

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 592 OF 2020

DIST. : LATUR

Dr. Sanjay s/o Baburao Dhage,)
Age. 47 years, Occ. Govt. Service,)
Asstt. Director Health Services (Malaria),)
Latur, Tq. & Dist. Latur,)
R/o Latur, Tq. & Dist. Latur.) -- **APPLICANT**

V E R S U S

(1) The State of Maharashtra,)
Through the Principal Secretary,)
Public Health Department,)
G.T. Hospital, 10th Floor,)
Mantralaya, Mumbai – 400 001.)

(2) The Director of Health Services,)
Aryogya Bhavan, Saint George)
Hospital Compound, M.S.,)
Mumbai – 400 001.)

(3) The Deputy Director of Health)
Services, Latur Region,)
Latur – 413 512.) -- **RESPONDENTS**

APPEARANCE :- Shri Shamsunder B. Patil, learned Advocate
for the applicant.

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

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 09.08.2021.

ORDER

1. Challenge in this Original Application is made under section 19 of the Administrative Tribunals Act, 1985 to the impugned transfer order dated 18.12.2020 (Annex. A-4 page 25 of paper book) issued by the respondent no. 1 – the Principal Secretary, Public Health Department, Mantralaya, Mumbai, thereby transferring the applicant from the post of Assistant Director H.S. (Malaria), Latur to the post of Medical Officer (Bhishak), General Hospital, Beed, Dist. Beed.

2. The applicant was initially appointed as a Medical Officer on 25.7.1997. In the year 2014, he was promoted in the cadre of Civil Surgeons in the pay scale of Rs. 15,600-39100 Grade Pay Rs. 6600 and was posted as a Medical Superintendent, Rural Hospital, Jalkot, Dist. Latur for the period from 7.4.2014 to 15.1.2015 and thereafter at Rajbhavan, Mumbai for the period from 16.1.2015 to 27.3.2018. Thereafter the applicant by the order dated 27.3.2018 (Annex. A-1) was transferred to the post of Civil Surgeon, Latur and he joined on the said post on 28.3.2018. While working as a Civil Surgeon at Latur by the order dated 29.9.2020 (Annex. A-2) he was given the additional charge of the post of Assistant Director, Malaria, Latur. However, while he was holding the additional charge of the said post, one Dr. Laxman

Sarjerao Deshmukh, Medical superintendent, Rural Hospital, Murud, Dist. Latur has been transferred and posted as a Civil Surgeon, Latur vide order dated 1.10.2020 (Annex. A-3), who joined on the said post on 8.10.2020. Thereafter, by the impugned order dated 18.12.2020 passed by the respondent no. 1 the applicant has been transferred from Latur to the post of Medical Officer (Bhishak), Civil Hospital, Beed, Dist. Beed.

3. It is the contention of the applicant that the said impugned order of transfer dated 18.12.2020 (Annex. A-4) is issued by the respondent no. 1 before the applicant completed his normal tenure of 3 years at Latur from 27.3.2018. In view of the same it is a midterm and mid tenure transfer of the applicant, which is passed without following the provisions 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 (for short the Transfer Act, 2005) and the impugned transfer order is passed stating merely administrative exigency. Moreover the said transfer order is inconvenient to the applicant. It is his contention that his daughter is studying in 10th standard for the academic year 2020-21 in Sant Tukaram National Model School at Latur and his old aged parents are taking treatment at Latur itself and therefore the impugned transfer is inconvenient. In view of

the same the impugned transfer order dated 18.12.2020 (Annex. A-4) is liable to be quashed and set aside.

4. Affidavit in reply is filed by Dr. Eknath Maloji Bhosale, Chief Administrative Officer working in the office of the Deputy Director of Health Services, Aurangabad on behalf of respondent nos. 1 to 3. In the said affidavit in reply the impugned order of transfer is justified stating that the applicant has been transferred by taking into consideration the administrative exigency as the applicant is holding the qualification of M.D. (Medicine). The impugned order of transfer is passed in accordance with law and taking approval of competent authority, and therefore, the present O.A. is liable to be dismissed.

5. I have heard the arguments advanced by Shri Shamsunder B. Patil, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents, at length.

6. Learned Advocate for the applicant strenuously urged before me that the impugned order of transfer dated 18.12.2020 is passed in blatant disregard of the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. The impugned order states only administrative reason, which is not contemplated under section

4(4)(ii) and 4(5) of the Transfer Act. Nothing is mentioned either in the impugned order dated 18.12.2020 (Annex. A-4) or in the affidavit in reply filed by the respondents suggesting that the impugned order is passed for any exceptional circumstances or special reasons and with the approval of immediate superior authority.

7. As against that the learned Presenting Officer submits that the impugned order of transfer is passed taking into consideration the administrative exigency and administrative reason as contemplated under section 4(4)(ii) and 4(5) of the Transfer Act, 2005.

8. Perusal of facts on record shows that the applicant was posted on the post of Civil Surgeon at Latur by the order dated 27.3.2018 (Annex. A-1) and the applicant joined on the said post on 28.3.2018. As per the order dated 29.9.2020 (Annex. A-2), the applicant was given the additional charge of the post of Assistant Director (Malaria), Latur. Thereafter by the order dated 1.10.2020 (Annex. A-3) one Dr. Laxman Sarjerao Deshmukh, Medical Superintendent, Rural Hospital, Murud, Dist. Latur was transferred to the post of Civil Surgeon, Latur, which post was held by the applicant. Accordingly said Dr. Laxman Sarjerao Deshmukh joined on the transferred post of Civil Surgeon, Latur

on 8.10.2020. In view of that the applicant ceased to work as Civil Surgeon, Latur from 8.10.2020 on which date said Dr. Laxman Deshmukh took the charge of the transferred post. From 9.10.2020 the applicant is working as a Assistant Director (Malaria), Latur and thereafter by the impugned order dated 18.12.2020 (Annex. A-4) the applicant can be said to have been transferred from the post of Assistant Director H.S. (Malaria), Latur to the post of Medical Officer (Bhishak), General Hospital, Beed, Dist. Beed. In view of above, it is clear that the applicant till the date of impugned order dated 18.12.2020 (Annex. A-4) worked only for about 2 years and 8 months at Latur. The applicant has not completed his normal tenure of 3 years as stated in the Transfer Act, 2005. Hence, the impugned transfer order of the applicant dated 18.12.2020 (Annex. A-4) is necessarily midterm and mid-tenure.

9. In view of above, in order to justify the said impugned order, the respondents have to establish that the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005 are complied with in its true spirit and letter. The respondents for that purpose have to establish that the competent transferring authority issued the impugned transfer order under exceptional circumstances or for

special reasons and that the approval of next higher authority is obtained.

10. In view of above-said background, if the impugned transfer order dated 18.12.2020 (Annex. A-4) is examined, it is seen that in the beginning of the order it is mentioned that the said order is passed under the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005 and approval of the next higher authority is taken and reasons mentioned therefor is on administrative ground / reasons. The name of the applicant is at sr. no. 1 in the list of this impugned transfer order dated 18.12.2020 (Annex. A-4). As the impugned transfer order dated 18.12.2020 (Annex. a-4) speaks of transfer on vacant post, in view thereof the impugned order will have to be tested under the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Both these provisions speak about exceptional circumstances or special reasons and the special case, however, in the impugned transfer order dated 18.12.2020 (Annex. A-4) requirement of these 2 provisions are not dealt with. Even in the affidavit in reply also only administrative exigency is mentioned without giving any details thereof. Nothing has been stated by the respondents that during the pendency of this O.A. anybody is posted on the post of Assistant Director

(Malaria), Latur. In view thereof, the applicant can be reposted on the said post of Assistant Director (Malaria), Latur.

11. In view of the discussion in foregoing paragraphs, I am of the opinion that the impugned transfer order of the applicant dated 18.12.2020 (Annex. A-4) issued by the respondent no. 1 is in total contravention of the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Administrative exigency as mentioned by the respondents is not a sufficient reason and as such compliance of the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Hence, the impugned order dated 18.12.2020 (Annex. A-4) is not sustainable and it is liable to be quashed and set aside. Hence, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 592/2020 is allowed and disposed of.
- (ii) The impugned order of transfer dated 18.12.2020 (Annexure A-4) issued by the respondent no. 1 thereby transferring the applicant from the post of Assistant Director H.S. (Malaria), Latur to the post of Medical Officer (Bhishak), General Hospital, Beed, Dist. Beed is quashed and set aside

- (iii) The interim relief granted by this Tribunal vide order dated 30.12.2020 stands merged in this final order.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 09.08.2021.