

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.736/2015.**

Sangita Mohan Aware,  
Aged about 50 years,  
Occ-Service,  
R/o Govt. Technical High School Centre,  
Hinganthat, Distt. Wardha. **Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Vocational Education & Training,  
Mantralaya, Mumbai-32.
2. The Director,  
Vocational Education & Training (M.S.),  
3, Mahapalika Marg, Mumbai.
3. The Joint Director,  
Vocational Education & Training,  
Regional Office, Near Udyog Bhavan,  
Civil Lines, Nagpur.
4. Smt. Sneha Bharat Motghare,  
Aged Major,  
Occ-Service,  
R/o Govt. Technical High School Centre,  
Mul Road, Gadchiroli.

**Respondents.**

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Shri R.V. Shiralkar, Ld. Advocate for the applicant.  
Smt. M.A. Barabde, Ld. P.O. for the respondents 1 to 3.  
Shri B.D. Pandit, Adv. for respondent No.4.

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**Coram:- B. Majumdar, Vice-Chairman**

**Dated:- 7<sup>th</sup> June, 2016.**

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**Order**

The applicant is a Higher Secondary Teacher in Government Technical School. Her grievance is that in spite of her representations, she has not been transferred to Nagpur and the vacant post has been filled up by posting respondent No.4.

2. The applicant was posted at Nagpur from 1992 to 2006. She was transferred to Gadchiroli on 12.6.2006. Thereafter she was posted at Hinganghat on deputation during 2008 to 2010. A regular order of her transfer to Hinganghat was issued on 18.12.2010. On 19.5.2015, she submitted a representation for posting to Nagpur for various personal reasons. She submitted a detailed representation on 26.11.2015. She filed this O.A. on 27.11.2015. On 30.11.2015, this Tribunal by way of an interim order directed the respondents to decide the applicant's representation dated 19.5.2015. On 30.12.2015, Smt. Sneha Bharat Motghare (R.4) was posted at Nagpur. The applicant has challenged this order in the O.A.

3. Smt. Sneha Bharat Motghare (R.4) was posted at Gadchiroli in 2004. She was transferred to Nagpur in 2006 and was again posted to Gadchiroli on 1.6.2013. From 18.11.2014, she made

representations for transfer to Nagpur on various personal grounds. Vide impugned order dated 30.12.2015, she was transferred to Nagpur. However, she was not relieved from Gadchiroli for reason of pendency of the present O.A.

4. The applicant submits that she had completed her normal tenure of three years at Hinganghat and had been making repeated requests for transfer to Nagpur to respondent No.3 who is the competent authority. A vacant post was available at Nagpur. She has been a patient <sup>of</sup> to chronic asthma for several years and needs prolonged treatment. She had also submitted her medical records to respondent No.3. The respondent No.4 on the other hand, had not completed her normal tenure at Gadchiroli when she was transferred to Nagpur vide the impugned order. The impugned order is in contravention of the interim order dated 13.11.2015 of this Tribunal as the respondents were estopped from filling up ~~of~~ the vacant post at Nagpur till the applicant's representation was decided. The impugned order does not ~~refer~~ at all refer to the above order of the Tribunal or to her representations and as the order does not state the special reasons for the mid-term transfer, it is violative of sub-sections (4) & (5) of Section 4 of the Transfer Act. She further submits that the respondent No.4 has hardly worked at Gadchiroli while in her case she

had put in a long stint. Thus, looked at from any angle, she had a far better and justifiable case for transfer from Nagpur vis-à-vis respondent No.4.

5. The Joint Director, Vocational Education & Training, Nagpur (R.3) in his reply submits as follows:

“(a) That the answering respondent further submitted that they have sent representation / proposal of transfer of the applicant, respondent No.4 alongwith other incumbents to the respondent No.2 and thereafter the respondent No.2 has forwarded the said transfer proposal with the respective reason in proforma (प्रपत्र-क) to the office of respondent No.1 for its approval. It is further submitted that the proposal was approved by respondent No.1.

(b) The answering respondent further submitted that there are one post at Nagpur.1 post at Gadchiroli and 1 post at Hinganghat for Full Time Teachers in Electronics and Technology. That in considering the representation / proposal sent by respondent No.3 and respondent No.2, the impugned order dated 31.12.2015 came to be approved by respondent No.1 after considering the genuine difficulty of the respondent No. 4 and accordingly she was transferred from Gadchiroli to Nagpur vide impugned transfer order dated 31.12.2015.

(c) It is further submitted that respondent No.4 is not yet relieved due to pendency of the present O.A.

(d) It is submitted that the applicant has given the reason for medical illness as “Ashthma Bouts” for transfer her at Nagpur. However, the said disease is not covered in the circular dated

28.4.2015 for Standard Operating Procedure on special transfer posting (SOP).”

6. The respondent No.4 in her reply submitted that both her sons are studying at Nagpur and for <sup>their</sup> security and maternal care, she is required to stay at Nagpur. She had worked at Gadchiroli during 2004-2006 and again from 2013 and hence she had a good case of being granted preference for posting of her choice at Nagpur. She had also made several representations in this regard.

7. Shri R.V. Shiralkar, learned counsel for the applicant submitted that the applicant had a better case for appointment against the vacant post at Nagpur due to her past service at Gadchiroli as also on health ground. In the proposal which the respondent No.3 had submitted to respondent No.2 for transfer of teachers, reason for proposing applicant's transfer to Nagpur is stated as "स्वताचे आजारपण" whereas for respondent No.4, it is recorded as "पती पत्नी एकत्रीकरण". According to him, there is no policy for granting preference to posting husband and wife to a place of their choice and it certainly cannot take precedence over personal health grounds. This has been ignored by the respondents and the Civil Services Board chaired by respondent No.2 as can be seen from the office record of respondent No.3 produced in open Court. It also shows that the Civil Services Board or

even the Departmental Secretary and Minister had not applied their mind as to whether the reason "पती पत्नी एकत्रीकरण" can be deemed to be a substantive reason / exceptional circumstance for mid-term transfer for purposes of meeting the requirements of Section 4 of the Transfer Act. For this, he relied upon the orders of the Hon'ble High Court, Nagpur in **Purushottam s/o Govindrao Bhagwat V/s State of Maharashtra {2012 (2) ALL MR 322} and S.B. Bhagwat V/s State of Maharashtra {2012 (3) Mh. L.J. 197}**.

8. Shri B.D. Pandit, the learned counsel for respondent No.4 submitted that the impugned order of posting the respondent No.4 to Nagpur has been issued after following the provisions of Section 3 and 4 of the Transfer Act, i.e., with the approval of the Civil Services Board and the higher authority and after taking into consideration the ground for transferring respondent No.4. Hence, there is no scope for this Tribunal to intervene in the present O.A. For this, he relied on **Mrs. Shilpa Bose V/s State of Bihar (AIR 1991 SC 532)**.

9. After hearing the argument of both the sides and after going through the record, I find that the applicant's grievance is that in spite of her having a better case for being posted at Nagpur against the vacant post on the ground that she had served at Gadchiroli over a

longer period as compared to respondent No.4, and she had completed her tenure at Hinganghat and also that she had serious personal reasons like her own health and children's education, the respondents have ignored her case by favouring respondent No.4. She has further challenged the impugned order dated 30.12.2015 posting respondent No.4 to Nagpur on the ground that this being a mid-term and mid-session transfer, the respondents were required to comply with the provisions of Section 4 (4) & (5) of the Transfer Act, but they have not done so.

10. I am of the view that for purposes of adjudication into the present case, it would suffice to examine whether the respondents have considered the applicant's representation for posting at Nagpur and that they have also followed the provisions of sub-sections (4) and (5) of the Transfer Act, i.e., taking prior approval of the next higher authority and recording specific reasons and circumstances for effecting the transfer.

11. The impugned order dated 30.12.2015 states that 29 Group / Craft Instructors are transferred as a special case as per the provisions of Section 4 (4) & (5) of the Transfer Act with the approval of the Government. Since no specific reasons other than what is stated above are stated in the above order, I have examined the relevant file (photo copy) from the office of respondent No.2 in which the order

was dealt with. As per this record, sequence of events had taken place as follows:

(a) **27.6.2015**: respondent No.3 sent a detailed proposal for transfer of teachers.

(i) Respondent No.4 is at Sr. No.200. Reason for seeking transfer is recorded as "पती पत्नी एकत्रीकरण". Against the remark column, the following is stated: "पद रिक्त नाही. निर्णय सध्याचे संस्थेत कार्यरत कालावधी २ वर्षांपेक्षा कमी नक्षलग्रस्त भागातील एकमेव पद रिक्त राहिल कार्यरत संस्थेत पु.वे. नि. चे पद रिक्त आहे. सदर पदावर कु. मंहल्ले यांनी विनंती केली आहे. तरी निर्णय संचालक स्तरावर घेण्यात यावा".

(ii) The applicant is at Sr. No.202 and the reason is recorded as "स्वताचे आजारपण". Against the remark column, following is recorded:

"पद रिक्त आहे. सध्या कार्यरत संस्थेत ५ वर्षांपेक्षा कमी कालावधी कार्यरत संस्थेत पु.वे. नि. पद आहे. कर्मचार्यांचा आजार एसओपी प्रमाणे नाही. तरी शासन स्तरावर निर्णय घ्यावा".

(c) **17.7.2015**: The Civil Services Board under the chairmanship of respondent No.2 considered and approved the proposals of transfer. It only approved the case of R.4 (Sr. No.200) and not of applicant (Sr. No.202). The minutes of the meeting contain the following statement:

"ऊपरोक्त तपशिलानुसार प्रपत्र ब व प्रपत्र क ची तपासणी करण्यात आली असून ज्या कर्मचार्यांच्या पती पत्नी एकत्रीकरण वैद्यकीय कारणे कौटुंबिक अडचणी व प्रशासकीय हित विचारात घेण्यात आले आहे. ऊपरोक्त तक्त्यात नमूद केल्यानुसार ६ विभागाच्या मिळून एकूण २२२ इतक्या विनंती बदल्या करण्याबाबत शिफारस करण्यात येत आहे".

(d) **29.9.2015**: The Hon'ble Minister for Higher and Technical Education approved the above recommendation.



(e) 7.11.2015: The Government conveyed the above approval to respondent No.2.

(f) 24.11.2015: The respondent No.2 directed the respondent No.3 to issue the transfer order in terms of the above approval.

(g) 13.12.2015: The respondent No.3 issued the order transferring respondent No.4 to Nagpur.

12. From the above, I find that the respondents, while taking a decision to post the respondent No.4 to Nagpur had considered the grounds for transfer. <sup>s</sup>There are the same grounds relied on by the applicant and the respondent No.4 for staking their claims for transfer to Nagpur. It is clear that the grounds for transfer have been brought on record and also considered by the Civil Service Board and the recommendations of the Board were subsequently accepted by respondent No.1 and the Hon'ble Minister. Hence in my view, the impugned order is issued after complying with the provisions of the Transfer Act.

13. As regards the applicant's averments that the impugned order was issued without deciding her representation dated 19.5.2015, I find that the respondent No.3 in his proposal dated 27.6.2015 had included the applicant's case for transfer which he had submitted to the respondent No.2 for appropriate decision, mentioning therein her ground of personal health. The proposal was considered by the respondent No.2 by holding a meeting of the Civil Service

Board (1). Hence, it cannot be said that the impugned order was issued without considering the applicant's above representation as directed by this Tribunal in its interim order. Thus, I find that the present O.A. is devoid of any merit and it stands rejected with no order as to costs.

Sd/-

(B.Majumdar)  
Vice-Chairman

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