

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.555 OF 2019

DISTRICT : PUNE

Shri Mahesh Ramchandra Holkar.)
Age : 46 Yrs., Occu.: Govt. Service as)
Scientific Laboratory Officer, Rural)
Hospital, Jejuri, Tal.: Purandar,)
District : Pune and residing at 293,)
Sudarshan Niwas, Satav Wadi, Hadapsar.,)
Pune - 411 028.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. The Director.)
Health Services, Central Building,)
Pune - 411 001.)
3. The Deputy Director.)
Health Services, Pune Division,)
New Administrative Building,)
Opp. Vidhan Bhavan,)
Pune - 411 001.)...**Respondents**

Smt. H. Kandiani, Advocate for Applicant.

Smt. K.S. Gaikwad. , Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.11.2019

Handwritten signature

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 31st May, 2019 whereby he was transferred from Rural Hospital, Jejuri, District : Pune to Sub-District Hospital, Baramati, District : Pune on the post of Scientific Laboratory Officer invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was initially appointed as Laboratory Technician. However, later, the nomenclature of the said post was changed as Scientific Laboratory Officer. In general transfer of 2019, he was due for transfer and had given three options in terms of Government Circular dated 09.04.2018 which *inter-alia* provides for giving preference of transfer to the Government servant who falls under the category mentioned in Circular. The Applicant contends that his father had undergone Bypass Surgery, and therefore, he is covered by Circular dated 09.04.2018. He had given following options.

- (i) Assistant Director, Leprosy Training Centre, Yerawada, Pune.
- (ii) STTC, Aundh, Pune.
- (iii) Regional Mental Hospital, Yerawada, Pune.

However, he was transferred to Sub-District Officer, Baramati, Pune by impugned order dated 31.05.2019, and therefore, being aggrieved by the same, the present O.A. is filed.

3. The Respondents resisted the O.A. on the ground that the Applicant had not given ten options as required by Circular dated 09.04.2018 and had given three options only. The Option No.1 - Assistant Director, Leprosy Training Centre, Yerawada, Pune was vacant, but the Applicant had already worked on that post in past,

and therefore, he was not entitled for the said post again. The Respondents further contend that the nomenclature of the post held by the Applicant is changed, and therefore, that post ceased to be isolated post, as a result of which, the Applicant is not entitled to the benefit of Circular dated 9th April, 2018. In so far as the Option Nos.2 and 3 are concerned, those were not at all vacant, and therefore, the question of considering those Options did not survive.

4. The learned Advocate for the Applicant submits that, in terms of Circular dated 09.04.2018, the Applicant's post being isolated, the ground of refusal raised by the Respondents that being worked on that post, is not entitled to the same post again, is unsustainable. She has further pointed out that the Applicant has already furnished Medical Certificate dated 23.07.2018 to substantiate that his father had undergone Bypass Surgery in Rasiklal M. Dhariwal Heart Care & Research Institute, Pune. She, therefore, submits that the impugned order is unsustainable in law and facts.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned order contending that the Applicant had already worked at Pune, and therefore, he is not entitled to the same post in terms of Circular dated 09.04.2018.

6. In view of submission advanced at the Bar, the question posed for consideration is whether the impugned order is sustainable in law. True, the transfer is an incidence of service and it falls in the domain of the executive. The Tribunal should not interfere with the transfer order unless it is in contravention of law or contrary to the Government instructions and Circulars.

7. Undisputedly, the Applicant was due for transfer and had given three Options. True, the Applicant ought to have given 10 Options as per Circular dated 09.04.2018. However, the fact remains that the

W. A. K.

Applicant had given three Options, out of which Option No.1 – Assistant Director, Leprosy Training Centre, Yerawada, Pune was vacant. The only issue is whether rejection of Option given by the Applicant is legal and valid. There is no denying that the Applicant's father had undergone Bypass Surgery.

8. As per Government Circular dated 09.04.2018, the Government had taken policy decision to give preference to the Options given by the public servant whose parent suffers from Heart ailment amongst others. As the Applicant's father had undergone Heart Surgery, his Options were required to be considered in proper perspective and letter and spirit of Circular dated 09.04.2018.

9. There is no denying that the Applicant had already worked as Assistant Director, Leprosy Training Centre, Yerawada, Pune. However, as per Clause 8(c)(1) of Circular dated 09.04.2018 (Page No.27 of Paper Book), the Applicant's post being isolated, the ground of rejection is clearly unjust. The Government Circular reads as follows :-

“(क) समुपदेशनाद्वारे बदली संदर्भातील इतर धोरणात्मक बाबी:-

(१) मूळ जागेवर पुन्हा बदलीस प्रतिबंध :-

प्रशासकीय किंवा विनंती बदल्या करताना कर्मचा-याने आगोदर ज्या जागी सेवा केली असेल त्या मूळ जागेवर शक्यतो बदली देण्यात येऊ नये. मात्र ही अट एकाकी पदास लागू राहणार नाही.”

10. Thus, the Government servant is not entitled for the posting at a place where he or she had already worked. However, it is explicit that the said condition is not applicable, if the post is isolated. In the present case, admittedly, the Applicant's post is isolated. True, as per G.R. dated 6th June, 2016, the nomenclature of the post from Laboratory Technician is changed to Scientific Laboratory Officer. Except change in nomenclature, there is no other change in so far as Pay and Allowances, nature of duties and promotional avenues are

concerned. It is not the case of Respondents that because of change of nomenclature, the post of Scientific Laboratory Officer is ceased to be isolated post. It is crystal clear in view of letter dated 30.03.2016 issued by Deputy Director, Health Services, Pune (Page No.103 of P.B.) that the post of Laboratory Technical is an isolated post and accordingly, the benefits of Time Bound Promotion were accorded. Suffice to say, there is only change of nomenclature and nothing else. The post does not seem to be isolated post. This being the position, the Applicant cannot be said not entitled for posting on the same place in view of Clause No.(क) of Circular dated 09.04.2018.

11. The Tribunal by order dated 09.08.2019 had granted interim relief in favour of the Applicant and the post of Scientific Laboratory Officer, Office of Assistant Director, Leprosy Training Centre, Yerawada, Pune was ordered to be kept vacant till the decision of O.A. Accordingly, the said post is kept vacant.

12. In view of above, I have no hesitation to sum-up that the Respondents failed to abide the Circular dated 09.04.2018 and ignored the claim of the Applicant for posting as per preference given by him. In terms of Circular, the Applicant was entitled for posting in the Office of Assistant Director, Leprosy Training Centre, Yerawada, Pune. The Civil Services Board (CSB) as well as Respondent Nos.2 & 3 failed to consider that the post held by the Applicant being isolated, there was no bar to claim posting at the same place. By Circular dated 09.04.2018, the Government had taken policy decision to accommodate the Government servant as per his/her preference where matter falls within the parameters mentioned therein. The Applicant's father being undergone Heart Surgery, his case ought to have been considered in proper perspective for posting at Pune. The very object of this Circular seems to alleviate the difficulties of Government servant and to post him as per choice given by them, so that he can function efficiently. However, the Respondents failed to

10/11/2019

abide the same. Therefore, the impugned order transferring the Applicant to Sub-District Hospital, Baramati, District Pune is not sustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 31.05.2019 is quashed and set aside.
- (C) The Applicant be posted as Scientific Laboratory Officer, in the Office of Assistant Director, Leprosy Training Centre, Yerawada, Pune within a month from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 16.11.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGEMENTS\2019\11 November, 2019\O.A.555.19.w.11.2019.Transfer.doc