except when

(i) transfer order shown to be vitiated by malafides or (ii) in violation of any statutory provision, or (iii) having been passed by an authority not competent to pass such an order.”

24. In the case of ***Air Ports Authority of India Vs. Rajeev Ratan Pandey and Ors. (2009) 8 SCC,337***, the Hon’ble Supreme Court has held that “Court should not interfere in the transfer order unless malafide is shown or pleaded.”

25. The above cited decisions are not applicable to the case in hand, because, the specific provisions are made in the Transfer Act,2005. As per Sections 4 (4) and 4 (5) of the Transfer Act,2005, the reasons are not recorded by respondent no.1 / respondent no.2 for transfer of the applicant from the post of District Health Officer, Buldhana. Nothing is shown by respondent nos.1 and 2 there was any new post etc. and therefore respondent nos.1 and 2 cannot satisfy the Section 4 (i) (ii) and (5) of the Transfer Act,2005. There was no any charge sheet or complaint against the applicant. None of the respondents have made any submission that work of the applicant is not proper etc. and therefore he is transferred on administrative ground. Respondent no.1, the Government of Maharashtra (Chief Minister) has approved the minutes / note sheet dated 25/08/2023. The relevant Clause-2 of the minutes / note sheet (P-393) is reproduced below -

अ. क्र.	मुमंस क्रमांक व नस्ती क्रमांक	विषय	निर्देश
२.	७३७५/ बदली २०२३/ २१९/सेवा-२	जिल्हा आरोग्य अधिकारी, जि. शल्य चिकित्सक व विशेषज्ञ संवर्गातील अधिका-यांच्या बदली बाबत.	<p>विभागाच्या प्रस्तावातील अनुक्र ४,७ व १३ (जिल्हा शल्य चिकीत्सक धुळे, जिल्हा शल्य चिकीत्सक जालना व वैद्यकीय अधीक्षक, उपजिल्हा रुग्णालय, भिवंडी, जि. ठाणे येथील प्रस्ताव वगळून विभागाच्या प्रस्तावास खालील समावेशनासह मान्यता देण्यात येत आहे.</p> <p>१. डॉ. दिनेश बाबू सुतार, अतिरिक्त जिल्हा आरोग्य अधिकारी, जि.प. गोंदिया यांना सहायक संचालक, आरोग्य सेवा आयुक्तालय, आरोग्य भवन, मुंबई या येथे पदस्थापना देण्यात यावी.</p> <p>२. डॉ. चारुशीला पाटील, सहायक संचालक (कुष्ठरोग) बुलढाणा) यांना जिल्हा आरोग्य अधिकारी, बुलडाणा या पदावर पदस्थापना देण्यात यावी.</p>

26. As per this approval / transfer by the Chief Minister clearly shows that respondent no.3 was not proposed for any transfer on the post of District Health Officer. On what ground the name of

respondent no.3 is included for transfer on the post of District Health Officer, Buldhana is not clear. Therefore, it appears that the transfer of applicant from the post of District Health Officer, Buldnana is malafide only to show favouritism to respondent no.3. Hence, the cited decisions are not applicable to the case in hand.

27. The learned counsel for respondent no.3 pointed out the Judgment in the case of ***Sanjeev Bhagwanrao Kokil Vs. State of Maharashtra and Ors.,2013 (2) Mh.L.J.,107***. In the cited decision, it is clear in para-4 of the Judgment that Petitioner Sajeev Kokil was not behaving properly. There were complaints against him. Therefore, he was transferred on administrative ground. In para-13, the observation of the Hon'ble High Court is reproduced below-

"(13) That takes us to the argument of the petitioner that the respondents have attempted to support the impugned transfer order on other additional reasons not referred to in the order itself. For that, reliance has been placed on portion of paragraph 27 of the affidavit filed before the Tribunal. The same reads thus:

"It is apparent from the said report that the oral functioning of the applicant as a Sr. Police Inspector at M.R.A. Marg Police Station, Mumbai, the applicant has levelled the allegations against the superior officers. However, the functioning of the applicant may not be ignored since both the superior officers have submitted the adverse reports of the applicant. Therefore, after receipt of the report of the superior officers, the Commissioner of Police was satisfied that it was a fit case to transfer the applicant from M.R.A. Marg Police Stn. By invoking the provisions of section 4(4)(ii) and 4(5) of the Transfer Act."

28. There is nothing on record to show that there was any proposal by respondent no.2 to transfer the applicant and it was submitted to respondent no.1 for approval. On the contrary, minutes / note sheet of the Chief Minister shows that the name of respondent no.3 is included and directed to transfer her in place of the applicant. No any reason is recorded for transfer. There is nothing on record to show that there was any complaint against the applicant. Hence, the impugned transfer order without complying Sections 4 (4) and 4 (5) of the Transfer Act,2005 is malafide and therefore cited decisions are not applicable to the case in hand.

29. The Judgment of Hon'ble Bombay High Court in the case of ***Rajendra Shankar Kalal Vs. State of Maharashtra & Ors.***, clearly shows that there were complaints against the applicant / petitioner. In para-9 of the Judgment, it was submitted by the State Government on affidavit that there were serious complaints and therefore he was transferred on administrative ground.

30. In the present O.A., no any complaint was pointed out by any of the respondents against the applicant. Hence, the transfer of the applicant is malafide. Therefore, the cited decision is not applicable to the case in hand.

31. In other cited decisions, the same view was taken by the Hon'ble High Court that the transfer order not to be interfered by the

Court or Tribunal, if it is not malafide or against the rules etc. The impugned transfer order is in the contravention of Sections 3 and 4 of the Transfer Act,2005. The applicant had not completed any normal tenure for transfer. The applicant joined on the post of District Health Officer, Buldhana as per the order dated 30/06/2023. By impugned order dated 28/08/2023, he is transferred from the said post. Within two months nothing happened to transfer him from the said post. Nothing is pointed out by respondents to show that there were any complaints or misappropriation etc. and therefore the impugned transfer order is in the breach of the statutory provisions of the Transfer Act,2005. Moreover, it appears that it is a malafide transfer only to show favouritism to respondent no.3. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned transfer order dated 28/08/2023 is hereby quashed and set aside.
- (iii) No order as to costs.

Dated :- 03/11/2023.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 03/11/2023