

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 536 OF 2016**

**DISTRICT : THANE**

Shri Vikas Kesharlal Biyani, )  
Working as Assistant Commissioner of )  
Drugs, Thane Zone-7. )  
Food & Drugs Administration [Konkan )  
Division], Thane, ESIS Hospital Bldg, )  
4<sup>th</sup> floor, Road No. 33, Waghale Estate, )  
Thane (W). R/o: B-3/2-4, Saket Complex )  
Thane [W] 400 601. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Principal Secretary, )  
Medical Education and Drugs Dept.)  
Mantralaya, Mumbai 400 032. )
2. The Commissioner, )  
Food & Drugs Administration, )  
Survey No. 341, Bandra Kurla )  
Complex, Bandra [E], )  
Mumbai 400 051. )

LA

3. Shri G.B Byale, )  
Assistant Commissioner of Drugs, )  
Beed, Food & Drugs Administration, )  
Shahu Nagari, Near Shahu Park, )  
BEED 421 122. )...**Respondents**

Ms Swati Manchekar, learned advocate for the Applicant.

Ms Neelima Gohad learned Presenting Officer for the Respondents no 1 & 2.

Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 07.07.2016**

**ORDER**

1. Heard Ms Swati Manchekar, learned advocate for the Applicant, Ms Neelima Gohad learned Presenting Officer for the Respondents no 1 & 2 and Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

2. This Original Application has been filed by the Applicant challenging the transfer order dated 31.5.2016, issued by the Respondent no. 1, transferring him from Thane to Yavatmal. The Applicant is seeking quashing of

the order dated 31.5.2016, posting the Respondent no. 3 to Thane, in his place.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Thane by order dated 6.8.2013, though he actually joined on 12.8.2013. He had not completed his tenure of 3 years when he was transferred by the impugned order dated 31.5.2016. The Applicant is also challenging the transfer of the Respondent no. 3 to Thane, though he had also not completed his tenure at Beed. The Applicant's case was considered by the Civil Services Board on 30.5.2016. It seems that a complaint was made against the Applicant by Small Scale Entrepreneurs Association (the Association) TTC, Navi Mumbai. This complaint is dated 21.3.2016. It was received in the office of the Minister on 26.4.2016 and he directed that enquiry may be conducted in the complaint. A letter was sent by the Respondent no. 1 to the Respondent no. 2 on 26.5.2016 and before any report is received, the Applicant is transferred on the basis of the complaint. Learned Counsel for the Applicant argued that the order of transfer is by way of punishment and is illegal. Learned Counsel for the Applicant further argued that the Association has recommended the name of one Mrs Veenita Esther Thomas for the post of Assistant Commissioner of Drugs, Thane Zone-7, which tends to show that the complaint by the Association against the

Applicant was made for extraneous reasons. Learned Counsel for the Applicant stated that the charges against the Applicant in the complaint are totally false. The complaint states that period of disposal of application for Licences is 15-130 days, while as per the inward register maintained in the office of the Applicant, it is 1-35 days. Learned Counsel for the Applicant stated that complaint of the Association about permitted colours in the drugs is also false. Learned Counsel for the Applicant stated that there are no exceptional circumstances or special case to transfer the Applicant before completion of his tenure, as required under Section 4(4)(ii) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). The transfer order is, therefore, bad in law.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 & 2 that there were serious complaints against the Applicant. The Respondent no. 2 by letter dated 27.5.2016, recommended that the Applicant be transferred from Thane Zone-7 due to serious complaints against him. Learned Presenting Officer argued that the matter was considered by the Civil Services Board which recommended transfer of the Applicant. The next higher transferring authority under Section 6 of the Transfer Act approved transfer of the Applicant, as a special case for

his transfer was made out. Learned Presenting Officer argued that 'the Association' might have recommended posting of some officer in place of the Applicant, but that did not influence the decision of the Government and that fact is not relevant. The Applicant was transferred after the procedure under the Transfer Act was fully complied with. It was necessary to transfer the Applicant, pending enquiry against him.

5. Learned Advocate Shri Bandiwadekar argued on behalf of the Respondent no. 3 that he had requested for a posting in Thane due to personal difficulties. His request was accepted by the authorities. There is nothing illegal in the transfer order of the Respondent no. 3. Learned Counsel for the Respondent no. 3 argued that the Applicant has more or less completed his tenure and it was hardly short by 2 ½ months. The complaint of the Association was verified and then only the Applicant was transferred after complying with the requirement of the Transfer Act.

6. In Government Circular dated 11.2.2015, in para 4, it is stated that:-

“ ४. एखाद्या अधिकारी/कर्मचा-याने एखाद्या विशिष्ट पदाची मागणी केल्यास वा सदरहू अधिकारी/कर्मचा-याने मा. लोकप्रतिनिधी मार्फत एखाद्या विशिष्ट पदाची मागणी केल्यास व सदरहू विशिष्ट पदावर ३ वर्षांपेक्षा कमी कालावधी असलेला अधिकारी/कर्मचारी कार्यरत असल्यास संबंधीत अधिकारी/कर्मचा-याची बदली न करता मागणी करणा-या

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अधिकारी/कर्मचा-याची पदस्थापना अन्य पदावर करण्याची दक्षता बदली प्राधिका-याने घ्यावी.”

It is seen that in para 8 of the aforesaid circular it is clearly mentioned that an employee should not be transferred merely on the complaints. The complaint should be verified. In the present case, the Respondent no. 3 had not completed his tenure, even then he has been posted in place of the Applicant, who had not completed his tenure. The Applicant is transferred, only on the basis of a complaint, which is at Exhibit A-10 of the Paper Book. Two specific issues are raised in the complaint, i.e that the Applicant was asking that colour index should be used, and the time for obtaining product manufacturing permissions was 15 to 130 days. Both these facts could have been verified quickly. However, though the Minister apparently asked for enquiry into the complaint on 28.4.2016, letter was sent by the Government to the Commissioner for conducting enquiry only on 26.5.2016, after more than a month. Then without waiting for the enquiry report transfer of the Applicant to Yavatmal was recommended on the basis of the complaint. This is in clear violation of Government circular dated 11.2.2015. This Tribunal, has in a number of cases held that an employee cannot be transferred on a mere complaint. In the present case, the complainant Association apparently recommended name of some other officer to be posted in place of the

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Applicant. Though that officer was not posted in place of the Applicant, it appears that the Association did have some oblique motive in making the complaint dated 21.3.2016. The Applicant claims that actual time taken by him for disposal of applications for permission to manufacture drugs was between 1 to 35 days. I do not make any comment as to whether this is an adequate defence. However, the fact remains that this could have been verified easily. Whether the time taken by the Applicant in disposal of the Application was justified or not could have been determined. As regards, colours to be used in drugs, the Applicant claims that he was insisting that the rules in this regard must be followed. This fact is also easily verifiable. The Respondent no. 1 did not ensure that the facts mentioned in the complaint against the Applicant were verified quickly. The Commissioner was asked to do so more than one month after the Minister's order in this regard. This Tribunal has held in many cases that a mere complaint cannot be called exceptional circumstances or special case for invoking section 4(4)(ii) of the Transfer Act. The order dated 31.5.2016 transferring the Applicant from Thane to Yavatmal cannot be sustained. Similarly, the Respondent no. 3 had not completed his tenure of 3 years at Beed. No special reasons for his transfer before completion of his tenure have been recorded by the Civil Services Board in the meeting held on 30.5.2016, except family responsibilities and personal reasons. In Government

Circular dated 11.2.2015, excerpts from this Tribunal's order dated 16.9.2014 in O.A no 703/2014 has been quoted and it is clear that this Tribunal has held that a transfer 'merely on request' does not satisfy the existence of 'special reason' or 'exceptional circumstances'. Transfer orders of both the Applicant and the Respondent no. 3, each dated 31.5.2016 are not maintainable.

7. Having regard to the aforesaid facts and circumstances of the case, transfer order dated 31.5.2016 transferring the Applicant from Thane to Yavatmal and the order dated 31.5.2016 transferring Respondent no. 3 to Thane in place of the Applicant are quashed and set aside. The Respondent no. 1 will allow the Applicant to join at Thane within four weeks from the date of this order. The Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)  
Vice-Chairman

**Place : Mumbai**  
**Date : 07.07.2016**  
**Dictation taken by : A.K. Nair.**