

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

WRIT PETITION NO.117 OF 2023

Milind Goraknath Dethe

... Petitioner

Versus

1. Union of India
Through the General Manager, Western
Railway, Churchgate Mumbai 400020
2. Chief medical Superintendent Mumbai ... Respondents
Division, Western Railway, Mumbai
Central Mumbai 400008

Mr.Vicky A. Nagrani for the Petitioner.

Ms. Neeta Masurkar for the Respondents.

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

DATED : 10 JANUARY, 2023

PC:-

1. By this Petition, the petitioner assails Judgment and order dated 4th October, 2022 passed by the Central Administrative Tribunal, at Mumbai (**Tribunal**) dismissing Original Application No.567 of 2022 by which Petitioner had challenged his transfer from Mumbai to Vadodara. He has also challenged order dated 12th October, 2022 by which the Tribunal has rejected Review Petition No.13 of 2022.

2. Petitioner was initially appointed as Health Inspector in the Western Railway. He was promoted to the post of Assistant Health Officer and came to be posted at Mumbai on 3rd March, 2008. He submitted representation dated 23rd May, 2022 foreseeing his transfer on account of the fact that the post of Assistant Health Officer came to be pinpointed as a sensitive post. There is an averment in synopsis to the petition that Petitioner had completed his tenure in Mumbai. By order dated 13th May, 2022, he came to be transferred and posted as Assistant Health Officer to Vadodara. After making representation dated 1st June, 2022 against the transfer order, the petitioner instituted Original Application No.410 of 2022 before the Tribunal challenging the transfer order. The Original Application came to be disposed of by the Tribunal on 8th June, 2022 with a direction to the respondents therein to consider and the decide the representation dated 1st June, 2022 by a reasoned and speaking order and meantime, status with regard to posting of the petitioner was directed to be maintained.

3. In pursuance of order passed by the Tribunal, the respondents passed order dated 18th July, 2022 rejecting the

petitioner's representation. This led to filing of Original Application No.567 of 2022 by the petitioner. By Judgment and order dated 4th October, 2022, the Tribunal has proceeded to dismiss the Original Application.

4. After dismissal of the Original Application, the petitioner filed Review Petition No.13 of 2022 alleging that the post held by him at Mumbai Central can be transferred to Head Quarter office of Western Railway at Churchgate by order dated 29th September, 2022. He urged that he could be adjusted against such vacant post at Churchgate and on account of this changed circumstance, review of order of the Tribunal was sought. The Tribunal has rejected the Review Petition by its order dated 12th October, 2022.

5. Appearing for the petitioner, Mr. Nagrani the learned counsel would submit that the representation of the petitioner against the transfer order is decided without considering all points raised therein. He would submit that other grounds such as spouse working at Mumbai, he being on the verge of his retirement, his ailing father being 90 years old etc. are not taken into consideration while rejecting the representation. He

would further rely upon the Addendum to the Comprehensive Transfer Policy Guidelines dated 12th Deceased, 2018 protects the transfer of employees whose children are at a crucial stage of education i.e. Board level exams (11th and 12th standards). He would rely on the Judgment of Apex Court in the case of ***X... v. Registrar General, High Court of Madhya Pradesh and another***¹.

6. *Per contra*, learned advocate Ms. Neeta Masurkar appearing for the respondents would oppose the Petition and support the orders passed by the Tribunal. She would submit that the petitioner has been working in Mumbai since 3rd March, 2008 for 14 long years and has rightly been transferred. She would submit that the petitioner has already enjoyed the protection with reference to one of his child being in 12th standard and cannot continue to urge the same ground in respect of his younger child who is currently in 11th standard. Relying on the transfer policy, she would urge that the petitioner is required to be posted out from a sensitive post after completion of period of 4 years whereas he has continued to work in the same post for 14 long years. Lastly she would

¹ 2022 SCC Online SC 171

contend that keeping the convenience of the petitioner in mind, he has been transferred at the nearest possible station at Varodara.

7. Rival contentions of the parties now fall for our consideration.

8. There is no matter of doubt that the petitioner has been working at Mumbai at the post of Assistant Health Officer since 3rd March, 2008. Averments in the synopsis contain an admission that Petitioner has completed his tenure at Mumbai. On account of completion of his tenure at Mumbai, an advance representation was sent by him on 23rd May, 2022 seeking adjustment in the Mumbai area *inter alia* on the spouse ground. Another ground professed by the petitioner was that he is going to retire in September, 2025. But Western Railway effected his transfer to Vadodara by order dated 30th May, 2022. In deference to the order passed by the Tribunal, the petitioner's representation dated 1st June 2022 was considered on merits and rejected by a reasoned and speaking order dated 18th July, 2022. In that order, the detailed reasons have been recorded to the effect that post of Assistant Medical

Officer is a sensitive post on which the petitioner had been working for 14 long years. That Vadodara is the nearest station from Mumbai and that the petitioner cannot insist that he must be retained in the same station on spouse ground for the entire career.

9. The petitioner has assailed order dated 18th July, 2022 rejecting his representation on the ground that all points raised in the representation are not considered. In support of his contention, the petitioner has relied upon the Judgment of the Apex Court in the case of *X... vs. Registrar General, High Court of Madhya Pradesh* (supra), and in paragraph 52 whereof the Apex Court has held as under;

52. The matter does not end here. On rejection of her first representation, the petitioner addressed her second representation, requesting that she be posted at any of the four cities mentioned in the said representation so that her daughter could continue with her education. However, the then RG made an endorsement that the said representation is on similar ground as mentioned in the earlier representation dated 9th July, 2014, which has already been rejected. The Transfer Committee endorsed that in view of the order already been rejected. The Transfer Committee endorsed that in view of the order already passed in the earlier representation dated 9th July, 2014, no further reconsideration is to be made. Both the representation are made with different requests. Where as the first representation requests for her retention at Gwalior for a period of 8 months so that her daughter could continue with her education at Gwalior; in the second representation, she had requested to be posted at either of the 4 places, where her daughter could continue with her education. However, the second representation was rejected on the ground that the earlier representation made on similar ground also stands rejected.

10. The facts in that case before the Apex Court were entirely different. In the first representation, the appellant therein had requested for retention for 8 months on the ground of her daughter's education whereas in the second representation, she had indicated 4 stations. Both representations were erroneously construed as if they were made for same purpose and this something which is adversely commented upon by the Apex Court. Such is not the case in the present Petition. Furthermore, even if all the grounds raised in the representation, allegedly ignored, are to be taken into consideration, the same does not take the case of the petitioner any further. The contention that he is due for retirement in September, 2025 does not cut any ice as the policy protects employees retiring within a span of two years. So far as the education of children is concerned, there appears to be typographical error in the Addendum to Comprehensive Transfer Policy dated 12th December, 2018 which clearly uses the words 'Board level exams'. The bracketed portion of paragraph (v) of the Policy referring to XIth & XIIth standards do not appear to be in consonance with the earlier words 'Board level exams'. What is meant by the policy is that the officers whose children are studying for Board level

examination of 10th and 12th standard could be considered for retention. The petitioner's child is studying in 11th standard and he cannot seek protection of the Policy. He has already availed the benefit of this provision for his elder child who was studying in 12th standard.

11. The contention of Mr. Nagrani that the tenure of 4 years is required to be computed from the date of declaration of post of AHO as sensitive post is stated only to be rejected. The objective is that an officer shall not function on a post identified as a sensitive one for more than 4 years. Petitioner has worked on that post for 14 long years and cannot insist that he should be permitted to hold the same for 4 more years from 2019 onwards when the same was identified as a sensitive post. This contention otherwise runs counter to Petitioner's own admission that he completed his tenure on the post of AHO at Mumbai Central. This contention was thus rightly not raised in Petitioner's representations.

12. The contention about transfer of post held by him at Mumbai Central office to Head Quarter office at Churchgate, no longer survives, as the petitioner apparently made a

separate representation for his posting at HQ office at Churchgate, which has already been turned down. It appears that this issue has been made a subject matter of a separate Original Application filed by the petitioner and therefore he cannot be permitted to raise this issue in the present petition.

13. The petitioner thus failed to make out any case for interference of the Tribunal in the transfer order. We are therefore of the view that the Tribunal has not committed any error in dismissing the Original Application and Review Application filed by the petitioner.

14. The petition is devoid of any merits. It is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)