

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 601 OF 2016

DISTRICT : PUNE

Dr Sahil Vasantryao Patil,)
Occ : Service as District Malaria Officer,)
Gondiya, Dist-Gondiya.)
R/o: E-78, Queens Garden, Pune-1.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. Director,)
Public Health Services,)
St. Georges Hospital Compound,)
P.D Mello Road, Near C.S.T Station)
Mumbai 400 001.)
3. Joint Director,)
Health Services, Arogya Bhavan,)
In front of Vishrawantwadi)
Police Station, Pune-6.)...**Respondents**

Shri V.P Potbhare, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 22.08.2016

ORDER

1. Heard Shri V.P Potbhare, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant, who has been working as District Malaria Officer at Gondiya for last more than 3 years and who is seeking transfer to a district of his choice as per G.R dated 11.7.2000.

3. Learned Counsel for the Applicant argued that the Applicant was posted as District Malaria Officer, at Gondiya by order dated 30.5.2013. The Applicant joined on that post on 10.6.2013. As he was completing three years in Gondiya by May, 2016, he applied online on 23.2.2016 requesting that he may be given a posting in Pune. Learned Counsel for the Applicant stated that Gondiya district is a Tribal area and as per G.R dated

11.7.2000, officers of Group 'A' and 'B' are eligible to be given a posting in the district of their choice after two years. The Applicant is a Group 'B' officer and he has worked in Tribal area for more than 2 years, in fact, more than 3 years. He is, accordingly, eligible to be given a posting in a district of his choice. Three posts are vacant in Pune, where the Applicant can be posted by the Respondents. However, the Respondents are not taking any steps to give posting to the Applicant as per G.R dated 11.7.2000.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has not completed his tenure of 3 years in Gondiya. He is, therefore, not due for transfer as per the Maharashtra Government Servants Regulation of Transfer & Prevention of Delay in Discharge of official Duties Act, 2005 (the Transfer Act). Learned Presenting Officer further stated that Gondiya is not a fully tribal district and only a few Talukas are included in Tribal Sub-Plan. As such G.R dated 11.7.2000 is not applicable in his case. Learned Presenting Officer stated that the Applicant has not earned satisfactory reports during his tenure in Gondiya and he was posted to Gondiya as a punishment. It is, therefore, necessary to dismiss this Original Application.

5. The affidavit in reply dated 4.8.2016 filed on behalf of the Respondent nos 1 to 3 states in para 23 that:-

“23. With reference to para 10, I say and submit that the Applicant is misguiding the Hon’ble Tribunal by making false statements and that he has completed three years of services at Gondia and that the District Gondia is a tribal/Naxalite area, also he has not got any satisfactory report about his working. Moreover, it is to be noted that he has been transferred to Gondia in 2013 on the punishment basis. Hence, I say and submit that the action of respondents not to transfer him is just and proper therefore, it needed to dismiss the said O.A at cost to the applicant.” (emphasis added).

The Respondents are probably not aware that a Government servant cannot be posted to a remote area as punishment. In the present case, this is totally against the Government policy. G.R dated 11.7.2000, which gives many concession to employees, who are posted to Tribal areas and as such it is envisaged that only good officers would be posted in Tribal areas as punishment means that officers not having good records are posted there. This will negate the policy of the Government which incentivize postings in such areas. On this ground alone, this Original Application deserves

to be allowed. The Applicant has already undergone sufficient 'punishment' by being posted to Gondiya, for more than 3 years, where admittedly he was posted as punishment, without holding any Departmental Enquiry. Coming to other claim of the Respondents that on 30.5.2016, the Applicant would not have completed 3 years in Gondiya is equally surprising. There is no doubt that the Applicant was posted to Gondiya by order dated 30.5.2013. A Government servant is allowed joining time as per rules. The Applicant was transferred to Gondiya from Alibaug, Dist-Raigad. The distance is more than 1000 kms. In such circumstances, if he joined at Gondiya on 10.6.2013, he cannot be blamed in any manner. The claim that he was not considered for transfer during general transfers of 2016 as, he would not have completed 3 years in Gondiya on 30.5.2016, only shows biased attitude of the Respondents towards the Applicant. It is claimed by the Respondents that G.R dated 11.7.2000 is not applicable to Gondiya District, as it is not fully tribal. The G.R dated 11.7.2000 talks of Government servant who had worked in Tribal areas (आदिवासी क्षेत्र). It does not mention 'tribal District' or that if a district is not fully tribal, provision of G.R dated 11.7.2000 will not apply. On that yardstick, no district in Maharashtra is fully tribal and G.R dated 11.7.2000 is totally meaningless. This claim of the Respondents has to be firmly rejected. The Respondents have claimed that performance of the Applicant in Gondiya has not been

satisfactory. However, ACRs of the Applicant for that period have not been appended. In Para 16 of the affidavit in reply, the Respondents have stated that:-

“As at District Gondiya, many case of Dengue, Filaria and Malaria are reported in past three years and as the post of D.M.O is supervisory cannot be kept vacant.”

From this averment, two inferences can be drawn, viz. if the Applicant is transferred out of Gondiya, no other office is available to be posted there, and the post will remain vacant. Reading this with averment in para 23, the Respondents want to further punish the Applicant by keeping him at Gondiya indefinitely. This claim of the Applicant cannot be accepted, as the essential posts are required to be filled, if necessary by promotion/fresh recruitment etc. Another inference that can be drawn is that the Applicant has been doing good work at Gondiya, so it is necessary to keep him there. This is also in sharp contrast to the claim in para 23 that his performance is not satisfactory.

6. It appears that the Respondents for some reason are not ready to consider the legitimate request of the Applicant that he may be posted to a district of his choice in terms of G.R dated 10.7.2000. The reasons given by the Respondents for not considering his request

are not logical and his representation has been rejected arbitrarily.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the representation of the Applicant for transfer to the district of his choice in terms of G.R dated 10.7.2000, within a period of 6 weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 22.08.2016
Dictation taken by : A.K. Nair.