

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 427 OF 2016

DISTRICT: BEED

Dr. Dilip s/o Banshirao Mote,

Age: 59 years, Occu. : Service

Working as Medical Officer,

R/o Near Navgan College,

Shivaji Nagar, Beed, Tq. & Dist. Beed.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra
In the Department of Public
Health, Mantralaya, Fort,
Mumbai.
- 2) The Director of Health Services,
Maharashtra State, in the premises
Of Saint Georges Hospital,
Arogya Bhavan, Chatrapati Shivaji
Maharaj Terminus, Fort, Mumbai.
- 3) The Deputy Director of Health Services,
Latur Circle, Latur.
4. Dr. Satish Bapurao Shinde,
Age-50, Occ. : Service as M.O.
P.H.C. Navgan Rajuri,
Tq. & Dist. Beed.

.. **RESPONDENTS**

APPEARANCE : Shri Shamsundar B. Patil, learned Advocate
holding for Shri M.B. Kolpe, learned Advocate
for the Applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

ORDER**(Delivered on this 30th day of March, 2017.)**

1. The applicant has challenged the transfer order dated 31.05.2016 issued by the respondent no. 1 transferring him as a Medical Officer from the office of Assistant Director Health Services (Leprosy), Beed to Primary Health Center Nimbaganesh, Tq. & Dist. Beed.

2. The applicant has obtained B.A.M.S. degree. He was appointed as Medical Officer through M.P.S.C. in the year 1986. He was working as Medical Officer in Leprosy Control Unit at Ambajogai, Tq. Ambejogai, Dist. Beed in the year 2007 and the State Government has abolished the said Leprosy Control Unit and the applicant was absorbed as Medical Officer, Class-II in the office of Assistant Director, Beed w.e.f. 9.10.2007. Accordingly, he joined the services as Medical Officer in the office of Assistant Director, Beed on 1.11.2007.

3. The applicant was to retire on 31.12.2015 on superannuation, but the Government has increased the age of superannuation of the Medical Officers from 58 to 60 by G.R. dated 03.09.2015. Therefore, the services of the applicant have been extended by two years on the basis of said G.R.

4. It is contention of the applicant that it is his duty to visit in entire district and treat the Leprosy patient by providing medical treatment and health and education. He is an expert and having experience of national and international level. He attended the several conferences & seminars at national and international level. Therefore, he has made request to the respondents to retain him in the office of Assistant Director Health Services (Leprosy) Beed till his retirement, as he was on the verge of retirement.

5. It is contention of the applicant that he filed O.A. No. 1179/2009 in this Tribunal challenging the seniority list as juniors to him were promoted. In that O.A., the Tribunal passed the order on 4.1.2010 directing respondents that, if promotions are made that would be subject to decision of that Original Application. Since, he filed that O.A., he was being harassed by the respondents. The respondents issued order regarding promotion, but the promotion to the applicant has been denied, though he was eligible. On the next day, i.e. on 31.05.2016 the respondent no. 1 made transfer order of Medical Officers in the State and in the said transfer order, the applicant has been transferred to Primary Health Center, Limbaganesh, Tq. & Dist. Beed. It is the contention of the applicant that his transfer made by the respondent is in contravention of the provisions of Section

5(1)(a) and 5(1)(b) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short 'the Transfer Act 2005'), therefore, he has challenged the said order by filing present Original Application.

6. The respondents filed affidavit in reply and contended that the transfer order under challenge is as per the provisions of Transfer Act 2005 and there was no illegality. They have denied that they harassed the applicant, as he has filed O.A. No. 1179/2009. It is their contention that the applicant was worked on the post of Medical Officer in the office of Assistant Director Health Services (Leprosy) Beed since the year 2007 and he has completed his regular tenure of posting and, therefore, he has been transferred from the office of Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed to Primary Health Center Limbaganesh, Tq. & Dist. Beed. Accordingly, he has been relieved by the respondent no. 3 vide letter dated 2.6.2016 with a direction to handover the charge of the post of Medical Officer to respondent no. 4. Not only this, but the applicant was holding additional charge of Assistant Director, Beed and he was also relieved from that post vide letter dated 2.6.2016. One Dr. Andhale, joined on the post of Assistant

Director Leprosy, Beed. The respondent no. 4 Dr. Satish B. Shinde was transferred from the post of Medical Officer, P.H.C. Navgan Rajuri Tq. & Dist. Beed to the post of Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed. He was relieved from the post of Medical Officer, P.H.C. Navgan Rajuri Tq. & Dist. Beed and he joined his new posting. They have denied that the applicant was on the verge of retirement and his transfer is in contravention of Section 5 (1)(a) of the Transfer Act, 2005. It is their contention that the applicant has filed W.P. No. 5899/2016 before the Hon'ble High Court Bombay, Bench at Aurangabad, in which the Hon'ble High Court has issued notices to the respondents vide order dated 8.6.2016 and granted status-quo to the transfer order and thereafter, W.P. has been disposed of on 1.7.2016. It is their contention that the applicant is illegally working in the office of Assistant Director, Beed though, he has been relieved. Therefore, they urged to dismiss the present Original Application.

7. The applicant has filed rejoinder affidavit and contended that he never handed over the charge of the post of Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed and he is still working on that post.

8. Heard Shri Shamsundar B. Patil, learned Advocate holding for Shri M.B. Kolpe, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the affidavit, affidavit in reply, rejoinder affidavit and various documents placed on record by the respective parties.

9. The learned Advocate for the applicant submitted that the applicant was working as a Medical Officer in Leprosy Control Unit at Ambejogai, Tq. Ambejogai Dist. Beed, since his appointment as medical Officer in the year 2007 the State Government has abolished the said Leprosy Control Unit at Ambejogai and therefore, the applicant was absorbed as a Medical Officer, Class-II in the office of Assistant Director, Beed w.e.f. 9.10.2007. The applicant has joined the services as Medical Officer in the office of Assistant Director, Beed on 1.11.2007. He has submitted that the applicant was to retire on 31.12.2015 on attaining the age of superannuation i.e. 58 years. But the Government of Maharashtra issued G.R. dated 3.9.2015 and increased the age of retirement of Medical Officer to 60 years from 58 years and therefore, the services of the applicant has been extended by two years. He has submitted that the applicant was not promoted as per his seniority and therefore, he filed O.A. No.

1179/2009 before this Tribunal, wherein this Tribunal directed the respondents that, if promotions are made that would be subject to decision of that O.A. The respondents passed the order of promotion on 30.05.2016, but they had not promoted the applicant, though he was eligible because of the O.A. filed by the applicant. On 31.05.2016, the respondent no. 1 issued transfer order and transferred the applicant who was serving as Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed to Primary Health Centre, Limbaganesh, Tq. & Dist. Beed. He has argued that the applicant acquired special skill and knowledge in Leprosy work. He attended several national and international seminars and he had undergone training. He has got lot of experience in that field, but the respondents transferred him without considering the said fact and the said transfer is in contravention of the Section 5 (1)(b) of the Transfer Act, 2005. He has further submitted that the applicant was to retire on 31.12.2015, but because of the extension given, his services are extended by two years. He was on the verge of retirement at the time of issuing impugned order of transfer. As per the provisions of Section 5(1)(a) he could not have been transferred from the present posting but the respondents transferred him in contravention of the provisions of Section 5(1)(a).

10. The learned Advocate for the applicant further argued that the applicant never handed over the charge of the post of Medical Officer attached to the office of Assistant Director Health Services (Leprosy) Beed in pursuance of the impugned order, but the respondents have falsely stated that they have relieved the applicant and respondent no. 4 has joined duty as Medical Officer in his place. He has argued that the applicant is still working as Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed and he has drawn my attention to the various documents in that regard. He has submitted that in these circumstances, it is just and proper to quash the order dated 31.05.2016 as it is in contravention of the provisions of Section 5 (1)(a) and 5(1)(b) of the Transfer Act, 2005.

11. The learned Presenting Officer for respondent nos. 1 to 3 and learned Advocate for respondent no. 4 have submitted that the applicant has completed his regular tenure of posting in the office of Assistant Director Health Services (Leprosy), Beed. He was serving there since 2007. He was due for transfer and therefore, in the general transfer order, he has been transferred from the post of Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed to Primary Health Center Limbaganesh, Tq. & Dist. Beed. They have further submitted that

at the time of transfer, the applicant was not only on the verge of retirement and he has tenure of more than one and half year before the retirement and therefore, the impugned transfer order is not hit by the provisions of Section 5(1)(a) of the Transfer Act, 2005.

12. The respondents have further submitted that the applicant is a B.A.M.S. degree holder. He has not acquired special knowledge or technic or experience for the post of Medical Officer attached to the office of Assistant Director Health Services (Leprosy), Beed and, therefore, his case is not covered under Section 5(1)(b) of the Transfer Act, 2015. Therefore, there is no illegality while issuing impugned order of transfer dated 31.05.2016. Therefore, they prayed to reject the O.A.

13. Perused the documents on record, the applicant is B.A.M.S. degree holder. He was appointed as Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed from the year 2007. He has completed his normal tenure of posting and he was due for transfer in the year 2016. Therefore, he has been transferred in the general transfer of the year 2016 vide impugned order dated 31.05.2016. His age of retirement has been increased to 60 years and he is due for retirement on 31.12.2017 on attaining the age of superannuation. Service

period of one year and seven months remained at the time of passing impugned order of transfer, therefore, it is not a fit case under section 5(1)(a), which reads as under:-

“5. Extension of tenure.

(1) The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely:-

(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement;”

As the applicant had completed his regular tenure of posting as Medical Officer in the office of Assistant Director Health Services (Leprosy) Beed and has more than 1 year and 7 months for his retirement at the time of impugned transfer order. Therefore, the impugned transfer order is not hit by provisions of Section 5(1)(a) of the Transfer Act, 2005. Therefore, I do not find any substance in the submission advanced by the learned Advocate for the applicant that there was contravention of the provisions of the Section 5(1)(a) of the Transfer Act, 2005.

14. The learned Advocate for the applicant has submitted that the applicant was experienced Medical Officer and therefore,

his transfer in the office of Assistant Director Health Services (Leprosy), Beed is against the provisions of Section 5(1)(b) of the Transfer Act, 2005. On perusing duty list of the Medical Officer attached to the Leprosy Unit, it is duty of the Medical Officers to visit the Health Institutes, to make confirmation of cases, treatment to verify record, to implement action plan of health education, training of health staff in field, maintain medicine stock register, to organize camps of patients for with training to health staff, to collect monthly report. The said duty list shows that no specific technical work was assigned by the Medical Officer attached to the Leprosy Unit. Whatever work assigned to you is of supervisory nature and it was pure administrative work. No special experience was required for discharging duty as Medical Officer attached to the Leprosy Unit working in the officer of Assistant Director Leprosy Unit, Beed. Moreover for appointing the Medical Officer attached to the Leprosy Unit, no special qualification is required. The applicant is B.A.M.S., whereas the respondent no. 4 is M.B.B.S. The person who has M.B.B.S. degree can discharge the duties assigned the Medical Officer attached to the Leprosy Unit efficiently and no special skill or experience is required for discharging the duties assigned to the Medical Officer. No special technical qualification or experience for the said job is required. Suitable replacement in the form of

respondent no. 4 is available to the respondents and therefore, the case of the applicant does not fall within the provisions of Section 5(1)(b) of the Transfer Act, 2005. Therefore, I find no substance in the submissions advanced by the learned Advocate for the applicant in that regard.

15. Considering the above said facts and circumstances of the case, it is crystal clear that the impugned order dated 31.05.2016 is just and legal and it is not in contravention of the provisions of Section 5 (1)(a) and 5 (1)(b) of the Transfer Act, 2005. The applicant's transfer is made after completion of his regular tenure of posting as Medical Officer in the office of Assistant Director Health Services (Leprosy), Beed. His stay at Beed is more than 7 years and therefore, he has been transferred to Primary Health Center Limbaganesh, Tq. & Dist. Beed on administrative ground. The order under challenge is perfectly legal and correct and therefore, no interference is required in it. There is no merit in the present O.A. and consequently the same deserves to be dismissed.

16. In view of the aforesaid discussions, the O.A. stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)