

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.542 OF 2017**

DIST. :JALGAON

Dr. Sunil Purushottam Bhamre,  
Age.53 years, Occu. : Service as  
District Civil Surgeon, Civil Hospital,  
Jalgaon, Dist. Jalgaon.

-- APPLICANT

**VERSUS**

1. The State of Maharashtra  
Through its Principal Secretary,  
Public Health Department, M.S.  
Mantralaya, Mumbai – 32.
2. The Director of Health Services,  
Aarogya Bhavan, Opp. C.S.T.,  
Mumbai.
3. The Deputy Director of Health Services,  
Nashik Circle, Nashik.
4. Dr. Nagorao Shivaji Chavan,  
Age. Major, Occu. Service as  
Civil Surgeon (Clinical),  
Civil Hospital, Beed,  
Dist. Beed.

-- RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the  
applicant.  
: Shri M.S. Mahajan, learned Chief  
Presenting Officer for the respondent nos. 1  
to 3.  
: Shri Shamsunder B. Patil, learned Advocate  
for respondent no. 4.

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**CORAM** : **Justice M.T. Joshi, Vice Chairman**

**DATE** : **1<sup>st</sup> February, 2018**  
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**ORDER**

1. Heard Shri V.B. Wagh, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 to 3 and Shri Shamsunder B. Patil, learned Advocate for respondent no. 4.

2. Aggrieved by the order dtd. 5.8.2017, of the res. no. 1 transferring the applicant from the post of District Civil Surgeon, Civil Hospital, Jalgaon to the post of Assistant Director of AIDS Control Society, Wadala, Mumbai and consequential posting of res. no. 4 – Dr. Nagorao Shivaji Chavan – in his place, the present applicant has filed the present Original Application for quashing and setting aside the said order.

3. The common submissions from all the sides would show that the present applicant was posted to the post of Civil Surgeon, Civil Hospital, Jalgaon vide order dtd. 18.7.2016. However, vide the impugned order dtd. 5.8.2017 he was transferred therefrom to the above described post of Wadala, Mumbai.

4. The applicant submits that the impugned transfer order is midterm and mid tenure made against the provisions of sec. 3 of the Maharashtra Government Servants Regulation of

Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). In the circumstances, he submits that the impugned order be annulled.

5. The stand of res. nos. 1 to 3 i.e. the State of Maharashtra at para 16 of the affidavit in reply is that the transfer of the applicant is recommended by the Civil Services Board, which is formed by the Government Resolution dated 17.4.2017. The copy of the said resolution is filed at Exhibit R. 1 along with their affidavit in reply.

During the course of arguments, the learned C.P.O. orally submitted that since there were complaints against the present applicant, he has been transferred though he has not completed his usual term of 3 years' as per the provisions of the Transfer Act, 2005.

6. The learned Advocate for res. no. 4 vehemently submitted as under :-

“The transfer is an incidence of a Government service. The applicant cannot compel the administration to keep him at one place of his choice. Since the applicant remained absent at Jalgaon, the res. no. 4 was required to take the charge of his post in his absence on 7.8.2017. The applicant

still has not joined the post at Wadala, Mumbai. The learned Advocate for res. no. 4 relied on the ratio of following cases :-

- (i) Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532);
- (ii) Union of India Vs. S.L. Abbas (AIR 1993 SC 2444);
- (iii) State of U.P. Vs. Gobardhan Lal (AIR 2004 SC 2165);  
and
- (iv) Sanjeev Kokil Vs. State of Maharashtra (2014 (7) Bom. C.R.148);”

7. The provisions of Chapter II of the Transfer Act, 2005 clearly specify that ordinary tenure of the State Govt. servants like the present applicant and res. no. 4 shall be of 3 years at a given post. The provisions would further show that midterm or mid tenure transfer would be an exception in the circumstances as specified in sub sect. 4 & 5 of sec. 4 of the Transfer Act, 2005, which run as under :-

**“4. Tenure of transfer.**

- (4) The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May:

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely:-

- (i) to the newly created post or to the posts which become vacant due to retirement, promotion, resignation, reversion,

reinstatement, consequential vacancy on account of transfer or on return from leave;

- (ii) where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority;
- (5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior +[approval of the immediately superior] Transferring Authority mentioned in the table of section 6, transfer a Government Servant before completion of his tenure of post.

8. In the present matter except the vague oral statement from the learned C.P.O. that there were complaints against the present applicant, there is no material on record to find as to what compelled the res. no. 1 to transfer the present applicant from the post just after completion of one year thereat. Complaints, if any, without disclosing its gravity or substance, against the present applicant cannot be an "exceptional circumstance or special reason" as provided in sub sec. 4 & 5 of sec. 4 of the Transfer Act, 2005.

9. The learned Advocate for res. no. 4 had relied on the ratio of judgments of the Hon'ble Supreme Court of India in the cases where fortunately or unfortunately there was no codified law

as regards transfer. Therefore general established principles of administrative law on the subject of transfer are highlighted in these cases by the Hon'ble Supreme Court. In the State of Maharashtra, however, we have the Transfer Act, 2005 and therefore administration is required to follow the provisions of the said Act.

In the case of **Sanjeev Kokil** cited supra, Hon'ble Bombay High Court was dealing with the subjective satisfaction of the authorities to find out as to whether there is a special case or exceptional circumstance according to the provisions of The Transfer Act, 2005. In the present case except the oral statement by the learned C.P.O. that there were complaints against the applicant, we do not find any other circumstance compelling the applicant to suffer a midterm / mid tenure transfer.

10. No doubt, the result of grant of present O.A. would unnecessarily cause hardship to res. no. 4, but it is unavoidable effect of the untenable transfer order passed by the Respondent No. 1.

Further in case the applicant has not joined the post where he is transferred by the impugned transfer order, though no stay to the said order was granted by the Tribunal, the said issue is beyond the purview of the present O.A. The res. nos. 1 to 3

would be at liberty to take such administrative action as may be deemed fit and proper in their discretion according to rules and regulations. Hence, I pass the following order :-

**ORDER**

(i) The present O.A. is allowed without any order as to costs and the impugned order dated 5.8.2017 issued by the res. no. 1 qua the applicant and the res. no. 4 is hereby quashed and set aside. The consequential action upon quashing of the impugned transfer order shall be taken by the res. no. 1 within a period of two weeks from the date of this order

(ii) The res. nos. 1 to 3 hereby are directed to be sympathetic while passing fresh order regarding transfer / adjustment of res. no. 4.

**VICE CHAIRMAN**