

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.469 OF 2017**

**DISTRICT : KOLHAPUR**

Mrs. Neha Vaijinath Kapare. )  
Working as Assistant Matron, )  
Residing at "Jai", 4/5, Rangkamal Nagar, )  
Devkar Panand, Kolhapur – 416 012. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Chief Secretary, )  
Mantralaya, Mumbai - 400 032. )
2. The Additional Chief Secretary. )  
Medical Education & Drugs Dept., )  
Mantralaya, Mumbai – 400 032. )
3. The Director. )  
Medical Education & Research, )  
Government Dental College Building, )  
4<sup>th</sup> Floor, St. George Hospital Campus, )  
Mumbai – 400 001. )
4. Dean. )  
Rejashree Chatrapati Shahu Maharaj )  
Government Medical College And )  
Chatrapati Pramilaraje General Hospital, )  
Bhausinghaji road, Dasara Chowk, )  
Rajendra Nagar, Kolhapur – 416 013. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM** : **A.P. KURHEKAR, MEMBER-J**

**DATE** : **26.06.2019**

### **JUDGMENT**

1. The Applicant has challenged the impugned transfer order dated 31.05.2017 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant was working as Assistant Matron at Rajashree Chatrapati Shahu Maharaj Government Medical College and General Hospital, Kolhapur. She has not completed normal tenure of six years, but transferred by impugned order dated 31.05.2017 from Kolhapur to Government Medical College and Hospital, Nanded on alleged complaint. The Applicant has assailed the impugned transfer order contending that, it being on false complaints amount to punishment and there is no compliance of Section 4(4)(ii) and 4(5) 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). She further contends that it is also in violation of Circulars dated 11.02.2015 and 24.09.2015 issued by the Government which postulates the proper enquiry where transfer is necessitated on the complaints.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.41 to 49 of P.B.) *inter-alia* denying that the impugned transfer order suffers from any illegality. In this behalf, the Respondents contend that there is serious complaints against the Applicant as well as her colleague Smt. Charubala Salokhe and with the approval of Civil Services Board (CSB), the Applicant was transferred to Nanded. As regard competency of the transferring authority, the Respondents contend that the Director, Medical Education and Research (Respondent No.3) is

the Head of Department and competent transferring authority. Thus, the Respondents denied that the impugned transfer order is malicious or by way of punishment and sought to justify the transfer of the Applicant on the ground of complaints.

4. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

5. At the very outset, it needs to be stated that by impugned order dated 31.05.2017, two employees viz. Smt. Charubala Salokhe, Assistant Matron as well as Applicant with other two employees were transferred. Smt. Salokhe was transferred to Yeotmal and Applicant has been transferred to Nanded. Both these employees were shown transferred on administrative ground. What is important to note that Smt. Salokhe had challenged the said transfer order by filing O.A.No.470/2017, which came to be allowed by this Tribunal on 27.07.2017. It may be noted that the transfers of Smt. Salokhe as well as Applicant are arising from the common set of facts and on some complaints. This Tribunal in its elaborate Judgment discussed the nature of complaints, its relevance, etc. and set aside the transfer order qua Smt. Salokhe. The learned P.O. has fairly stated that the Judgment in O.A.470/2017 is not challenged before higher forum and has been implemented. This being the position, the present O.A. also needs to be allowed in view of the finding recorded by the Tribunal in O.A.470/2017 as it is hit by principle of *res-judicata*. True, the Applicant was not party to O.A.470/2017, but there is no denying that the said proceeding is arising from common transfer order as well as common facts giving rise to the transfer order. I would like to deal with the Judgment in O.A.470/2017 briefly.

6. The Tribunal in Judgment of O.A.No.470/2017 made elaborate discussion about the nature of complaint, its relevance, finding of Enquiry Committee and the legality of impugned transfer order. The perusal of Judgment reveals that in

respect of the complaints against the present Applicant as well as Smt. Salokhe and Smt. Natekar, Four Member Committee was set to enquire into the matter in detail and submit the report. The observation of the Committee were that about 90% of the Nurses had no complaints against the Applicant or Smt. Natekar or Smt. Salokhe.

7. Here, let us see the nature of complaints and grievances, which are as follows :-

- (i) The Applicant, Smt. Natekar and Smt. Salokhe were making the Nurses to work as Clerks.
- (ii) They were not working in accordance with Job Chart and negligent in duties.
- (iii) They were not supervising the Department efficiently.
- (iv) They were not displacing duty list and were working in arbitrary manner.
- (v) They were collecting money from Nurses.
- (vi) They were constantly holding meetings and other programmes and thereby keeping themselves away from service to the patients.
- (vii) They were issuing misleading Circulars.
- (viii) They were making false allegations against Office bearers and members of Maharashtra Government Nurses Association, Kolhapur.

8. Thus, the perusal of Judgment reveals that the complaints were made by Maharashtra Government Nurses Association against the functioning of the

Applicant, Smt. Salokhe and Smt. Natekar. The Enquiry Committee had observed that sufficient number of persons were not available for the service to the patients. The Committee further observed that most of the Nurses did not have any complaints of arbitrary exercise of power by the Applicant. The Committee further observed that no complaint was received by the College or Hospital about deficiency of services to the patients. In conclusion, the Committee observed that, to some extent, the complaints by the Nursing Association were exaggerated. In view of the Enquiry Committee Report, the Tribunal held that there was no substance in the complaints and the transfer order on the basis of said complaint is not sustainable.

9. The Tribunal in O.A.470/2017 further observed that there is no proper compliance of Circular dated 11.02.2015. As per this Circular, the concerned authorities were directed to comply with the provisions of 'Transfer Act 2005' in case of mid-term or mid-tenure transfer and there has to be special reasons or exceptional circumstances for such transfer. The Tribunal accordingly held that no case was made out for mid-term or mid-tenure transfer and secondly, there was no compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. Consequently, the impugned transfer order has been quashed.

10. As such, the present O.A. being arising from same facts, the transfer order qua present Applicant must go and liable to be set aside.

11. Apart, material to note that interestingly, there was no approval for the transfer of the Applicant by CSB. In fact, the CSB in its meeting dated 30.05.2017 proposed for the transfer of Nurses who have already completed their tenure. The Committee further recommended that the Nurses against whom complaints are made by Union, those Nurses, if completed normal tenure, then only be transferred on administrative ground. As such, it is quite clear that the CSB did not approve the transfer of the Applicant.

12. Suffice to say, in absence of specific recommendation of CSB that the transfer of the Applicant, which is admittedly mid-tenure is not sustainable in law.

13. Apart, it being mid-tenure transfer, there had to be compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'. Admittedly, the impugned transfer order passed by Head of the Department without approval of next higher authority, as contemplated in Section 4(4)(ii) and 4(5) of 'Transfer Act 20095'. Indeed, the Applicant is shown transferred on administrative ground without assigning any reason much less justifiable in law.

14. The totality of aforesaid discussion leads me to sum-up that the impugned order qua Applicant is bad in law and deserves to be quashed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 31.05.2017 qua Applicant is quashed and set aside.
- (C) Resultantly, the interim relief granted by the Tribunal stands confirmed.
- (D) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 26.06.2019

Dictation taken by :

S.K. Wamanse.