

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.253/2015.

Ramkrushna Chirkutrao Gaiki,
Aged about 53 years,
Occ- Service,
R/o Rural Hospital, Kuhi,
District Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Director of Public Health,
Govt. of Maharashtra, Arogya Bhavan,
St. Georges Hospital Compound,
CST, Mumbai-1.
3. The Dy. Director of Health Services,
Nagpur Region, Mata Kacheri Compound,
Shraddhanand Peth, Nagpur.
4. The Medical Superintendent,
Rural Hospital, Kuhi, Distt. Nagpur.

Respondents.

5. Respondent no. 5 → Deleted

Shri N.D. Thombre, Ld. Counsel for the applicant.

Shri A.P. Sadavarte, Ld. P.O. for the respondents.

Coram:- B. Majumdar, Vice-Chairman and

Dated:- 6th April, 2016.

Order

The applicant is a Laboratory Technician in the Public Health Department. He has filed this O.A. as he is aggrieved with an order transferring him to Mulchera, District Gadchiroli.

2. Brief facts of the case are that the applicant was posted at Sindewahi, District Chandrapur in 1991. He was posted at Kuhi, District Nagpur from 25.6.2008. On 31.3.2015, he submitted a representation to the Dy. Director of Health Services, Nagpur (R.3) requesting that he should be posted at Nagpur, Kalmeshwar or Hingna. On 30.5.2015, the Director of Public Health (R.2) issued a general order of transfer of Group-C employees. As per this order, the applicant is transferred to Mulchera, District Gadchiroli. The applicant filed the present O.A. on 8.6.2015 challenging the above order. On 9.6.2015, the Tribunal rejected his prayer for grant of interim relief. The applicant approached ~~the~~ Hon'ble the High Court by filing W.P. No. 3299/2015. ~~The~~ Hon'ble the High Court stayed the order dated 30.5.2015. On 21.10.2015, ~~the~~ Hon'ble the High Court directed this Tribunal to decide the present O.A. as early as possible and it also continued the interim relief during the pendency of the writ petition.

3. The applicant submits that he has been working in the tribal / naxalite affected area for 17 years. The G.R. dated 6.8.2002 lays down the policy that after working in a tribal / naxalite affected area, a Government employee is entitled to a posting of his choice and, further, there should not be any posting in such an area after the government servant attains the age of 50 years. He also

relies on the G.R. dated 19.5.1986 which states that after three years of work in a tribal area, a Government servant is to be posted at a place of his choice. He has a daughter who is undergoing studies in 12th standard in Nagpur and that was one of the reasons why he had requested for a posting at Nagpur. There are a number of Laboratory Technicians who have never worked earlier in the tribal / naxalite affected area and their cases should have been taken on priority. He refers to the case of one Shri A.M. Kukde, Laboratory Technician. The said Shri A.M. Kukde, vide the same order dated 30.5.2015 was posted at Kushi vice the applicant. The respondent No.2 on 30.6.2015 amended the order of posting of Shri A.M. Kukde by posting him at Gondia, for the reason that once having worked in the tribal / naxalite affected area he cannot be posted again to such an area. The applicant also refers to the order of ~~the~~ Hon'ble the High Court dated 17.1.2014 in W.P. No.2770/2013 (**Ramtek Taluka High School Shikshak Anyaya Niwaran Samiti V/s State of Maharashtra**) wherein it was held that an employee who had worked for three years in the tribal / naxalite affected area cannot be sent back to that area.

4. The respondent No.2, the Director of Public Health and the respondent No.3, the Dy. Director of Health Services in their reply in affidavit submit that the applicant had completed seven years

at Kuhi and hence he was due for transfer. The transfer had taken place on administrative grounds and by an authority which is competent in this regard. With regard to the applicant's representation dated 31.3.2015, they submit that no vacancy is available at any of the places for which the applicant had given his options.

5. Shri N.D. Thombre, the learned counsel for the applicant reiterated the submission made by the applicant as above.

6. Shri A.P. Sadavarte, the learned P.O. similar reiterated the submission of respondent Nos. 2 and 3. However, he fairly conceded that as the applicant had worked for seven years in the naxalite affected area, as per Government policy, he has a good case for being considered favourably for posting in a non tribal / naxalite affected area.

7. I find that it is undisputed that the applicant has been posted at Sindewahi, District Chandrapur from 1991 to 2008. Thus, he has completed more than 17 years in a tribal / naxalite affected area. Vide impugned order, he was again posted in the tribal / naxalite affected area, i.e., the Gadchiroli District. It is not disputed that the applicant had completed his tenure of six years at Kuhi, when the order of transfer was issued and it is also not a mid-term transfer. Thus, there has been no violation of the provisions of

the Transfer Act. However, it is equally relevant that the posting of the applicant to Mulchera, District Gadchiroli was against the Government policy of not posting an employee in the tribal / naxalite affected area after he had completed three years in such an area. The G.R. dated 6.8.2002 is relevant. As per sub- para (5) of para 2 of the said G.R., the Government servant who has completed 50 years of age should, as far as possible, not be posted in such an area. The G.R. thereafter reiterates the provisions of the earlier G.R. dated 11.7.2000 which are as follows:

“१. आदिवासी क्षेत्रात ३ वर्षे चांगले काम केलेल्या गट ‘क’ व गट ‘ड’ च्या कर्मचा-यांना त्यांच्या पसंतीच्या जिल्ह्यात सोईप्रमाणे नेमणूका देण्यात याव्यात.

२. आदिवासी क्षेत्रात किमान २ वर्षे चांगले काम केलेल्या गट ‘अ’ व गट ‘ब’ च्या अधिका-यांना देखील त्यांच्या पसंतीच्या जिल्ह्यात सोईनुसार नेमणूका देण्यात याव्यात.

३. वरीलप्रमाणे पसंतीच्या जिल्ह्यात बदली मिळण्यासाठी आदिवासी क्षेत्रात काम करणा-या अधिकारी/कर्मचारी यांनी उपरोक्त विहित कार्यकाळ संपाण्यापूर्वीच किमान ३ महिने आधी त्यांच्या पसंतीच्या जिल्ह्यांची तीन नावे सक्षम प्राधिका-यांनाकळवावीत व त्याची प्रत तो कार्यरत असलेल्या क्षेत्राच्या जिल्हाधिकारी/ विभागीय आयुक्त यांना देण्यात यावी”.

8. Thus, it is clearly laid down the policy of the Government that a Group-C employee like the applicant who has reached the age of 50 years and who has completed the tenure of three years in the tribal / naxalite affected area, is entitled to be posted to a place of his choice. The applicant had applied for posting of his choice on 31.3.2015 and respondent No.2 could have

therefore considered his case during the transfer session of April / May 2015 and posted him to a non tribal / non naxalite affected area even if no vacancy was available in the Nagpur District.

9. Hon'ble the High Court in its order dated 17.1.2014 in W. P. No.2770/2013 (**Ramtek Taluka High School Shikshak Anyaya Niwaran Samiti V/s State of Maharashtra**) had held as follows:

“Various policy decisions / circulars noted by us (supra) mandate a transfer in particular proportion. These circulars do not lay down the maximum percentage of such transfers. On the contrary, in any case, the minimum percentage as prescribed i.e. 5% needs to be adhered to. Thus, there is no law or policy decision, which prohibits respondent No.2 to transfer employees in excess of 5% out of tribal / naxalite areas. We therefore clarify the position accordingly and respondent No..2 to see that employees, who have put in more than three years of service in tribal / naxalite areas, are transferred out of said areas as the employees who have put in three years service earlier in such areas, cannot be sent back to that areas. Employees continuing there in excess of three years cannot be made to suffer. Those who have never worked in tribal / naxal prone areas need to be posted there at least once in their service”.

10. I further find that in case of ~~case~~ Shri Kukde, respondent No.2 had conceded that having worked in the tribal /

naxalite area, he cannot be posted back to a similar area and he had made changes in his order of transfer accordingly. It may be relevant to note that by doing so, respondent No.2 had accepted *any that* Kuhi, District Nagpur is a naxalite area. If he could consider the case of Shri Kukde, in all fairness he should have also similarly considered the case of the applicant.

11. Having examined all the issues as above, I dispose of the present O.A. in terms of the following directions:

- (a) The impugned order dated 30.5.2015 so far as it concerns the applicant is quashed and set aside.
- (b) Respondent No.2 is at liberty to post the applicant to a vacant post in a non tribal / non naxalite affected area where the vacancy is available after offering an option in this regard to the applicant.
- (c) This will be done during the ensuing transfer session.
- (d) Parties to bear their own costs.

sd/-

(B. Majumdar)
Vice-Chairman