

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.233 OF 2019

DISTRICT : NASHIK

Dr. Dilip Sambhaji Ranvir.)
Age : 50 Yrs., Occu.: Medical Officer,)
Group 'A', presently posted at Primary Health)
Centre, Rohile Tehsil, Trimbakeshwar,)
District Nashik and having residential address)
as Kamal Blossom, Flat No. 5, Kalika Park,)
Untwadi, District : Nashik.)...Applicant

Versus

1. The Government of Maharashtra.)
Through Principal Secretary,)
Public Health Department, having office)
At G.T. Hospital Compound, Fort,)
Mumbai.)
2. Shri R.R. Gadhari.)
Deputy Secretary, Public Health Dept.,)
G.T. Hospital Compound, Fort,)
Mumbai.)
3. Dr. Mahendra Deollikar.)
Age : 54 Yrs., Occu.: Taluka Health)
Officer, Surgana, District : Nashik.)...Respondents

Mr. M.D. Lonkar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent Nos.1 & 2.

None for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

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DATE : 17.05.2019

JUDGMENT

1. The Applicant is seeking direction for implementation of order dated 19.09.2018 whereby he was transferred from Primary Health Centre, Rohile, Taluka Trimbakeshwar, District Nashik to Taluka Health Officer, Surgana, District Nashik and for further consequential relief invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.
2. Shortly stated facts giving rise to the O.A. are as under :-

The Applicant was appointed as Medical Officer (Group 'B') in 2004. Later, he was regularly absorbed as Medical Officer (Group 'A') in 2009. By order dated 23.05.2017, he was posted as Medical Officer (Group 'A'), Primary Health Centre, Rohile, Taluka Trimbakeshwar, District Nashik. The Respondent No.1 issued transfer order dated 18.08.2018 of various Medical Officers in pursuance of which he was transferred as Taluka Health Officer, Surgana, District Nashik. However, the Respondent No.1 by order dated 21.08.2018 temporarily suspended the implementation of order dated 18.08.2018 for some administrative reasons. But again, by order dated 19th September, 2018, the Respondent No.1 issued fresh order confirming transfer order of the Applicant and he was posted as Taluka Health Officer, Surgana, District Nashik. However, in the meantime, the Respondent No.1 by order dated 31.08.2018 transferred Respondent No.3 – Dr. Deollikar on the post of Taluka Health Officer, Surgana, Nashik on which the Applicant was posted by orders dated 18.08.2018 and 19.09.2018. The Applicant contends that the Respondent No.3 is in the cadre of District Technical Services (Group 'C') and not entitled for posting as Taluka Health Officer. The Applicant contends that realizing the mistake that the Respondent No.3 was not entitled for posting at Taluka Health Officer, Surgana, the Respondent No.1 again issued transfer order dated 20.12.2018 thereby

transferring Respondent No.3 at Sub-District Hospital, Kalwan, District Nashik. The grievance of the Applicant is that, though by orders dated 18.08.2018 and 19.09.2018 he has been posted as Taluka Health Officer, Surgana, District Nashik and transfer of Respondent No.3 to Kalwan, District Nashik by order dated 20.12.2018, he has not been allowed to join at Taluka Health Officer, Surgana. He made representations on 14.09.2018, 24.09.2018 as well as 21.02.2019 and requested to relieve him from the post of Primary Health Centre, Rohile, Trimbakeshwar and allow him to join as Taluka Health Officer, Surgana, District Nashik. However, the Respondent No.1 by letter dated 16.02.2019 informed to District Health Officer, Z.P, Nashik that the Respondent No.3 has been already posted as Taluka Health Officer, Surgana and had joined the said post and no such order about transfer of Respondent No.3 from Surgana (order dated 20.12.2018) had been issued by the Government. On this background, the Applicant has filed the present O.A. contending that in view of his transfer and posting by orders dated 18.08.2018 and 19.09.2018, the transfer order of Respondent No.3 dated 31.08.2018 posting him at Surgana is arbitrary, *malafide* and illegal. The Respondent No.3 does not fall in Group 'A', and therefore, he is not entitled for posting as Taluka Health Officer, Surgana. The Applicant, therefore, prayed for direction to implement the order dated 19.09.2018, so as to allow him to join at Surgana and for consequential relief of cancellation of order of Respondent No.3 dated 31.08.2018.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.39 to 47 of P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that by order dated 18.08.2018, the Applicant was transferred as Taluka Health Officer, Surgana, District Nashik and the same order was confirmed by order dated 19.09.2018. It is also not in dispute that by order dated 31.08.2018, the Respondent No.3 has been transferred from Metghar, District Nashik to Taluka Health Officer, Surgana. The Respondent No.3 is admittedly Group 'B' Medical Officer. The Respondents 1 & 2 denied that the

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Respondent No.3 is in the cadre of District Technical Services (Group 'C') and not entitled for posting as Taluka Health Officer. In this behalf, the Respondent 1 & 2 contend that by G.R. dated 17.10.2014, the Respondent No.3 has been absorbed in Public Health Department in the cadre of Medical Officer, and therefore, he was eligible for posting as Taluka Health Officer. The Respondents 1 & 2 denied that the Respondent No.3 is in the cadre of District Technical Services (Group 'C') and not entitled for posting as Taluka Health Officer. In this behalf, the Respondents 1 & 2 contend that by G.R. dated 17.10.2014, the Respondent No.3 has been absorbed in Public Health Department in the cadre of Medical Officer, and therefore, he was eligible for posting as Taluka Health Officer. The Respondents 1 & 2 contend that the order dated 20.12.2018 transferring Respondent No.3 from Surgana to Kalwan has not been issued officially by the Government. According to Respondents, on the contrary, in pursuance of order dated 31.08.2018, the Respondent No.3 had taken charge at Surgana and is continuously functioning there. Thus, the Respondents sought to justify the issuance of order dated 31.08.2018 in favour of Respondent No.3 and denied that it suffers from any illegality, *malafides* or arbitrariness. With these pleadings, the Respondents prayed to dismiss the O.A.

4. The Respondent No.3 though served did not appear.

5. Shri M.D. Lonkar, learned Advocate for the Applicant submitted that, once the posting order of Applicant at Surgana by order dated 18.08.2018 is confirmed by subsequent order dated 19.09.2018, there was no reason whatsoever much less valid to post the Respondent No.3 at Surgana by order dated 31.08.2018. He further urged that the Respondent No.3 though seems to have been absorbed in the cadre of Medical Officer still he falls in Group 'B', and therefore, not entitled for posting as Taluka Health Officer in terms of Government policy as reflected by letter dated 03.07.2013 issued by Additional Chief Secretary, Public Health Department, Mantralaya, Mumbai. He has further pointed out that realizing the

mistake in posting of Respondent No.3 at Surgana, the Respondent No.1 by order dated 20.12.2018 transferred Respondent No.3 from Surgana to Kalwan. However, the Respondents have not implemented the order dated 20.12.2018 and on the contrary, allowed him to continue at Surgana under the strange defence that no such order dated 20.12.2018 has been issued by the Government. On this line of submission, he submitted that the Respondents 1 & 2 are supporting Respondent No.3 and the order dated 31.08.2018 suffers from malice and arbitrariness.

6. Per contra, Shri A.J. Chougule, learned P.O. sought to contend that, in view of order dated 31.08.2018 transferring Respondent No.3 at Surgana, the order dated 18.08.2018 whereby the Applicant was earlier posted at Surgana stands automatically cancelled. He has further pointed out that in view of absorption of Respondent No.3 in the cadre of Medical Officer, there is no illegality in posting him as Taluka Health Officer, Surgana. On this line of submission, he prayed to dismiss the O.A.

7. At the very outset, it may be stated that this is a case where the Applicant is seeking direction for implementation of transfer order in view of contradictory orders by Respondents 1 & 2 whereby he has been deprived of the posting of Taluka Health Officer, Surgana which was given to him by order dated 18.08.2018 and subsequently, confirmed by another order dated 19.09.2018.

8. True, the transfer is an incidence of Government service and it falls within the domain of executive. However, it is well settled that where the transfer order is in contravention of express provisions of law or suffers from malice or arbitrariness, the same deserves to be set aside. The executive cannot be allowed to pass orders in colourable exercise of power which has effect on the posting already given to the Government employee. Undoubtedly, the executive is empowered to change the posting order as it deems appropriate and just, but

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it must be in fair and reasonable manner and not in colourable exercise of power or to accommodate somebody else.

9. The facts of the present case are very unusual, as conflicting orders are issued by Respondent No.1 without explaining the circumstances or reasons for change of the order. Admittedly, initially, by order dated 18.08.2018, the Applicant was transferred and posted as Taluka Health Officer, Surgana, District Nashik. However, later by order dated 21.08.2018, the implementation of transfer order dated 18.08.2018 was stayed for some administrative reasons. As per order dated 21.08.2018, it was informed by the Government that the Medical Officers transferred by order dated 18.08.2018 should not be allowed to join at the new place given to them till further orders from Government. Thus, what is pertinent to note that the order dated 18.08.2018 was not cancelled, but its implementation was kept in abeyance temporarily. Later, by order dated 19.09.2018, the Respondent No.1 again issued fresh order and significantly confirmed the posting of the Applicant as Taluka Health Officer, Surgana, District Nashik. The Medical Officers under transfer were directed to join the place of posting given to them within seven days. However, the problem arises in view of issuance of order dated 31.08.2018 whereby the Respondent No.3 who was working at Metghar, District Nashik was transferred as Taluka Health Officer, Surgana District Nashik, that is the post where the Applicant was posted by order dated 18.08.2018 and confirmed by order dated 19.09.2018.

10. Here, material to note that the transfer of Dr. Deollikar was mid-term and mid-tenure. The perusal of order dated 31.08.2018 in favour of Respondent No.3 shows that it was on request and was passed in purported compliance of Section 4(4) and 4(5) of "Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (hereinafter referred to as 'Transfer Act 2005'). Here, the important aspect is that the designation of Dr. Deollikar is shown as Medical officer (Group 'B'). Thus, one

thing is abundantly clear that Dr. Deollikar was Group 'B' Medical Officer and was not due for transfer and on his request, he was transferred thereby displacing the Applicant from the post of Taluka Health Officer, Surgana, District Nashik where he was posted by order dated 18.08.2018 and confirmed by order dated 19.09.2018. In such situation, the Respondents 1 & 2 were bound and expected to explain how such contrary orders have been issued in the teeth of earlier order dated 18.08.2018 and confirmed by order dated 19.09.2018 whereby the Applicant was posted as Taluka Health Officer, Surgana. However, no such explanation much less plausible is forthcoming. On the contrary, in Affidavit-in-reply, the Respondents 1 & 2 had gone to the extent of denying the issuance of order dated 19.09.2018 as seen from Para No.10 of the reply. The order dated 19.09.2018 is at 21 of P.B. and has been issued under the name of Hon'ble Governor, State of Maharashtra and has been implemented in respect of other Medical Officers barring few. Thus, it is seen that the Respondents 1 & 2 have audacity to disown their own orders issued under the name of Hon'ble Governor, which rather reflect want of care and due diligence on the part of concerned.

11. Be that as it may, once the Applicant has been shown transferred at Surgana by order dated 18.08.2018 and it was within the knowledge of Respondent No.1, there was no question of giving posting to Respondent No.3 by order dated 31.08.2018 whereby the Respondent No.3 was posted in place of Applicant. As stated above, the Respondent No.3 was not due for transfer and it was request transfer. It is thus quite clear that only to accommodate Respondent No.3, the posting given to the Applicant by order dated 18.08.2018 was changed. Needless to mention that it was only to oblige Respondent No.3. Besides, surprisingly, even in subsequent order dated 19.09.2018, the Applicant was given posting at the same place i.e. Taluka Health Officer, Surgana, District Nashik. This again shows want of due diligence and absurd manner of functioning and nothing else.

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12. One can understand the power of executive to change transfer orders for some valid reasons, but it need to be explained and justified to satisfy that change was necessitated for certain good administrative reasons in *bonafide* manner. However, in the present matter, no such situation is made out to legalize and justify the order dated 31.08.2018. On the contrary, it is obvious that it was passed only to oblige Respondent No.3. The Respondents 1 & 2 have also not produced on record the minutes of Civil Services Board to know the opinion recorded by CSB in this behalf. Suffice to say, the order dated 31.08.2018 seems to have been issued in colourable exercise of power which has effect of displacing the Applicant from the posting given to him by order dated 18.08.2018 and confirmed by order dated 19.09.2018.

13. Now, let us see the pleadings and material in respect of order dated 20.12.2018. The Applicant contends that having realized the mistake of issuance of wrong posting order of Respondent No.3, the Government sought to correct it and issued order dated 20.12.2018, which is at Page No.31 of P.B. The perusal of order reveals that by the said order, the Respondent No.3 shown transferred from the post of Taluka Health Officer, Surgana to Sub-District Hospital, Kalwan, District Nashik. In so far as this order is concerned, surprisingly, according to Respondents 1 & 2, no such order was in fact issued by the Government. In fact, the order dated 20.12.2018 is also shown issued under the name of Hon'ble Governor and issued under the signature of Shri Ravindra Gote, Under Secretary. The Respondents have not filed Affidavit of Under Secretary Shri Gote to clarify that he has not issued any such transfer order. In fact, the documents produced by Respondents 1 & 2 itself shows that the order dated 20.12.2018 was issued and communicated to Respondent No.3. In this respect, material to note letter of Respondent No.3 dated 23.02.2019, which is at Page No.62 of P.B. By this letter, the Respondent No.3 requested the Government that he had joined at Surgana on 08.09.2018 in pursuance of order dated 31.08.2018, but again within three months, by order dated 20.12.2018, he has been transferred to Kalwan,

District Nashik. He, therefore, requested to cancel his transfer. There is an endorsement of Principal Secretary on the letter by which he temporarily stayed the transfer order. The endorsement is as follows :-

“प्रस्तुत डा. महेंद्र देवळीकर यांचे बदलीस तात्पुरती स्थगिती देण्यात येते आहे. विभागाने या बदली संदर्भात सविस्तर प्रस्ताव तपासून सादर करावा.”

14. As such, the stand taken by Respondents 1 & 2 in the reply that no such order dated 20.12.2018 has been issued is completely exposed in view of letter of Respondent No.3 dated 23.01.2019 at Page No.62 of P.B. It is not made clear that whether the application dated 23.01.2019 was further processed by the Department and legal or valid order for stay to transfer order dated 20.12.2018 has been confirmed.

15. Now, turning to the entitlement of Respondent No.3 for posting as Taluka Health Officer, true, he seems to have been brought in the cadre of Medical Officer by G.R. dated 14.10.2014. However, there is no denying that he does not fall in Group 'A'. Whereas, as per policy decision of the Government, as reflected in the letter dated 03.07.2013 (Page No. 30 of P.B.), the post of Taluka Health Officer should be manned by Group 'A' Medical Officer. The letter dated 03.07.2013 has been issued by the then Additional Chief Secretary, whereby the directions were given to take remedial measures, so that only Group 'A' Medical Officers are posted as Taluka Health Officers. In the said letter, it is further stated that the allotment of post of Taluka Health Officer to Medical Officers other than Group 'A' would be administrative irregularity and it would also affect moral of senior Medical Officers of Group 'A'. Despite this position, the Respondent No.1 had posted Respondent No.3 – Dr. Deoliker as Taluka Health Officer, Surgana to which he seems not entitled in the terms of Government policy.

16. The totality of aforesaid discussion leads me to sum-up that the Government is under obligation to implement the order dated 18.08.2018

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confirmed by order dated 19.09.2018 by allowing the Applicant to join as Taluka Health Officer, Surgana, District Nashik. Consequently, the order dated 31.08.2018 needs to be modified by Respondent No.1 by giving appropriate posting to him. The Applicant has been deprived of getting his posting as Taluka Health Officer, Surgana by issuance of order dated 31.08.2018 in favour of Respondent No.3, which is nothing but colourable exercise of power and suffers from arbitrariness and consequently, liable to set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents 1 & 2 are directed to implement the order dated 18.08.2018 confirmed by subsequent order dated 19.09.2018 thereby posting the Applicant as Taluka Health Officer, Surgana, District Nashik by passing appropriate order, so as to allow him to join at Surgana within one month from today.
- (C) In consequence of the above direction, the order dated 31.08.2018 in favour of Respondent No.3 will stand inoperative and the Respondent No.1 shall issue further suitable order for posting of Respondent No.3 as it deems fit.
- (D) While giving posting to Respondent No.3, his convenience be considered for further posting.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.05.2019

Dictation taken by :

S.K. Wamanse.