

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 541 OF 2017

DISTRICT : DHULE

Dr. Manik Prabhakar Sangale,
Age : 56 years, Occu. : Service as
District Civil Surgeon, Civil Hospital,
Dhule, Dist. Dhule.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through its Principal Secretary,
Public Health Department,
M.S. Mantralaya, Mumbai-32.
- 2) The Director of Health Services,
Aarogya Bhavan, Opp. C.S.T.,
Mumbai.
- 3) The Deputy Director of Health Services,
Nashik Circle, Nashik.
- 4) Dr. Mohan Yashwant Patil,
Age. Major, Occ. : Service as
Medical Superintendent, Wai,
Dist. Satara.

.. RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned for the
applicant.
: Shri M.S. Mahajan, learned Chief Presenting
Officer for the respondent nos. 1 to 3.
: None appears for respondent no. 4.

Coram : Hon'ble Shri Justice M.T. Joshi, Vice Chairman

Date : 15.12.2017

ORAL ORDER

Heard Shri V.B. Wagh, learned for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 to 3. None appears for respondent no. 4.

2. By filing the present O.A., the applicant is challenging the order of transfer dated 5.8.2017 issued by the res. no. 1 under which he is transferred from the post of Dist. Civil Surgeon, Dhule to the vacant post of Assistant Director, Health Services (Medical), Aurangabad. The res. no. 4 - Dr. Mohan Yashwant Patil, who is absent in the present matter, is transferred in his place.

3. The applicant was earlier transferred from Sangli to Dhule vide transfer order dated 15.7.2016. However, by the impugned order dated 5.8.2017 he came to be transferred at Aurangabad as detailed above. Claiming that the impugned transfer order is midterm and mid tenure, the same came to be challenged.

4. The affidavit in reply on behalf of res. nos. 1 to 3 would show that the Civil Services Board has consciously taken a decision to transfer the applicant as a Assistant Director at Aurangabad on administrative ground as the said post was vacant. The same was duly accepted by the competent authority as per process prescribed by the G.R. dated 17.4.2017 (Exh. R.1). In that view of the matter, the respondents wanted that the present O.A. be dismissed.

5. Additionally, the learned C.P.O. during the hearing filed on record photo copy of the proceedings, which is accepted and marked as document 'X'.

6. The record would show that in the present application along with 6 other O.As. no interim relief was granted. Ultimately on 30.11.2017, the learned C.P.O. made a statement that, he would seek an instruction from the concerned respondents to find out as to whether any corrective steps can be taken. But on 15.12.2017 he submitted that, no instructions are forthcoming and, therefore, the present O.A. is heard on merit.

7. The photocopy of the proceedings (document 'X') would show that on 5.8.2017, various transfers in the cadre of Dist. Health Officers etc. came to be issued, which include the transfers of the Officers, who had completed 3 years' tenure, the Officers, who had applied for request transfer and transfers on the vacant posts etc. Thus, on 5.8.2017, the respondents effected the transfers as if those were general transfers, while the provisions of sec. 4 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005) would show that the general transfers are required to be effected in the month of April and May in the year.

8. The impugned transfer order dated 5.8.2017 (Annex. A.1) would show that in all 69 transfers have been effected as detailed above. The provisions of sec. 4 of the Transfer Act, 2005 are as under :-

“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 sub-section (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.

(Emphasis supplied)”

9. The provisions of sec. 4 would show that in exceptional circumstances, midterm and mid tenure transfers can be effected, and posting on the vacant post is one of such exception.

10. The copy of the proceeding (document 'X') would show that at sr. no. 4 – Dr. Anjali Ashok Deshpande, at sr. no. 8 Dr. Gopal Vasudevrao Bhagat and at sr. no. 19 Dr. J.R. Nimbhore etc. had not only completed their period of 3 years', but were at the same post for a period of more than 4 to 5 years. Specifically Dr. Anjali Ashok Deshpande is working at Beedkin since 5.7.2010. However, all these Officers, without request from their side and without any reason as can be seen from the noting, were retained at the same places.

Not only this, but also at page no. 11 of the said proceedings one would find that at sr. no. 44 Dr. M.J. Aathar, who has completed 2

years' at Parbhani had in fact made a request for his transfer on the vacant post to which the present applicant is posted. Thus, having completed 2 years at Parbhani, Dr. Aathar had in fact requested for his transfer to the said vacant post, however, same was rejected for the reasons "not eligible for transfer and therefore request rejected".

11. If all these facts and circumstances are taken into consideration, it would be clear that not only the concerned authorities had caused the general transfers in the month of August, 2017 against the provisions of the Transfer Act, 2005, but has also not applied its mind to above facts.

12. The learned C.P.O. submits that, since the transfer in exceptional circumstances is made for the reasons as stated above and has been duly ratified, no interference at the hands of the Tribunal is called for. The admitted facts, however, would show that, there is non-application of mind and, therefore, interference is required.

13. At this stage, the learned C.P.O. submits that, in case the applicant would make a representation, it would be considered by the respondents. The record, however, would show that time and again, time was granted to the learned C.P.O. for taking instructions to find out as to whether any corrective steps can be taken in the matter. However, there was no instruction from the respondents in that regard. Hence, I pass the following order :-

ORDER

(i) The present O.A. is allowed without any order as to costs and the impugned transfer order dated 5.8.2017 issued by the res. no. 1 is hereby quashed and set aside, so far as the present applicant – Dr. Manik Prabhakar Sangale - is concerned.

(ii) The concerned respondents are directed to repost the present applicant as a Dist. Civil Surgeon, Civil Hospital, Dhule.

(iii) The concerned respondents are further directed to make a suitable adjustment, due to above occasion of reposting of the present applicant, as regards posting of res. no. 4 – Dr. Mohan Yashwant Patil, who did not participate in the present proceedings.

VICE CHAIRMAN

ARJ-OA NO.541-2017 JUS-MT JOSHI (TRANSFER)