

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.311 OF 2018**

DISTRICT : NASHIK

Smt. Lochana Raosaheb Ghodke,)
Age 57 years, Deputy Director, Health Services,)
Nashik Circle, Shalimar Chowk, Nashik)
R/o Regional Referral Hospital, Government Quarter,)
Flat No.1, Shalimar, Nashik)..Applicant

Versus

The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department, Mantralaya, Mumbai)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondent

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

CLOSED ON : 20th April, 2018

PRONOUNCED ON : 4th May, 2018

J U D G M E N T

PER: Shri P.N. Dixit, Member (A)

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.
2. The Applicant has filed the above OA challenging the order dated 3.4.2018 (Exhibit 'A' page 18 of the OA) passed by the respondent transferring Applicant from the post of Deputy Director, Health Services, Nashik Circle, Nashik to the office of Directorate of Health Services, Mumbai.
3. The impugned transfer order dated 3.4.2018 further states that it has been issued by invoking the provisions of Section 4(4) and 4(5) of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the 'Transfer Act').
4. The Applicant has challenged the impugned order stating that:
 - (a) *Applicant has been serving in the present post for one and half year as against normal tenure of 3 years.*

(b) *The impugned order is totally vague and it does not describe or narrate the nature, date or author of the complaint against the Applicant.*

(c) *The complaint against her is fabricated, concocted and is used only to justify the impugned mid-term and mid-tenure transfer.*

(d) *Transfer of a Government servant on the basis of unsubstantiated complaint is not legally tenable in view of the circular issued by GAD dated 11.2.2015.*

(e) *If any substance was found in the complaint against the Applicant, the competent authority could have initiated disciplinary action against her while retaining her on the same post.*

(f) *If the competent authority intended to transfer the applicant, reasons for the same ought to have been recorded in the endorsement of approval of the immediate superior authority.*

(g) *The Civil Services Board (CSB) which has vetted the proposal of applicant's transferred is not constituted as per the requirements laid down by GAD vide its circular dated 31.1.2014.*

5. In support the learned Advocate for the Applicant has relied on the following judgments:

(a) *(2009 1 SCC (L&S) 411 Somesh Tiwari Vs. Union of India & Ors.*

(b) *O.A. No.290 of 2014 – Shri Suryakant Vasantrao Katkar Vs. The State of Maharashtra & Ors. decided by this Tribunal on 9.5.2014*

(c) *O.A. No.839 of 2014 - Dr. [Ms] Padmashri Shriram Bainade Vs. The State of Maharashtra & Ors. decided by this Tribunal on 13.10.2014.*

(d) *Writ Petition No.9781 of 2014 – The State of Maharashtra & Ors. Vs. Dr. [Ms.] Padmashri Shriram Bainade & Ors. decided on 17.12.2014.*

(e) *O.A. No.466 of 2016 – Shri Arun Ramchandra Pawar Pawar Vs. The State of Maharashtra & Ors. decided by this Tribunal on 12.7.2016.*

(f) *O.A. No.536 of 2016 – Shri Vikas Kesharlal Biyani Vs. The State of Maharashtra & Ors. decided by this Tribunal on 7.7.2016.*

(g) *O.A. No.614 of 2017 – Shri Pramod Haribhau Sawakhande Vs. The State of Maharashtra & Anr. decided by this Tribunal on 27.3.2018.*

All these judgments are relied upon to urge that the transfer ought to be based on proven misconduct which is enquired into and if ordered on the basis of an un-enquired complaint such action would amount to exercise of powers contrary to the scheme of Transfer Act. Even the transfer may amount to a punitive action and would be unjust and unsustainable.

6. In view of the submissions advanced by learned Advocate for the Applicant, the Applicant has prayed that the impugned order issued by the Respondent be set aside.

7. The Respondent in his affidavit has averred the points namely:

(a) *A news item was published in the daily newspaper Maharashtra Times reporting that, on 14.2.2017 seven persons had died due to*

consumption of spurious liquor secured from the canteen of Civil Hospital, Ahmednagar.

(b) With a view to enquire into the same, Director, Health Services constituted a Committee of 3 Members on 15.2.2017. The said Committee submitted its report dated 17.2.2017 to the Director, Health Services, Mumbai by its letter dated 22.2.2017.

(c) According to the enquiry report dated 17.2.2017 had the Applicant taken an action promptly i.e. soon after receipt of complaints about problems regarding functioning of canteen in Civil Hospital, Ahmednagar the incident of storage and distribution of spurious liquor and its consumption followed by deaths could have been averted.

(d) On the basis of enquiry report dated 17.2.2017, the government has decided and has directed the Director, Health Services (on 24.11.2017) to ascertain the responsibility of the Applicant.

(e) The Director, Health Services submitted a proposal to transfer the Applicant mentioning that pending the proposed disciplinary action against the Applicant, she should be transferred out of the office at Nashik in the interest of administration.

(f) The proposal of transfer was initiated, was put up before the CSB was considered by circulation and it has been approved.

(g) Thereafter file was put up for the decision of the concerned minister and after Hon'ble Minister's decision, and after approval by the Hon'ble Chief Minister, the transfer order was issued.

(h) The impugned transfer order is issued in due compliance with the provisions contained in the Transfer Act.

(i) *Considering the seriousness in dereliction of duties as pointed out by the committee against the Applicant, vide report dated 22.2.2017, it was necessary to transfer the Applicant from the present assignment.*

(j) *Other subordinate officers namely:- Dr. S.M. Sonawane, Civil Surgeon, Ahmednagar; Dr. P.S. Kamble, the then Civil Surgeon; Shri S.K. Rathod, the then Administrative Officer; and Shri R.S. Mane, Administrative Officer have been suspended and Departmental Enquiry (DE) has been initiated against them.*

(k) *The DE has to be initiated against the Applicant and it was considered that it would not be proper to keep the Applicant in the same post and hence, she has been transferred.*

(l) *The CSB in the Health Department has been constituted vide GR dated 17.4.2017 after the approval of GAD and, therefore, applicant's plea that the CSB was constituted in violation of the directions issued by GAD in their GR dated 31.1.2014 is erroneous.*

8. The Ld. PO has relied on the following judgments:

(a) *Arun Damodar Veer Vs. The State of Maharashtra & Ors. decided on 22.3.1999 [1999(2) Bom. C.R. 766: (1999) ILLJ 1330 Bom.].*

(b) *Devidas Pandit Tatar Vs. State of Maharashtra & Ors. decided on 20.12.2005 [2006(2) Mh.L.J. 100].*

(c) *O.A. No.19 of 2016 decided by this Tribunal on 7.6.2016 in the matter of Shri Sampat Trymbak Gunjal Vs. The State of Maharashtra & Ors.*

(d) *OA No.1029 of 2017 decided by this Tribunal on 4.4.2018 in the matter of Shri Dilip Keshav Kulkarni Vs. State of Maharashtra.*

9. These citations are relied by learned PO to urge that:

(a) Courts or Tribunals are not Appellate Fora to decide the matter of propriety of transfer of officers on administrative grounds.

(b) It is for administration to take appropriate decisions and such decisions cannot be assailed unless they are vitiated either by malafides or by extraneous considerations and unsupported by any factual background.

(c) Judicial review is ordinarily not permissible unless a clear case of malafide is established.

(d) Transfer which conforms to the test of 'special reason or exceptional circumstances' any interference was not justified.

10. Following issues are framed for consideration.

(a) Whether the Applicant has been transferred mid-term and mid-tenure?

(b) Is impugned transfer propelled due to facts which have surfaced through preliminary enquiry?

(c) Whether prima facie the Applicant has been found responsible for dereliction of her duties and for lack of due supervision, ultimately resulting into the death of 7 persons due to consumption of spurious liquor in Civil Hospital, Ahmednagar?

- (d) Whether the impugned order is in violation of the provisions of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005?
- (e) Can this Tribunal exercise power of judicial review over executive action in absence of an illegality?

11. With a view to ascertain the nature of complaints regarding dereliction of duties by the Applicant, we have perused the enquiry report prepared by Dr. Satish Pawar, Director, Health Services and submitted on 8.3.2017 to the Additional Chief Secretary, Public Health Department.

This communication reads as under:

“सदर चौकशी अहवालामध्ये नमुद केलेल्या निष्कर्षानुसार, उपहारगृ सुरु करण्यापूर्वी शासन निर्णय दि १९/३/२००८ नुसार खाजगी प्रयोजनाकरीता शासकीय रुग्णालयाची जागा वापरता येत नसतानाही उपहारगृह सुरु करणे, चुकीच्या पध्दतीने निविदा प्रक्रिया राबविणे, निविदा प्रक्रियेस वरिष्ठ कार्यालयाची प्रशासकीय मान्यता न घेणे, ठेक्याची अटी व शर्तीची पूर्तत करुन न घेणे, भाडे व इतर कर वसुली न करणे या व इतर बाबी करीता ऑगस्ट २०१३ ते आजपर्यंत या कालावधीतील जिल्हा शल्य चिकित्सक, प्रशासकीय अधिकारी, कार्यालय अधिक्षक आणि कनिष्ठ लिपिक/ भांडारपाल हे जबाबदार असून, त्यांचेवर महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ व महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियमांप्रमाणे प्रशासकीय कार्यवाही सुरु करण्याची शिफारस केली आहे.

त्यानुसार सदर प्रकरणी ऑगस्ट २०१३ ते आजपर्यंतच्या कालावधीतील जिल्हा शल्य चिकित्सक, प्रशासकीय अधिकारी, कार्यालय अधिक्षक आणि कनिष्ठ लिपिक / भांडारपाल यांचेविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ मधील नियम ८ नुसार विभागीय चौकशी कार्यवाही करण्यासाठी विहित नमुन्यातील दोषारोपपत्रे त्वरीत

संचालनालयास सादर करणेबाबत उपसंचालक आरोग्य सेवा नाशिक यांना कळविण्यात येत आहे. दोषारोपपत्रे प्राप्त होताच शासनास सादर करण्यात येतील.

तसेच जिल्हा शल्य चिकित्सक, अहमदनगर यांना सक्तीच्या रजेवर पाठविण्यात येऊन त्यांची इतरत्र बदली करण्याबाबत शासनास शिफारस करण्यात येत आहे.”

(Quoted from page 52-53 of OA)

12. This communication accompanies the enquiry report dated 17.2.2017 of the Committee submitted by Shri V.D. Pawar, who is Chairman of the Enquiry Committee and also Joint Director, Health Services. The enquiry report in para 10 states as follows:

“१०. चौकशी दरम्यान घडलेली घटना - सदर चौकशी सुरु असताना महाराष्ट्र नवनिर्माण सेना या पक्षाचे तीन सदस्यीय शिष्टमंडळ जिल्हा शल्य चिकित्सकांच्या दालनात आंदोलनाच्या पावित्र्यात दाखल झाले. यावेळी दालनात जिल्हा शल्यचिकित्सक आणि चौकशी समितीचे तीनही सदस्य उपस्थित होते. शिष्टमंडळाच्या एका सदस्याने जिल्हा रुग्णालय विषयक ज्या तक्रारी जिल्हा रुग्णालय व उपसंचालक, आरोग्य सेवा, नाशिक यांचेकडे करण्यात आल्या होत्या त्याच्या प्रती पुन्हा सादर करून उपाहारगृहाबाबत तीन महिन्यांपूर्वी तक्रार करूनही जिल्हा रुग्णालय व उपसंचालक कार्यालयाने कोणतीही दखल न घेतल्याने दारुकांड घडले असून निरपराध माणसांचा जीव गेला आहे व यास उपसंचालक व जिल्हा शल्य चिकित्सक हे जबाबदार असून जबाबदार अधिकाऱ्यांवर तात्काळ कार्यवाही झाल्याशिवाय दालन सोडणार नाही अशा आंदोलनाचा पवित्रा घेतला. या दरम्यान उपसंचालक, नाशिक आणि शिष्टमंडळ यांचेमध्ये शाब्दिक बाचाबाची होऊन प्रकरण चिघळण्याची शक्यता निर्माण झाली. यावेळी जिल्हा शल्यचिकित्सक हे शिष्टमंडळाला सामोरे जाण्याऐवजी वारंवार फोनवर बोलण्याच्या निमित्ताने अॅप्टीचेंबरमध्ये जात होते. यामूळेही शिष्टमंडळाचा राग वाढ होता. परिस्थिती हाताबाहेर जात असल्याचे लक्षात घेऊन चौकशी समितीचे अध्यक्ष यांनी हस्तक्षेप करून शिष्टमंडळास प्रकरणातील सद्यस्थितीची माहिती दिली. घडलेल्या प्रकरणास जबाबदार

कोण आहे. याकरिता चौकशी समिती चौकशी करत असून त्याचा अहवाल शासनास सादर करण्यात येईल व जबाबदार अधिकारी / कर्मचारी यांचेवर योग्य कारवाई करण्यात येईल याची माहिती शिष्टमंडळास देण्यात आली. यावर शिष्टमंडळाने सदर म्हणणे लेखी देण्याची मागणी केल्याने समिती सदस्यांच्या एकमताने समिती अध्यक्ष यांनी शिष्टमंडळास लेखी पत्र दिल्यानंतर शिष्टमंडळ माघारी गेले.

वरील घटनेनंतर असे लक्षात आले की उपाहारगृहाच्या समस्यांबाबत जिल्हा रुग्णालय व उपसंचालक कार्यालयास तक्रारी सादर केलेल्या असतानाही दोनही कार्यालय प्रमुखांनी त्याची दखल घेतली नाही. वास्तविक उपसंचालक नाशिक यांनी याची तात्काळ दखल घेऊन चौकशी केली असती तर कदाचित उपाहारगृहात दारुच्या बाटल्या सापडणे इ. प्रकार टाळता आला असता अशी धारणा झाल्याने मा. संचालक, आरोग्य सेवा, मुंबई यांचेशी चर्चा करण्यात आली व त्यांनी दूरध्वनीद्वारे दिलेल्या निर्देशानुसार उपसंचालक आरोग्य सेवा, मुंबई यांना वगळून चौकशी पूर्ण करण्यात आली.”

(Quoted from page 63-64 of OA)

13. In the concluding portion of the enquiry report it further states in para 5 as follows:

“५. पूरक सेवा अबाधित सुरु ठेवणे ही प्रामुख्याने जिल्हा रुग्णालयाच्या प्रशासनाची जबाबदारी असतानाही त्यांनी ती पूर्ण न करून प्रशासकीय हलगर्जीपण दाखवला आहे. तसेच उपसंचालक कार्यालयानेही याबाबत दुर्लक्ष केलेले आहे. ”

(Quoted from page 70 of OA)

14. During hearing of present OA, a query was made to the learned Advocate for the Applicant as to whether the applicant had received any complaints and what action was taken regarding the affairs and improper working in the Civil Hospital at Ahmednagar. In response the Applicant

has filed an affidavit. Applicant has averred in Para 2 (page 86 of OA) that the Applicant had conducted enquiry in the complaints regarding the functioning of the Civil Hospital, Ahmednagar.

15. The learned Advocate for the Applicant has filed affidavit in support and annexed details of complaints received and action taken at Exhibit A page 91 of OA. In response the Respondent has filed affidavit at Exhibit R-1 page 100 & 101 of OA and annexed the chart regarding details of complaints received and action taken along with the complaints are placed on record. The said chart is reproduced below:

“जिल्हा रुग्णालय अहमदनगर येथील तक्रारीबाबत उपसंचालक, आरोग्य सेवा, नाशिक यांचेकडून करण्यात आलेल्या कार्यवाहीचा अहवाल

अ.क्र.	तक्रारीचा विषय / जि.रु. अहमदनगर येथील तक्रारकर्त्याचे नांव/ तक्रारीची तारीख	तक्रारीबाबत उपसंचालक कार्यालयाकडून करण्यात आलेली कार्यवाही	सद्यस्थिती
१.	डॉ. एस.एम. सोनवणे, जिल्हा शल्य चिकित्सक, अहमदनगर यांचे कामातील निष्काळजीपणाची चौकशी करणेबाबत. श्री. श्रावण बी. ओहळ यांच्या दिनांक १७/११/२०१६ व दिनांक ०५/०१/२०१७ च्या तक्रारी.	उपसंचालक नाशिक यांनी दि.१७/०२/२०१७ रोजी संचालनालयास अहवाल सादर केला.	चौकशी अहवाल प्राप्त, तथापि उपसंआसे नाशिक यांचे स्वयंस्पष्ट अभिप्राय अप्राप्त असल्याने संचालनालयाचे दि.१८ व २७/०७/२०१७ व दि.२६/१०/२०१७ चे पत्रान्वये सदरचे अभिप्राय मागविले.
२.	जिल्हा रुग्णालय अहमदनगर येथील भ्रष्टाचार व त्यास जबाबदार असलेले जिल्हा शल्य चिकित्सक डॉ.एस.एम. सोनवणे व स्वीय सहाय्यक श्री. संजय ठोंबरे यांचे चौकशी करणेबाबत. श्री. अमोल साठे यांच्या दि.१६/०१/२०१७ ची तक्रार.	--	सदर तक्रार नस्तीबंद करणेबाबत समितीने शिफारस केली. तथापि उपसंआसे नाशिक यांचे स्वयंस्पष्ट अभिप्राय अप्राप्त असल्याने संचालनालयाचे दि.१८ व २७/०७/२०१७ व दि.२६/१०/२०१७ चे पत्रान्वये सदरचे अभिप्राय मागविले.
३.	जिल्हा रुग्णालय अहमदनगर यांचेकडून सामान्य नागरीक, अपंग वृद्ध नागरीक यांना होत असलेल्या त्रासाबाबत. ग्राहक मार्गदर्शक संस्था यांच्या दि. दि.१७/११/२०१६ ची तक्रार	--	सदरचा चौकशी अहवाल शासनास सादर करण्यात आला तथापि शासनाने सदर प्रकरणी बाबनिहाय अहवाल सादर करणेबाबत कळविले त्यानुसार उपसंआसे नाशिक यांना कळविले.
४.	जिल्हा शल्य चिकित्सक अहमदनगर यांचे	उपसंचालक नाशिक यांनी	सदर तक्रारीत तथ्य नसल्याचे चौकशी समितने

	मनमानी कारभाराबाबत. भ्रष्टाचार निर्मुलन समिती अहमदनगर यांची दि.१७/११/२०१६ ची तक्रार	दि.१७/०२/२०१७ रोजी संचालनालयास अहवाल सादर केला.	अहवाल नमुद केले आहे. तथापि उपसंआसे नाशिक यांचे स्वयंस्पष्ट अभिप्राय अप्राप्त असल्याने सदरचे अभिप्राय संचालनालयाचे दि.१८ व २७/०७/२०१७ व दि.२६/१०/२०१७ व दि.२६/१०/२०१७ चे पत्रान्वये मागविले.
५.	जिल्हा शासकीय रुग्णालय अहमदनगर येथील अनागोंदी कारभाराची चौकशी करणेबाबत. श्री. सचिन दफळ जिल्हा. अध्यक्ष, दि.२७/०१/२०१७ ची तक्रार	चौकशी अहवाल संचालनालयास सादर.	सदरची तक्रार संचालनालयास प्राप्त नाही. तथापि, चौकशी अहवाल प्राप्त. तथापि उपसंआसे नाशिक यांचे स्वयंस्पष्ट अभिप्राय अप्राप्त असल्याने सदरचे अभिप्राय संचालनालयाचे दि.१८ व २७/०७/२०१७ व दि.२६/१०/२०१७ चे पत्रान्वये मागविले.
६.	जिल्हा रुग्णालय अहमदनगर येथील उपहारगृहात विषारी दारुसाठा आढळल्याबाबत व आठ लोकांचा मृत्यूबाबत दैनिक महाराष्ट्र टाईम्स व दूरचित्रवाणी मिळालेली माहिती - दि.१७/०२/२०१७ .	उपसंचालय नाशिक यांनी दि.२२/०२/२०१७ रोजी संचालनालयास अहवाल सादर केला.	चौकशी समितीच्या अहवालावरून सदर प्रकरणी दोषी अधिकारी/कर्मचारी यांचेविरुद्ध विभागीय चौकशीचा प्रस्ताव (जोडपत्र १ ते ४) शासनास संचालनालयाचे दि.२१/०७/२०१७ पत्रान्वये सादर. याअनुषंगाने शासनाचे दि.२३/११/२०१७ रोजीचे पत्रान्वये दोषारोपपत्रे बजावण्यात आली आहेत.

16. Discussion and findings:

(a) *The examination of the table mentioned above in para 15 indicates that several complaints had been received by the Deputy Director on 17.11.2016, 27.11.2016 and 16.1.2017.*

(b) *Even though the Applicant has tried to show that enquiry was made by her regarding the same, it is evident that the report of enquiries regarding those complaints have been submitted on 15.2.2017, 27.1.2017 and 15.2.2017 respectively. This delay shows that there was considerable delay in conducting enquiry and most of the reports have been submitted after the incident of 7 deaths due to consumption of spurious liquor on 14.2.2017.*

(c) *Even in respect of one report which was submitted on 27.1.2017, there is nothing to show that the Deputy Director had diligently followed up as responsible officer.*

(d) *The record made available to this Tribunal and the affidavit filed by the Applicant reveals that the Applicant did not take her responsibility of supervision regarding the Civil Hospital, Ahmednagar seriously.*

(e) *This omission on the part of applicant has resulted in failure in averting death of 7 persons due to consumption of spurious liquor in Civil Hospital, Ahmednagar.*

(f) *The enquiry report submitted by the Director, Health Services contains conclusions which are prima facie arrived. The same is seen in para 13 of report, which is reproduced below:*

“५. पूरक सेवा अबाधित सुरु ठेवणे ही प्रामुख्याने जिल्हा रुग्णालयाच्या प्रशासनाची जबाबदारी असतानाही त्यांनी ती पूर्ण न करून प्रशासकीय हलगर्जीपण दाखवला आहे. तसेच उपसंचालक कार्यालयानेही याबाबत दुर्लक्ष केलेले आहे. ”

(Quoted from page 70 of OA)

(g) *Repeated complaints were being made to her among others regarding the same. It was expected on the part of applicant to react to the same with speed and ensure corrective measures.*

(h) *In complaints, where enquiry was conducted, Applicant did not give clear observations, regarding action to be taken.*

(i) *The transfer of the Applicant is mid-tenure on the basis of material facts mentioned above and the Respondent has pointed out that DE regarding the same will be held.*

(j) *Pending this enquiry, the Respondent has considered it appropriate to transfer her so that enquiry is not influenced due to applicant's presence.*

(k) *The mid-term and mid-tenure transfer has been effected with the approval of the Minister as well as Hon'ble Chief Minister.*

(l) *With a view to conduct the enquiry impartially the Respondent appears to have reached to the conclusion that her transfer was necessary.*

(m) *Power to resort to disciplinary proceedings and an executive measure are not mutually exclusive. Respondents have acted on the basis of preliminary enquiry. Therefore, it would be adventurous to say that an un-enquired complaint has been ordered.*

17. The issues framed by this Tribunal are answered accordingly holding that: Transfer is mid-term and mid-tenure. However, there is enough material to indicate that the transfer of the Applicant is based on reasonable grounds which have surfaced after preliminary enquiry, we find the order issued by the Respondent does not suffer from any illegality or malafide. Therefore, there is no reason to interfere in the same.

18. There is no merit in the OA and the same is dismissed with no order as to costs.

Sd/-
(P.N. Dixit)
Member (A)
4.5.2018

Sd/-
(A.H. Joshi, J.)
Chairman
4.5.2018

Dictation taken by: S.G. Jawalkar.