

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.419 OF 2023

**DISTRICT: PUNE
SUBJECT: TRANSFER**

Sushma Baliram Atkale)
Age 43 years, Occ. Service)
R/at, E1, 104, RK Puram Society)
Munjaba Lalsti, Gokul Nagar, Dhanori)
Pune 411015)... **Applicant**

Versus

- 1) The State of Maharashtra)
Through Secretary)
Public Health Department, Mantralaya)
Mumbai 400032)
- 2) The Assistant Director of Health Services)
New, Administrative Building)
3rd Floor, Room No. 301,)
Near Vidhan Bhawan, Pune 411001)
- 3) Mr. Swapnil Dayanand Dhage)
Through the office of the Deputy Director of)
Health Services, New Administrative Building,)
3rd Floor, Room No. 301)
Near Vidhan Bhavan Pune 411001)... **Respondents**

Smt. Pooja Mankoji, learned Advocate along with Shri B. Shelke, learned Advocate holding for Shri S.S. Dere, learned Advocate for the Applicant.

Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.

CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)

DATE : 28.08.2024.

JUDGMENT

1. The Applicant who is 'Senior Clerk' in 'Public Health Department' has invoked provisions of 'Section 19' of 'The Administrative Tribunal Act 1985' to challenge Order dated 11.04.2023 issued by 'Deputy Director of Health Services, Pune Circle, Pune' about her 'Promotion-cum-Transfer' but limited to extent of not being posted as 'Senior Clerk' in office of 'Civil Surgeon; District Hospital, Solapur' but instead in office of 'Assistant Director Health Services (Leprosy), Solapur'.

2. The learned Advocate for Applicant stated that Applicant by Order dated 11.04.2023 issued by 'Deputy Director of Health Services, Pune Circle, Pune' was transferred upon promotion from post of 'Junior Clerk' in 'Regional Mental Hospital; Yerwada, Pune' to post of 'Senior Clerk' in office of 'Assistant Director Health Services (Leprosy); Solapur'; while Respondent No. 3 came to be transferred upon promotion to post of 'Senior Clerk' in office of 'Civil Surgeon; District Hospital, Solapur' which had been sought by Applicant.

3. The learned Advocate for Applicant further stated that 'Deputy Director of Health Services, Pune Circle, Pune' had published the 'Seniority List' of 01.01.2022 for 'Junior Clerks' on 29.04.2022. The name of Applicant appears at 'Sr. No. 42' while that of Respondent No. 3 appears at 'Sr. No. 121'. The 'Deputy Director of Health Services, Pune Circle, Pune' had thereafter published on 02.01.2023 the list of 'Junior Clerks' who were in 'Zone of Consideration' for promotion to post of 'Senior Clerk'. Applicant was found eligible for promotion to post of 'Senior Clerk'. The name of Applicant appeared at 'Sr. No. 35' whereas name of Respondent No.3 appeared at 'Sr. No. 52'; Thus; it was evident Applicant was senior to Respondent No. 3 in 'Zone of Consideration' for promotion to post of 'Senior Clerk'.

4. The learned Advocate for Applicant stated that contention of Applicant was that Order dated 11.04.2023 issued by 'Deputy Director of

Health Services, Pune Circle, Pune' about 'Promotion cum Transfer' to post of 'Senior Clerks' should have been issued after due consideration of choice given by Applicant as she had higher placements than Respondent No.3 in 'Seniority List' of 'Junior Clerks' published on 29.04.2022 as well as 'Zone of Consideration' published on 02.01.2023 for promotion to post of 'Senior Clerks'. The 'Deputy Director of Health Services, Pune Circle, Pune' did not consider the seniority of Applicant on account of 'Political Influence' brought upon by Respondent No. 3 who was transferred upon promotion to post of 'Senior Clerk' in office to 'Civil Surgeon; District Hospital, Solapur' which had been sought by Applicant.

5. The learned Advocate for Applicant then drew attention to the fact that Applicant is 'Single Mother' as well as cited specific grounds of 'Personal Hardships'.

6. The learned Advocate for Applicant relied on 'Judgment' dated 29.03.2022 passed in Original Application No: 733/2021 which had held that transfer would be bad in law; if done without considering the 'Options' given by 'Government Servants' and their placements in 'Seniority List'.

7. The learned PO relied on 'Affidavit-in-Reply' dated 04.05.2023 filed on behalf of 'Deputy Director of Health Services, Pune Circle, Pune' to state that it is admitted that list of 'Junior Clerks' who were in 'Zone of Consideration' for promotion to post 'Senior Clerks' was published on 02.01.2023 and name of Applicant appeared at 'Sr. No. 35' whereas name of Respondent No.3 appeared at 'Sr. No. 52';.

8. The learned PO again relied on 'Affidavit-in-Reply' dated 04.05.2023 filed on behalf of 'Deputy Director of Health Services, Pune Circle, Pune' to state that Applicant had been directed on 10.04.2023 to remain present for meeting of 'DPC'. However; Applicant not only failed

to remain present for meeting of 'DPC' but also did not give advance intimation about her absence to 'Deputy Director of Health Services, Pune Circle, Pune'. Further it was emphasized that allegations made about 'Political Influence' brought upon by 'Respondent No.3' were baseless and irrelevant; as Applicant as per her choice was transferred to 'Solapur City' upon promotion to post of 'Senior Clerk'. Hence no inconvenience has been caused to Applicant; just because she was transferred to post of 'Senior Clerk' in office of 'Assistant Director Health Services (Leprosy) Solapur' and Respondent No.3 came to be transferred instead to post of 'Senior Clerk' in office of 'Civil Surgeon; District Hospital Solapur'.

9. The learned PO emphasized that the ratio laid down by 'Judgment' dated 29.03.2022 passed in Original Application No. 733/2021 was not applicable as facts & circumstances relating to Applicant therein were vastly different from that of Applicant in this O.A. No. 419/2023.

10. The Applicant 'per-se' has not challenged the Order dated 11.04.2023 issued by 'Deputy Director of Health Services, Pune Circle' about her 'Promotion-cum-Transfer' to post of 'Senior Clerk' but only contention of Applicant was that she should have been posted as 'Senior Clerk' in office of 'Civil Surgeon; District Hospital, Solapur' on grounds of higher placements as 'Junior Clerk' in 'Seniority List' published on 29.04.2022 and 'Zone of Consideration' published on 02.01.2023 for promotion to post of 'Senior Clerks'.

11. The relative placements of 'Government Servants' in last published 'Seniority List' is an important consideration while determining eligibility for promotion to next 'Higher Posts' which are generally based on the criteria 'Seniority-cum-Merit': However; after having been found fit for promotion subsequent transfers to next 'Higher Posts' are usually based on overall suitability of Government Servants as per recommendations made by 'CSB'. The 'CSB' which is constituted by 'Senior Officers' takes

collective decisions to recommend transfers of 'Government Servants' after taking into due consideration all relevant factors including relative placements of 'Government Servants' in last published 'Seniority List'. The 'CSB' in its own wisdom while making recommendation for transfers to 'Senior Level' posts like 'Heads of Department'; may even decide to judiciously assess overall suitability of concerned 'Government Servants' by matching the nature of role and responsibility of such 'Senior Level' posts with records of evaluation of 'Government Servants' done through 'APAR' including assessment under specific captions such as (a) 'Work Completion' (b) 'Personal Attributes' and (c) 'Efficiency'. Hence transfers of 'Government Servants' whether upon promotion or otherwise are based on collective decision taken by 'CSB' which objectively ascertains the overall suitability of Government Servants for available posts and approvals are then sought from 'Competent Transferring Authority' and next 'Superior Transferring Authority' who are vested with 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'.

12. **The Hon'ble Supreme Court of India in B Varadha Rao v State of Karnataka, 1986 (3) Serv LR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287** has generally observed that transfer is an ordinary incidence of service and therefore does not result in any alteration of any condition of service to disadvantage of Government Servants.

13. **The Hon'ble Supreme Court of India in K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) Serv LR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 Serv LR 1** has pertinently observed that Government Servants cannot, as a matter of right seek transfer to a place of his choice. **The Hon'ble Supreme Court of India in UOI v SL Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357** has further specifically observed that which Government Servant is to be transferred

where, is a matter to be decided by the appropriate Competent Authority.

14. The Applicant therefore did not have any legal entitlement to be transferred upon promotion only to post of 'Senior Clerk' in office of 'Civil Surgeon District Hospital, Solapur'. The Order dated 11.04.2023 issued by 'Deputy Director of Health Services, Pune, Circle Pune' to transfer Applicant to post of 'Senior Clerk' in office 'Assistant Director (Leprosy) Solapur' thus does not suffer from any vice of 'Malafide Exercise' or 'Arbitrary Exercise' of 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' and is also in consonance with 'Policy Guidelines' under GAD GR dated 09.04.2018.

15. The challenge by Applicant to Order dated 11.04.2023 issued by 'Deputy Director of Health Services, Pune Circle, Pune' is based on 'Hyper Claim' that transfers of 'Government Servants' have to be based on their relative placements in last published 'Seniority List'. The transfers of 'Government Servants' are done under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' which is silent about any assemble of criteria that should necessarily be observed by 'CSB'. Hence it would be patently bad in law to contemplate placing restrictions on independent functioning of 'CSB' to assess overall suitability of 'Government Servants' for transfers subject to 'Administrative Instructions' issued by way of 'Government Resolutions' and Government Circulars. Neither can extensive 'Statutory Powers' vested with 'Competent Transferring Authority' and next 'Superior Transferring Authority' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005' be curtailed by over emphasizing consideration of the specific criteria of relative placements of 'Government Servants' in last published 'Seniority List'.

16. The Applicant upon 'Promotion-cum-Transfer' from post of 'Junior Clerk' in 'Regional Mental Hospital Yerwada, Pune' has been posted as 'Senior Clerk' in office of 'Assistant Director Health Services (Leprosy) Solapur' which in itself is irrefutable evidence that grounds of 'Personal Hardships' cited by Applicant including that of being 'Single Mother' were duly considered by 'CSB' and thereupon received acceptance of 'Competent Transferring Authority' while exercising 'Statutory Powers' under 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005'. Hence the following Order.

ORDER

- (i) The Original Application No. 419/2023 is Dismissed.
- (ii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Place: Mumbai
Date: 28.08.2024
Dictation taken by: A.G. Rajeshirke.

Uploaded on:_____