

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.532/2016

DISTRICT – JALGAON

Gopal S/o. Supdu Mali,
Age: 32 years, Occ : Service (as Peon),
C/o. O/o. Assistant Director [Leprosy], Jalgaon,
R/o. Mali Galli, Jamner,
Distirct Jalgaon. ...APPLICANTS

V E R S U S

1. The Deputy Director,
Health Services,
Nashik Circle, Nashik.
2. The Medical Superintendent,
Sub District Hospital,
Jamner, District Jalgaon.
3. Mr. Sunil Bhadu Surwade,
Peon, C/o. Sub District Hospital,
Jamner, District Jalgaon. ...RESPONDENTS

APPEARANCE :Shri A.S.Deshmukh, learned Advocate for the
applicant.

Shri V.R.Bhumkar, learned Presenting Officer
for the respondent nos.1 and 2, and

Shri V.B.Wagh learned Advocate for
respondent no.3.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 1st December, 2016.

ORAL ORDER**[Delivered on 1st December, 2016]**

Heard Shri A.S.Deshmukh, learned Advocate for the applicant, Shri V.R.Bhumkar, learned Presenting Officer for the respondent nos.1 and 2, and Shri V.B.Wagh learned Advocate for respondent no.3.

2. In this O.A. applicant has challenged impugned order dated 14-06-2016 (Annexure A-6) passed by the Deputy Director, Health Services, Nashik Circle, Nashik whereby the applicant's transfer to the post of Peon at Jamner from Jalgaon has been cancelled.

3. From the facts on record it seems that the applicant was transferred to Jamner vide order dated 31-05-2016 and in place of the applicant respondent no.3 has been posted. Applicant was relieved on 01-06-2016 from Jalgaon and has joined at Jamner on 02-06-2016. It seems that he has worked there till 14-06-2016, which is evident from the muster roll on which the applicant has signed. All of a sudden, the impugned order has been passed whereby the applicant's transfer has been cancelled. According to the learned Advocate for the applicant in view of the impugned

order he is serving at Jalgaon whereas the respondent no.3 is still at Jamner.

4. From the reply affidavit filed by the respondent no.1, it is evident that the order was implemented and the applicant was serving at Jamner in view of the transfer order. According to the respondent no.1, respondent no.3 filed a request application mentioning his domestic problems and higher education of his children and requested for cancellation of his transfer order at Jalgaon and his request was considered, therefore, the impugned order has been passed.

5. Respondent no.3 also filed reply affidavit and submitted that he never requested for transfer at Jalgaon but he was compelled by the Medical Superintendent (Class I), sub District Hospital, Jamner to submit 'Ichchhapatra'. When he came to know about his transfer he filed representation on 01-06-2016 and in pursuance of request, the impugned order has been passed.

6. Learned P.O. has invited my attention to the representation filed by the respondent no.3 which is alleged to have been considered. In the said representation, it is mentioned that the 'Ichchhapatra' has been written by every employee under force and compulsion, and that somebody has done mischief and

further Respondent no.3 has never applied for transfer at Jalgaon. Admittedly, respondent no.1 did not make any enquiry as to whether such 'Ichchhapatra' was taken under force or compulsion, and therefore, the cancellation of the applicant's order of transfer at Jamner without giving any opportunity to the applicant of being heard is absolutely illegal, particularly, when the applicant's transfer order at Jamner has been implemented and the applicant has worked there for about 14 days.

7. Learned Advocate for the applicant has invited my attention to the 'Ichchhapatra' signed by the respondent no.3 (page-16, A-2), from which it seems that the respondent no.3 has given preference on 3 places for his transfer in the Annual General Transfer of 2016. He has given choice for posting at Rural Hospital Pahur, General Hospital Jalgaon and Sub District Hospital at Jamner. It seems that his choice at Jalgaon has been considered.

8. Now, respondent no.3 is coming with a case that this letter was obtained forcefully and under pressure. Respondent no.3 has not denied that he has signed on the letter. For the first time statement made by the respondent no.3 that Medical Officer has obtained signature on 'Ichchhapatra' under pressure, threat or force, cannot be accepted.

9. It, therefore, seems that earlier order of transfer whereby the applicant has been transferred to Jamner and the respondent no.3 to Jalgaon in his place must have been passed because of this consent letter.

10. Learned Advocate for the respondent no.3 Shri Wagh submits that being class-IV employee, he cannot be transferred except on his request or on receiving substantiated complaint against him. In my opinion, 'Ichchhapatra' is nothing but consent, and therefore, it cannot lie in the mouth of respondent no.3 that he has not consented for the transfer. Even for arguments' sake if it is accepted that he has not filed regular application for mutual transfers till fact remains that the order was issued on the basis of his 'Ichchhapatra'.

11. Learned Advocate for the respondent no.3 also submitted that he may be adjusted in any place at Jamner. It was stated that one posts of O.T. Attendant and one post of Dresser are available at Jamner. Learned P.O. was directed to take instruction in this regard. Accordingly, it is submitted by the learned P.O. that no post of Peon is available at Jamner, and the posts of O.T. Attendant and Dresser are having different pay scale than Peon, and therefore, respondent no.3 cannot be adjusted at Jamner.

12. From the discussion in the foregoing paragraphs, it is thus crystal clear that since the order of transfer of the applicant at Jamner dated 31-05-2016 has already been implemented, it was unjustified and wrong on the part of the respondent no.1 to cancel the said order arbitrarily. Hence, the following order:

ORDER

- (i) O.A. is allowed.
- (ii) Impugned order dated 14-06-2016 of cancellation of transfer of the applicant at Jamner and transferring respondent no.3 in his place, is quashed and set aside.
- (iii) Respondent no.1 is directed to allow the applicant to work at Jamner with immediate effect.
- (iv) O.A. stands disposed of with no order as to costs.

(J. D. Kulkarni)
MEMBER (J)