

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1127 OF 2017

DISTRICT : NASIK

Dr Sushilkumar S. Wakchaure,)
Occ : Service, R/at : Arnavshree,)
Professor Colony, Chaudhari Mala,)
Racca Square, Panchvati,)
Nasik 422 003.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Public Health Department, 10th floor)
G.T Hospital Complex, Mantralaya,)
Mumbai 400 001.)
2. Dr Vijay Natthuji Dekate,)
Medical Officer,)
Municipal Corporation, Nasik.)
R/at Aashirvad Bldg, Flat no. 3,)
Behind Kalika Mata Mandir,)
Bombay Naka Road, Nasik.)...**Respondents**

Ms Smita Gaydhani, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondent no. 1.

Shri A.V Bandiwadekar, learned advocate for Respondent no. 2.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 14.02.2018

PRONOUNCED ON: 27.02.2018

ORDER

1. Heard Ms Smita Gaydhani, learned advocate for the Applicant, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondent no. 1 and Shri A.V Bandiwadekar, learned advocate for Respondent no. 2.

2. By the present O.A, applicant has approached this Tribunal by challenging order at Exh-B dated 23.11.2017 by which applicant has been transferred from his post as District Health Officer, Nasik to District Health Officer, Dhule.

3. Impugned order discloses that it has been issued, in so far as applicant is concerned on administrative grounds.

4. Impugned order also contains a recital in its preamble that it has been issued by complying with Sections 4(4) & 4(5) of ROT Act, 2005.

5. Applicant has relied upon the copy of Government Resolution dated 11.2.2015, wherein the necessity and modality of recording reasons has been reiterated by the Government, whenever the transfers are mid-term or mid-tenure.

6. Original Application is opposed by the Respondent no. 2, while O.A is orally opposed by the State, and record is produced for perusal.

7. Perused the record produced by the learned C.P.O. It consists of copy of minutes of Civil Services Board along with endorsements thereof by Hon'ble Minister.

8. Perusal of the minutes reveals that transfer and posting of Respondent no. 2 is proposed by the Department at Dhule was vetted by Civil Services Board. Mostly because applicant was not due for transfer on the date of proposal, and had not completed 3 years tenure, his name did not find any place in the proposal which was placed before the Civil Services Board.

9. While the Hon'ble Minister who is the competent authority considered the proposal, has modified the place of posting of Respondent no. 2, to Nasik instead of Dhule. The Hon'ble Minister may not be aware as to status of applicant's posting at Nasik and also the fact that applicant's tenure was not complete.

10. Consequent upon Hon'ble Minister's endorsement/approval the department has issued impugned order without bringing to the notice of Hon'ble Minister that Hon'ble Minister's endorsement relating to Respondent no. 2's transfer as District Health Officer, Nasik was going to result into displacement of the applicant requiring to change his posting elsewhere. In fact, the Secretary is expected and believed to be aware of the provisions of law, i.e. ROT Act, 2005, namely whenever the transfer is mid-term, special reasons or exceptional circumstances have to be recorded and approval of next higher authority has to be taken.

11. In the present case, it is not shown that both these compliances are done. Even it is not shown that a conscious decision to transfer the applicant from Nasik to Dhule is taken.

12. It is thus evident that the decision to post Respondent no. 2 at Nasik is in total lack of advertence to the fact as to what shall be the effect on the incumbent holding post at Nasik and whether due to resultant transfer, of the incumbent, i.e. present applicant shall

be effected by following provisions of law or applicant has to be a fait accompli.

13. From the foregoing discussion following conclusion emerges:-

- (a) Proposal for transferring the applicant is mid-term and mid-tenure as on the date of decision.
- (b) Civil Services Board had no occasion to apply mind to the proposal, since there was no proposal before the Civil Service Board.
- (c) Special reasons or exceptional circumstances for shifting the applicant from his present post mid-term are not recorded.
- (d) Since transfer of the applicant is mid-term and mid-tenure, the approval of authority higher in hierarchy above competent authority, though necessary, is not taken.

14. Thus, the recital in the impugned order that it is passed after following the provisions of Sections 4(4) & 4(5) of the ROT Act, 2005 is utterly erroneous and it is almost a falsehood in so far as it relates to the present applicant.

15. In the result, Original Application succeeds and impugned order is quashed and set aside, in so far as applicant is concerned.

16. Parties are directed to bear their own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 27.02.2018
Dictation taken by : A.K. Nair.