

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 291 OF 2017 (S.B.)**

Dr. Mrs.Kavita W/o Dilip,  
Changole (Randhe)  
Aged about 47 years, Occupation – Service,  
R/o N-2, "Neelam" Apartment,  
8<sup>th</sup> Rasta Square, Laxminagar,  
Nagpur- 440 022.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Principal Secretary,  
Public Health Department,  
G.T. Hospital, Complex Building,  
9<sup>th</sup> Floor, B-Wing, New Mantralaya,  
Mumbai-01.
- 2) District Collector & President,  
Selection Committee, Civil Lines,  
Nagpur.
- 3) Civil Surgeon,  
General Hospital (Mayo), Central Avenue Road,  
Nagpur.
- 4) Medical Superintendent,  
Sub District Hospital, Kamptee,  
Distt. Nagpur.
- 5) Medical Superintendent,  
Regional Mental Hospital, Chhindawada Road,  
Nagpur.
- 6) Dr. Deepak S/o Ramesh Rao Awachat,  
Medical Officer, Sub District Hospital, Kamptee,  
Distt. Nagpur.

**Respondents**

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**Shri N.D.Thombre, Id. Advocate for the applicant.**

**Shri S.A.Sainis, Id. P.O. for the respondents.**

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

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**JUDGMENT**

**(Delivered on this 05<sup>th</sup> day of January, 2018)**

Heard Shri N.D.Thombre, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The applicant Dr. Mrs. Kavita W/o Dilip Changole (Randhe) is working as Medical Officer in Maharashtra Medical and Health Services since 25/01/1996. She was initially appointed as such and was posted at Rural Hospital, Seloo, Dist. Wardha Prior to impugned order of her transfer, she was working at Regional Mental Hospital, Nagpur since 07/07/2007.

3. On 19/05/2017, the respondent no. 3, the Civil Surgeon, General Hospital (Mayo) Nagpur had issued the impugned order of her transfer dated 19/05/2017 whereby the applicant had been transferred from Regional Mental Hospital to Sub-District Hospital, Kamptee, District Nagpur in place of respondent no. 6 i.e. Dr. Deepak Rameshrao Awachat, a newly recruited Medical Officer. The respondent no. 6 had been transferred vice the applicant.

4. According to the applicant, the respondent no. 3, Civil Surgeon, General Hospital, Nagpur has no authority to issue the impugned order of her transfer. It is stated that as per Section 6 of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short Act of 2005) sub section (b), the power to transfer the applicant is vested with the Hon'ble Minister Incharge of the concerned department in consultation with the Secretary and, therefore, the respondent nos. 2 and 3 have no authority to transfer the applicant. The order of transfer is, therefore, in contravention of the provisions of Section 6 of the Act of 2005. According to the applicant, the applicant's husband is Medical Officer at General Hospital, Nagpur. He has suffered a brain stroke when he was in duty and was admitted in the General Hospital, Nagpur. The right portion of his body has been paralysed. The respondent no. 3 knows this fact very well and still with intention to harass the applicant and for accommodating the respondent no. 3, the impugned order has been issued. It is further prayed that the order of transfer of the applicant dated 19/05/2017 whereby the applicant has been transferred to Kamptee in place of respondent no. 6 and the order dated 19/05/2017 issued by respondent no. 3, whereby respondent no. 6 has been transferred in place of the applicant, be quashed and set aside and

respondents be directed to allow the applicant to work at Nagpur as she was working prior to her transfer to Kamptee.

5. The respondent no. 3 has filed the affidavit-in-reply and submitted that the applicant is working as Medical Officer at Nagpur since 07/07/2007 and she was very much due for transfer, since she has already completed her tenure. She has been working at Nagpur for more than 10 years. Initially the applicant did not challenge the order dated 19/04/2017, whereby she was transferred from Nagpur to Kamptee on administrative ground and, therefore, the application is not tenable. Subsequently, the applicant amended the O.A. and also challenged the order dated 19/04/2017 issued by respondent no. 2. In fact, the applicant seems to have been transferred vide order dated 29/05/2017 issued by respondent no. 2, Collector in the capacity of Chairman of Transfer Committee at Nagpur. The said order has been placed on record at P.B., Pg. No. 29 and 30 (both inclusive).

6. The respondents tried to justify the order of transfer of the applicant and stated that the applicant has been transferred on administrative ground. The powers to transfer the officers like applicant have been assigned to a committee under the Chairmanship of respondent no. 2 and the said delegation of power is as per the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. It is

stated that Kamptee is just about 15k.m. from Nagpur and she has been posted at the nearest place. The respondent no. 6 has already joined at Nagpur. As against this, the applicant has not joined at Kamptee. The respondent denied the allegations of malice, favouritism and harassment. It is stated that the impugned order dated 19/05/2017 is apparently a relieving order and not the transfer order and the transfer order is passed by the competent authority.

7. From the pleadings, it seems that in the original O.A. the applicant had challenged the order dated 19/05/2017 and 18/05/2017 issued by respondent no. 3. In fact these two orders are the relieving orders of the applicant and respondent no.6 respectively. The applicant was in fact transferred vide order dated 29/04/2017 and the same order has been issued by respondent no. 2 in the capacity as the Chairman of Transferring Committee. Thus, initially the applicant tried to misguide the Tribunal, stating that the applicant was transferred by the Civil Surgeon (respondent no. 3) and that he was having no authority. However, by way of amendment, the applicant has come with a case that the respondent no. 2 has also no authority to transfer the applicant and that the powers cannot be delegated as per the Act of 2005.

8. In support of his contention, the Id. counsel for the applicant Shri N.D.Thombre placed reliance on the judgment delivered by this Tribunal in O.A.444 and 446 of 2017 delivered by this Tribunal at

Mumbai Bench in case of **Mr.Harishchandra L. Jadhav Vs. State of Maharashtra & 2 Ors. & Mrs.Smita R. Gurav Vs. Divisional Commissioner & 2 Ors.** It was a common judgment delivered on 28/07/2017. The Id. counsel for the applicant submits that this Tribunal has held in the said judgment that the Government has no authority to delegate powers of transfer.

9. I have carefully gone through the judgment in O.A. 444 & 446 of 2017 delivered by this Tribunal at Mumbai Bench as referred to above. It is material to note that, in the said case, the transfer of two Naib Tahsildars, were under consideration and the Tribunal interpreted the letter of delegation of power issued vide Government Resolution dated 23/06/2016. In the said case, the transfer order were issued by Divisional Commissioner on the strength of delegated powers and the Tribunal interpreted the said Government Resolution. Admittedly, the said Government Resolution is not in question in this O.A. and, therefore, the judgment in O.A.444 and 446 of 2017 is not applicable to the present set of facts.

10. In the present case, the powers have been delegated to the competent committee to transfer the officers like applicant vide Government Resolution dated 30/11/2016, a copy of which is placed on record at P.B. Pg. No. 87 and 88 (both inclusive) by the respondents. The said Government Resolution of delegation of powers has been issued by

the Government of Maharashtra under the authority of Hon'ble Governor. The said Government Resolution had been issued in respect of transfer of the Medical Officers falling under Group-A and B to D. The Group A, Officers falling in the pay group of Rs.15,600 – 39,100 with grade of pay Rs.5400 are also included in the said Government Resolution.

11. Perusal of the Government Resolution dated 30/11/2016 shows that since the power of transfer of the Medical Officers was with the Government, it was difficult for the administration to transfer the Medical Staff as per requirement within District and, therefore, the Government thought it proper to form a committee whereby the transfer of Medical Officer can be looked into by the District Administration and, therefore, a committee was formed which includes District Collector as a Chairman, Chief Executive Officer, Zilla Parishad, District Social Welfare Officer, District Civil Surgeon, District Health Officer and Assistant Commissioner, Adivasi Vikas as members of the committee.

12. Section 6 of the Act of 2005 reads as under :-

6. The Government servants specified in column (1) of the table hereunder may be transferred by the Transferred Authority specified against such Government servants in column (2) of the table.

**TABLE**

<b>Groups of Government Servants</b>	<b>Competent Transferring Authority</b>
(1)	(2)
(a) Officers of All India Services, all Officers of State Services in Group "A" having pay-scale of Rs. 10,650-15,850 and above	Chief Minister
(b) All Officers of State Services in Group "A" having pay-scales less than Rs.10,650-15,850 and all Officers in Group "B"	Minister-in-charge in consultation with Secretaries of the concerned Departments.
(c) All employees in Group "C"	Heads of Departments.
(d) All employees in Group "D"	Regional Heads of Departments.

Provided that, in respect of Officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division and the District Head shall be competent to transfer such officers within the District:

Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority."

The plain reading of the aforesaid Section clearly shows that the Government has authority to delegate the powers of transfer by general or special order to any sub-ordinate authority.



13. As already stated, in the present case the power of delegation has been exercised by the Hon'ble Governor of Maharashtra who is the highest authority in the State and a conscious decision has been taken to form the committee to consider the transfer of the Medical Officer in the District. It can therefore be said that the powers have been delegated by the competent authority. Moreover, the applicant has not challenged the powers of delegation in this O.A. and, therefore, by no stretch of imagination, it can be said that the delegation of powers accorded by the Government Resolution dated 30/11/2016 are, in any manner, illegal.

14. The guidelines were issued by the Government as regards transfer of the Medical Officers as per Government Resolution dated 20/04/2017 and it was directed that said transfer orders be issued before 30/04/2017 and in any case such transfer order shall not be issued after June end. The impugned order of transfer was issued in the meeting dated 29/04/2017 and, therefore, it cannot be said that the competent authority has ignored the guidelines.

15. So far as the applicant's transfer is concerned, it is not disputed that the applicant is working at Nagpur for more than ten years and is very much due for transfer. It, therefore, cannot lie in her mouth that the person who was transferred in his place (respondent no. 6) was newly appointed and was not due for transfer. Except mere allegation, no

sufficient evidence has been produced on record to show that the respondent authority was, in any manner, prejudiced against the applicant or that it were having any grudge against the applicant. The allegation of malafides and harassment at the hands of respondent no. 3 are also without any substance. There is no material on the record to show that the impugned order of transfer has been issued only with intention to harass the applicant or to favour respondent no. 6.

16. The respondents has placed on record the minutes of meeting dated 29/04/2017 (exh-x) in which the transfers of as many as 26 Medical Officers were considered. As regards the applicant, it has been stated that she has been transferred according to the seniority. I therefore, do not find any merit in the O.A. Had it been a fact that the respondent authorities were having any grudge against the applicant, the applicant ought not to have been posted at Kamtee which is just 15 k.m. away from Nagpur.

17. From the pleadings in the O.A., it seems that initially the applicant did not challenge the order of the transfer dated 29/04/2017 which was issued by respondent no. 2. It has been mentioned in the said order that the order was issued by Collector, Nagpur in his capacity as Chairman of Transfer Committee. The Government Resolution, delegating the powers of transfer dated 30/11/2016 was also referred in

the said order. The applicant, however, challenged the order of her relieving from Nagpur.

18. Even after amendment, the Id. counsel for the applicant insisted that the powers are not delegated for transferring the Medical Officers and, therefore, vide order dated 16/11/2017, this Tribunal was pleased to direct the respondents to produce the documents on record regarding delegation of powers of transfer. It is stated by the Id. counsel for the applicant and as such observed in the order dated 16/11/2017 that the applicant belongs to Group – A officer of Government servant and, therefore, she is in the pay scale of Rs. 15,600 – 39100 and, therefore, the competent authority, to effect transfer of the applicant is the Hon'ble Chief Minister, it was also stated that the order issued by the Collector or Civil Surgeon is not legal. In the synopsis, it is stated that the applicant belongs to Group-B employee.

19. As already stated, the respondents have placed on record the Government Resolution dated 30/11/2016 which clearly shows that the Government of Maharashtra has delegated the powers of transfer of the officers like applicant to the committee mentioned in the Government Resolution headed by District Collector and the said committee has considered the transfer of the applicant on the basis of her station seniority. Since the applicant was overdue for transfer, I, do not find any malafide in the transfer of the applicant. Hence the following order:-

**ORDER**

1. O.A. stands dismissed with no order as to costs.

**Dated :- 05/01/2018**

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