

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.563/2018

Dated this Friday the 20th day of December, 2019

Coram: R. Vijaykumar, Member (A)
Ravinder Kaur, Member (J)

Dr. Pramod J. Jaiswal
Aged 50 years
Working as Chief Medical Officer
(Incharge Ayurvedic)
Central Government Health Scheme
Swasthya Sadan, 2nd Floor, Mukundnagar
Pune - 411 037
Residing at : 412 CGHS Quarters,
Behind CGHS Hospital
Mukundnagar, Pune - 411 037. ... **Applicant**

(By Advocate Shri S.V. Marne alongwith Ms.
Priyanka Mehndiratta)

VERSUS

1. The Union of India
Through the Secretary,
Ministry of Health and Family Welfare
CGHS-I, Section
Nirman Bhawan, New Delhi - 110 011.
2. The Secretary
Ministry of Ayush
Ayush Bhavan, B-Block, GPO Complex,
INA, New Delhi - 110 023.
3. The Additional Director
Central Government Health Scheme
Swasthya Sadan, 2nd Floor,
Mukundnagar, Pune - 411 037.
4. Dr. R.D. Patil
CMO (Ayurveda)

O/o. Additional Director
Central Government Health Scheme,
Seminary Hills,
Nagpur - 440 006.

... Respondents

(By Advocate Shri N.P. Shimpi - R1 to R3
Shri S.D. Kahaley - R4)

Order reserved on: 03.12.2019

Order pronounced on: 20.12.2019

ORDER

Per: R. Vijaykumar, Member (Administrative)

This application has been filed on
04.09.2018 under Section 19 of the
Administrative Tribunals Act, 1985 seeking the
following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the impugned order dated 24.08.2018.

(b) The respondent No.4 may be restrained from joining in place of the applicant.

(c) Costs of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant, a resident of Mumbai, was appointed as Medical Officer Ayurveda and posted at Pune on 09.11.1998 where he remained ever since for 21 years to date and now holds the post of CMO at Pune in one of the two posts

of Ayurveda Doctor at the single Wellness Centre with Ayurvedic facility at Pune. Respondent No.4, a resident of Kolhapur, was appointed at Ayurveda Doctor on 22.03.2002 at Nagpur Wellness Centre and has been serving there ever since for 17 years even after becoming CMO at that station. In impugned orders No.A-22012/01/2017-CGHS-I dated 24.08.2018, the respondent No.4 was transferred by the Competent Authority which is a Committee in the Ministry of Health and Family Welfare, CGHS Division from CGHS Nagpur to CGHS Pune, while simultaneously transferring the applicant from CGHS Pune to CGHS Nagpur. Respondent No.4 was also issued relieving orders on 28.08.2018 (Annexure R-6) and assumed charge of the post of CMO Ayurveda at Pune on 29.08.2018 forenoon. By this time, the applicant states that he received the transfer orders dated 24.08.2018 on 28.08.2018 and emailed his representation on 28.08.2018 at 1.20pm apart from making a formal representation on the same date which was also forwarded by the Additional

Director, CGHS Pune on the same date (Annexures A-3 and A-4). On the same day, in the afternoon on 28.08.2018 he applied for medical leave with a medical certificate from the Wellness Centre Medical Officer which states that he was suffering from low back pain and absence of duty for 15 days from 28.08.2018 was necessary. He, therefore, proceeded on medical leave. In his representation, he has asserted that there is no rotational transfer policy in the Ministry of Ayush. He has argued two grounds: that his spouse is a Nutrition Specialist with the UNICEF at South Sudan from July 2017 to July 2019 and he was, therefore, a single parent; and since his daughter was studying in 10th standard, he was unable to go out of Pune at that point in time. He has also informed the official respondents R-1 to R-3 that he had filed a case in this Tribunal against the orders of transfer and requested that the orders may be kept in abeyance. It is noted however, that this OA has been filed only on 04.09.2018. Meanwhile,

however, Respondent No.4 who had been transferred in the same orders had joined in the vacancy of the applicant resulting from his proceeding on medical leave for 15 days and his joining report was duly communicated to the competent authorities. No reply has been received from the respondents in response to the representation dated 28.08.2018 of the applicant.

3. The applicant contends that he has been singled out and transferred abruptly and that all doctors in AYUSH Department (now Ministry) have entered service and retired at the same station and that no reasons have been furnished in the transfer orders which have been issued in the absence of rotational transfer policy and is contrary to law and facts. He has emphasised the fact that his daughter is studying in the 10th standard at Pune and cites the judgment of Director of School Education Madras and Ors. Vs. O. Karuppa Thevan and Anr., 1994 Supp (2) CC 666 in support. Further, he asserts that political pressure has

come to bear in this case and the applicant has been transferred out from Pune only in order to accommodate respondent No.4 in his place. In support he cites the rulings of the Hon'ble Apex Court deprecating transfer under political pressure in Suresh Chand Sharma Vs. Chairman, UPSEB and Ors., 2005 AIR C 1133 and also refers to the rulings of the Hon'ble Apex Court in Goverdhan Lal Vs. State of U.P. & Ors., 2000(2) UPLBEC 1356 that a transfer order passed under influence of any other person cannot be sustained. Further, he refers to the observations of the Hon'ble Apex Court in Director Vs. Nathi Lal, 1995 (2) UPLBEC 1121 that an employee can be transferred only considering administrative exigencies and not at the whim of any administrator or politician or any such extraneous consideration. He also argues that his personal circumstances should have been considered before transferred out from Pune to Nagpur which is 716 Kms away.

4. The applicant also contends by reference to the transfer order that the

Competent Authority in the Ministry of Health and Family Welfare, CGHS Division, while passing orders of transfer has also asked the AYUSH Ministry to keep the CGHS Division in the loop in such matters and provide a copy of the rotational transfer policy of AYUSH.

5. When the case was heard at the time of Admission in the presence of learned counsel for official respondents Nos.1 to 3 and learned counsel for respondent No.4, learned counsel for the respondents Nos.1-3 stated that he had received instructions to appear but he had not been briefed. Counsels were heard. Learned counsel for the applicant argued for interim relief that since the applicant's wife was posted abroad and he was a single parent, he had to take care of his daughter who is studying in 10th standard (wrongly recorded as 12th standard) in mid-academic session and further, that there was still one vacant post available at Pune to which the applicant could be posted. On the strength of this assertion, the

respondents were directed not to take any coercive measure against the applicant and to maintain status-quo until the next date of hearing on 11.10.2018 so far as posting of the applicant is concerned.

6. The official respondents filed their reply on 05.10.2018 prior to the date of next hearing in which they have denied that there are more than two posts at Pune one of which was held by a Medical Officer and the other was now occupied by respondent No.4. Specifically, they have averred that when the applicant obtained interim relief on 11.09.2018, the applicant had played fraud upon the Hon'ble Court by intentionally making a false statement although with his experience of having worked in the Wellness Centre at Pune for about 20 years, he knew that there were only two posts of Medical Officer at Pune and there was no vacancy. He had also not revealed that his intention for going on medical leave from 28.08.2018 was to avoid the transfer order and that respondent No.4 had

already taken charge on 29.08.2018 in place of the applicant. They urged that the applicant had obtained interim relief by misleading the Court. They further enclosed transfer policy (Exhibit R-1) of the Ministry of AYUSH (Respondent No.2) in relation to Medical Officers which reads as under:-

No.A.22011/02/2016-E.II

Government of India

Ministry of AYUSH

AYUSH Bhawan, 'B' Block,

GPO Complex INA,

New Delhi – 110 023

Dated, the 21st December, 2016

OFFICE MEMORANDUM

Subject: Framing of Rotational Transfer Policy/Internal Transfer Policy in the Ministry of AYUSH – regarding.

In pursuance of the Department of Personnel & Training's OM No.11013/10/2013-Estt.A dated 2nd July, 2015, the undersigned is directed to say that the Rotational Transfer Policy/Internal Transfer Policy as detailed below shall come into force with immediate effect in the Ministry of AYUSH:-

S. No	Name of the Post	Tenure of posting in the Ministry of AYUSH	Remarks
1	Under Secretary
2	Section Officer/ASOs/SSOs
3	Medical	03 years	Medical Officers shall be

	Officers/Research Officer	<p>placed at the disposal of the CGHS for further posting after serving in the Ministry for a period of three years.</p> <p>The Research Officers of the Councils working in the Ministry shall be sent back to the respective Councils after the prescribed period of three years. The Medical Officers/Research Officers who have completed the prescribed tenure of three years shall immediately be re-patriated back to the respective Council/National Institutes by the Divisions dealing with Councils/NIs in the Ministry.</p>
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2. A compliance report on the implementation of the policy in respect of S.No.3 above may please be sent to the Establishment Division.

3. This issue with the approval of Secretary (AYUSH).

sd/-

(Yash Veer Singh)

Under Secretary to the Govt. of India"

7. They also refer to the draft rotational transfer policy recommended by the DoPT and issued on 02.07.2015 (Annexure R-2) in this regard and further state that the Medical Officers of Indian System of Medicines such as Ayurveda, Siddha, Unani etc. were previously an integral part of Ministry of Health & Family

Welfare. However, when a separate Ministry of AYUSH was created, those Medical Officers of Indian System of Medicines came under the control of the Ministry of AYUSH as well as under the Ministry of Health and Family Welfare in respect of those Medical Officers who are posted in CGHS. They, therefore assert that the tenure of the Medical officer in AYUSH is only three years and denied the contentions of the applicant. With regard to his transferability, the respondents refer to his appointment order which contains the following clause "*(viii) The appointment carries with it the liability of service in any part of India or outside*" and therefore, the applicant holds a transferable job and is liable to serve anywhere in India and cannot claim permanency at one station. In regard to the applicant, they state that he joined as Medical Officer Ayurveda at Pune on 09.11.1998, was promoted as Senior Medical Officer from 10.11.2002 and then became Chief Medical Officer on 10.11.2008. With reference to the allegations that the applicant

was moved out from Pune in order to accommodate to respondent No.4, they deny such allegation and state that transfers are made based on administrative needs and circumstances and that the applicant was working at Pune for the past 20 years continuously and cannot claim a lien on the post.

8. Respondent No.4 has filed his reply on 11.09.2018 asserting that the Ministry of Health and Family Welfare (CGHS Division) has formulated their rotational transfer policy (Annexure R-1) dated 12.07.2011 which applied for different cadres functioning under the CGHS and his transfer has been duly ordered by the competent transfer authority. He also refers to the rotational transfer policy of AYUSH dated 21.12.2016 on the requirement of three years tenure for medical officers. He denies that the transfer was made as a favour to respondent No.4 as a fictitious and misleading statement. He further submits that he had been submitting his representation since 2008 requesting transfer to

Pune which is near his permanent residence at Kolhapur because of his personal difficulties that he elaborates in argument on account of his aged parents who are suffering from a variety of diseases and there is a dire need to transfer him near his hometown. He also refers to some 20 doctors who had been transferred between stations as evidence of the fact of transfers taking place and that there was no permanence attached to a station for doctors. He denied the applicability of the citation and interpretation of O. Karuppa Thevan (supra) which, he argues are merely suggestive in character.

9. The applicant has filed a rejoinder on 23.10.2018 denying that there is any transfer policy of the Ministry of AYUSH and reiterating all the averments regarding the reasons for the transfer made out in the OA. The applicant insists that there are two pressing circumstances for the applicant to be retained at Pune: that his wife is posted out of the country whereby he is a single parent; and that

his daughter is studying in the 10th standard. He further suggests that another Medical officer at Pune, a junior, could be transferred and Respondent No.4 could well have been accommodated in that position. He also refers to the file notings that he had obtained under RTI (Page 98-99) in which the request of the Respondent No.4 has been considered and it is mentioned in the notes therein that with two persons already employed at Pune, there is no vacancy for the post of Medical officer (Ayurveda) at Pune. The applicant further suggests that Respondent No.4 could be posted to some other place especially since Kolhapur is also far, 230 kms away from Pune.

10. With regard to the specific allegations made in para 3 of the reply of official respondents, he has replied in a consolidated form for paras 3, 6 and 13 denying all their contentions but has not specifically replied to the allegations of intentional fraud for obtaining interim orders. However, in this

rejoinder, the applicant has admitted that there are two posts of Ayurveda at Pune and not two vacant posts. He further asserts in reply to the written statement filed by respondent No.4 that a transfer order has been passed without application of mind and that respondent No.4 had joined on 29.08.2018 when there was no post vacant for him to do so and he had been dislodged from his post in a brazen manner. He has filed at Annexure, notings within the Ministry of Ayush which record a note dated 07.06.2018 that respondent No.4 has been petitioning 7 times previously and has also invited attention to the rotational transfer policy of the Ministry and requested transfer from Nagpur to Pune on humanitarian grounds to take care of his old and ailing parents. The ailment mentioned of his parents, who are farmers, are that his father residing in Kolhapur suffers from Bronchial Asthma, Hypertension, Osteoporosis and Glaucoma and has lost complete vision of right eye and has only

partial vision of the left eye. Further, he has been diagnosed with late onset epilepsy and over the last two years, he had been hospitalised for 8 times for Dyspnoea/Epilepsy. These hospitalisations had to be done at odd timings and the expenditure was considerable since Kolhapur was a non-CGHS city and he was unable to obtain the benefit of empanelled hospitals. The note has set out that there are two doctors against two vacancies at Pune with the applicant having joined service in 1998 and the junior doctor in 2009 and now had 9 years service. However, at Nagpur, there is the respondent who joined service in 2002 and three other doctors who joined service in 2010, 2014 and 2015. The note accordingly proposes for consideration of the Secretary AYUSH that the respondent No.4 may be transferred to Pune on humanitarian grounds vice the applicant who had been working at Pune from 1998. Accordingly, the Secretary AYUSH has approved the recommendation for such transfer for the consideration of the Competent Committee

in CGHS. The notings of the CGHS Committee have also been obtained by the applicant and are enclosed with the rejoinder and bear its approval on which there is no challenge in respect of the aspect of the competence of such authority.

11. The applicant was, thereafter permitted on 09.04.2019 upon the submission of learned counsel that she wanted to file additional affidavit on materials obtained under the RTI Act of relevance in adjudicating the matter. A submission was filed thereafter on 26.04.2019 without proper verification containing some RTI replies and accompanied by a variety of allegations which were not in keeping with the permission granted earlier and were of no relevance to the transfer orders passed by the respondents. This objection was considered during final hearing and after hearing all counsels, it was observed that the learned counsel for the applicant was relying on Annexure A-8 filed with this submission which is

a letter issued by the Parliament Section of the Ministry of Health and Family Welfare dated 30.10.2018 on the status of replies given by the Ministries of Health and of AYUSH to Members of Parliament and Union Ministers on the references sent by them. The applicant has argued that the reference dated 20.07.2016 sent by the Minister of State (AYUSH), Shri Shripad Naik, regarding the transfer request of respondent No.4 suggests the existence of political pressure. The applicant has also annexed as Annexure A-9 (colly) various statements of Medical Reimbursement Claims (MRC) of the respondent No.4 to assert that the father of respondent No.4 was staying at Nagpur and on the basis that which the MRC were being made by there. Further, learned counsel for the applicant also relies on Annexure A-11 to this submission on the policies of the Government in regard to private practice and private activities of medical or non-medical nature by AYUSH Doctors to which reply has been furnished by the

department. The other materials annexed to the submission were accordingly rejected as irrelevant to the present issue.

12. The official respondents have filed their reply to this submission on 22.11.2019 taking objection to the nature of this additional submission. They have also filed a list of transfer orders of AYUSH Doctors between cities. Much of the reply has become irrelevant because of the acceptance of only some of the annexures included by the applicant in the additional submission to which this reply has been filed. They also point out that the applicant has relied on a chart of doctors who retired prior to the rotational transfer policy of 2016 and this was clearly irrelevant. They have also denied the existence of any political pressure and stated that the statement at Annexure A-8 is only a reminder by circular of pending VIP references in the Ministry and the interpretation of the applicant is misleading. They further assert by reference to the decision

of the Hon'ble Apex Court in Rajendra Singh Vs. State of UP and Others reported in 2009 (15) SCC 178 where it was held that since the High Court did not find any flaw in the transfer order and the orders had not affected the petitioners service conditions, pay and other benefits, no interference was called for. Further, the Hon'ble Apex Court held that a Government servant has no vested right to remain at a place of his choice nor can he insist that he must be posted at one place or the other because no Government can function in such manner. A Government servant is liable to be transferred in administrative exigencies and a transfer is only a incident inherent in terms of appointment and is an essential condition of service.

13. During arguments held on 18.11.2019, learned counsel for the applicant reiterated the arguments contained in pleadings. She argued that there was no transfer policy in AYUSH. Further, she argued that respondent No.4 has been posted as CMO but only holds a post of

Senior MO and that there is no post of Senior MO in Pune but he has been posted in the CMO vacancy. She argued that the applicant is senior to respondent No.4 and therefore, his post cannot be occupied by the latter. She conceded that the applicant's daughter had already appeared in the 10th standard exam in March, 2019. However, she argues that the applicant had spent heavily on his daughter's training programme for the upcoming 12th standard examination in 2021. She further suggested that the respondent No.4 could instead be posted to Goa or some other place. In particular, she reiterated the fact of the Medical Reimbursement Claims filed by the applicant which showed that her argument that his father was unwell and was at Kolhapur was not true and that he was staying with his son at Nagpur and availing CGHS benefits. She also refers to pending representations dated 28.08.2018 with the respondents. When hearings continued on 02.12.2019, the applicant's case was further

argued by learned senior counsel Shri S.V. Marne who emphasised that although respondent No.4 received a benefit by way of this transfer, the result was the serious damage caused to the applicant who was dislodged in the process. He argues that there was no rotational transfer policy since the said policy of 2016 only refers to staff of the Ministry of AYUSH and their movement between Ministry and Councils/National Institutes. There was also no requirement for rotational transfer. In particular, while reiterating the various pleadings of the applicant, he argued that his personal grievances were never considered nor was he consulted before the transfer. He also insisted that reference to Annexure A-8 and the notings of the Ministry of AYUSH and of Ministry of Health that indicated the existence of political pressure. He further reiterated his pleadings by arguing that Doctors have continued in the same station for a long time and cases highlighted by the respondents in their replies were mostly

cases of request transfer.

14. Learned counsel for the respondent No.4 reiterates his arguments contained in pleadings that the applicant has been continuously petitioning respondents for transfer from the year 2008. He further emphasises the problem of applicant's father who cannot stay at coastal areas because of his medical condition and also that the CGHS facilities at Pune are nearest to Kolhapur. He also objects to the additional submission of the applicant which does not have any verification. It was on this basis that the respondent No.4 was refused permission to file a reply for which he reserved the right if such permission was granted. He also submitted that these were all extraneous arguments with reference to Annexure A-8. He stated that this was a Parliament Section letter which was issued on 30.10.2018 and showed that the representation of the applicant made in 2016 to the Minister was still pending whereas orders of transfer had already been issued in favour of the applicant

on 24.08.2018 and that the Section had evidently no knowledge of the matter nor was the Minister so advised. Therefore, this was clear evidence that there was no political pressure whatsoever and no other evidence was provided by the applicant. He also stated that this list, three pages of which were enclosed as Annexure A-8 contained as many as 700 names or even more which did not support the submission of the argument of the applicant on political pressure which were also clearly untrue. He states that his wife who was a Doctor has resigned and started the training institute which was owned and managed by his wife and it had nothing to do with his request for transfer to Pune. He asserted that his transfer was made purely on humanitarian grounds which he had requested and agreed that there was no rotational transfer but had been done on the orders of the Competent Authority. He also refers to a recent batch of orders transferring 31 Doctors on 26.09.2019.

15. During the hearing held on 03.12.2019, learned counsel for the respondents stated that the representation had been made by the respondent No.4 on personal grounds and repeated over several years. He again reasserted that the transfer policy of AYUSH allowed three years for the CMO and refers to an Unstarred Question in the Lok Sabha which also reflected the fact of the same tenure period of three years. While reiterating the contents of pleadings, he invited attention to the behaviour of the applicant who received the transfer order at 1.20 pm on 28.08.2018 and went on leave from 28.08.2018 afternoon with a letter of the same date which was forwarded by the Additional Director located in the 3rd floor of the same building on the same day. He further denied that there was any political pressure and he argued that the applicant has also not urged any mala fides.

16. Respondent No.4 who appeared on 03.12.2019 in person conveyed the excuses of his

learned counsel and stated that he had prepared a representation in April, 2015 which he had forwarded to the Ministry and a copy of this representation had been submitted in person to the Ministry of State (AYUSH) in February, 2016 during a National Conference of Homeopathic Practitioners at Nagpur. This application remained pending and he had no knowledge of the fate of this representation nor did it have any impact on the decision which was taken finally on August, 2018 whereas the petition was shown as pending for reply to the Minister even as late as October, 2018. He also asserted that several doctors have been transferred and it was not correct to assert that transfers were not taking place. With reference to his medical reimbursement claims, he asserted that these MRCs were filed in his station at Nagpur only in respect of hospitalisation claims for treatment in non-empanelled hospitals and had been done for his father for hospitalisation in non-empanelled hospitals which were alone available

at Kolhapur. The claims had subsequently been filed in Nagpur where he was posted and the applicant has clearly attempted to mislead the court in this regard. He also stated that his father lost his eyesight in one eye and nearly all his eyesight in the second eye due to Glaucoma which was considered purely as a consequence of negligence in treating a curable but progressive condition.

17. In rebuttal, learned senior counsel for applicant asserted that the evidence suggested that the transfer in question was only a request transfer to favour respondent No.4 and cannot be considered to be rotational transfer. He suggests that the list of 33 persons referred by respondents are also request transfers made by the concerned authorities. With reference to the transfer policy contained in Exhibit R-9 in OM NO.F.No.A22011/23/2013-CGHS-II dated 10.08.2016, he argues that this is a policy of the Ministry of Health and Family Welfare in CGHS and not for Ministry of Ayush. He also refers to the fact

that the other doctors in Nagpur had not been rotated similarly and therefore, it cannot be held that this was a rotational or routine transfer but was only a request transfer.

18. We have heard the learned counsels for the applicant and the learned counsels for the respondents at length and have carefully considered the facts, circumstances, law points and rival contentions in the case. We have carefully examined the pleadings and annexures filed by the parties.

19. The orders of transfer in respect of the Government servant, for whom transfer is in incident of service and where such transfer does not affect that the officers service conditions, pay, cannot be challenged except on the grounds that the orders are not approved by the Competent Authority or that they are in violation of transfer policy guidelines or further that there are mala fides in the matter or that outside pressure or political pressure has been brought to bear influence an the

decision of transfer. In the present case, the applicant has not challenged the fact that the orders were approved by the appointed Committee in the Ministry of Health and Family Welfare dealing with CGHS doctors which include Ayush doctors deputed to work under the CGHS system established throughout the country. The applicant has not urged any mala fides other than the aspect that there has been political pressure in the view of the applicant that has influenced the decision for transferring him in exchange to the respondent No.4 between their respective position. He has also pleaded his personal hardship as valid considerations for opposing transfer and that this has not been considered while transferring respondent No.4 in his place.

20. A debate has ensued in this particular case by virtue of the mention in the impugned transfer orders of the respondents dated 24.08.2018 in the copy notes sent to Ministry of AYUSH in which, a previous letter dated

02.07.2018 was referred with request to keep CGHS Division in loop in such matters and provide them a copy of rotational transfer policy of AYUSH. The Rotational Transfer Policy (RTP) dated 10.08.2016 of Ministry of Health itself has been placed in the pleadings by respondents at Annexure R-9 (page 177) and presumably includes AYUSH doctors working within the CGHS Centres. In respect of CHS (Allopathy) at the disposal of CGHS and doctors, a circular of 12.7.2011 at Annexure PR-1 (page 28 of paper book) records at para 5 that these doctors may be transferred by the Directorate but subsequent to the judgment of the Hon'ble Apex Court in TSR Subramaniam and Ors Vs. UOI & Ors in WP (C) No.82/2011 dt. 31.10.2013, a further OM No.S.11030/1/2014-CGHS(P) dt. 10.01.2014 (Annexure PR-1 colly at page 31 of paperbook) forms a Committee for this purpose headed by Director, CGHS and includes AYUSH doctors in CGHS. Although an RTP dt. 21.12.2016 (Annexure PR-3 at page 36) is shown, this relates only to

non-CGHS, AYUSH doctors. Further, the reply of the Minister of Health in Parliament on 21.02.2014 states as much at Annexure PR-4 page 37 but does not clearly refer AYUSH doctors in CGHS. The RTP for CHS (Allopathy) doctors is, however, available at Exhibit R-9 page 177 and since it applies to all CHS doctors under category D, this might presumably apply to AYUSH doctors in CGHS by default. However, in all such cases, the proposals have to be initiated by the concerned department which is Ministry of AYUSH in the present case.

21. To summarize, when the authorized Transfer Committee considered the present case of the applicant and respondent No.4, it is apparent that they were looking into the possibility of a similar system to be adopted by AYUSH. In its absence, the competence of the Transfer Committee has set up in the Ministry of Health in regard to Ayush doctors remains unchallenged. In the absence of a proper reading of the various orders, the parties have

unnecessarily confused the analysis of this issue. Further, considering the notings that have been produced by the applicant in pleadings, it is quite apparent that the Secretary, Ayush finally considered the representation of the respondent No.4 in 2018 and recommended his transfer to the Competent Transfer Committee. The basis of this recommendation is also recorded in the notings as bestowed in consideration of the hardship experienced by the respondent No.4 and reflects the administrative concerns and the deployment priorities of the Administration whose discretion cannot be challenged in a Court except in the limited circumstance of any mala fides, which are not urged in this case, or due to undue external or political pressure. What is, however, plain is that this is only a request transfer as asserted by the applicant and agreed by respondent No.4 but continues to be opposed without basis by the official respondents. The applicant, official respondents

and private respondent have been trading lists of officers in the past transferred prior to the Ministry's transfer policy of 2016 and even subsequently, with the claim that these are request transfers. In the absence of definite proof, we do not wish to enter into those transfers in view of the fact that the notings clearly established that the present case was only ordered based on the private respondent's request for transfer on grave personal grounds as adjudged by the highest executive authority in the Ministry of AYUSH. It is also apparent that if a recommendation has been examined and made by the Secretary Ayush, the Competent Transfer Committee will not ordinarily seek to undermine the recommendation.

22. The applicant has produced a review minute of the Parliament Section of the Ministry of Health which includes AYUSH to indicate the status of VIP references pending at the end of October, 2018. The applicant urges that the mention of the applicant's representation in

this list of pending references is proof of political pressure since the reference was received from the Minister of State (Ayush). The number of references enclosed in three pages of pleadings under Annexure A-8 itself runs upto No.688 wherein the applicant's representation is at No.682. However, the last page of the pending references has not been enclosed to determine how many such references are pending resolution and for a Ministry of this size, it is presumably several times more. The first reference itself dates from 13.11.2017 for seeking support out of CSR fund of PSUs under the Ministry of Health and was sent by the then Ministry of Defence Smt Nirmala Sitharaman and remains pending. The rest of the list as made available do not show any evidence of such personal interest shown by the MPs or Ministries. As pointed out by the respondents, the representation in regard to the applicant was received on 20.07.2016 and remains pending till October, 2018 without knowledge of the fact

that it had already been settled by the impugned transfer order of August, 2018. Therefore, these papers do not provide any scrap of evidence that political pressure or non-official pressure has been brought to bear on the matter. Further, it is also not disputed that the respondent No.4 has been pursuing this matter for ten years with the same issue of hardship and has finally obtained relief.

23. The applicant has thereafter raised the issue of his personal hardship which includes the assertion that his wife who is a Consultant of UNICEF is currently posted at Sudan and therefore, he is a single parent. He has also asserted that his daughter was in the 10th standard when the transfer orders were issued and during pleadings, has admitted that her 10th standard examination was completed in March, 2019. During arguments, he has altered this plea on behalf of his daughter to her requiring support for continuing studies. The applicant has also made some gratuitous suggestions that

the respondent No.4 could have been posted to some other place near Kolhapur such as Goa, Bombay and so on. He has also suggested that the respondent No.4 could have replaced the junior doctor posted at Pune who, as we have noted earlier, was a Medical Officer with who had completed nine years of service at the time of the transfer orders. The fact remains and holds against the applicant that from his original residence in Mumbai, he has remained posted at Pune for 21 years since and cannot claim any lien to this station since he is in a transferable post and should have been expecting transfer at some time in his career.

24. This Tribunal will not enter into the shoes of the administrative authorities in considering where a particular doctor has to be posted and how he would fit into the administrative structure and experience requirement at his location. Between the four doctors at Nagpur and two doctors at Pune the two comparable seniors are evidently the

applicant and respondent No.4 and no fault can be ascribed to the respondents in considering these two persons for a exchange transfer. Further, if the applicant has intelligent suggestions to make regarding the available options for the respondents for posting the respondent No.4 and for himself, he should have made it at the first instance to the respondents and not at this stage. With regard to the personal hardship of the applicant, the reasons cited that the orders dated 24.08.2018 were issued in mid-academic session when his daughter was studying in the 10th standard are an aspect that bears mention in the guidelines issued by the DoPT and have been upheld by various Tribunals and Courts in most cases. In the present case, the applicant filed a representation to that effect upon receipt of the orders on 24.08.2018 but immediately proceeded on leave and thereafter, filed this OA challenging the orders which have evidently prevented the respondents from taking up all

these aspects of his pleas of hardship. In any event, this Tribunal granted stay after taking into consideration a submission made by the learned counsel for the applicant that there were three posts available for Medical Officers at Pune and therefore, notwithstanding respondent No.4 having joined as CMO, the applicant could be adjusted in the third post and draw salary accordingly. However, as it turns out, there is no such post and we are unable to understand at this stage how he was able to draw his salary nor has he made any submission on this aspect. However, the interim orders have continued well beyond March, 2019 after completion of 10th standard exam of his daughter and that plea loses its ground.

25. What remains now is the applicant's plea of hardship that he is a single parent taking care of his daughter whose studying in school and needs his support. This aspect has been included in his original representation dated 28.08.2018 and continues to remain pending

with the respondents. We further take into account our view in the preceding paragraph that this is a request transfer and in the fact of such request transfer, it was necessary for the administrative authority to consider all the facts involved in such a request transfer which would include any possibility of hardship that may be caused to the incumbent especially when the respondent No.4 had been pursuing his request for as long as 10 years and could have waited a little longer until the end of the 10th standard academic session. At the same time, there was an obligation on the applicant to first report at the station to which he had been transferred and then file a representation as held by the Hon'ble Apex Court in **Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshami**, 1989 AIR 1433 dt. 31.03.1989, but he has chosen to stay in his previous station with the plea of medical ailments and then filed a representation even on the day he proceeded on medical leave. It is a well borne principle laid

down by the Hon'ble Apex Court in several judgments that the first duty of a Government servant is to obey the orders and then to seek consideration of his grievances and that has not been done by the applicant in the present case. It is also important to take note of the fact that there is no third post available at Pune and the respondent No.4 had already occupied the post of the applicant when he was relieved after sanctioned of medical leave in which he proceeded from 28.08.2018 afternoon and has managed to stay at Pune on the strength of the interim orders of this Tribunal by making the plea that there were three posts available.

26. In the circumstances, we direct the respondents to consider the representation dated 28.08.2018 filed by the applicant both by E-mail and through proper channel and to pass orders on his request and pleadings of personal hardship within three weeks and to communicate these orders to the applicant, by E-mail within three days and by speed post within a week thereafter.

The applicant is also directed to immediately report at Nagpur at his posted station and await orders of the respondents as directed above.

27. This Original Application is accordingly disposed of in the above terms without any order as to costs. All interim orders granted in this matter stand hereby withdrawn.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar) *20/11/19*
Member (A)

ma.

JD
06/01/2020

