

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 14 OF 2019

DIST. : BEED

Shahadeo s/o Wamanrao Jogdand,)
Age. 54 years, Occu. : Serving as)
Health Assistant at Osmanabad,)
R/o Near D.C.C. Bank,)
Rajuri Ves, Beed, Dist. Beed.) .. **APPLICANT**

VERSUS

1. Principal Secretary,)
Public Health Department,)
Government of Maharashtra)
10th Floor, G.T. Hospital)
Complex, Mumbai – 400 001,)
Maharashtra.)
2. Director of Health Services,)
Near St. George Hospital,)
Aryogya Bhavan, Near C.S.T.)
Mumbai – 400 001, Maharashtra.)
3. The Joint Secretary,)
Joint Director of Health Services,)
Malaria & Filariasis and)
Water Born Disease, Yerwada,)
Pune – 38.)
4. The District Health Officer,)
Zilla Parishad, Beed.)
5. The Assistant Director Health Services))
(Malaria), Aryogya Sankaul,)
Near New Collector Office, Latur)
Maharashtra.)
6. Shri L.D. Tapse,)
Health Assistant, Primary Health)
Centre, Beed.).. **RESPONDENTS**

APPEARANCE :- Smt. Savita N. Solunke, learned Advocate
for the applicant.
: Shri M.P. Gude, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman
RESERVED ON : 2nd December, 2019
PRONOUNCED ON : 4th December, 2019

ORDER

1. The applicant has challenged the posting order dtd. 9.7.2018 issued by the District Malaria Officer, Beed by which he has been promoted and posted as a Health Assistant in Primary Health Centre, Walvad, Tq. Bhoom, Dist. Osmanabad, by filing this Original Application.

2. Applicant was initially appointed on compassionate ground as a Health Employee at Sub-centre Waghala, Primary Health Centre, Babhulgaon, Tq. Pathri, Dist. Parbhani on 6.9.1999. Accordingly he joined the said post. Thereafter he has been posted in the Beed District. On 9.7.2018 the respondent no. 4 issued the impugned order and promoted him on the post of Health Assistant and posted him in P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad. It is contention of the applicant that as per the promotion list he is senior most candidate and his name is appearing at sr. no. 12 therein, while the respondent no. 6 is

junior to him and his name is appearing at sr. no. 17. As per the seniority he has to be posted in Beed district itself, but the respondents has not considered the said aspect and posted him at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad and posted the respondent no. 6 in Beed district though he is junior to him. It is his contention that the said act on the part of the respondents is against the provisions of Maharashtra civil Services (Regulation of Seniority) Rules, 1982. Therefore he filed the representations dtd. 13.7.2018 & 31.8.2018 with the respondents in that regard, but the respondents had not paid heed to his representations. Therefore he filed another representation on 22.10.2018 addressed to the Hon'ble Chief Minister, but no action has been taken in that regard. Therefore, he approached this Tribunal by filing the present O.A. and prayed to quash the impugned order dtd. 9.7.2018 to the extent of giving him posting at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad and prayed to issue direction to the respondents to give him posting in Beed district at the place of respondent no. 6.

3. Respondent no. 5 has filed affidavit in reply and resisted the contentions of the applicant. He has not disputed the promotion order issued by the respondent no. 4 and the seniority of the applicant and the respondent no. 6 mentioned therein. It is his

contention that on 16.3.2018 the applicant submitted an application with the office of respondent no. 5 stating that he is ready to go anywhere in Latur region on promotion. Therefore, considering his willingness and availability of the posts, the respondent no. 4 promoted the applicant and posted at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad. It is his contention that there is no illegality in the impugned order and therefore he prayed to reject the O.A.

4. I have heard the arguments advanced by Smt. Savita N. Solunke, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

5. Admittedly the applicant was appointed as a Health Worker in Parbhani District by the order dtd. 6.9.1999. Thereafter he was transferred to Beed District. Admittedly he was due for promotion on the post of Health Assistant and therefore, he has been promoted by the order dtd. 4.7.2018 issued by the Deputy Director of Health Services (Malaria), Latur. On the basis of the said order the respondent no. 4 has issued the impugned order dtd. 9.7.2018 regarding promotion and posting of the applicant. Admittedly the respondent no. 6 has also been promoted vide the said order and has been posted in Beed district.

6. Learned Advocate for the applicant has submitted that as per the promotion list the applicant is senior employee than the respondent no. 6. She has argued that as per the provisions of the M.C.S. (Regulation of Seniority) Rules, 1982 the seniority of the applicant ought to have been considered while promoting him and giving him posting and the respondents ought to have posted him in Beed district considering his seniority. But the respondent no. 4 has illegally transferred the applicant and posted him at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad. The impugned order is in violation of the provisions of M.C.S. (Regulation of Seniority) Rules, 1982 and the provisions of the Transfer, 2005 and therefore she prayed to quash the impugned order and direct the respondent no. 4 to post the applicant in Beed district in place of the respondent no. 6.

7. Learned Advocate for the applicant has placed reliance on the Study report of five Indian States regarding postings and transfers in Health Services and submitted that in view of the report mentioned in the said studies the vacancies has to be displayed and after counseling the transfers and postings has to be made. She has also submitted that the privilege has to be given to the senior employees while making transfer and posting.

8. Learned Presenting Officer has submitted that there was no illegality in the promotion and the posting order of the applicant. He has submitted that before promotion order the applicant submitted his consent letter on 16.3.2018 on his own accord to the Deputy Director of Public Health (Malaria), Latur and expressed his willingness to serve anywhere in Latur region on the promotional post of Health Assistant. He has submitted that the Deputy Director, Public Health Department (Malaria), Latur, after considering the consent given by the applicant, as well as, vacancies available in the region, had issued the promotion order accordingly on 4.7.2018 and promoted the applicant on the post of Health Assistant and posted him at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad. He has submitted that the Deputy Director of Health Services (Malaria), Latur has issued the said order considering the vacancies and need of Health Assistants at particular place and there is no illegality in the impugned order. The provisions of the M.C.S. (Regulation of Seniority) Rules, 1982 are not applicable in the instant case. The entire process of promotion and posting has been conducted by the respondents as per the rules and the provisions of the Transfer Act, 2005. There is no illegality in the impugned order and therefore he prayed to reject the O.A.

9. On perusal of the record it reveals that the applicant was due for promotion on the post of Health Assistant. The process in that regard started in the month of March, 2018. On 16.3.2018 the applicant submitted an application to the Deputy Director of Health Services (Malaria), Latur and informed that he was ready to work at any place in Latur region on the promotional post of Health Assistant. The Deputy Director considered the said consent letter as well as the vacancies at the particular places and the need of the administration and issued the promotion order of the employees on the post of Health Assistant. Accordingly the applicant has been promoted by the Deputy Director, Latur vide order dtd. 4.7.2018 and he has been posted at P.H.C., Walvad, Tq. Bhoom, Dist. Osmanabad taking into consideration the vacancy available at that places and the need of the administration. There is no violation of any rules of M.C.S. (Regulation of Seniority) Rules, 1982 as well as the provisions of the Transfer Act, 2005. In view of the provisions of the Transfer Act, 2005 the applicant cannot claim posting at the place of his choice on the basis of seniority. It is prerogative of the competent authority to give posting to the promoted employees as per the need and the exigency of the administration. Therefore, I find no substance in the argument advanced by the learned Advocate for the applicant in that regard.

10. I have also gone through the Study report of five Indian States regarding postings and transfers in Health Services submitted by the learned Advocate for the applicant. In my opinion it has no relevance with the matter in hand as it has not been accepted by the Government of Maharashtra. Therefore, the same is not useful in the present case.

11. The impugned order has been issued by the respondents on the basis of promotion and posting order given by the Deputy Director of Health Services (Malaria), Latur on 4.7.2018. There is no illegality therein. Therefore no interference is called for in the impugned order at the hands of this Tribunal. There is no merit in the O.A. Hence the O.A. deserves to be dismissed.

12. In view of the discussion in the forgoing paragraphs the O.A. stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 4th December, 2019