

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 429 OF 2016

DISTRICT: LATUR

Dr. Shripati S/o Kondiram Shinde,
Age: 54 years, Occu. : Medical Officer,
Group-A, Taluka Health Officer,
Renapur, Tq. Renapur, District Latur,
R/o At P. Kharola, Tq. Renapur,
District Latur.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
(Through its Principal Secretary
Public Department,
Mantralaya, Mumbai.
- 2) The Director of Health Services,
Maharashtra Health Services,
10th Floor, Sankul Building,
G.T. Hospital,
Mantralaya, Mumbai-400 001.
- 3) The Deputy Director of Health Services,
Latur, Tq. And District Latur.
- 4) The Chief Executive Officer,
Zilla Parishad, Latur.
- 5) The District Health Officer,
Zilla Parishad, Latur.
- 6) Dr. Narayan S/o Kishanrao Deshmukh,
Age : 38 Years, Occu.: Medical Officer,
Primary Health Centre,
Pangaon, District Latur.
Permanent Address :-
R/o Ghansargaon, Tq. Renapur,
District Latur.

.. **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, learned Advocate for the Applicant.
: Shri N.U. Yadav, learned Presenting Officer for the Respondent nos. 1 to 3.
: Shri D.T. Devane, learned Advocate for Respondent no. 6.
: Shri S.S. Manale, learned Advocate for Respondent nos. 4 & 5 (**Absent**).

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

O R D E R

(Delivered on this 11th day of April, 2017.)

1. The applicant has challenged the order of transfer dated 31.05.2016 issued by respondent no. 2 transferring him from the post of Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur Group-A to the post of Medical Officer at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur and posting respondent no. 6 in his place.

2. It is contention of the applicant that he has passed M.B.B.S. degree in the year 1991 and joined the services in the year 1991. He has been selected through M.P.S.C. from Scheduled Caste on 21.11.1995 and thereafter, posted at various places from time to time. He has been posted as Taluka Health Officer at Renapur on 30.06.2009 as the applicant was senior most person in the cadre of Medical Officer Group-A, in view of

the guidelines issued by the Government vide G.R. dated 16.05.2007. The said guidelines has been modified on 24.05.2007 thereby clarifying that the Taluka Health Officer is an independent officer and he is controlling authority of the Primary Health Centers in Taluka. It is also clarified that the Taluka Health Officer should not been allotted regular work of Primary Health Centre. The applicant's service record is excellent and the Renapur Panchayat Samiti got Yeshwant Panchayat Raj Award in the year 2014-15 when the applicant was serving as Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur.

3. On 31.05.2016, the respondent no. 2 issued transfer order of Medical Officers transferring Medical Officers including the applicant from the post of Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur to the post of Medical Officer at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur. By the same order, the respondent no. 6 who was serving at Primary Health Centre, Pangaon, Dist. Latur has been transferred to the post of Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur. The respondent no. 6 has not passed the M.P.S.C. examination. However, he was absorbed in the year 2009 as per Government policy. It is contention of the applicant that the respondent no. 6 is not senior person but the respondent no. 1 has issued the said

order of transfer to degrade the applicant. The impugned transfer order is mala-fide and therefore, he has filed the present Original Application to quash the impugned order of transfer dated 31.05.2016 transferring him from the post of Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur to the post of Medical Officer at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur and posting respondent no. 6 in his place.

4. The respondent nos. 1 to 3 rebutted the allegations made by the applicant by filing affidavit in reply. They have denied that the respondent no. 1 issued impugned transfer order to degrade the applicant. They have admitted the fact that the applicant is working on the post of Taluka Health Officer, Renapur, Dist. Latur since 2002 and he has been transferred as Medical Officer at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur vide impugned transfer order. It is their contention that the post of Taluka Health Officer as well as Medical Officer in the Primary Health Centre are equivalent and belongs to the same cadre of Medical Officer Group-A. The post of Taluka Health Officer is not a promotional post and it is not a separate and independent cadre. Therefore, the transfer of the applicant to the post of Medical Officer Group A in Public Health Centre is not degradation. They have denied that the applicant's service record

is not excellent and also contended that the award of Renpur Panchayat Samiti is outcome of the collective efforts put up in the program by all the employees in Panchayat Samiti and it was not because of the independent efforts of the applicant. It is contention of the respondents that the applicant is serving at Renapur since the year 2002 and he was working there as Taluka Health Officer since 2009. He has completed near about 14 years of his service at the same place. Therefore, he has been transferred on the post of Medical Officer at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur, in view of the provisions 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). The respondent no. 6 was working at Primary Health Centre, Pangaon, Dist. Latur and his transfer is made on the post of Taluka Health Officer, Renapur, Dist. Latur at his request. The impugned transfer order is in accordance with the provisions of the Transfer Act, 2005 and there is no illegality in the order of transfer. Therefore, they have prayed to dismiss the present O.A.

5. The respondent no. 6 filed his affidavit in reply by denying the contention of the applicant. It is his contention that the applicant is working at Renapur since the year 2002 and he

has completed 14 years of service at the same place, therefore, the respondent no. 1 transferred him. There is no violation of provisions of Transfer Act, 2005, while transferring the applicant. It is his contention that the applicant is working on the post of Taluka Health Officer, Renapur, Dist. Latur since the year 2009 and he was due for transfer and therefore, respondent no. 1 passed impugned order of transfer dated 31.05.2016. It is his contention that he himself as well as applicant are Medical Officers, Group-A and therefore, he can be appointed as Taluka Health Officer. The post of Taluka Health Officer and Medical Officer are of one and the same cadre. It is his contention that he is working as Medical Officer at Pangaon, Tq. Latur since 10.02.2009 and he has completed seven years of his service on the said post. His son aged about 7 years has undergone complicated heart surgery and he suffering from Convulsions (Fits). His father is aged about 93 years and therefore, he has to visit Latur for their medical treatment. Better medical facility at Renapur Government Rural Hospital is available and therefore, he made request to transfer him at Renapur, Dist. Latur. The Government has considered his request and posted him as Taluka Health Officer, Renapur, Dist. Latur in place of applicant. The impugned order of transfer is in view of the provisions of the

Transfer Act, 2005 and therefore, he prayed to reject the present O.A.

6. Heard Shri V.B. Wagh, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for respondent nos. 1 to 3 and Shri D.T. Devane, learned Advocate for respondent no. 6. Shri S.S. Mangle, learned Advocate for respondent nos. 4 & 5 (**Absent**). I have also perused the affidavit, affidavit in replies and various documents placed on record by the respective parties.

7. The learned Advocate for the applicant submitted that the applicant has passed M.B.B.S. degree and appointed as Medical Officer in the year 1991. Thereafter, he was selected through M.P.S.C. in the year 1995. He has submitted that the post of Taluka Health Officer has been created by the Government to implement the health program. Guidelines regarding duties, function and responsibilities of Taluka Health Officer were issued vide G.R. dated 16.05.2007. According to the guidelines, Medical Officer nominated by M.P.S.C. and the senior and experienced person shall be appointed on the post of Taluka Health Officer. The said guidelines were modified vide G.R. dated 24.05.2007 and thereby it has been clarified that the post of Taluka Health Officer

is an independent post and he is controlling authority of Primary Health Centres in Taluka. It is also clarified that no regular work of Primary Health Centre shall be allotted to Taluka Health Officer. The learned Advocate for the applicant has submitted that the applicant is working as Taluka Health Officer, Renapur since 3.6.2009. He is senior most Medical Officer in the District. Therefore, he should not have been posted on the post of Medical Officer at Primary Health Centre, Pangaon, in view of the guidelines given in the Government Resolution dated 16.05.2007. He has submitted that the respondents had not considered his experience on the post of Taluka Health Officer, while issuing the impugned order of transfer and therefore, it is in contravention of the said G.R. He has further submitted that the respondent no. 6 is not eligible to be appointed on the post of Taluka Health Officer. He has not been nominated by the M.P.S.C. as Medical Officer and therefore, his appointment on the post of Taluka Health Officer, Renapur, Dist. Latur is in contravention of the G.R. dated 16.05.2007. Therefore, the applicant has prayed to quash the impugned order of transfer dated 31.5.2016.

8. Learned Presenting Officer submitted that in view of the G.R. dated 16.05.2007, the preference should be given to the Medical Officer appointed by nomination and senior most Medical

Officer while appointing on the post of Taluka Health Officer and the final decision in that regard was of the Chief Executive Officer. The powers of the Chief Executive Officer were vested to the Government thereafter in view of the G.R. dated 28.03.2012. The applicant was working as Taluka Health Officer since the year 2009. He was due for transfer and therefore, he has been transferred to the post of Medical Officer, Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur and the respondent no. 6 has been posted in his place on his request. It is their contention that the Taluka Health Officer is not a separate cadre and it is not a promotional post. Medical Officer working as Taluka Health Officer as well as Medical Officer in the Primary Health Centre are member of Medical Officer Group-A. M.P.S.C. nominated as well as Medical Officer who were absorbed in the service are eligible and entitled to work on the post of Taluka Health Officer and therefore, there is no breach of guidelines. He has further submitted that as both the posts i.e. Taluka Health Officer and Medical Officer in Primary Health Centre are belonging to same cadre, no question of demotion of applicant arises. He has submitted that the impugned order is perfectly legal and it is issued in view of the provisions of Transfer Act, 2005 and therefore, they prayed to reject the present O.A.

9. The learned Advocate for respondent no. 6 has submitted that the respondent no. 6 was serving at Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur since 10.02.2009 and he has completed 7 years' service on the said post and he was due for transfer. His son aged about 7 years had undergone complicated heart surgery and he is suffering from Convulsions (Fits). His father is aged about 93 years and therefore, he is required to visit Latur for medical treatment frequently. Better medical facility at Renapur Government Rural Hospital is available and therefore, he made request to transfer him at Renapur, Dist. Latur. On considering his request, the Government has passed the Transfer order. The order of transfer is in view of the guidelines in the Government Resolution dated 16.05.2007 and it is legal and proper and therefore, he prayed to reject the present O.A.

10. On going through the guidelines given in the G.Rs. dated 16.05.2007 (page nos. 12 to 15 of the paper book), 24.05.2007 (page nos. 16 & 17 of the paper book) and 28.03.2012 (page nos. 52 and 53 of paper book) it reveals that the post of Taluka Health Officer has been created for implementation of health program effectively and it was decided to appoint experienced, efficient and senior most person on the post of

Taluka Health Officer. It has also been clarified that the preference should be given to the M.P.S.C. nominated Medical Officer while appointing Taluka Health Officer. The final powers to appoint the Taluka Health Officer were vested with the Chief Executive Officer, Zilla Parishad but the said powers has been withdrawn by G.R. dated 28.03.2012 and it is vested with the Government. There is no dispute about the said fact. On perusal of the G.R. produced by both the parties, it is crystal clear that the post of Taluka Health Officer is not a promotional post and it is not a separate cadre. Any Medical Officer, Group-A can be appointed on this post while appointing the Medical Officer but preference should be given to the senior most experience and M.P.S.C. nominated Medical Officer. Therefore, it cannot be said that the transfer of Medical Officer posted as Taluka Health Officer on the post of Medical Officer in Primary Health Centre amounts demotion. Both the posts are equivalent and therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicant that there was demotion of the applicant due to the impugned transfer order by posting him as Medical Officer, Primary Health Centre, Pangaon, Tq. Renapur, Dist. Latur. Not only this, but there is nothing on the record to show that the impugned transfer order was issued with mala-fide intention to harass the applicant. On the contrary, the record

shows that the applicant is serving at Renapur since the year 2009 as Taluka Health Officer for more than 7 years. He was serving at the same place since near about 14 years. He is due for transfer and he has been transferred accordingly. By considering the genuine request of the respondent no. 6, the respondents posted him on the post of Taluka Health Officer, Renapur, Tq. Renapur, Dist. Latur. There is no illegality in the transfer order. Therefore, no fault can be attributed to the respondents in passing impugned order of transfer dated 31.05.2016. Therefore, there is no merit in the submissions advanced on behalf of the applicant. As there is no merit in the O.A., the O.A. must fail.

11. Therefore, the O.A. stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)