

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
C.A. No.480/2016 in
ORIGINAL APPLICATION NO. 397/2016

Rajashri Appasaheb Raut,
Aged about 35 years,
R/o Plot No. 316, Bhaktisahanivas Apartment,
Near Ajani Police Station, Vishvakarmanagar,
Nagpur.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Public Health Department ,
Mantralaya,Mumbai.
2. The Director of Health Services,
Directorate of Health Services,
Arogya Bhavan, St.George Hospital,
Mumbai.
3. The Dy. Director of Health Services,
Nagpur Circle, Nagpur.
4. The Civil Surgeon,
Daga Hospital, Nagpur. -----

Respondents

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1. Shri A.P. Tathod, Advocate holding for Shri A.D. Girdekar, Id. Advocate for the applicant.
 2. Shri A.M. Khadatkar, Presenting Officer for the Respondents.

CORAM : **S.S. Hingne: Vice Chairman**

DATE : **15th December, 2016**

ORDER

The challenge to the transfer order dtd. 31/5/2016 (Annex-A-5, page-12) is made by the applicant-Staff Nurse by which she is shifted from Nagpur to Deori.

2. Heard Shri A.P. Tathod, Advocate holding for Shri A.D. Girdekar, Id. Counsel for the applicant and Shri A.M. Khadatkar, Id. P.O. for the respondents.

3. The challenge is two fold. 1) the applicant was not due for transfer and thus it is a mid-tenure transfer and 2) she has not opted for transfer but her transfer is shown on request.

4. So far as the first point is concerned, the applicant was transferred vide order dtd. 9/7/2014 (Annex-A-3, page-10) from Wardha to Nagpur and in 2016, she was not due for transfer. The impugned transfer order dtd. 31/5/2016 is a general transfer order. It mentions that the order is issued under the provisions of the Maharashtra Govt. Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties

Act, 2005 (hereinafter referred to as the 'Transfer Act'). However, it does not state that it is issued in compliance of the provisions of Sections 4(4) and 4(5) of the Transfer Act. When the applicant is subjected to transfer though not due, the compliance of Section 4 (5) was necessary it being mid-tenure transfer. It is not the case of the respondents that compliance is done. However, they have come with the case that the applicant's transfer is on request.

5. This leads to consider second aspect. According to the applicant she had never made request for transfer. Truly, the impugned order in the remarks column says that the transfer is on request . However, the applicant's case that she had never opted for transfer and she had no reason to seek transfer for the variety of reasons. In 2014, the applicant had opted for transfer from Wardha to Nagpur and she was transferred at Nagpur vide transfer order dtd. 9/7/2014 (Ananex.A-3, page-10) on request. The applicant's father-in-law is 73 years old and suffering from Cancer and her mother-in-law is suffering from chronic kidney disease and requires dialysis and they both are

residing with her at Nagpur. The medical certificates to that effect are also filed(Annex-A-6, page-19 to 24). It is also submitted that the applicant's parental place is Marathwada. Her in-laws are residing with her at Nagpur and there is no reason for her to opt for Deori, which is the remote tribal and naxalite affected place at the last corner of Maharashtra.

6. The respondents have filed the request application of the applicant (Annexure-R-1, page-28) to show that she had opted for transfer at Deori. No doubt the application says that her original village is Deori and her in-laws are residing there and therefore she be posted at Deori. The applicant has come with the case that it does not bear her signature. She has filed the rejoinder (page-29) in which she has submitted that it is a fabricated document. The respondents have filed affidavit-in-reply to the rejoinder and submitted that she has submitted such application on 4/6/2015. It bears the stamp of the office. However it does not bear outward and inward No. The outward register is produced and in the register this application bears inward No. as 9452 dtd. 5/6/2015.

7. The Id. Counsel for the applicant urged that this document is fabricated one and it does not bear the signature of the applicant. The signature of the applicant on the O.A. was compared with the signature on this application at page-28. If both the documents are juxtaposed, it is visible even with the bird's eye view that both the signatures do not tally at all. However, to clarify the position the applicant's signature on the admitted document which is prior to 4/6/2015 i.e. before the application was compared. Her signature on the application dtd. 1/12/2014 is available at Annexure-A-4, page-11. By this application she had opted for transfer at Nagpur. This admitted signature if compared with the alleged option application, it is manifest that no slender semblance is there in the mode of the signature. From this document it is seen that she starts her signature with her surname and ends with her initial. Whereas in the alleged document of option her signature commences with initial and finishes with surname. It appears that there is a sea change in the mode and manner betwixt these two signatures.

8. Moreover nobody from the family of the applicant is resident of such a remote place. On the contrary, the parental place of the applicant is western Maharashtra. Her in-laws are residing with her at Nagpur and are resident of Amravati and are taking treatment at Nagpur which cannot be available at such a remote Taluka place of the tribal district. When living in the metropolitan place like Nagpur, nobody will opt for remote place when there are no other family or domestic reasons.

9. Moreover, the alleged option application does not bear the inward No. The signature thereon does not tally with signature of the applicant. In the light of these facts the submission of the applicant that some colleagues being on bad blood with her played mischief with her cannot be thrown away easily. Under such circumstances, it has to be held that the applicant had not opted for transfer and there cannot be transfer on any reason to seek request. Secondly there is no compliance of the provisions of the Transfer Act. The cumulative effect is that the order cannot be said to be legal and valid.

10. Consequently the O.A. is allowed. The impugned transfer order of the applicant dtd. 31/5/2016 is quashed and set aside. No order as to costs.

(S.S. Hingne)
Vice-Chairman.

Skt.