

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.293/2017.**

**(S.B.)**

Dr. Kishor Gopal Patil,  
Aged about 48 years,  
Occ. Associate Professor MPSC),  
Department of Zoology,  
Govt. Institute of Science, Nagpur.  
R/o 54, Old Jagruti Colony, Katol Road,  
Nagpur-440013.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Higher & Technical Education,  
Mantralaya , Mumbai-32.
2. The Director of Higher Education,  
2<sup>nd</sup> floor, Central Building,  
Near Pune Railway Station, Pune-1.
3. The Govt. Institute of Science, Nagpur.  
Through its Director, Ravindranath Tagore Marg,  
Civil Lines, Nagpur.
4. Dr. Archana Atul Nerkar,  
Aged about 49 years,  
Occ-Associate Professor (CAS),  
Department of Zoology,  
Govt. Institute of Science, Nagpur.  
Presently on deputation at Amravati  
as Joint Director, Higher Education,  
Amravati Region, GVISH VMV Road,  
R/o 53, Nalode Layout, Deendayal Nagar,  
Amravati.

**Respondents.**

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Shri P.S. Wathore, Ld. Advocate for the applicant.  
Shri P.N. Warjekar, Ld. P.O. for the respondents 1 to 3.  
Miss Archana Lanjewar, learned counsel for respondent No.4.

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**Coram:- Shri J.D. Kulkarni,**  
**Vice-Chairman (Judicial)**

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**JUDGMENT**

(Delivered on this 4<sup>th</sup> day of May 2018.)

Heard Shri P.S. Wathore, the learned counsel for the applicant, Shri P.N. Warjekar, the learned P.O. for respondent Nos. 1 to 3 and Miss Archana Lanjewar, learned counsel for respondent No.4.

2. The applicant in this case has challenged the impugned order dated 31<sup>st</sup> May 2017, whereby he has been transferred from Govt. Institute of Science, Nagpur to Govt. Institute of Science, Mumbai on the post of Associate Professor in Zoology. According to the applicant, there is an oblique intention behind issuing of impugned order of transfer and attempts were continuously made to keep the applicant away from the present place of posting, as the applicant has played vital role of whistle blower to unearth the corruption and favouritism by the respondents to

accommodate the employees of his choice. It is stated that the applicant is being harassed at the instance of junior employees.

3. According to the applicant, number of senior persons such as 1) Dr. Archana Atul Nerkar (R.4) and 2) Dr. (Mrs) Swati Avinash Kaushik were overdue for transfer, but they were not considered. It is alleged that respondent Nos. 1 and 2, in furtherance of their common intention were hatching conspiracy in a clandestine manner to remove the applicant from the post of Head of the Department and, therefore, starting making attempts to tarnish the highly reputed image of the applicant through mischievous communication / complaint by Dr. Archana Atul Nerkar (R.4). It is stated that the post at Nagpur is still vacant and the charge has not been handed over to anybody. It is, therefore, prayed that the impugned order of transfer be quashed and set aside.

4. The respondent Nos. 1 and 2 filed affidavit in reply and denied the allegations. It is stated that the applicant is directly recruited through M.P.S.C. as Associate Professor in Zoology and Dr. (Mrs.) Archana Atul Nerkar (R.4) and Dr. (Mrs.) Swati Avinash Kaushik are promoted to the said post through C.I.S. The cadre of the applicant and Dr. (Mrs.) Archana Atul Nerkar and Dr. (Mrs.) Swati Avinash Kaushik are different and, therefore, even if Dr. (Mrs.)

Archana Atul Nerkar and Dr. (Mrs.) Swati Avinash Kaushik were promoted to the post of Associate Professor through C.I.S., will be considered in the list of Assistant Professors and, therefore, their seniority cannot be taken into common seniority list. The name of the applicant is included in the list of directly recruited Associate Professors, whereas those of Dr. (Mrs.) Archana Atul Nerkar and Dr. (Mrs.) Swati Avinash Kaushik are included in the list of Assistant Professors. Two different proposals were forwarded for transfer of the applicant and the respondent No.4. The applicant was due for transfer and she has completed more than 5 years and 3 months at Institute of Science, Nagpur and, therefore, in due course, she has been transferred. The respondent No.4 Dr. (Mrs.) Archana Atul Nerkar also filed an affidavit and denied the allegations. Respondent No.3 i.e. Director, Institute of Science, Nagpur also filed an affidavit and adopted the reply filed by respondent Nos. 1 and 2.

5. From perusal of the record, it seems that the post of Associate Professor at Nagpur is not vacant at present, since one Mrs. Alka Chougule was posted in place of the applicant and she has already joined the said post on 3.10.2017, as seen from Exh.X placed on record by the learned P.O.

6. So far as the allegations against the respondents are concerned, said allegations are mere allegations without any proof and in fact, the applicant should have thought over it hundred times before making such allegations against the respondents. Admittedly, the applicant was due for transfer from Nagpur and it seems that, in due course he has been transferred. The impugned order of transfer has been passed on 31.5.2017 and, therefore, it is not mid-term or mid-tenure transfer, as the applicant has already completed her tenure at Nagpur. I, therefore, absolutely find no merit in this O.A. There is nothing on record to show that, the impugned order of transfer is against the provisions of any of the Sections of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the "Transfer Act of 2005"). Being a Class-I officer, the applicant can be transferred anywhere in the State of Maharashtra and, therefore, he cannot take any objection for his transfer to Mumbai. The learned P.O. has also placed on record the documents which were considered at the time of considering the transfer of the applicant alongwith other officers, from which it seems that since the applicant was due for transfer, he was considered for

transfer. I do not find any illegality in transferring the applicant to Nagpur.

7. At the time of hearing the matter at interim stage on 5.6.2017, the learned counsel for the applicant submitted that the respondents have not followed the procedure for preparation of the list of candidates due for transfer and also pointed out other procedural aspects under Section 4 of the Transfer Act of 2005. However, the said points were not raised at the time of final hearing. As per Section 4 of the Transfer Act of 2005, no Govt. servant shall ordinarily be transferred unless he has completed his tenure of post, as provided in Section 3 of the Transfer Act of 2005 and such tenure shall be three years. Admittedly, in the present case, the applicant has been working at Nagpur from 2012 and, therefore, he was overdue for transfer. In the O.A., the ground that the transfer order is violative of Section 4 (2) of the Transfer Act of 2005, has been taken. Section 4 (2) of the Transfer Act of 2005 states that the competent authority shall prepare every year in the month of January a list of Govt. servants due for transfer in the month of April and May in the year. However, it is not clear as to on what basis, the applicant is making such allegations. The applicant is admittedly overdue for

transfer and, therefore, it cannot be said that he, in any manner, has been prejudiced by the order of transfer.

8. For the reasons stated in foregoing paras, I do not find any merit in this O.A. Hence, the following order:-

**ORDER**

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

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

Dated :- 04/05/2018.

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