

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.583 OF 2021

**DISTRICT : MUMBAI
SUBJECT : TRANSFER**

Smt. Ranjna Tukaram Kadam,)
aged 40, Occ. – working as Staff Nurse,)
residing at 302, Balaji Enclave Society,)
Plot No.14, Sector 21, Kamothe, Panvel,)
Dist. Raigad – 410 209.)...**Applicant**

Versus

- 1) The State of Maharashtra,)
through Secretary, Health Service Depart.)
GT Hospital, Mumbai 400 032.)
- 2) The Deputy Director, Health Services,)
Mumbai Mandal Regional Mental)
Hospital Premises, Thane (W) - 400 604.)...**Respondents**

Shri R.G. Panchal, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 13.10.2022.

JUDGMENT

1. Heard Shri R.G. Panchal, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged transfer order dated 09.08.2021 whereby she is transferred from Railway Police Hospital Ghatkopar, Mumbai to Regional Mental Hospital, Thane *inter-alia* contending that it is in contravention of provision of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official

Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity).

3. The Applicant is serving as Staff Nurse. She was transferred and posted at Railway Police Hospital, Ghatkopar, Mumbai by order dated 18.12.2017 and accordingly she joined there. Though she has completed more than three years, she was not transferred in general transfer of 2021. She came to be transferred by order dated 09.08.2021 which is impugned in the present O.A.

4. Shri R.G. Panchal, learned Advocate for the Applicant sought to assail impugned transfer order *inter-alia* contending that transfer order dated 09.08.2021 is mid-term, it being issued in August 2021 instead of in April and May of 2021. Secondly, there is no approval of the next higher authority for such transfer as contemplated u/s. 4(5) of Transfer Act 2005 and thirdly, matter was not placed before C.S.B.

5. Per Contra, in reference to contention raised in Affidavit-in-Reply, She submits that in 2021 due to COVID-19 Pandemic situation general transfer were not effected in April and May, and therefore Government by G.R. dated 29.07.2021 extended the period of issuance to transfer order upto 09.08.2021. She therefore submits that the Applicant having found completed normal tenure of three years in general transfer of 2021 she was due for transfer and accordingly came to be transferred by order dated 09.08.2021 in view of G.R. dated 29.07.2021. As regard, competency she submits that there were complaints against the Applicant, and therefore proposal was forwarded by Deputy Director Health Service, Mumbai and consequent to it the Applicant was transferred to Mental Hospital, Thane with the approval of Director Health Services, Mumbai. As regard, approved by CSB, she fairly concedes that the matter was not placed before the C.S.B.

6. Undisputedly, the Applicant was posted at Railway Police Hospital, Ghatkopar, Mumbai by order dated 18.12.2017 and completed normal tenure of three years in general transfer of 2021. In 2021, on account of COVID-19 Pandemic situation, Government extended the period of issuance of transfer of Government servants who have completed three years tenure and this transfer orders were to be issued upto 09.08.2021. It is thus explicit that time was extended for issuance of transfer orders of those Government servants who have completed normal tenure. This being so, impugned transfer order 09.08.2021 will have to be construed as the general transfer order and it cannot be termed as mid-term transfer.

7. The Applicant being group 'C' employee the Head of the Department is competent authority for general transfer in terms of Section 6 of Transfer Act 2005. In this behalf, perusal of notification dated 03.02.2021 reveals that for group 'C' employee, The Commissioner, Health Services and Director National Health Services Programme, Mumbai is declared as Head of the Department. However, later by notification dated 04.02.2021 powers were delegated to Director Health Service, Pune. The said notification has been issued u/s. 7 of Transfer Act 2005 which *inter-alia* provides for delegation of power by one authority to other authority. As such, Director Health Services, Pune is competent authority for transfer of the Applicant.

8. However, perusal of impugned order dated 09.08.2021, reveals that it has been issued by Deputy Director, Health Services, Mumbai Circle, Thane. Attempt was made by leaned P.O. that it has been approved by Director Health Services, Pune. However, no such record is forthcoming except one signature on proposal forwarded by Deputy Director which is at page 137 of P.B. There is faint initial on the side of the proposal without any designation or specific approval in terms of Transfer Act 2005. In absence of it, it can't be inferred that the transfer order is issued by competent authority.

9. That apart, even assuming for a moment that transfer has been approved by Director Health Service, Pune in that event also there being no recommendation of C.S.B., the transfer order is unsustainable in law in view of decision of Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**. The Applicant was shown transferred on compliant, and therefore the placing of matter before CSB is *sine-qua-non*. Indeed, the Government had issued G.R. dated 31.01.2014 for constitution and composition of CSB at various level in compliance of the directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian's (cite supra)**. However, in present case admittedly the proposal was not placed before CSB.

10. In this view of the matter, there is no escape from the conclusion that impugned transfer order is bad in law and liable to be quashed. The transfer order is already stayed by interim relief which needs to be made absolute.

ORDER

- A) The Original Application is allowed.
- B) The impugned transfer order dated 09.08.2021 is quashed and set aside.
- C) No order as to costs.

**Sd/
(A.P. Kurhekar)
Member (J)**

Place: Mumbai
Date: 13.10.2022.
Dictation taken by: N.M. Naik.

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