

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**CIVIL APPLICATION NO.11/2017**

**AND**

**ORIGINAL APPLICATION NO.05/2017.**

Dr. Bhojrao Shyamrao Madke,  
Aged about 55 years,  
Occ-Service,  
R/o Plot No.6, Adarsha Nagar,  
Opp. Prerna Buddha Vihar, Kamptee,  
Distt. Nagpur.

**Applicant**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Public Health,  
Mantralaya, Mumbai-440 032.
- 2) The Commissioner of Police,  
Nagpur city Nagpur.
- 3) The Director of Health Services,  
+Arogya Bhavan+, St. Georges Hospital Compound,  
Mumbai-01.
- 4) Dr. Sandip Shankarrao Shinde,  
Aged about years,  
Occ-Service,  
R/o Omkar Nagar, Manewada Road,  
Behind Reliance Fresh & Behind Water Tank,  
Nagpur.

**Respondents**

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Shri A.D. Mohagaonkar, learned Counsel for the applicant.

Shri M.I. Khan, learned P.O. for respondents 1,2 & 3.

Shri A.P. Tathod, Ld. counsel for respondent No.4.

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**Coram:- Hon'ble Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 19<sup>th</sup> day of April 2017.)**

Heard Shri A.D. Mohagaonkar, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents 1,2 and 3. Shri A.P. Tathod, the learned counsel for respondent No.4.

2. C.A. No.11/2017 is for vacation of interim order dated 6.1.2017 passed by this Tribunal. Vide order dated 6.1.2013, *status-quo* was directed to be maintained in respect of impugned order of transfer. The O.A. and the C.A. are being disposed of by this common order.

3. The applicant is a Medical Officer and vide impugned order dated 31.12.2016 issued by respondent No.1, he has been transferred from Police Hospital, Nagpur to Daga Women Hospital, Nagpur. In his place, respondent No.4 has been posted. According to the applicant, the said order of transfer is mid-tenure and mid-term and has been issued only with intention to accommodate respondent No.4. In fact, no post is available at Daga Women's Hospital, Nagpur and still the applicant has been transferred. The said transfer is also against the provisions of the Maharashtra Government Servants

Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as, "Transfer Act, 2005"). The applicant submits that he has filed representation, making a grievance about his transfer on 3.1.2017. But his grievance has not been considered. The applicant has prayed that the order dated 31.12.2016 be quashed and set aside and the respondents be directed not to relieve the applicant.

4. Earlier the applicant has filed W.P. No. 1331/2017 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur. In the said writ petition, the Hon'ble High Court was pleased to give directions on 13.4.2017 as under:-

On the circumstances of the case, since the *ad interim* relief is operating from 6.1.2017, it would be necessary to dispose of the writ petition with a direction to the Tribunal to either decide the application for vacation of interim relief as filed by the petitioner, within a week or to decide the O.A., if it is possible, within the same time.

Hence, in the circumstances of the case, since the order dated 30.1.2017, confirming the interim relief was passed without deciding the application filed by the petitioner for vacation of interim relief, we dispose of the writ petition with a direction to the Tribunal to either decide the application for vacation

of interim relief or the O.A. filed by the respondent No.1, on or before 21.4.2017. Order accordingly. No costs.+

5. In view of the aforesaid directions of the High Court, matter was placed before this Tribunal when the concerned parties to the application agreed that the matter be disposed of on merit and, therefore, it was heard on merit.

6. Respondent No.1 has justified the order of transfer. It is stated that the applicant is a Govt. servant and he can be transferred anywhere at any time, wherever his services are required. It is stated that the impugned order has been issued as per the provisions of Section 4 (4) and 4 (5) of the Transfer Act, 2005 and necessary sanction of appropriate authority has been obtained. It is denied that the post at Daga Women's Hospital, Nagpur is not available. It is further stated that the said post is under Civil Surgeon, National Blindness Control Programme.

7. According to respondent No.1, the applicant has completed the normal tenure of three years and, therefore, he was due for transfer. The impugned order comes within the ambit of Section 4 (4) and 4 (5) of the Transfer Act, 2005.

8. Respondent No.4 has also filed affidavit in reply. According to respondent No.4, he was transferred to Rural Hospital, Narkhed to Police Hospital, City Nagpur, as the applicant was due for transfer. He has served for more than three years in Rural Hospital, Deolapar in Tamtek Taluka, which is a tribal area and, therefore, as per G.R. dated 11.7.2000, he was entitled to choice posting. He applied for choice posting at Police Hospital, City Nagpur. But his request was not considered and he was transferred to Daga Women's Hospital, Nagpur. He, therefore, made representation and his representation was considered. Respondent No.4 justified the transfer.

9. The applicant filed rejoinder affidavit and submitted that respondent No.4 has managed the order of transfer. The said order is against the G.R. dated 30.5.2007 which states that the doctors having specialized knowledge should not be transferred at District Hospital / PHC / Ashram School and Police Hospitals. Allegations are also made against respondent No.4 that he was absconding from 19.5.2014 till 2.5.2015. He was relieved from Rural Hospital, Deolapar on 20.2.2016. But he never joined at Daga Women's Hospital, Nagpur.

He has served only for 19 months and 8 days at Rural Hospital, Deolapar.

10. Shri A.D. Mohagaonkar, the learned counsel for the applicant has invited my attention to the opening para of the impugned order of transfer dated 31.12.2016 which reads as under:-

प्रशासन आदेश दिनांक ३१ डिसेंबर, २०१६

महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट-अ (वेतनश्रेणी रुपये १५,६००-३९,१०० +ग्रेड पे रुपये ५,४००) या संवर्गातील वैद्यकीय अधिका-यांच्या शैक्षणिक अर्हता, रुग्णसेवा इत्यादी बाबी विचारात घेवून विहित केलेले निकष व अनुषंगीक लोकहित तसेच प्रशासनाची निकड या बाबींचा विचार करून खाली दर्शविलेल्या वैद्यकीय अधिका-यांच्या विनंती/प्रशासकीय बदल्या करण्यात येत आहेत.

| अ.क्र. | वैद्यकीय अधिका-यांचे नांव | सध्या कार्यरत ठिकाण          | बदलीचे ठिकाण                 |
|--------|---------------------------|------------------------------|------------------------------|
| १.     | डॉ. संदिप शंकरराव शिंदे   | डागा स्त्री रुग्णालय, नागपूर | पोलीस रुग्णालय, नागपूर       |
| २.     | डॉ.बी.एस.मडके             | पोलीस रुग्णालय, नागपूर       | डागा स्त्री रुग्णालय, नागपूर |

२. सदर आदेश महाराष्ट्र कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(४) आणि ४(५) च्या तरतुदीनुसार निर्गमित करण्यात येत आहेत. %

11. He submitted that the impugned orders of transfer in respect of the applicant and respondent No.4 have been issued taking into consideration their educational qualification and service of patients. He submitted that the applicant is having a qualification of MBBS whereas respondent No.4 is MBBS, DGO having specification in

Gynaecology and, therefore, the services of respondent No.4 should have been properly unitized at Daga Womens Hospital, Nagpur and not at General Hospital, Nagpur and, therefore, the very purpose of transfer is illegal. It is, however, material to note that, these are not the only two grounds on which the impugned order of transfer has been passed. The further contents of the order of transfer clearly show that the order has been passed also considering the public interest as well as administrative need and qualification and service period of the applicant and respondent No.4 was not only the criteria.

12. The learned counsel for the applicant has invited my attention to Section 4 (4) (1) and 4 (5) of the Transfer Act, 2005 which reads as under:-

**4. Tenure of Transfer.**

- (1) No Govt. servant shall ordinarily be transferred unless he has completed his tenure of positng as provided in section 3.
- (2).....
- (3).....
- (4) The transfers of Govt. 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 Govt. servant before completion of his tenure of post.+

13. The learned counsel for the applicant submits that if the transfer order is not issued in the month of April or May, the said transfer order can be said to be mid-term. Admittedly, in this case the applicant was posted in the Police Hospital, Nagpur on 13.6.2013 and he has been transferred to Daga Women's Hospital, Nagpur vide



impugned order dated 13.12.2016. The applicant has, therefore, completed more than three years and six months at Police Hospital, Nagpur. As per sub-section (1) of Section 4 of the Transfer Act, 2005 referred to above, any Govt. servant shall not ordinarily be transferred unless she has completed his tenure of posting as provided in Section 3 and admittedly as per Section 3, tenure of posting is three years and, therefore, the impugned order of transfer is not mid-tenure, though it can be mid-term. Since it is not issued in the month of April or May of the year. In view of the fact that the applicant has already completed more than three years tenure at Police Hospital, Nagpur, he cannot claim extension of said period of tenure as of right and he can be considered for transfer at any time once he has completed his tenure of three years.

14. The learned counsel for the applicant submits that the impugned order of transfer does not fall within the ambit of Section 4 (4) (i) (ii) or Section 4 (5) of the Transfer Act, 2005. However, Section 4 (4) (i) of the Transfer Act, 2005 makes it crystal clear that an employee can be transferred at any time in the year, if such transfer is consequential vacancy on account of transfer or on return from leave. In this case, the respondents are coming with a case that the applicant

was transferred because the respondent No.4 has been transferred, as his request was considered.

15. The Ld. P.O. submits that the approval of the Hon'ble Chief Minister was obtained for the transfer of respondent No.4. The applicant has filed rejoinder affidavit and submitted that the approval of immediately superior authority / higher authority which if obtained, the respondents be directed to place a relevant file on record in this regard. Accordingly, the learned P.O. has placed on record the minutes of the approval given to the transfer of respondent No.4. Copy of the said minutes is placed on record and is annexed as Annexure % for identification. Perusal of Annexure % shows that in fact applicant's case for transfer was not under consideration before the Hon'ble Chief Minister. But the competent authority suggested that respondent No.4 Dr. Shinde be transferred at Police Hospital, Nagpur and in his place, Dr. Bhojrao Shyamrao Madke (the applicant) be transferred. The relevant recommendation in para 2 is as under:-

%. संदीप शिंदे, वैद्यकीय अधिकारी, डागा डॉस्पिटल, नागपूर यांची वैद्यकीय अधिकारी, पोलीस रुग्णालय, नागपूर येथे बदली करावी व त्या ठिकाणी कार्यरत असलेले डॉ.बी.एस.मडके यांची डॉ. शिंदे यांच्या जागेवर बदली करावी.%%

16. The said suggestion has been approved by the Principal Secretary as well as the Hon'ble Chief Minister. The said

approval seems to be dated 30.12.2016 and accordingly on the said recommendation, the impugned order dated 31.12.2016 has been issued. The Tribunal is not expected to go into the merits of the decision taken by the competent authority and particularly the Hon'ble Chief Minister. Even for the argument sake, it is accepted that the order has been issued in order to accommodate respondent No.4. It will be material to note that, respondent No.4 was serving in the rural area and he has requested that as per the Govt. policy, since he was working in naxalite affected and rural area, he was entitled to be transferred at his choice posting. He was, however, not transferred on his choice posting and, therefore, he made representation that he be posted at Police Hospital, Nagpur. It seems that the said request has been accepted by the Hon'ble Chief Minister, as the Hon'ble Chief Minister thought it proper to transfer respondent No.4 at Police Hospital, Nagpur and to post the applicant in place of respondent No.4. Such decision cannot be said to be illegal, since admittedly the applicant has completed his tenure at Police Hospital, Nagpur and he has no right to claim extension as of right.

17. In view of this, it can be said that the approval of the competent authority was obtained for issuing impugned order of transfer.

18. The learned counsel for the applicant submits that respondent No.4, though on probation, did not join the post earlier and was absconding for a long period. In fact, a show cause notice was also issued to respondent No.4 as to why he shall not be removed from service on account of his absence. However, instead of taking action against respondent No.4, he has been awarded with the posting of his choice. In my opinion, this argument cannot be considered for the simple reason that it is a matter between respondent No.1 and respondent No.4. Respondent No.1 will be at liberty to take departmental action against respondent No.4, if it desires to do so and the applicant cannot take benefit of that so-called misconduct of respondent No.4.

19. Respondent No.4 in his affidavit in reply has stated that in fact he requested that he be transferred to Police Hospital, Nagpur on request, since he has completed his tenure in naxalite affected area and as per the Govt. policy. However, instead of transferring him at Police Hospital, Nagpur, he was transferred to Daga Women's Hospital, Nagpur. The learned counsel for respondent No.4 also invited my attention to the representation dated 24.2.2016 in this regard. A copy of which has been placed on record at Annexure R-3 at page No.75 of the paper book. It is not necessary to consider as to

whether the case of respondent No.4 was genuine or not. The competent authority has considered his case and has accordingly taken a decision to transfer respondent No.4 in place of the applicant, who was admittedly due for transfer and, therefore, I do not find any merit in the say that the disloyal employee has been favoured by respondent No.1.

20. The learned counsel for respondent No.4 submits that the applicant is claiming favouritism in favour of respondent No.4 and further making allegations that respondent No.4 has managed the competent authority to get his choice posting. He submits that the applicant, however, did not disclose the names of the officers, who alleged to have been managed nor made them as party in the O.A. It is true that the allegations made by the applicant are vague in nature. Admittedly, respondent No.4 alone cannot get himself transferred at a choice posting and it is the competent authority who can pass the order. The competent authority and transferring authority in this case is the Hon<sup>ble</sup> Chief Minister in consultation with the Principal Secretary and such vague allegations of managing those authorities by respondent No.4 cannot be accepted without specific pleadings with a concrete proof in this regard. The Division Bench of the Hon<sup>ble</sup> High Court of Judicature at Bombay in case of **V.B. Gadekar**

**V/s Maharashtra Housing and Area Development Authority, 2007**

**(6) Bom. C.R. 579-DB= 2008 (2) Mh.L.J. 640,** has observed as

under:-

(i) It is settled principle of law that transfer is an essential incidence of service. These provisions are regulatory and not prohibitory in their application. Provisions of section 4 of the Act clearly contemplates vesting of discretion in the authority to make an exception to the normal tenure of three years of posting. Every provision should be construed so as to achieve the object of the Act and certainly the larger public interest. Government is biggest employer and to regulate conditions of service, such provisions are made either by virtue to guidelines or by Rules. Once a discretion is vested in the authority, itg has to be exercised uniformly and fairly. There is nothing on record before us which could indicate that the discretion has been exercised for *mala fide* reasons or is arbitrary.

(ii) Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict wilth Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfers could be due to exigencies of service or due to administrative reasons. The petitioners in the present case have failed to

demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power. The authorities concerned have made a class of persons against whom disciplinary action is contemplated. In fact, it has been stated in the reply filed by the respondents in no uncertain terms that they are taking disciplinary action in accordance with the opinion of the Vigilance Department against these Officers for irregularities committed in the special and current repairs in the transit camps all over Mumbai. If the authorities have taken a view that they need to transfer the Officers upon whom show cause notices were served and disciplinary action is contemplated that decision cannot be termed as *arbitrary* or *mala fide*. It is a decision obviously taken for administrative reasons and there is no occasion for the Court to go behind the order and examine, like an Appellate Authority, whether or not such order needs to be passed.+

21. The learned counsel for the applicant submits that respondent No.4 being a specialist in Gynaecology who has served properly at Daga Women's Hospital, Nagpur and that the applicant is not a specialist. However, it is material to note that there are posts of General Medical Officer in Daga Women's Hospital, Nagpur also and it is for the respondents to consider as to how to get the services of the applicant utilized in the best interest of the administration. In such circumstances, it would not be proper to interfere in the order passed by the competent authority which has been duly approved by the

Honorable Chief Minister. The applicant has been transferred from Police Hospital, Nagpur to Daga Women's Hospital, Nagpur i.e. within the city only and no prejudice will be caused to the applicant, if he is asked to join on the post where he is transferred. I, therefore, do not find any merit in this O.A. Hence, the following order:-

**ORDER**

- 1/- The O.A. is dismissed with no order as to costs.
- 2/- C.A. also stands disposed of.
- 3-/ Consequently, the *status-quo* order passed on 6.1.2017 stands vacated accordingly.

(J.D.Kulkarni)  
Vice-Chairman(J)

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