

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.575 OF 2019

DISTRICT : PUNE

Shri Dattatraya A. Bharmade.)
Age : 50 Yrs., Working as Junior Clerk,)
Rural Hospital, Rui, Tal.: Baramati,)
District : Pune and residing at Government)
Quarters, Rural Hospital, Rui,)
Tal.: Baramati, District : Pune.)...**Applicant**

Versus

1. The Director of Health Services,)
Pune, Having Office at Central)
Building, Pune - 1.)
2. Shri V.S. Agawane.)
Age : Adult, Working as Junior)
Clerk, Rural Hospital, Gondavale,)
District : Satara.)
3. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 17.02.2020

W. S.

JUDGMENT

1. The Applicant has challenged the impugned transfer order issued by Respondent No.1 in May, 2019 (no specific date is mentioned in the impugned order by the Respondents) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was serving as Junior Clerk, Rural Hospital, Rui, Tal.: Baramati, District : Pune and had completed six years tenure at the time of general transfers of 2019. In terms of Circular dated 09.04.2018, options were called from the employees including the Applicant who were due for transfer. The Applicant, however, asked for retention at the same place on the ground that his son requires medical treatment from the Doctors of Rubi Hospital, Pune for brain injury suffered in 2017. He has not given any other option. However, by impugned order (Page No.16 of Paper Book) issued in month of May, 2019, he was transferred to Rural Hospital, Natepute, District Solapur. The Applicant has challenged the transfer order in the present O.A.

3. At the time of admission, the interim relief was granted in favour of Applicant having noticed that there is legal defect in the impugned transfer on the point of competency of transferring authority.

4. Shri A.V. Bandiwadkar, learned Advocate for the Applicant sought to assail the transfer order mainly on the following grounds :-

(i) The transfer order is issued by Director of Health Services, Pune though in terms of Notification dated 14.04.2014 issued by Government, Director of Health Services, Mumbai was declared competent transferring authority as Head of the Department under the provisions 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' for brevity).

Therefore, Director of Health Services, Pune who has issued transfer order was not competent in law.

(ii) Son of the Applicant suffered brain injury in 2016 and was operated twice in Rubi Hospital, Pune and was required continuous follow-up treatment. Therefore, in terms of G.R. dated 09.04.2018, which *inter-alia* provides for suitable posting to the Government servant as per their choice where Government servant or his dependents suffer from serious illness including brain injury, the Applicant was entitled for retention.

(iii) The Applicant is subjected to discrimination by denying the benefit of G.R. dated 09.04.2018 but at the same time, the benefit of said G.R. was given to co-employees viz. Shri S.V. Mujawade and Shri M.B. Kadam.

On the above grounds, the learned Advocate for the Applicant submits that the impugned order transferring the Applicant from Rural Hospital, Rui to Rural Hospital, Natepute, District Solapur is unsustainable in law.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer opposed the application contending that the Applicant had completed 19 years in Pune District except one transfer out of Pune District, and therefore, he was required to be shifted out of Pune. She further submits that though in terms of G.R. dated 09.04.2018, the Applicant was required to give ten options, he did not give any other option except for asking retention at Rui. As regard medical ground, she submits that the Applicant's son suffered brain injury in 2016 and was operated twice in 2016 and 2017 only, and therefore, on this ground alone, the Applicant cannot ask for continuation on the same post in future forever. As regard competency, she submits that the post of Director, Health Services, Pune has been created by G.R. dated 06.03.2019 which is subsequent to Notification dated 14.03.2014 whereby Director, Health Services, Mumbai was notified as head of the Department, and therefore, in view of creation of

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post of Director, Health Services, Pune was empowered to effect transfer of Group 'C' employees. On this line of submission, she prayed to dismiss the O.A.

6. Having heard the submission, in my considered opinion, the present O.A. can be disposed of on the ground of competency alone as it goes to the root of the matter. I, therefore, propose to decide the O.A. on the ground of competency without touching other aspects.

7. Indisputably, the Applicant was transferred by the order of Director, Health Services, Pune in general transfer of 2019. There is no denying that the Applicant had completed six years tenure at Rural Hospital, Rui and was due for transfer. However, material question comes whether after Archana Patil, Director, Health Services, Pune who had issued transfer order was competent transferring authority as contemplated under the provisions of 'Transfer Act 2005'.

8. The Applicant being Group 'C' employee, the Head of the Department is competent transferring authority as per Table below Section 6 of 'Transfer Act 2005'. However, here Section 7 of 'Transfer Act 2005' is material, which is as follows :-

"7. Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act."

9. Thus, it is explicit from the Scheme of 'Transfer Act 2005' that the Head of the Department is the competent transferring authority for general transfer and every Administrative Department was required to publish the list of the Head of Department and to notify the authorities as competent authorities to make transfers within their jurisdiction.

10. Now turning to the facts of the present case, material to note that by Notification dated 14.03.2014 (Page No.44 of P.B.), the Government of Maharashtra had appointed Director, Health Services, Mumbai as Head of the Department as contemplated under Section 7 of 'Transfer Act 2005'. Thus, there is no denying that by Notification dated 14.03.2014, the Director, Health Services, Mumbai has been declared as competent transferring authority for the purposes of 'Transfer Act 2005'. Admittedly, there is no Notification in the name of Director, Health Services, Pune under Section 7 of 'Transfer Act 2005'.
11. True, as submitted by the learned P.O. that the post of Director, Health Services, Pune was created for the first time by G.R. dated 6th March, 2019. Thus, it appears that prior to issuance of this G.R. dated 7th March, 2019, the Director, Health Services, Mumbai was the only authority and accordingly, it was notified as only competent transferring authority. By G.R. dated 6th March, 2019, the post of Director, Health Services, Pune only has been created. The perusal of G.R. dated 6th March, 2019 reveals that the Director, Health Services, Mumbai is given nomenclature as Director, Health Services-1, Mumbai and Director, Health Services, Pune is given nomenclature as Director, Health Services-2, Pune. No doubt, by G.R. dated 6th March, 2019, new post of Director, Health Services, Pune is created for Pune Region. However, G.R. dated 6th March, 2019 is of creation of post only and it does not have any reference of the provisions of 'Transfer Act 2005'. I have gone through the G.R. dated 6th March, 2019 and found that the said G.R. is totally silent about declaring Director, Health Services, Pune as competent transferring authority to effect transfer of Pune Region.
12. Smt. K.G. Gaikwad, learned P.O. fairly concede that after creation of new post at Pune, the Government has not issued Notification as required under Section 7 of 'Transfer Act 2005'. However, she tried to salvage the damage contending that in view of creation of post, the said authority automatically gets over of competent transferring authority.

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This submission run counter to the specific provision contained in Section 7 of 'Transfer Act 2005' reproduced above, which *inter-alia* mandates publication of list of Head of Department and Regional Head of Department as competent transferring authority. It may be recalled that, initially, the Government Notification dated 14th March, 2014 had empowered Director, Health Services, Mumbai as competent transferring authority for the purpose of 'Transfer Act 2005', and therefore, unless the said Notification is modified by issuance another Notification in the name of Director, Health Services, Pune as contemplated under Section 7 of 'Transfer Act 2005', the said authority cannot be said legally competent to transfer the Applicant.

13. True, the transfer is an incidence of service and it exclusively falls within the domain of executive. However, now transfers are regulated and governed by the provisions of 'Transfer Act 2005' which *inter-alia* laid down the specific requirement which needs to be complied with while effecting transfers. In the present case, the Notification of competent transferring authority is in the name of Director, Health Services, Mumbai but the transfer order is issued by Director, Health Services, Pune. Admittedly, there is no Notification in the name of Director, Health Services, Pune which is mandatory requirement as per Section 7 of 'Transfer Act 2005'. As such, there is violation of express provision of law, and therefore, transfer order is unsustainable in law and facts and consequently deserves to be quashed.

14. In view of aforesaid discussion, the O.A. deserves to be allowed on the ground of competency. Therefore, it is not necessary to deal with the other grounds canvassed by the learned Advocate for the Applicant. It is necessary to make it very clear that the Respondents are at liberty to get the post of Director, Health Services, Pune notified under Section 7 of 'Transfer Act 2005' and thereafter may pass further orders of transfers in accordance to law.

15. The totality of aforesaid discussion leads me to conclude that the impugned transfer order of May, 2019 qua the Applicant is deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order of May, 2019 (Page Nos.16 to 18 of P.B) qua the Applicant is hereby quashed and set aside.
- (C) Interim relief granted by this Tribunal is made absolute.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.02.2020

Dictation taken by :

S.K. Wamanse.

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