

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6539 OF 2021

Vishweshwar Daulatrao Patil

.. Petitioner

Vs.

The Director, Health Services Directorate
and ors.

.. Respondents

Mr. Anilkumar K. Patil with Ms. Sonal Rajput for petitioner.

Smt. R.A. Salunkhe, AGP for State.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: OCTOBER 7, 2021

P.C. :

1. The petitioner's original application (O.A. No.539 of 2021) has been dismissed by the Chairperson of the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal" for short) by an order dated August 30, 2021. The said order is the subject matter of challenge in this writ petition.

2. The petitioner is working as an Administrative Officer in the District Civil Hospital, Nashik. He is a Class-II (Group-B) officer. By an order dated July 29, 2021, the petitioner has been transferred to the office of the Commissioner of Health Services, Mumbai on a post which was vacant. Such order of transfer was challenged before the Tribunal, which did not find any merit in the contentions raised by the petitioner.

3. We have heard Mr. Patil, learned counsel appearing for the petitioner. According to him, the order of transfer should have been set aside by the Tribunal on the grounds that (i) there is no one to take over charge from the petitioner at Nashik; and (ii) the choices given by the petitioner for transfer did not include Mumbai and, therefore, there has been a breach in the sense that the petitioner has not been posted on transfer to any place of his choice.

4. Law is well settled that an order of transfer may be interdicted only if violation of statutory provisions is proved and if the person challenging the transfer order succeeds in proving *mala fides*.

5. None of the aforesaid conditions are satisfied in the present case. In terms of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereafter "the Act" for short), the normal tenure of posing of a Group-B Government servant on a post shall be three years. Admittedly, the petitioner has spent more than three years as an Administrative Officer at Nashik. The order of transfer, therefore, does not contravene any right of the petitioner under the Act.

5. Our attention has been drawn by Mr. Patil to section 5 of the Act which provides for exceptional situations where the Government servant's tenure may be extended. Although clause 'b' of section 5(1) is sought to be relied upon by Mr. Patil, we are of the considered opinion that such provision empowers the Government to exercise its discretion and no Government servant can claim extension as a matter of right. The submission of Mr. Patil does not appear us to have any substance in view of the factual finding recorded by the Tribunal in the order under

challenge that several posts are vacant since 2007 and the petitioner's service at the transferred place is of immediate necessity. We also record that the petitioner has not alleged malice against any superior officer.

6. For the reasons aforesaid, there is no merit in the writ petition. The same stands dismissed. No costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

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