

**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>Date : 19.07.2019.</p> <p>O.A.No.681 of 2019</p> <p>S.S. PatilApplicant</p> <p>Versus</p> <p>The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. In terms of order dated 17.07.2019 passed by this Tribunal, today learned P.O. has filed short Affidavit of Additional Director General of Police and Member Secretary of Police Establishment Board-No.1 (PEB). It is taken on record.</p> <p>3. Arguments on the point of interim relief are heard.</p> <p style="text-align: center;">Sd/- (A.P. Kurhekar) Member(J)</p> <p>vsm</p>

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.681 of 2019

S.S. Patil

)..... Applicant

Versus

State of Maharashtra & Ors.

)...Respondents

Smt. Punam Mahajan, Counsel for the Applicant
Shri A.J. Chougule, Presenting Officer for the Respondents

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 19.07.2019

ORDER

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.
2. In the present O.A., the challenge is to the transfer order dated 15.07.2019 on the ground that it is mid-term and mid-tenure transfer, without compliance of Section 22N of Maharashtra Police Act. The Applicant has admittedly not completed two years of normal tenure at Pune. She was transferred to Pune from Nagpur by order dated 27.07.2018.
3. Today, learned P.O. has filed short Affidavit of Additional Director General of Police and one of the Member of Police Establishment Board-No.1 (PEB) to substantiate and support the transfer.
4. The P.E.B. in its meeting dated 15.07.2019 transferred several officials including the Applicant under the caption 'Administrative Ground'. Except administrative ground, no other reason is mentioned in P.E.B. Minutes. It is on this background, one of the Member of P.E.B. Shri Kulwant Kumar Sarangal, Additional Director General of Police (Estt.) and Secretary of PEB-1 has filed short Affidavit.

Handwritten signature

5. Whereas, learned Counsel for the Applicant was harping on the absence of reason or any ground in Minutes of PEB, as except the wording 'Administrative ground' nothing is mentioned therein. She has also pointed out that same Police Commissioner Shri R. K. Padmanabhan has issued various appreciation letters to the Applicant and, therefore, the impugned action of transfer is malicious and unfounded. She has also placed reliance on certain decisions.

6. Learned P.O. for the Respondents submits that the transfer was necessitated on account of serious default on the part of Applicant which was communicated to the Director General of Police (DGP). He has also pointed out the details of default report dated 26.06.2019 forwarded by Shri R.K. Padmanabhan, Commissioner of Police, Pimpri-Chichwad addressed to Director General of Police. Learned P.O. submits that in view of serious lapses and default report dated 26.06.2019, the transfer of the Applicant was necessitated in the public interest as contemplated u/s 22N(2) of Maharashtra Police Act, 1951. He has also pointed out that even before default report to DGP, Commissioner of Police, Pimpri-Chichwad had issued several memos to the Applicant. The copies of memos are produced along with affidavit. He further submits that the recommendation made by PEB-I has been approved by the Hon'ble Chief Minister. Learned P.O. has also placed reliance on the judgment of the Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. V/s. Janaradhan Debanath & Anr.)**

7. True, as per the decision of Hon'ble Supreme Court in **(2006) 8 SCC 1 (Prakash Singh & Others. V/s. Union of India & Others)**, the PEB was established to regulate and channelized the transfer of police officials with fixed tenure. It is in pursuance of directions given in **Prakash Singh's** case (cited supra), amendments have been carried out in Maharashtra Police Act.

8. There is no denying that in the Minutes, the PEB has recommended the transfer of the Applicant from Pune to Special Branch, Thane and the same has been approved by the Hon'ble Chief Minister. True, in the Minutes of PEB, no

reason or ground is mentioned except stating that it is on 'administrative ground'. However, one of the Member of PEB has filed Affidavit stating that default report dated 26.06.2019 was placed before the PEB and on going through the report, the PEB accepted the recommendation of the Commissioner of Police to transfer the Applicant. In fact, the report or discussion ought to have been figured in the Minuets of PEB. However, in view of the Affidavit filed by one of the Member of the PEB, *prima-facie*, it is clear that the default report was placed before the PEB and on the basis of it the transfer was recommended.

9. The perusal of default report dated 26.06.2019 reveals that there are several instances of default about efficiency and performance of the Applicant. Besides, several memos dated 22.01.2019, 02.03.2019, 07.03.2019, 12.03.2019, 30.03.2019, 14.03.2019, 08.04.2019, 10.04.2019, 16.04.2019, 20.06.2019 and 26.06.2019 were issued to the Applicant and directions were issued to ensure law and order situation, take preventive action to curb crimes and expedite investigation of serious crimes. Perusal of these memos reveals that the complaints received from public were forwarded to the Applicant but those were not attend to nor report was submitted. Besides, there was no progress in the investigation of four offences u/s 302 of IPC. As such, the submission advanced by the learned Counsel for the Applicant that not a single memo was issued to the Applicant is factually incorrect.

10. Learned Counsel for the Applicant was much harping upon the letters of appreciation given by Shri R.K. Padmanabhan, Commissioner of Police, Pimpri-Chinchwad and sought to contend that the default report submitted by the same Commissioner of Police on 26.06.2019 can't be accepted as a gospel of truth and it is fabricated later on. She has also pointed out that the ACRs of the Applicant are excellent.

11. The perusal of the appreciation letters issued by the Commissioner of Police, Pimpri-Chinchwad reveals that those letters of appreciation dated 04.05.2019, 16.05.2019 & 29.05.2019 pertain to some specific instances of good



work and it is not about the entire performance of the Applicant as a DCP, Zone-I. This being the position, these appreciation letters does not outweigh the detailed default report dated 26.06.2019. In default report, twelve instances of defaults are noted. The Commissioner of Police, Pimpri-Chinchwad, therefore, requested DGP for transfer of the Applicant on the ground that the performance of the Applicant is not satisfactory.

12. Learned Counsel for the Applicant referred the judgment of the Hon'ble Supreme Court in **(2009) 2 SCC 592 (Somesh Tiwari V/s. Union of India & Others)**. In that case, the transfer was made on non-existence ground. There was anonymous complaint against Shri Somesh Tiwari, which was investigated by the Disciplinary authority but nothing adverse was found against him, yet he was transferred from Bhopal to Shillong. It is in this context, having found that the transfer was based on material which was not in existent the transfer was quashed with observation that it suffers from malice. As such, in fact situation, the transfer was held malicious. Whereas in the present case, the transfer is effected on default report which pertains to inefficiency or incapacity of the Applicant.

13. As regard judgment of Hon'ble Bombay High Court in **2015(2) Mh.L.J. 679 (State of Maharashtra V/s. Dr. (Ms.) Padmashri Shriram Bainade)**, it is the case arising from the provision of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. In that case without taking disciplinary action for failure to remove encroachment, the transfer was effected which was challenged, it is in that context, the Hon'ble High Court quashed the transfer order.

14. In the present case for effecting transfer of the Applicant, the Respondents invoked Section 22N(2) of the Maharashtra Police Act, 1951 which inter-alia provides that in exceptional cases in public interest and on administrative exigency, the Competent Authority shall make mid-term transfer of any police personnel. Perusal of default report reveals that the continuation of Applicant on the post of DGP, Zone-I found not in the interest of public and, therefore, PEB had

recommended for transfer of the Applicant which has been approved by the Hon'ble Chief Minister as required under the provision of Maharashtra Police Act, 1951. Thus, prima-facie, there is compliance of mandatory requirement of law.

15. The judgment of Hon'ble Supreme Court in **Janardhan Debanath's** case referred by the learned P.O. is material in this behalf and the ratio laid down in the authority is *prima-facie* attracted to the present situation. The Hon'ble Supreme Court held as follows:-

"12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

16. In view of above, I am not inclined to grant interim relief.

17. Issue notice before admission returnable on 09.08.2019.

18. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

19. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

20. 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.

21. The service may be done by Hand delivery, speed post, courier 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.

22. In case notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

23. S.O. to 09.08.2019.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

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

Date : 19.07.2019. Tribunal's orders

O.A.No.998 of 2017

M. J. P. MontodeApplicant

Versus

The State of Maharashtra & Ors. ...Respondents.

1. Heard Shri A. V. Sakolkar, learned Counsel for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The matter pertains to date of birth. The Applicant contends that his correct date of birth is 10.10.1963 and date of birth recorded in service book as 10.10. 1959 is incorrect. He further claims to have filed an application on 06.08.1990 before the Commissioner of Police, Pune for correction of date of birth in service record but the same was not done. The Applicant continued in service and stands retired on 31.10.2017 on the basis of date of birth recorded in the service book. The Applicant has also produced additional Affidavit along with the copy of application dated 06.08.1990 to show that he had really made an application for correction of date of birth within five years. There is also endorsement of inward register on the application.

3. Whereas stands taken by the Respondents are that no application was filed within five years from the date of joining of service.

4. Learned C.P.O. therefore seeks time to verify whether any such application for correction of date of birth was really made on 06.08.1990. If the Applicant's date of birth is taken as 10.10.1963 and so corrected then he will have four years service. However, he has already retired on 31.10.2017. Therefore, O.A. deserves to be decided expeditiously.

5. The matter is adjourned for hearing on 26.07.2019.

Sd/-

(A.P. Kurhekar)
Member(J)

**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>Date : 19.07.2019.</p> <p>O.A.No.653 of 2019</p> <p>Dr. A. R. PatilApplicant</p> <p>Versus</p> <p>The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Shri D. B. Khaire, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.</p> <p>2. The matter is taken up for Speaking to Minutes for some correction in order dated 10.07.2019. At Sr. No.10 of the chart on page No.3, the Applicant is shown recommended by CSB for transfer at Khed, Tal. Igatpur, Dist.Nashik but it was typed as Talwade, Tal. Malegaon, Dist. Nashik. The Applicant was in fact transferred to Talwade not Khed. It being inadvertent mistake, it be corrected accordingly.</p> <p>3. Similarly, at Sr. No.13 the name of the Applicant shown as Dr. D. B. Dagadu whereas his name is Bhaskar Dagadu Dhumal, it be corrected.</p> <p>Sd/-</p> <p>(A.P. Kurhekar) Member(J)</p> <p>vsm</p>

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.708 of 2019

Dr. S. D. Jadhav

)..... Applicant

Versus

State of Maharashtra & Ors.

)...Respondents

Smt. Punam Mahajan, Counsel for the Applicant
Ms S. P. Manchekar, Chief Presenting Officer for the Respondents

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 19.07.2019

ORDER

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.
2. In the present O.A., the Applicant is challenging the impugned transfer order dated 15.07.2019 whereby she was transferred from Solapur to Jalgaon.
3. The Applicant was serving as Assistant Director, Health Services (Leprosy), Solapur since November, 2018. However, before completion of normal tenure, she has been again transferred by impugned order dated 15.07.2019 to the post of District Health Officer, Jalgaon on the vacancy occurred because of transfer of Dr. Smt. Kamalapurkar.
4. Learned Counsel for the Applicant submits that the transfer shown as on "administrative ground" is not enough to sustain mid-term and mid-tenure transfer without mentioning reasons and urgency. Applicant's Counsel, therefore, prayed for interim relief.

M. Jadhav

5. Per contra, learned C.P.O. for the Respondents sought to contend that the Applicant was at Solapur for long period and secondly, there were complaints against the Applicant and, therefore, the Civil Services Board (CSB) approved the transfers. Learned C.P.O. further pointed out that the transfers are approved by the Hon'ble Chief Minister.
6. Learned C.P.O. has also produced the file noting for perusal of the Tribunal.
7. Perusal of file reveals that there were serious complaints against Smt.Kamlapurkar and for her transfer, the matter was processed. She was serving at Jalgaon. In the Note/Minutes of CSB itself approval of Hon'ble Chief Minister is taken. It seems that the approval of CSB was taken in circulation.
8. Be that as it may, in so far as the Applicant is concerned, except one passing reference that there were also complaints against the Applicant, there are no other details about the nature of the complaints, period of the alleged complaints etc. Save and expect mere reference that there were also complaints against the Applicant, no other material is forthcoming. This being the position, it can't be said that it is a special case of mid-term and mid-tenure transfer and to satisfy the rigor of Section 4(4)(ii) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005'). It seems that to fill in vacancy of Smt. Kamalapurkar because of serious complaint against her she was transferred and, therefore, the Applicant was displaced.
9. Mere approval of the transfer by Highest Authority is not enough in absence of specific reasons with some details of transfer.
10. In view of above, I am satisfied, *prima-facie*, case is made out to stay the implementation of impugned transfer order dated 15.07.2019.

11. Accordingly, interim stay is granted in terms of Prayer Clause 10(a) of the O.A.
12. Issue notice before admission returnable on 30.07.2019.
13. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
14. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
15. 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.
16. The service may be done by Hand delivery, speed post, courier 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.
17. In case notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.
18. S.O. to 30.07.2019.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION Nos.712, 713, 714, 715, 716 of 2019

Dr. P. S. Sontakke & Ors.

)..... Applicants

Vs.

State of Maharashtra & Ors.

)...Respondents

Shri S. D. Sarode. Advocate for Applicant (O.A.No.712/2019)

Shri D. B. Khaire. Advocate for Applicants (O.A.Nos.713 to 716/2019)

Mr. P. P. Manchekar, Chief Presenting Officer with Shri S.D. Dole, Shri A. J. Chivale and Smt. Archana B. K.. Presenting Officers for the Respondents

COMMISSIONER : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 19.07.2019

ORDER

I have heard Shri S. D. Sarode, learned Counsel for Applicant in O.A.No.712/2019. Shri D. B. Khaire, learned Counsel for Applicants in O.A.Nos.713 to 716/2019 and Smt. Kranti Gaikwad and Smt. Archana B. K., Presenting Officers for the Respondents

In all these Original Applications, the Applicants have challenged the transfer order dated 04.07.2019 on the ground that same is not in consonance with Section 4(4) (ii) and 4(5) of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005'). The Applicants were due for transfer but no transfer orders have been issued in April or May and, therefore, they opposed the transfer orders.

3. Having heard the learned Counsels for the Applicants, learned P.O. and on perusal of the file produced by the learned P.O. what transpired is as follows:-

Earlier the matter was placed before the Civil Services Board meeting dated 29.05.2019 for approval of General Transfers of the Applicants. Accordingly, CSB gave approval for posting of the Applicants as under:-

Sr. No.	O.A.No.	Name	Presenting Posting	CSB recommendation dated 29.05.2019	Posting as per transfer order dated 04.07.2019.
1	O.A.712/2019	P. S. Sontakke	Veterinary dispensary Gr-1, Shivare, Tal. Bhore, Dist. Pune	Veterinary Dispensary, Gr.I, Ranjangaon, Dist. Pune	veterinary dispensary Gr-1, Gudne, Tal. Shirala, Dist. Satara
2	O.A.713/2019	Dr. Kishor Kumar Mulay	Veterinary dispensary Gr-1, Pargaon, Tal.Khandara, Dist. Satara.	Veterinary dispensary Gr-1, Kikwi, Tal. Bhore, Dist. Pune.	Veterinary dispensary Gr.I, Panchayatbarhi, Tal. Man, Dist. Satara
3	O.A.714/2019	Dr. P. C. Mutyepod	Veterinary Dispensary, Gr.I, Boribel, Tal.Daund, Dist. Pune	Veterinary Dispensary, Gr.I, Girin, Tal.Daund, Dist. Pune	veterinary dispensary Gr-1, Samardha, Tal. Jai, Dist. Sangli
4	O.A.715/2019	Dr. Shantilal K. Atole	Veterinary dispensary Gr-1, Khadki, Tal.Daund, Dist. Pune	Veterinary dispensary Gr-1, Boribel, Tal.Daund, Dist. Pune	veterinary dispensary Gr-1, Sonval, Tal. Jai, Dist. Sangli.
5	O.A.716/2019	Dr. S. N. Kadam	Veterinary dispensary Gr-1, Khatav, Tal.Khatav, Dist. Satara	Veterinary Dispensary, Gr.I, Wathar Station, Tal.Koregaon, Dist. Satara	veterinary Dispensary, Bahule, Tal. Patan, Dist. Satara.

4. Though, the CSB had recommended for transfers of the Applicants to the above places, subsequently, those orders were cancelled and fresh orders were issued by the order dated 04.07.2019 whereby the Applicants were posted to different places as shown in the chart above. It further transpires that earlier the powers of general transfer were delegated to the Secretary but it was withdrawn and Hon'ble Minister himself took over the powers. The perusal of

Circular dated 01.06.2019 reveals that the powers of regular transfers only were assigned to the Hon'ble Minister.

8. Whereas in the present case, the transfer orders being issued on 04.07.2019, prima-facie, it is mid-term transfers and, therefore, there has to be compliance of approval of preceding next Competent Authority. However, perusal of file reveals that the Hon'ble Chief Minister had only approved the general / regular transfers and as regard to mid-term transfer, the Hon'ble Minister was directed to take decision at his level.

9. Thus, the position culminates that there is no approval of Hon'ble Chief Minister. Besides, after cancellation of earlier orders of transfers, the matters were not placed before the CSB for approval. The postings given to the Applicants in pursuance of earlier recommendations were totally changed. No special reasons are forthcoming to justify such mid-term transfers.

10. In view of above, I am satisfied that prima-facie, the impugned transfer order dated 04.07.2019 qua the Applicants are not sustainable and the Applicants are entitled to interim relief.

11. In view of above, implementation of the transfer order dated 04.07.2019 qua the Applicants is stayed.

12. As the Applicants have made out strong case of breach of mandatory requirement of law, the Applicants be reposted on the same post, if relieved earlier.

13. Issue notice before admission returnable on 30.07.2019.

14. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

15. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with

complete paper book of O.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

13. 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.

14. The service may be done by Hand delivery, speed post, courier 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.

15. In case notice is not collected within seven days of service report or affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

16. S.O. to 30.07.2019.


Sd/-

(A.P. KURHEKAR)
MEMBER (C)

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

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

T N

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>Date : 19.07.2019.</p> <p>O.A.No. 716 of 2018 (D.B.)</p> <p>N. K. KiravaleApplicant</p> <p>Versus</p> <p>The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Shri M. B. Kadam holding for Shri G. Sadavarte, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. Today, learned P.O. has filed reply on behalf of the Respondent No.2. It is taken on record.</p> <p>3. On the request of learned Counsel for the Applicant, two weeks time is granted for filing rejoinder, if necessary.</p> <p>4. S.O. to 31.07.2019.</p> <p>Sd/-</p> <p>(A.P. Kurhekar) Member(J)</p> <p>vsm</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

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

Original Application No. of 20

FARAD CONTINUATION SHEET No.

<p>Office Notes, Office Memoranda of Coram. Appearance, Tribunal's orders or directions and Registrar's orders</p>	<p>Date : 19.07.2019 Tribunal's orders O.A.No.679 of 2019</p>
	<p>S. V. Deshmukh ...Applicant Versus The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The matter is taken up for hearing on today's board for Speaking To Minutes.</p> <p>3. On 16.07.2019, the Tribunal had granted interim relief. In Paragraph No.6 the Tribunal recorded as follows:- "Learned Counsel for the Applicant fairly stated that the Applicant is not yet relieved from the post and she is on maternity leave."</p> <p>4. Learned Counsel for the Applicant submitted that in fact the Applicant was relieved during the period of maternity leave itself and, therefore, the order dated 16.07.2019 needs to be corrected. She further prays for reposting of the Applicant on the same post contending that in various other OAs arising from the same situation, the Tribunal has granted relief of reposting of the Government servant on the same post, if relieved earlier. In this behalf, learned Counsel for the Applicant has placed on record the order passed by this Tribunal in O.A.No.644/2019 wherein in the bunch of applications, interim relief was granted with a direction that Applicants be reposted on the same post, if relieved earlier.</p> <p>5. In view of above, now following order is passed:- "As the Applicant has made out strong case of breach of mandatory provision of law, she be reposted on the same post at the earliest."</p> <p>6. Hamdast and steno copy is granted.</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member(J)</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.T.A./O.A. No. _____ of 20____

IT N

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>Date : 19.07.2019.</p> <p>O.A.No.278 of 2019</p> <p>B. B. RathodApplicant</p> <p>Versus</p> <p>The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Shri G. A. Bandiwadekar, learned Counsel for the Applicant and Shri S. D. Dole, learned Presenting Officer for the Respondents.</p> <p>2. Today learned P.O. for the Respondents has filed Reply on behalf of the Respondent No.1. It is taken on record.</p> <p>3. On the request of learned Counsel for the Applicant, two weeks time is granted for filing rejoinder.</p> <p>4. S.O. to 29.07.2019.</p> <p style="text-align: right;">Sd/- wv~ (A.P. Kurhekar) Member(J)</p> <p>vsm</p>

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

Tribunal's orders

Date : 19.07.2019.

O.A.No.213 of 2019 With O.A.No.235 of 2019

P.N. Lohakare & Ors.

R. K. Jambhale

Versus

The State of Maharashtra & Ors.

....Applicants

...Respondents.

1. Heard Shri M.D. Lonkar, learned Counsel for the Applicants in O.A.No.213/2019, Shri C. T. Chandratre, learned Counsel for the Applicant in O.A.no.235/2019 and Smt. Archana B. K., learned Presenting Officer for the Respondents.
2. In both the Original Applications, Applicants are seeking direction for repatriation to Thane District in terms of orders dated 27.06.2017 and 17.07.2017. The Applicants were originally on the establishment of Collector, Thane. However, in view of creation of new District Palghar, some of the employees from the establishment of Collector, Thane were deputed temporarily in Palghar. They were deputed temporarily and were required to be shifted back to Thane within reasonable time.
3. Till date, the period of two years is over but no steps are taken to repatriate the Applicants. Having no option, the Applicants have approached this Tribunal.
4. Learned P.O. for the Respondents submits that due to staff scarcity, the Applicants could not be repatriated to Palghar District. Thus, it seems that the Collector, Palghar is not taking appropriate steps to fill up the vacate posts or to promote the employees on the establishment and, therefore, the Applicants are continued in Palghar District. There is no denying that as per seniority, they are now entitled for repatriation in terms of G.R. dated 19.08.2016
5. These Original Applications were filed in March, 2019 and were adjourned from time to time so as to give enough time to Collector, Palghar to take appropriate steps but in vain.
6. In view of above, these Original Applications can be disposed of by giving reasonable time to Collector, Palghar. It is for the District Collector, Palghar to make arrangements of staff required for administration. The Applicants who have already completed more than two years and admittedly, entitle for repatriation can't be detained for a longer period.
7. In view of above, Original Applications are disposed of with direction to Respondent No.2 i.e. Collector, Palghar to relieve the Applicants within eight weeks from today. The Collector, Thane to coordinate with the Collector, Palghar to facilitate the said exercise.
8. No order as to costs.

Sd/-
(A.P. Kurhekar)
Member(J)

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./O.A./C.A. No. _____ of 20____

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>Date: 19.07.2019.</p> <p align="center">M.A. No.365 of 2019 in O.A.No.628 of 2019 With M.A.No.366 of 2019 in O.A.No.629 of 2019</p> <p>B. J. Tejankar Dr. D. D. KshirsagarApplicants</p> <p>Versus</p> <p>The State of Maharashtra & Ors. ...Respondents.</p> <p>1. Heard Shri D. B. Khaire, learned Counsel for the Applicants and Smt. Archana B. K., learned Presenting Officer for the Respondents.</p> <p>2. In both the Misc. Applications, the Applicants have requested to add private Respondent No.2 who were transferred and posted in place of the Applicants. Initially, they have not joined and, therefore, now these Misc. Applications have been filed to implead them in O.A.s</p> <p>3. Learned P.O. for the Respondents submits that she has no objection to implead the Private Respondent but sought to contend that interim relief granted in favour of the Applicants be vacated.</p> <p>4. The Tribunal has granted interim relief having found blatant violation of provision of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Therefore, question of vacating Interim relief at this stage does not survive.</p> <p>5. Misc. Applications are allowed. Private Respondents be added as Respondent No.2.</p> <p>6. Issue notice to Respondent No.2 returnable on 30.07.2019.</p> <p>7. Amendment be carried out immediately.</p> <p align="right">Sd/- (A.P. Kurhekar) Member(J)</p>

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 702 OF 2019

DISTRICT : SOLAPUR

Smt Deepashri B. Patil)...**Applicant**

Versus

The State of Maharashtra & Others)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Shri P.N Dixit (Vice-Chairman) (A)**
Shri A.P Kurhekar (Member)(J)

DATE : **19.07.2019**

PER : **Shri A.P Kurhekar (Member)(J)**

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. In the present Original Application, applicant has challenged her termination order dated 24.6.2019 and also prayed for interim relief to stay the implementation of the termination order.

3. In 2017, the applicant had applied for the post of Dietician. The requisite qualification for the post was B.Sc (Home Science). The applicant did not have degree in B. Sc (Home Science), but she possessed qualification of B. Sc (Food, Technology and Management). However, while submitting the on-line application, she clicked the button of qualification, B. Sc (Home Science) intentionally. The process was completed and applicant was appointed on the post of Dietician by order dated 29.11.2017.

4. However, later, it has transpired to Respondent no. 1 that applicant does not possess qualification B. Sc (Home Science), but fraudulently, she submitted on-line application showing her qualification as B. Sc (Home Science) and thereby cheated the department. Accordingly, impugned order dated 24.6.2019



has been issued to terminate her services on the ground of misrepresentation and fraud.

5. The applicant admits that she do not have qualification of B. Sc (Home Science) and also admits that while submitting on-line application she clicked the button of B. Sc (Home Science). The applicant sought to contend that her qualification B. Sc (Food, Technology and Management) is equal to B. Sc (Home Science), and therefore, sought stay to the impugned termination order.

6. Shri Bandiwadekar, learned advocate for the applicant sought to contend that in similar situation in O.A 1020/2018, filed by colleague of the applicant, namely, Dr (Smt) M.M Patil, this Tribunal has granted interim relief on 29.11.2018 and also produced copy of the order, which is at page 69 to 71 of the paper book.

7. However, perusal of the interim order reveals that in that case applicant was claiming to be nominee of freedom fighter and also possess specialization in the field of Nutrition and Dietician. It is in that context interim relief was granted.

8. However, in the present case, applicant has suppressed the material fact and knowingly that she did not possess the requisite qualification furnished false information and obtained appointment.

9. The submission of learned advocate for the applicant that the impugned order dated 24.6.2019 is stigmatic and therefore for want of regular enquiry, termination is not permissible, holds no water.

10. The alleged conduct of submission of false information is prior to her appointment to the post, and therefore, question of conducting regular departmental enquiry may not survive. At any rate the applicant is prima facie blameworthy for submitting false information and obtaining appointment by misrepresentation. She was not eligible to apply for the said post

11. Therefore, we are not inclined to grant interim relief. Equitable relief of injunction cannot be granted in favour of the person who has not come with clean hands.

12. It is rather surprising that even after physical verification of the document which is the normal practice, the applicant was appointed. This clearly shows carelessness and negligence on the part of the concerned, who have failed to verify the documents physically or ignored the same.

13. Respondent no. 1, is therefore, directed to conduct enquiry against the concerned and submit the report on the next date.

14. Issue notice returnable on 20.8.2019.

15. Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

16. Applicants are authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

17. 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.

18. The service may be done by hand delivery/ speed post/courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicants are directed to file affidavit of compliance and notice.

19. In case notice is not collected within 3 days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference and papers be consigned to record.

20. S.O to 19.8.2019.

Sd/-

(A.P Kurhekar)
Member (J)

Sd/-

(P.N Dixit)
Vice-Chairman

Place : Mumbai
Date : 19.07.2019
Dictation taken by : A.K. Nair.