

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.305/2018**

**DISTRICT: NANDED**

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1. Aruna w/o. Shirish Bhingardive,  
Age : 51 years, Occu. Service,  
R/o. c/o. Dr. Shankarrao Chavan Government  
Medical College & Hospital, Vishnupuri,  
Nanded, Tq. & Dist. Nanded.

2. Jyotsna w/o. Samual Kharat,  
Age : 53 years, Occu. Service,  
R/o. As above.

3. Sushila w/o. Satish Dethe,  
Age : 53 years, Occu. Service,  
R/o. As above.

4. Sulbha w/o. Samual Dethe,  
Age : 53 years, Occu. Service,  
R/o. As above.

5. Kamal w/o. Shirish Kharat,  
Age : 51 years, Occu. Service,  
R/o. As above.

6. Hemlata w/o. Baburao Dakhale,  
Age : 52 years, Occu. Service,  
R/o. As above.

7. Manda w/o. Anil Thombe,  
Age : 52 years, Occu. Service,  
R/o. As above.

...APPLICANT

**V E R S U S**

1) The State of Maharashtra,  
Through its Secretary,  
Medical Education and Drugs Department,  
Mantralaya, G.T. Hospital Campus (7<sup>th</sup> Floor)  
Mumbai-01.

- 2) The Director,  
Medical Education & Research,  
State of Maharashtra,  
Saint Georges Hospital Campus,  
4<sup>th</sup> Floor, Near CST, Mumbai-01.
- 3) The Dean,  
Government Medical College & Hospital,  
Aurangabad, Tq. & Dist. Aurangabad.
- 4) Vishnukant Yashwant Nandurkar,  
Age : Major, Occu; Service,  
R/o. C/o. Metron Office,  
Government Medical College & Hospital,  
Aurangabad, Tq. & Dist. Aurangabad.
- 5) Sunita Avinash Chakranarayan,  
Age : Major, Occu; Service,  
R/o. As above.
- 6) Kiran Sanjay Dongardive,  
Age : Major, Occu; Service,  
R/o. As above.
- 7) Babynanda Shivanand Sharma,  
Age : Major, Occu; Service,  
R/o. As above.
- 8) Jaymala Prabhakar Kalsarpe,  
Age : Major, Occu; Service,  
R/o. As above.
- 9) Sujata Mahadeo Bhagat,  
Age : Major, Occu; Service,  
R/o. As above.
- 10) Tejaswini Shivaji Thorat,  
Age : Major, Occu; Service,  
R/o. As above.
- 11) Shivananda Pandharinath Paulbudhe,  
Age : Major, Occu; Service,  
R/o. As above.

12) Deepali Dipak Maheshpathak,  
Age : Major, Occu; Service,  
R/o. As above.

13) Jeras Vishramji Pakhre,  
Age : Major, Occu; Service,  
R/o. As above.

14) Savita Prabhudas Nirmal,  
Age : Major, Occu; Service,  
R/o. As above.

15) Swarupa Joseph Khetre,  
Age : Major, Occu; Service,  
R/o. As above.

16) Surekha Kanhya Chandrashekhar,  
Age : Major, Occu; Service,  
R/o. As above.

17) Rani Sahebrao Padalkar,  
Age : Major, Occu; Service,  
R/o. As above.

...RESPONDENTS

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APPEARANCE :Shri S.S.Jadhavar, Advocate for the  
Applicants.

:Smt. Sanjivani Ghate, Presenting Officer  
for the respondent nos.1 to 3.

:Shri S.S.Dambe, Advocate for respondent  
nos.10 & 11 (**absent**).

:Shri V.G.Pingle, Advocate for respondent  
nos.4 to 9 & 12 to 17.

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CORAM : B. P. Patil, Member (J)

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DATE : 1<sup>st</sup> April, 2019  
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**J U D G M E N T**  
**[Delivered on 1<sup>st</sup> day of April, 2019]**

1. By filing the present O.A. the applicants have challenged the order dated 23-04-2018 issued by the respondent no.2 to the extent of transfer and posting of respondent nos.4 to 17 in Government Medical College and Hospital at Aurangabad and also prayed to direct the respondent no.2 to issue the transfer order transferring them from Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded to Government Medical College and Hospital, Aurangabad in view of the order dated 10-01-2018 issued by the respondent no.1.

2. The applicants were selected on the post of Staff Nurse after following selection process and accordingly they were appointed as Staff Nurse at various places. In view of the recommendations of the Divisional Promotion Committee, applicant nos.1 and 2 were promoted to the post of Incharge Sister by order dated 10-08-2015 issued by the respondent no.2 and the applicant nos.3 to 17 were promoted to the post of Sister Incharge by order dated 01-01-2016 issued by the respondent no.2. Accordingly applicant nos.1 and 2 and applicant nos.3 to 7 were posted

at Dr. Shankarrao Chavan Government Medical College and Hospital, Nanded by orders dated 28-08-2015 and 15-02-2016, respectively. Accordingly, the applicants joined their duties at Nanded. Families of the applicants are residing at Aurangabad. Their children are taking education at Aurangabad. Their husbands are also residing at Aurangabad. In view of these facts, all the applicants submitted request applications to respondent nos.1 and 2 and prayed for their transfer at Aurangabad. Considering the requests of the applicants and many other similarly situated employees, respondent no.1 was pleased to direct the respondent no.2 to transfer Staff Nurses and Sister Incharge to the respective places mentioned in the order dated 10-01-2018. Accordingly, by the said order respondent no.1 directed the respondent no.2 to transfer the applicant in Government Medical College and Hospital at Aurangabad. There were vacancies of the post of Sister Incharge in the Government Medical College and Hospital at Aurangabad when the said order dated 10-01-2018 was issued. In view of the said order, respondent no.2 ought to have issued the transfer order of the applicants transferring them from Nanded to Aurangabad but the respondent no.2 had not issued any transfer order for the reasons best

known to him in compliance of the order dated 10-01-2018. Applicants were waiting for the transfer orders but the respondent no.2 had not issued their transfer orders.

3. By an order dated 23-04-2018, respondent no.2 granted provisional promotion to as many as 265 Staff Nurses to the post of Sister Incharge. By the same order, respondent no.1 has posted the promoted candidates to various places. Respondent nos.4 to 17 were working as Staff Nurse and they had been promoted to the post of Sister Incharge by the order dated 23-04-2018 and they had been posted at Government Medical College and Hospital at Aurangabad. It is their contention that the respondent no.2 has not considered the direction given by the respondent no.1 by order dated 10-01-2018 and also not considered the requests of the applicants for transferring them from Nanded to Aurangabad while passing the impugned order dated 23-04-2018. It is their contention that the impugned order promoting and posting respondent nos.4 to 17 at Aurangabad is in contravention of the direction given by the respondent no.1 on 10-01-2018. Because of the impugned order, the rights of the applicants are violated, and therefore, they have

approached this Tribunal and prayed to quash the transfer orders of the respondent nos.4 to 17 dated 23-04-2018 and prayed to direct the respondent no.2 to issue transfer order transferring them from Nanded to Aurangabad.

4. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicants. They have not disputed the fact that the applicants were promoted and posted at Nanded and they have joined their posting at Nanded. It is their contention that the applicant cannot claim transfer at Aurangabad as of right. They have not disputed the fact that the respondent no.1 issued letter dated 10-01-2018 to the respondent no.2 to consider the cases of the applicants for transfer as per their requests. It is their contention that it is not the direction given to the respondent no.2 but the respondent no.1 has directed the respondent no.2 to consider their cases if the rules permit. It is their contention that the Government runs the hospitals for the welfare of the needy and poor people in different localities. It is the responsibility of the Government to provide health facilities like indoor and outdoor treatment to the patients visiting hospitals. It is obligatory on the part of the Government to provide

additional staff for smooth functioning of the hospitals run by the State Government. It is their contention that the respondent nos.4 to 17 have been promoted and they have been posted at Aurangabad because of the vacancies available there. The applicants were transferred to Nanded on their promotion because of the administrative exigency. It is their contention that it is not possible to transfer all the applicants at Aurangabad. In case, applicants are transferred to Aurangabad from Nanded then there will be huge vacancies at Nanded and it will hamper smooth functioning of the hospital and consequently will affect the public at large. It is their contention that the applicants cannot claim transfer as of right. The requests for transfer can be considered sympathetically but at the same time the larger interest of the public welfare can also be considered. It is their contention that in the public interest it was not possible to consider the request of the applicant for transfer at Aurangabad. It is their further contention that the applicants were not due for transfer in view of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharging Official Duties Act, 2005 ("Transfer Act" for short), and therefore, they had not been transferred. It is



their contention that there is no illegality in transferring the respondent nos.4 to 17. The applicants have no *locus standi* to challenge the transfer of the respondents. Impugned transfer order is legal and proper. Therefore, they have prayed to dismiss the O.A.

5. Respondent nos.4 to 9 and respondent nos.12 to 17 have resisted contentions of the applicants by filing their affidavit in reply. It is their contention that they had been promoted as Sister Incharge by order dated 23-04-2018 and they have been posted accordingly as per the vacancies available. They never demanded any specific place of posting but they have been posted by the respondent nos.1 and 2 as per the vacancies available. It is their contention that they have been posted at Aurangabad as per administrative exigency and vacancies of the posts and there is no illegality in the same. It is their contention that the original application filed by the applicants is devoid of merit. Therefore, they have prayed to dismiss the O.A.

6. I have heard Shri S.S.Jadhavar, Advocate for the Applicants, Smt. Sanjivani Ghate, Presenting Officer for the respondent nos.1 to 3 and Shri V.G.Pingle, Advocate for respondent nos.4 to 9 & 12 to 17. Shri S.S.Dambe,

Advocate for respondent nos.10 & 11 remained absent. Perused the documents placed on record by the parties.

7. Admittedly, the applicants joined services as Staff Nurse and they have been appointed as Staff Nurse at various places. Admittedly, by the recommendation of the Divisional Promotion Committee, applicant nos.1 and 2 were promoted to the post of Sister In charge by order dated 10-08-2015 and applicant nos.3 to 7 were promoted to the post of Sister Incharge by order dated 01-01-2016. Admittedly, all the applicants had been posted at Dr. Shankarrao Chavan Government Medical College and Hospital at Nanded and accordingly they have joined their duties.

8. Admittedly, families, children, husbands of the applicants are residing at Aurangabad, and therefore, they have made requests to the respondent no.1 to transfer them at Aurangabad. There is no dispute about the fact that the respondent no.1 issued letter dated 10-01-2018 to the respondent no.2 and requested to consider the applicants for transfer as per rules. Admittedly, the respondent nos.4 to 17 have been promoted and posted as Sister Incharge in the Government Medical College and

Hospital at Aurangabad by the impugned order dated 23-04-2018. Admittedly, the applicant nos.1 and 2 are serving at Nanded since the year 2015 and applicant nos.3 to 17 are serving there since the year 2016. Admittedly, all the applicants have not completed their normal tenure of posting at Nanded and they are not due for transfer.

9. Learned Advocate for the applicant has submitted that the applicants had requested the respondent no.1 to transfer them from Nanded to Aurangabad on account of their family problems. Considering their problems as well as the problems of similarly situated employees, respondent no.1 issued letter dated 10-01-2018 to the respondent no.2 and requested to consider their cases for transfer at the desired place. He has submitted that the said communication was before the respondent no.2 when he promoted the Staff Nurses on the post of Sister Incharge by impugned order dated 23-04-2018. He has submitted that the respondent nos.4 to 17 are serving at Aurangabad as Staff Nurse and they had been promoted on the post of Sister Incharge at Aurangabad. He has submitted that the respondent no.2 ought to have considered the cases of the applicants before giving posting to the respondent

nos.4 to 17 on the promotional post as per the communication dated 10-01-2018 and transferred them at Aurangabad and the respondent nos.4 to 17 ought to have been transferred elsewhere but the respondent no.2 had not considered the said aspect and issued the impugned order and thereby caused injustice to the applicants. He has submitted that the respondent no.2 has intentionally not considered the communication dated 10-01-2018 and therefore, he prayed to quash the impugned order of transfer so far as the respondent nos.4 to 17 are concerned and prayed to direct the respondent no.2 to transfer the applicant at Aurangabad.

10. Learned Advocate for the applicant has submitted that the respondent no.2 has issued the impugned order dated 23-04-2018 maliciously, arbitrarily and illegally. Therefore, it requires to be quashed and set aside by allowing the O.A.

11. Learned P.O. as well as the learned Advocate for respondent nos.4 to 9 & 12 to 17 have submitted that the applicants are not due for transfer. They cannot claim that they should be transferred at Aurangabad as of right. They were previously serving at Aurangabad and they have been

transferred to Nanded. Therefore, they cannot claim that they should be transferred at Aurangabad again. They have submitted that the communication dated 10-01-2018 of the respondent no.1 addressed to respondent no.2 does not provide that the applicant should be transferred at Aurangabad. They have submitted that the respondent no.1 has directed the respondent no.2 to consider the requests of the applicants subject to the availability of the posts at the desired places, recommendations of the Civil Services Board, probability of litigation and administrative exigencies. They have submitted that the respondent no.2 while issuing the promotion orders and posting orders of the respondent nos.4 to 17 considered the administrative exigencies and posted them at Aurangabad.

12. Learned P.O. has submitted that the Government has to run the Government hospitals for the weaker sections in the society. To make available the medical facility and to provide medical services to the public the Government has to provide sufficient staff in the respective hospitals. She has submitted that all the applicants are serving at Nanded and it will not be possible to transfer them at once from Nanded to Aurangabad and if that is done then huge

vacancies will arise at Nanded and it will cause inconvenience to the public at large and also hospital administration at Nanded. She has submitted that the applicants cannot claim their transfer at Aurangabad as of right. When they were transferred at Nanded there were vacancies at Nanded. At present they are not due for transfer, and therefore, their cases are not considered for transfer. They have further submitted that the respondent nos.4 to 17 have been accommodated at Aurangabad considering the vacancies and administrative exigencies and there is no illegality on the part of the respondents. Therefore, the learned P.O. as well as the learned Advocate for respondent nos.4 to 9 & 12 to 17 have supported the impugned order.

13. On going through the record, it reveals that the applicant as well as other employees made representations with the respondent no.1 with a request to transfer them at their desired place. Respondent no.1 by communication dated 10-01-2018 had directed the respondent no.2 to consider the cases of the applicants subject to availability of the vacancies at the desired place, recommendations of the Civil Services Board, probability of litigation etc. By the

said communication, respondent no.1 never directed the respondent no.2 to transfer the employees mentioned in the list. Therefore, it cannot be said that by the said order dated 10-01-2018 respondent no.1 directed the respondent no.2 to make transfers of the applicants at the places of their choice. The applicants are not due for transfer as they have not completed normal tenure of posting at Nanded. Therefore they cannot claim their transfer from Nanded to elsewhere as of right.

14. No doubt, their requests for transfer had not been considered by the competent authority on administrative exigencies. Respondent no.2 while making posting of respondent nos.4 to 17 on their promotion looked into the administrative exigencies and decided to post them at their place of posting. Therefore, it cannot be said that the respondent no.2 issued the impugned transfer order dated 23-04-2018 with malice and arbitrariness.

15. In view of the above discussion, in my view, there is no illegality in the impugned order dated 23-04-2018. Therefore, no interference in the impugned order is called for. The impugned order has been issued on account of administrative exigency and in the public interest. There is

no merit in the O.A. Consequently, it deserves to be dismissed.

16. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

**(B. P. PATIL)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 01-04-2019.**