

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.897 OF 2023

DISTRICT: PUNE
Subject: Transfer

Dr. Abhijit R. Phadnis,)
Age: 49 yrs, Occ: Assistant director,)
Health Services (Medical))
Pune.)...**APPLICANT**

VERSUS

1. State of Maharashtra)
Through the Principle Secretary,)
Department of Public health,)
Gokuldas Tejpal Hospital Building)
10th Floor A wing Mantralaya,)
Mumbai – 400 001.)

2. Dr. Prashant Wadkar)
Assistant Director, (Medical))
Pune)..**RESPONDENTS**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondent No.1

Shri. S.B. Gaikwad, learned Advocate for Respondent No.2.

CORAM : Shri Debashish Chakrabarty, Member (A)

DATE : 04.01.2024

JUDGEMENT

1. The Applicant who was working as Assistant Director (Medical), Pune has challenged Transfer Order of Public Health Department dated 30.06.2023 by which Respondent No.2 has been posted in his place and

also Transfer Order dated 28.08.2023 of Public Health Department by which he is now posted as Assistant Director (Human Organ Transplant) Mumbai, by invoking provisions of Section 19 of The Administrative Tribunals Act, 1985.

2. The Applicant was represented by Smt. Punam Mahajan learned Advocate; while the Respondent No.1 was represented by Smt. Archana B. K., learned P.O. and Respondent No.2 was represented by Shri. S.B. Gaikwad learned Advocate.

3. The learned Advocate for the Applicant stated that he had been working as 'Assistant Director (Medical), Pune' since 05.12.2022. She further stated that Applicant had written letter to the Hon'ble Minister-in-Charge of Public Health Department on 06.06.2023 requesting for transfer to post of 'Civil Surgeon; District, Raigad'.

4. The learned Advocate for Applicant then stated that Applicant's grievance is that although his request to be posted as 'Civil Surgeon, District, 'Raigad' was not finally approved; yet Respondent No.2 came to be posted in his place as Assistant Director (Medical), Pune. Thus, the Applicant was left without any posting and now has been posted as Assistant Director (Human Organ Transplant) Mumbai on 28.08.2023.

5. The learned P.O. relied on the 'Affidavit in Reply' of Respondent No.1 dated 08.08.2023 and 'Affidavit in Reply' of Respondent No.2 dated 22.08.2023. She stated that Applicant has been transferred from the post of Assistant Director (Medical), Pune on 'Administrative Grounds' after complying with provisions of Section 4(4)(ii) and Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

6. The Applicant had joined on post of Assistant Director (Medical), Pune on 05.12.2022 on being transferred from the post of Medical Superintendent, Sub District Hospital Baramati, District, Pune. The

Applicant had requested the Hon'ble Minister of Public Health Department on 06.06.2023 that he be transferred to post of 'Civil Surgeon, District, Raigad' and his request came to be considered by CSB. Thereafter, the request of Applicant for transfer to post of Civil Surgeon, District Raigad was recommended by 'Competent Transferring Authority' who is Hon'ble Minister in Charge of Health Department, but it was not finally approved by next 'Superior Transferring Authority' who is Hon'ble Chief Minister of Maharashtra State. The Hon'ble Chief Minister, Maharashtra State instead gave approval to the name Dr. Ambadas Deomane for post of 'Civil Surgeon, District Raigad'.

7. The CSB had also recommend the Respondent No.2 for transfer to post of Assistant Director (Medical), Pune in place of Applicant. Although recommendation of CSB in respect of Applicant was not finally approved; the recommendation of CSB in respect of Respondent No.2 was accepted by the 'Competent Transferring Authority' who is Hon'ble Minister in Charge of Health Department and then approved next 'Superior Transferring Authority' who is Hon'ble Chief Minister of Maharashtra State. Thus, Respondent No.2 was transferred to the post of Assistant Director (Medical) Pune on 30.06.2023.

8. The Applicant who had written letter to 'Hon'ble Minister in Charge of Public Health Department' on 06.06.2023 wanting to be transferred as 'Civil Surgeon, District, Raigad' had no qualms then about seeking 'Mid Term' transfer; but is now taking recourse to provisions of Section 4(4)(ii) and Section 4(5), contending that they were not observed to issue his Transfer Order on 28.08.2023 to post of Assistant Director (Human Organs Transplant) Mumbai. Further the Applicant is unethically challenging the Transfer Order dated 30.06.2023 of Respondent No.2 to post Assistant Director (Medical), Pune. The Respondent No.2 suffers from 'Permanent Disability' of 60% due to 'Low Vision'.

9. The Applicant cannot now take refuge in arguments of 'Arbitrary Exercise' of 'Statutory Powers' under Section 4(4)(ii) and Section 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and contend that guidelines in GAD Circular dated 11.02.2015 regarding 'Mid Tenure' transfer have been contravened by Public Health Department; as these were no less applicable when Applicant had sought 'Mid Tenure' transfer from post of 'Assistant Director (Medical), Pune' to post of 'Civil Surgeon, District, Raigad'. Hence, the contention of the Applicant that he has been transferred from post of 'Assistant Director (Medical) Pune' only to accommodate Respondent No.2 is not borne out by his own conduct of being eager to vacate the post of 'Assistant Director (Medical) Pune' within just 6 months but if he were to get posted as 'Civil Surgeon District Raigad'. Hence prayer of Applicant to quash and set aside the Transfer Order dated 30.06.2023 by which Respondent No.2 is posted his place as 'Assistant Director (Medical)' Pune is rejected on grounds of it being completely devoid of merit and it being decision of 'Reasonable Accommodation' under provisions of 'Section 2(y)' and 'Section 20(2)' of 'The Rights of Persons with Disabilities Act, 2016'.

10. The Applicant had sought 'Mid Tenure' transfer to be posted as 'Civil Surgeon, District, Raigad' using political indulgence as he had written letter directly to Minister-in-Charge, Public Health Department on 06.06.2023. The Applicant had no reservations about violating provisions of 'Rule 3(viii)' of the 'Maharashtra Civil Services (Conduct) Rules, 1979' but now masquerading his deviant behaviour by seeking protection of law under Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and the guidelines in GAD GR dated 09.04.2023. The overall conduct of Applicant is thus reminiscent of the story of "The Hungry Fox and The Grapes" from famous "Aesop's Fables".

11. The Transfer Order dated 30.06.2023 of Respondent No.2 to the post of Assistant Director (Medical) Pune and Transfer Order dated 28.08.2023 of the Applicant to the post of Assistant Director (Human Organ Transplant) Mumbai merit no interference. Hence, the following order.

ORDER

(i) The Original Application is Dismissed.

(ii) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Place: Mumbai

Date: 04.01.2024

Dictation taken by: VSM

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