

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.344/2017. (S.B.)**

Yogesh Kantil Chandarana,  
Aged about 54 years,  
Occ-Service,  
R/o Row House No.A-8, Madraprastha,  
Vatsalyabhumi, Near Power House,  
Wathoda, Nagpur-8.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Higher & Technical Education,  
4<sup>th</sup> floor, Mantralaya Annexe, Madam Cama Road,  
Nariman Point, Mumbai-32.
2. The Directorate of Technical Education (M.S.),  
Mahapalika Marg, P.B. No.1967,  
Opp. Metro Cinema, Mumbai-1  
Through its Director.
3. Maharashtra State Board of Technical Education,  
Officer Incharge, Mumbai Sub-Region,  
2<sup>nd</sup> floor, Govt. Polytechnic Building,  
49, Kherwadi, Bandra (East), Mumbai-51,  
Through its Director.
4. The Joint Director, Technical Education,  
Regional Office, Govt. Polytechnic Campus,  
Near Mangalwari Bazar, Sadar, Nagpur-1.
5. The Principal,  
Govt. Polytechnic, Nagpur.  
Govt. Polytechnic Campus,  
Near Mangalwari Bazar, Sadar, Nagpur-1.

**Respondents.**

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Miss K.K. Pathak, the learned counsel for the applicant.  
Smt. S.V. Kolhe, the Ld. P.O. for the respondents.

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

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### **JUDGMENT**

(Delivered on this 9<sup>th</sup> day of November 2017).

Heard Miss K.K. Pathak, the learned counsel for the applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.

2. The applicant Yogesh Kantilal Chandarana is the Head of the Department in Govt. Polytechnic College, Nagpur and vide impugned order dated 31.5.2017 he has been transferred as Deputy Secretary in the Maharashtra State Technical Education Board at Mumbai. His order has been shown as ~~%~~administrative transfer~~±~~. The said order has been challenged in this O.A. It is stated that the said order is against the Government directions issued as regards appointment / transfer to the post of Deputy Director and also against the rules framed in this regard.

3. According to the applicant, the applicant belongs to the cadre called, ~~%~~Maharashtra Engineering Teachers and Administrative Services, Group-A~~±~~. The Govt. of Maharashtra took a policy decision, bifurcating the cadre of Maharashtra Engineering Teachers and Administrative Services, Group-A into Maharashtra

Polytechnic Teachers Services, Group-A and the Maharashtra Engineering Administrative Services, Group-A. In pursuance of the said decision, the Government Resolution dated 9.9.2004 was also published. Nature of duties, roles and responsibilities of the teaching cadre i.e. the Head of the Department in various subjects, the Government Polytechnics under respondent No.1 and the nature of duties, roles and responsibilities of administrative cadre i.e. the Deputy Secretary (Technical) are completely different. The pay scale of teaching cadre is on higher side. The applicant is drawing his salary in the pay band of Rs.37,400-67000 and grade pay of Rs.9000/-, whereas pay scale of the Deputy Secretary is Rs. 15,600-39100 and grade pay of Rs.6900/-.

4. Respondent No.1 issued a notification on 1.4.2015 and called options for effecting transfers on deputation in the year 2015. In view of the said notification on 6.4.2016, the applicant gave option for the post of Deputy Secretary (original office) at Nagpur, Pune and Amravati. Period of said option was to come to an end on 6.4.2017. He never opted for Mumbai. Respondent No.1, however, took disadvantage of the said option and transferred the applicant vide impugned order dated 31.5.2017, as already stated, from Nagpur to Mumbai as a Deputy Secretary. The said transfer is, therefore, not as per option given by the applicant.

5. The learned counsel for the applicant submits that before transferring the applicant to the post of Deputy Secretary at Mumbai, the Govt. of Maharashtra has notified the rules called, Director of Technical Education, Joint Director of Technical Education in Maharashtra State Board of Technical Education, Deputy Secretary of Technical Education or Secretary, Maharashtra State Board of Technical Education, Assistant Director (Technical) of Technical Education or Deputy Secretary, Maharashtra State Board of Technical Education, Assistant Secretary of Maharashtra State Board of Technical Education, Maharashtra Engineering Administrative Service Group-A (Recruitment) Rules, 2017 (same hereinafter referred to as Recruitment Rules of 2017). According to the learned counsel for the applicant, as per these rules, the applicant cannot be transferred or deputed to the post of Deputy Secretary, since the applicant is holding the post of Head of the Department and the Head of the Department can be considered only for the post of Secretary and not for the post lower to the post of Secretary and, therefore, on this count also applicant's transfer to the post of Deputy Secretary is illegal.

6. In the reply affidavit, respondent Nos. 1 to 4 and 5 submitted that the applicant has completed his tenure of six years at Govt. Polytechnic, Nagpur in the subject of Applied Mechanics as Head of the Department and, therefore, he was due for transfer. The

applicant has also given his willingness to the post to work on administrative post and, therefore, he has been transferred to Mumbai as per G.R. dated 31.5.2017 on administrative ground with prior approval from the competent authority. Even though the applicant is transferred on non teaching administrative post, his pay and pay scale is protected and there is no financial loss to the applicant.

7. The applicant filed rejoinder to the reply affidavit filed by the respondents alongwith the Rules of 2017.

8. Miss K.K. Pathak, the learned counsel for the applicant submits that earlier similar question came up for consideration before this Tribunal in **O.A. No.802/2013 in case of Shri S.D. Muley V/s State of Maharashtra and others** and this Tribunal at Mumbai on 5.5.2014 was pleased to refer to the judgment delivered by the Hon'ble Supreme Court in case of **Tejshree Ghag and others V/s Prakash Parshuram Patil and others in Civil Appeal No. 2697 of 2007 decided on 17<sup>th</sup> May 2007.** The said judgment has been reported in **(2007) 6 SCC 220.** In the said case, the Hon'ble Supreme Court has observed as under:-

An order of transfer cannot prejudicially affect the status of an employee. If orders of transfer substantially affect status of an employee, the same would be violative of the conditions of service and thus illegal.

Further, the true criterion for equivalence is the status and the nature and responsibilities of duties attached to the two posts.+

9. Admittedly in the present case, the applicant is working as Head of the Department and now he is being posted on administrative post which is comparatively at lower level than he is working. Therefore, merely because his pay scale has been protected, it cannot be said that his deputation to a lower post is illegal.

10. Even for the argument sake, it is accepted that the applicant has been posted / deputed / transferred on the post as per his willingness, it has to be considered as to whether the said contention of the respondents is legal and proper.

11. Notification dated 1.4.2015 is placed on record at page Nos. 63 to 66 (both inclusive) (Annexure A-7) whereby options were called for the post of Deputy Director and other administrative posts from the competent employees. The subject and opening para of the said letter clearly shows that the options were called for the post which was having the tenure of at the most two years. The very opening para of the said notification reads as under:-

“**वषयः-** महाराज् आभ्यां क् शासकय सेवा या संवगात्नील एत पदांवर तदथ् यवथेने ०२ वषाछे कमाल कालावधीसाठ् एतजयुती / बदल करयाबाबत.



the post of his option. Thus, the respondents submission that the applicant has been transferred on his request or as per his option, his option cannot be said to be legal.

14. The learned counsel for the applicant further invited my attention to the Recruitment Rules, 2017 and particularly Clause 5 (c) and Clause 6 (c) of the said rules which are placed on record at page No.86 and 86 (O). Clause 5 (c) deals with appointment to the post of Deputy Director of Technical Education or Secretary, Maharashtra State Board of Technical Education. These rules state about various options open for such appointment. So far as the applicant is concerned, Clause 5 (c) is applicable and the said Clause 5 (c) reads as under:-

5. Appointment to the post of Deputy Director of Technical Education or Secretary, Maharashtra State Board of Technical Education shall be made either,

(a) by promotion from amongst the persons holding the post of Assistant Director of Technical Education or Secretary, Maharashtra State Board of Technical Education ;

(b) by transfer on deputation from amongst the persons holding the post of Assistant Professor in Govt. Engineering College or Head of Department in Govt. Polytechnic ;

(c) by transfer on deputation from amongst the persons holding the post of Associate Professor in Govt. Engineering College or Head of Department in Govt. Polytechnic :

Provided that, appointment by transfer on deputation shall be made only in case the post cannot be filled in by promotion or by nomination :



Provided further that the term and other conditions of appointment by transfer on deputation shall be as per deputation policy of State Government.+

15. This clause clearly shows that a person can be transferred on the post of Deputy Director of Technical Education or Secretary, Maharashtra State Board of Technical Education on deputation from the persons holding the post of Associate Professor, Govt. Engineering College or of Head of the Department in Govt. Polytechnic. The applicant has not been transferred / deputed to the post of Secretary, but he has been transferred to the post of Deputy Secretary.

16. So far as the appointment to the post of Assistant Director (Technical) of Technical Education or Deputy Secretary, Maharashtra State Board of Technical Education is concerned, Rule 6 (c) is applicable and the said rule 6 (c) reads as under:-

**6.** Appointment to the post of Assistant Director (Technical) of Technical Education or Deputy Secretary, Maharashtra State Board of Technical Education shall be made either,

(a) by promotion or by nomination :

(b) by transfer on deputation from amongst the persons holding the post of Assistant Professor in Govt. Engineering College or Lecturer in Govt. Polytechnic :

(c) by transfer on deputation from amongst the persons holding the post of Assistant Professor in Govt. Engineering College or Lecturer in Govt. Polytechnic :

Provided that, appointment by transfer on deputation shall be made only in case the post cannot be filled in by promotion or by nomination :

Provided further that the term and other conditions of appointment by transfer on deputation shall be as per deputation policy of State Government.+

17. The aforesaid Rule 6 clearly shows a person can be posted as Deputy Secretary from the cadre of Assistant Professor in Govt. Engineering College or Lecturer in Govt. Polytechnic. The applicant is neither Assistant Professor nor Lecturer. He is Head of the Department and, therefore, the applicant can be transferred / deputed only to the post of Secretary, Maharashtra State Board of Technical Education or to the post of Deputy Director of Technical Education. In spite of existence of such Rules of 2017, the applicant has been transferred to the post of Deputy Secretary. His option dated 6.4.2015 which was for two years as per notification dated 1.4.2015 cannot be used against him and as already stated, even otherwise the option given by the applicant was not for the post at Mumbai and, therefore, it cannot be said that the applicant has been transferred on his own request. The observations made by this Tribunal in O.A. No.802/2013 are applicable to the present set of facts.

18. On a conspectus of discussion in foregoing paras, I am, therefore, satisfied that the impugned order of transfer / deputation dated 31.5.2017 in respect of the applicant is not legal and proper and, therefore, the same stands quashed and set aside.

19. As already stated, the applicant has completed his tenure in the present post as Head of the Department, in view thereof, following order is passed:

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned order of transfer of the applicant dated 31.5.2017 stands quashed and set aside.
- (iii) Since the applicant has completed his tenure in his present post at Nagpur, the respondents are directed to post the applicant anywhere in the available post in the teaching department.
- (iv) The said order shall be issued as early as possible and in any case within a period of **one month** from the date of this order.
- (v) No order as to costs.

Dt. 9.11.2017.

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

