

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

Original Application No.

of 20

DISTRICT

..... Applicant/s

(Advocate .....

*versus*

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p><b>Date : 09.11.2023</b></p> <p style="text-align: center;"><b>O.A.No.1452/2023</b></p> <p>B.K. Patil .....Applicant Vs. The State of Maharashtra &amp; Ors. ....Respondents.</p> <p>1. Heard Mr. M.D. Lonkar, learned Counsel for the Applicant and Ms. Archana B.K., learned Presenting Officer for the Respondents.</p> <p>2. Applicant challenges impugned order dated 08.11.2023 issued by Respondent No.1 by which he was transferred from the post of Civil Surgeon, Solapur District to the post of Medical Officer, Civil Hospital, Satara on the vacant post.</p> <p>3. Learned Counsel for the Applicant has submitted that,</p> <p style="padding-left: 40px;">(i) Applicant's transfer is mid-term and mid-tenure. Applicant was not due for transfer as he has completed only 10 months on the post at Solapur. There are no exceptional reasons so as to curtail his tenure of three years on the post at Solapur. Hence, the provisions of Sections 3 and 4 of the Maharashtra Government Servants (Regulation of Transfer and Prevention of Delay in Discharge of official Duties) Act, 2005 (hereinafter referred as 'ROT Act 2005' for brevity) have not been followed.</p> <p style="padding-left: 40px;">(ii) Applicant was earlier transferred by order dated 17.01.2023 on the post at Solapur issued by the Public Health Department and he took charge of the said post on 19.01.2023.</p> <p style="padding-left: 40px;">(iii) Respondent No.3 was transferred on request by order dated 08.11.2023 on the post of Applicant.</p>

18

Office Notes, Office Memoranda of Coram,  
Appearance, Tribunal's orders or  
directions and Registrar's orders

**Tribunal's orders**

(iv) There are no reasons mentioned in the Civil Services Board meeting.

(v) Administrative grounds cannot be used for transfer.

4. Learned Counsel has pointed out the note which is placed for perusal of learned P.O. It is clearly mentioned in the note that the transfer order was recommended and the same is moved on the basis of letter of one Mr. Shivajirao Sawant, Shiv Sena Leader District Coordinator, District Planning Committee along with the request letter made by Respondent No.3 dated 09.10.2023. Learned Counsel has stated that no reasons are incorporated for cutting short the tenure of the applicant or no mention of any exceptional circumstances are made for the transfer of the Applicant when the matter was put up before the Civil Services Board meeting which was held on 18.10.2023.

5. Learned P.O. for the Respondent while opposing this O.A. has stated that the O.A. is not affirmed by the Applicant. She further stated that the file was subsequently put up before the Hon'ble Chief Minister and the same has been approved. Learned P.O. produces copy of order dated 08.11.2023 relieving the Applicant and joining of Respondent No.3 on the post which was held by the Applicant. She has stated that today morning Respondent No.3 has joined. Learned P.O. states that the procedure has been followed. She further pointed out Applicant was issued show cause notice in the month of October, 2023 regarding irregularities in his work.

6. Learned Counsel has stated that the show cause notice which the learned P.O. has mentioned today is not mentioned in the minutes of CSB. Learned Counsel has stated that the procedure of handing over and taking over the charge as mentioned in letter dated 08.11.2023 has not been followed. Learned Counsel has stated that the applicant continues to work on the post at Solapur as he has not handed over the charge.

7. Learned P.O. on instructions from Mr. Vasant Gaiwad, Under Secretary, Public Health Department has stated that the Respondent No.3 has taken the charge and attended video conferencing as he is now working on the post of the Applicant.

18

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

Original Application No.

of 20

DISTRICT

..... Applicant/s

(Advocate .....

*versus*

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>8. Considering the peculiar facts and circumstances of the case, it is not possible to give any interim relief. Respondents are given time to file reply.</p> <p>9. The office objections, if any, are to be removed and court fees to be paid, if not already paid.</p> <p>10. Issue notice before admission returnable on 21.11.2023.</p> <p>11. Applicant is authorized and directed to serve on Respondent intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.</p> <p>12. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.</p> <p>13. By Hand delivery, speed post, courier notice to be served and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.</p> <p>14. In case notice is not collected within <u>seven</u> days or service report on affidavit is not filed <u>three</u> days before returnable date, the Original Application shall be placed on board before the concerned Bench under the caption "for Dismissal" and thereafter on the subsequent date the Original Application shall stand dismissed.</p> <p>15. Matter is kept for hearing on 21.11.2023.</p> <p style="text-align: right;">Sd/- <b>(Medha Gadgil)</b> Member (A)</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

M.A./R.A./C.A. No. \_\_\_\_\_ of 20 \_\_\_\_\_

IN

Original Application No. \_\_\_\_\_ of 20 \_\_\_\_\_

**FARAD CONTINUATION SHEET NO.**

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center"><u>M.A. No.708 of 2023 in O.A. No.1285 of 2023</u></p> <p>Dr. Satyendra B. Chavan ..Applicant Vs. The State of Maharashtra &amp; Ors. ..Respondents</p> <p>Heard Shri S.B. Talekar with Ms. Neha Kachi, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.</p> <p>2. Ld. Advocate for the applicant has filed this MA No.708/2023 seeking amendment in the OA as per schedules attached to the MA for adding the facts, grounds and prayers due to subsequent developments and also prays to stay the impugned order dated 8.11.2023 relieving the applicant.</p> <p>3. Leave to amend is granted. Amendment be carried out forthwith and amended copy be served on all the respondents.</p> <p>4. This Tribunal by its order dated 11.10.2023 has stayed the impugned order of repatriation dated 5.10.2023 of the applicant from the post of HOD, Dr. Babasaheb Ambedkar Research &amp; Training Institute (BARTI), Pune to his parent department as Livestock Development Officer (LDO) in the office of Commissioner, Animal Husbandry, Pune.</p> <p>5. Subsequently the applicant has filed MA No.706/2023 in the above OA for amendment in which this Tribunal by its order dated 8.11.2023 has issued notice and continued the interim relief granted on 11.10.2023 till next date i.e. 4.12.2023.</p> <p>6. Ld. Advocate for the applicant prays for staying the impugned order dated 8.11.2023 passed by Commissioner, Animal Husbandry, Pune relieving the applicant from the post of HOD, BARTI, Pune.</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>7. Ld. PO opposes the MA and submits that amendment may be allowed however, she opposes grant of interim relief to order dated 8.11.2023. She states that there is fresh cause of action and fresh OA is to be filed challenging the impugned order.</p> <p>8. Ld. Advocate for the applicant submits that applicant has been singled out for being repatriated to the parent department of Animal Husbandry whereas there are 22 others who are on deputation. He states that the earlier order of this Tribunal dated 11.10.2023 is advisory in nature and this Tribunal is not empowered to give advise to the Government. He submits that advisory jurisdiction vests with the Hon'ble Supreme Court alone under Article 143 of the Constitution of India. He states that the order of repatriation is dated 5.10.2023 however approval of the Hon'ble Chief Minister is dated 2.11.2023. He states that earlier order dated 5.10.2023 has been only confirmed after obtaining approval of the Hon'ble Chief Minister hence, he states that order dated 8.11.2023 is not a fresh order and appropriate decision should be taken to issue fresh order. He reiterates that this is only a confirmation of the earlier order and this Tribunal is not empowered to issue any advisory to the Govt.</p> <p>9. Ld. Advocate for the applicant relies on the list of other LDO's who are working on deputation to buttress his contention on the point of discrimination. He also relied on the list of LDO's who are working on deputation for more than 10 years. He states that Lumpy disease has subsided and applicant can be continued on deputation instead of sending him back to his parent department. He states in the original order out of 7 LDO who were repatriated only 3 were relieved including the applicant and other 4 were continued on deputation. Now out of 3, two are allowed to continue on deputation and only applicant is repatriated. He states that earlier he was sent on deputation in February 2022 and repatriated back in June, 2022 and now he is sent on deputation in February 2023 and on 5.10.2023 he is repatriated. He states that he was issued two show cause notice by Director General of BARTI and therefore his relations were strained and he has been repatriated. He states that they are prejudiced against the applicant. He states that there is no administrative exigency for his repatriation. He states that 3 months notice is not given to</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>the applicant before repatriation. Post facto approval given to the earlier order cannot legalise which is bad in law. He relies on the Judgment of the Hon'ble Supreme Court in (2012) 7 SCC 757 Ashok Kumar Ratilal Patel Vs. Union of India &amp; Anr. on the point of discrimination.</p>	<p>10. Ld. PO pointed out that if the applicant had any objection with the earlier order dated 11.10.2023 then he should have approached the Hon'ble High Court. He cannot raise this issue at this stage. She pointed out that Tribunal has granted liberty to the Government to take decision afresh and that does not amount to advisory. Ld. PO submits that respondents have followed the directions of this Tribunal and passed the impugned order after following proper procedure and obtaining approval of the Hon'ble Chief Minister. Ld. PO submits that MA is only for amendment not for stay and only after amendment is allowed, the prayer for grant of interim relief can be considered. She submits that it is the prerogative of the department that who should be posted where. Ld. PO submits that respondents have followed the directions of the Tribunal and followed the procedure and it is a fresh order. Ld. PO submits that applicant was aware of the order dated 2.11.2023 and it was added in MA No.706/2023. However, they did not press for interim relief</p> <p>11. Ld. Advocate submits that he is challenging the consequence of the order dated 11.10.2023. He states that liberty was granted to take fresh decision and not to modify the earlier order. He states that the Tribunal is empowered to grant stay even if it is not prayed.</p> <p>12. I have considered submissions of both the sides. This MA is filed at 12.15 p.m. today. Since the applicant has raised important issues and the department was not given sufficient time to get information the issue of interim relief is kept open and matter will be heard on 21.11.2023</p>

Sd/-  
(Medha Gadgil)  
Member (A)  
9.11.2023

(sgj)