

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 343 OF 2017**

**DISTRICT: - DHULE**

**Smt. Mrunalini Sunil Bawiskar,**

Age – 56 years & 3 months,  
Occu. Service (Office  
Superintendent), R/o : Plot  
No. 9, Dream Bungalow,  
Kirti Apartment, Behind  
Deopur, Gondur Road,  
Dhule, Dist. Dhule.

.. APPLICANT.

**V E R S U S**

**1) The State of Maharashtra,**

Through its Secretary,  
Medical Education & Drugs  
Department, M.S. Mantralaya,  
Mumbai – 32.

**2) The Director,**

Medical Education & Research,  
Mumbai.

**3) The Dean,**

Civil Hospital, Dhule.

.. RESPONDENTS

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**APPEARANCE :** Shri Avinash Deshmukh – learned  
Advocate for the applicant.

: Smt. Sanjivani Deshmukh-Ghate –  
learned Presenting Officer for the  
respondents.

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**CORAM** : **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (J)**  
**DATE** : **12<sup>TH</sup> SEPTEMBER, 2017.**  
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**ORDER**

1. By filing the present Original Application, the applicant has challenged the transfer order dated 31<sup>st</sup> May, 2017 issued by the respondent No. 2, by which he has been transferred to Pune from Dhule.

2. The applicant was entered the service of respondent Nos. 1 & 2 as a Junior Clerk in Group 'C'/Class-III cadre on 1.11.1985 and appointed by & under Dean, Government Dental College, Aurangabad. She worked as Junior Clerk at Aurangabad till the year 1992 from the date of appointment. She worked near about 7 years at Aurangabad and thereafter, she has been transferred to Dhule in Bhausahab Hirey Government Medical College on her request. On transfer she joined her duties as Junior

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Clerk in the Government Medical College, Dhule. On 20.11.2001 she was promoted in the cadre of Senior Clerk. She worked in that cadre for about 10 years. On 8.6.2011, respondent No. 2 promoted her on the post of Senior Assistant and she was posted in Civil Hospital, Dhule i.e. on the establishment of respondent No. 2.

3. Thereafter, on 2.8.2014 she was promoted in the cadre of Office Superintendent and posted in Civil Hospital at Dhule itself. She joined the post of Office Superintendent in Civil Hospital, Dhule on 11.8.2014. Since then she is working there. She had not completed her normal tenure of posting. She is not due for transfer. Not only this, but she has not completed two full tenures of posting at Dhule. It is her contention that at the time of general transfer of 2017 she was considered as due for transfer and she has been transferred to Pune vide impugned order dated 31<sup>st</sup> May, 2017. It is her contention that even it is assumed that she was due for transfer, she ought to have been transferred as Office Superintendent

in Bhausahab Hirey Government Medical College, Dhule, as there are sanctioned vacant posts of Office Superintendent on that establishment. It is her contention that she ought to have been transferred on the establishment of Bhausahab Hirey Government Medical College, Dhule, by transferring one of the Office Superintendents working there at present. It is her contention that the impugned transfer order issued by the respondent No. 2 is against the provisions of the Maharashtra Government Servants Regulation of Transfers And Prevention of Delay In Discharge of Official Duties Act, 2005 (for short "the transfer Act of 2005"). Therefore, she made representation dated 5.6.2017 to the respondent No. 2 through respondent No. 3 and prayed to cancel the transfer order on the ground that she is due for retirement in the month of February, 2019. She has also contended that her husband was working in a private credit society at Parola in Jalgaon District. She has further contended that she is suffering from severe knee pain and she was advised to undergo surgery.

4. It is her contention that as per the Government Policy, an employee who is within 3 years of his/her retirement shall not be transferred from his or her native place or from the place where he/she decided to settle. It is her contention that the respondents have not considered her representation and effected transfer order in contravention of the Government policy. Therefore, she challenged the impugned order of transfer dated 31<sup>st</sup> May, 2017 by which she has been transferred to Pune from Dhule, by filing the present Original Application.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. They have not disputed the fact that the applicant was working at Dhule since 28.07.1992 as Junior Clerk. They have admitted the fact that she has been promoted as Senior Clerk in the year 2001. They have admitted that she was again promoted on the post of Sr. Assistant in the year 2011 and in the year 2014 she was promoted on the post of Office Superintendent at Dhule only.

6. It is their contention that the applicant is serving at Dhule since 25 years and she has completed more than 2 tenures at the same place i.e. at Dhule and, therefore, she is due for transfer in view of the provisions of the Transfer Act of 2005. It is their contention that the applicant rendered total service of 31 years and out of the said period she has served for 25 years at Dhule only. It is their contention that she has been transferred to Dhule from Pune on her request and she enjoyed all the promotional benefits at Dhule only. It is their contention that the transfer of the applicant has been made on administrative ground to meet the exigencies of service and administration and in the public interest and, therefore, it is legal. They have denied that there is a vacant post of Office Superintendent in Bhausaheb Hirey Government Medical College at Dhule. They have contended that Mr. N.K. Wagh has been transferred from B.H. Government Medical College, Dhule to B.J. Government Medical College, Pune and he has been relieved on 29.06.2017 and one Mr. M.N. Anmod was

posted in place of Mr. N.K. Wagh and he joined his duties on 31.7.2017. It is their contention that Mr. N.K. Wagh was transferred as he was working there since 8.11.1991. They have contended that the contentions raised by the applicant are mala fide and baseless and, therefore, they prayed to reject the present Original Application.

7. Heard Shri Avinash Deshmukh – learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate – learned Presenting Officer for the respondents. I have perused the affidavit, affidavit in reply filed on behalf of the respondents. I have also perused the documents placed on record by both the sides.

8. Admittedly, the applicant was appointed as Junior Clerk in Group 'C'/Class-III cadre on 1.11.1985 and posted in the Government Dental College, Aurangabad. In the year 1992, she has been transferred to Dhule, as Junior Clerk on her request and posted in Bhausahab Hirey Government Medical College. She was promoted in the year 2001 as Senior Clerk and again in the year 2011

she was promoted on the post of Senior Assistant and she was posted in Civil Hospital, Dhule. In the year 2014 she was promoted on the post of Office Superintendent and posted in Civil Hospital at Dhule. Admittedly, on her promotion on the post of Senior Assistant in the year 2011, she was posted in Civil Hospital, Dhule. Since 8.6.2011 she is working there. There is no dispute about the fact that the applicant is working at Dhule since 28.7.1992. Admittedly, she is going to retire in the month of February, 2019.

9. Learned Advocate for the applicant has submitted that the applicant is working as Office Superintendent w.e.f. 11.8.2014. He has submitted that she has not completed her normal tenure of posting of three years on the said post. He has submitted that the post of Officer Superintendent is falling in the non-secretariat Group 'C' service of the Government and, therefore, in view of the provisions of proviso to Section 3 (1) of the Transfer Act of 2005, an employee in Group 'C' from the non-secretariat



services, shall be transferred from the post held, on his completion of two full tenures at that office or department. He has submitted that the applicant has not completed his two full tenures in the post of Office Superintendent, as well as, in the office of respondent No. 3 and, therefore, she was not due for transfer at the time of general transfers of the year 2017. He has submitted that the applicant is on the verge of retirement and she will be retiring in the month of February, 2019. He has argued that the husband of the applicant is working in a private credit society at Parola in Jalgaon District. He has further submitted that the applicant is suffering from severe knee pain and she is advised to undergo surgery and, therefore, she requested the respondents to post her on the establishment of Dean, Bhausahab Hirey Government Medical College at Dhule itself. But her request has not been considered and she has been transferred to B.J. Medical College at Pune. He has submitted that the transfer of the applicant is in contravention of the provisions of proviso to Section 3 (1) of the Transfer Act of

2005 and, therefore, he prayed to quash and set aside the impugned order of transfer of the applicant and repost her at Dhule.

10. Learned Presenting Officer for the respondents has submitted that the applicant has rendered about 31 years' service. Out of the said service period, she rendered 25 years' service at Dhule itself. She is working there since 28.7.1992. She got all the promotions at Dhule only. He has submitted that she has completed two full tenures at the office and department of the respondent at Dhule, and therefore, she is due for transfer in view of the proviso to Section 3 (1) of the Transfer Act of 2005 and, therefore, she has been transferred at Pune in B.J. Medical College, on administrative ground. He has submitted that no post of Office Superintendent is vacant and available in Civil Hospital at Dhule and in Bhausahab Hirey Government Medical College, and therefore, the applicant cannot be accommodated there. He has submitted that the impugned order has been issued by following the

provisions of Transfer Act of 2005 and, therefore, he supported the impugned order of transfer and prayed to reject the O.A.

11. On going through the documents at record, it reveals that the applicant rendered total service of 31 years and out of the said period she has rendered service of 25 years at Dhule only. She is working on the establishment of respondent No. 3 since the year 2011. She has completed tenure of two posting as provided under proviso to Section 3 (1) at the same office, as well as, the department and, therefore, she was due for transfer in the general transfers of the year 2017. The provision of proviso to Section 3 (1) is material & relevant in this case. Therefore, I reproduce the same as under: -

**“3. Tenure of posting.**

***(1) For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years:***

***Provided that, when such employee is from the non-secretariat services, in Group***

***C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department:***

***Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”***

12. On reading the said provision, it is crystal clear that if an employee from non-secretariat services, in Group ‘C’ completes his full two tenures at the office or department then he is liable to be transferred. In the instant case, the applicant has served at Dhule for about 25 years in the same department. Not only this, but she has completed two full tenures at the office of respondent No. 3. Therefore, in my opinion, she has completed her two full tenures of posting at Dhule in view of the proviso to Section 3 (1) of the Transfer Act and, therefore, she was due for transfer at the time of general transfers of 2017.

As she was due for transfer, she was transferred by the impugned order. Therefore, I do not find substance in the submissions made on behalf of the applicant that the transfer of the applicant has been made before completion of her two full tenures at Dhule on the establishment of respondent No. 3.

13. On going through the impugned transfer order, it reveals that the transfer of the applicant has been made on administrative ground. It is settled law that the transfer can be made in exercise of administrative ground to meet with the exigency of the service and in public interest. The impugned transfer order of the applicant has been made to meet the administrative exigencies. The applicant has rendered 25 years' service at one place i.e. at Dhule. She was due for transfer at the time of general transfers of the year 2017 and, therefore, she has been rightly transferred by the respondents by the impugned order of transfer dated 31<sup>st</sup> May, 2017. I do not find violation of any of the provisions of the Transfer Act of 2005 while transferring the applicant by the impugned

order. Therefore, in my opinion, there is no illegality in the impugned order. There is no merit in the contentions raised by the applicant challenging the impugned order. Therefore, no interference is called for in the impugned transfer order. There is no merit in the Original Application. Consequently, it deserves to be dismissed.

14. In view of the foregoing discussions, the present Original Application is dismissed. Consequently, the status quo granted by this Tribunal by an order dated 09.06.2017 stands vacated. There shall be no order as to costs.

**MEMBER (J)**

O.A.NO.343-2017(SB)-HDD-2017-transfer