

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.473/2019

DISTRICT: AURANGABAD

Mohammad Matin Mohammad Naseer,

Age : 54 years, Occu. : Service,

R/o. Behind Dostana Hotel,

Makai Gate, Begampura, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Food and Drugs Administration Department,
M.S., Mantralaya, Mumbai – 400 032.
 - 2) The Commissioner,
Food and Drugs Administration Department,
Maharashtra 341, Bandra-Kurla Complex,
Bandra (E), Mumbai – 400051.
 3. The Assistant Commissioner (Law),
Food and Drugs Administration Department,
Maharashtra 341, Bandra-Kurla Complex,
Bandra (E), Mumbai – 400051.
 4. The Assistant Commissioner,
Aurangabad Division,
Food and Drugs Administration Department,
Maharashtra, Second Floor, Nath Super Market,
Aurangpura, Aurangabad. ...RESPONDENTS
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APPEARANCE :Shri G.J.Pahilwan, Advocate for the
Applicant.

:Shri N.U.Yadav, Presenting Officer for the
respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 23-08-2019

Pronounced on : 27-08-2019

J U D G M E N T

1. The applicant has challenged the order dated 30-05-2019 issued by the respondent no.2 transferring him from the office of Food and Drugs Administration, Aurangabad to the office of Food and Drugs Administration, Latur by filing the present O.A.

2. The applicant was serving as Driver in the office of Food and Drugs Administration, Aurangabad. On 13-03-2019, respondent no.2 started process of transfer of Drivers in the department and issued letter to the respondent no.4 calling options of the Government servants due for transfer. In response to the same, the applicant filed applications dated 08-04-2019 and 24-04-2019 with the respondent

nos.2 and 4 and requested to retain him at Aurangabad on account of ill-health of his parents as he was due for transfer. Not only this but he has submitted places of his choice where to be transferred and opted for Aurangabad, Jalna, Parbhani and Beed. The respondents called the applicant for counseling and after counseling decided to transfer him in the office of Food and Drugs Administration, Latur and accordingly issued the impugned order.

3. It is contention of the applicant that the impugned order is in violation of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ("Transfer Act" for short) and in contravention of the G.R. dated 09-04-2018. It is his contention that the respondents had not considered the representations of the applicant. They have not considered the fact that his parents are old-aged and ill while effecting his transfer. Therefore, the impugned order is illegal. It is his contention that his family is residing at Aurangabad. Therefore, it will be inconvenient for him to serve at Latur which is far away

from Aurangabad. On these grounds he has prayed to quash the impugned order by allowing the O.A.

4. Respondent nos.2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant served on the post of Driver in the office of respondent no.4 approximately for 20 years and 10 months during his service tenure. Post of Driver is technical post. He was due for transfer at the time of General Transfers of 2019. Therefore, options from the employees due for transfer were called for. In response to which the applicant had filed his option form and submitted places of his choice at Aurangabad, Jalna, Parbhani and Beed. Respondents considered his options. There is no vehicle at Jalna. Therefore, no Driver can be posted there. The posts of Driver at Parbhani and Beed were already filled and there was no vacancy at those places. Therefore, the applicant had not been posted at the place of his choice.

5. The applicant served at Aurangabad for more than 20 years. In the year 2017 i.e. on 15-04-2017, the Joint Commissioner, Food and Drugs Administration informed the respondent no.2 that the applicant was not discharging

the duties properly and honestly and raised doubt regarding integrity of the applicant. Considering the said report of the Joint Commissioner, Food and Drugs Administration, Aurangabad, respondents decided to transfer him from Aurangabad. The post of Driver at Latur was vacant, and therefore, the respondents decided to transfer him at Latur considering the administrative convenience. It is their contention that as per the G.R. dated 09-04-2018, the applicant was called for counseling and after counseling he was posted at Latur. It is his contention that the applicant has joined his new posting at Latur on 17-06-2019. Therefore, no question of cancelling the impugned order arises. It is their contention that the impugned order has been issued in view of the provisions of Transfer Act and G.R. dated 09-04-2018 and there was no violation of any provision of the Transfer Act and the G.R. Therefore, they have justified the impugned order of transfer and prayed to dismiss the O.A.

6. I have heard Shri G.J.Pahilwan Advocate for the Applicant and Shri N.U.Yadav Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

7. Admittedly, the applicant was initially appointed in the Food and Drugs Administration, Jalna and he is in service since 22-06-1993. There is no dispute about the fact that the applicant had served as Driver in the office of Joint Director, Food and Drugs Administration, Aurangabad for more than 20 years. He was due for transfer at the time of general transfers of the year 2019. The respondents called options of the Drivers who were due for transfer. The applicant submitted his application and submitted options regarding places of his choice and he opted for transfer at Aurangabad, Jalna, Parbhani or Beed. The applicant has been transferred to Latur by the impugned order.

8. Learned Advocate for the applicant has submitted that the parents of the applicant are old-aged. Family members of the applicant are residing at Aurangabad. The applicant is the only earning member in the family. He has argued that the applicant's father is suffering from mental disorder and he is under treatment. Therefore, the applicant requested the respondents to retain him at Aurangabad and in case it is not possible to retain him at Aurangabad to transfer him at Jalna, Parbhani or Beed. He

has submitted that the respondents had not followed the guidelines given in G.R. dated 09-04-2018 and without considering the difficulties of the applicant issued the impugned transfer order and transferred the applicant to Latur which is far away from Aurangabad. He has submitted that because of the impugned order of transfer, inconvenience is causing to the applicant. Therefore, he has prayed to quash the impugned order by allowing the O.A.

9. Learned P.O. has submitted that the applicant had served for more than 20 years at Aurangabad. He was due for transfer at the time of general transfers of 2019. Not only this but in the year 2017, the Joint Commissioner, Food and Drugs Administration, Aurangabad submitted report and informed the higher authorities that vested interest of the applicant are involved at Aurangabad since he was serving there for more than 20 years. He has also informed his higher authorities that the applicant was not discharging the duties honestly and he suspected his integrity. He has argued that considering the said report and other factors, respondents decided to transfer the applicant.

10. Learned P.O. has further argued that they considered the places of choice of the applicant for transfer. The applicant claimed transfer at Jalna but there was no vehicle at Jalna, and therefore, they had not transferred the applicant at Jalna. Next option of the applicant was for Parbhani and Beed but there was no vacancy at those places. Therefore, they transferred the applicant at Latur where post of Driver was vacant. He has submitted that the applicant was called for counseling before issuance of the impugned order and after counseling, the impugned order has been issued. He has submitted that the administrative convenience has been considered while passing the impugned order and guidelines given in the G.R. dated 09-04-2018 have also been followed by the respondents. The impugned order has been issued by the competent authority in pursuance of the provisions of Transfer Act, and there is no violation of any provision of the Transfer Act. Therefore, the learned P.O. has justified the impugned order and prayed to dismiss the O.A.

11. On going through the documents on record, it reveals that the impugned order of transfer has been issued as the applicant was due for transfer. Before issuing the

impugned order, respondents had considered the options submitted by the applicant. The applicant served at Aurangabad for more than 20 years. The Joint Commissioner, Food and Drugs Administration, Aurangabad informed his higher authorities in the year 2017 by letter dated 15-04-2017 that the applicant has developed vested interests at Aurangabad. He was not punctual in duties and he doubted integrity of the applicant. It has been alleged that the applicant was not maintaining secrecy while conducting the raids. Therefore, image of the department has been maligned in the society. On that ground, respondents decided to transfer the applicant from Aurangabad.

12. The choices given by the applicant were considered by the respondents. There was no vehicle available at Jalna, and therefore, no question of transferring the applicant or any Driver at Jalna arises. There were no vacancies at Parbhani and Beed and therefore, they had not posted the applicant there. They called the applicant for counseling and after counseling they decided to transfer the applicant at Latur as there was vacancy of Driver. After following the guidelines given in the G.R. dated 09-04-2018 and in view

of the provisions of the Transfer Act they have issued the impugned order.

13. There is no illegality in the impugned order as well as the procedure followed by the respondents while transferring the applicant. Therefore, no question of interfering in the impugned order arises. There is no merit in the O.A. Hence, the O.A. deserves to be dismissed.

14. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 27-08-2019.