

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.434/2017**

**DISTRICT: AURANGABAD**

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Abhijit s/o. Suresh Sable,  
Age : 36 years, Occu. : Service  
as a social service superintendent (Psychiatric),  
Address/Permanent Residence : Plot No.179,  
Sector 27, Pradhikaran,  
Nigdi, Pune.411044.

...APPLICANT

**V E R S U S**

- 1) The Government of Maharashtra,  
Through The Secretary,  
Medical Education and Drugs Department,  
Mantralaya, Mumbai.
- 2) The Director,  
Medical Education and Research,  
Mumbai.
- 3) The Dean,  
Government Medical College and Hospital,  
Aurangabad.
- 4) Narendra Baskarrao Bhalerao,  
Age : Major, Occ : : Service as a social  
service superintendent (Psychiatric)  
in Government Medical College  
and Hospital Aurangabad.

...RESPONDENTS

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APPEARANCE :Shri M.R.Kulkarni Advocate for the  
Applicant.

:Shri S.K.Shirse Presenting Officer for the  
respondent nos.1 to 3

:Shri S.D.Dhongde Advocate for the  
respondent no.4.

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

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DATE : 20<sup>th</sup> April, 2018  
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**O R D E R**  
**[Delivered on 20<sup>th</sup> day of April, 2018]**

The applicant has challenged the impugned transfer order dated 28-06-2017 (wrongly mentioned as 31-05-2017) issued by the respondent no.2 transferring him from Government Medical College and Hospital, Aurangabad to Dr. V. M. Government Medical College, Solapur in place of respondent no.4 and transferring the respondent no.4 in his place by filing the present O.A. and also prayed to direct the respondents to issue modified order considering his request.

2. It is the contention of the applicant that he has completed MSW course in the year 2004. He was appointed as Psychiatric Social Worker on the reserved post of Handicapped category Low Vision. He is having 75% disability and Special Medical Board issued certificate to that effect. The applicant had joined Government Medical College and Hospital Aurangabad on 15-03-2007 and since then he is working there.

3. It is the contention of the applicant that by issuing G.R. dated 31-01-2014, the Government decided to establish a Civil Services Board for recommendation of

transfers of employees in Group-A to Group-C but the said decision was stayed till 20-05-2014. Thereafter, the Government by order dated 19-01-2015 directed all departments to establish Civil Services Board while effecting transfer and after due recommendation of the Board the transfer has to be made.

4. It is the contention of the applicant that his family members i.e. parents and brother are residing at Pune. He is handicapped, and therefore, a special concession has been given to the handicapped employees in case of their transfer at their native place in view of the G.R. dated 15-12-2004. On the basis of said G.R. the applicant made representation to the respondents on 27-09-2004, 27-10-2010 and 07-04-2011 with the respondent no.2. Respondent no.3 forwarded the said representation accordingly, but the respondents had not considered his requests and not posted him at Pune as demanded by him. All of a sudden respondent no.2 issued impugned order dated 31-05-2017 and transferred the applicant to Solapur from Aurangabad and posted respondent no.4 at his place. Transfer order was served on him on 30-06-2017. It is his

contention that respondent no.2 issued backdated order to favour respondent no.4.

5. It is his contention that respondent no.4 is not a handicapped person but the respondents considered his request and posted him at Aurangabad. It is his contention that Solapur is not convenient place for him, and therefore, inconvenience is caused to him. It is his contention that his son is taking education at Aurangabad but the said aspect had not been considered by the respondents while effecting his transfer. It is his contention that the impugned transfer is mid-term transfer. Respondents had not followed mandatory provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Transfer Act" for short), and therefore, the impugned transfer order is in violation of the provisions of Transfer Act. Therefore, he prayed to allow the O.A. and quash and set aside the impugned order.

6. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. It is their contention that the impugned transfer order has been issued by respondent no.2 as per the directions of the

Government in Medical Education and Drugs Department issued on 15-06-2017. It is their further contention that the impugned order has been issued on 28-06-2017 on the basis of direction given in the letter dated 15-06-2017 but the date of said order has been inadvertently mentioned as 31-05-2017. It is their contention that the applicant is Group-C employee and his transfer is made in accordance with the provisions of the Transfer Act. It is their contention that the applicant has served for about 10 years at Aurangabad and he was due for transfer, and therefore, he has been transferred by the impugned order. The applicant is senior-most employee in the cadre, and therefore, his transfer has been made on administrative ground. It is their contention that Social Service Superintendent (Medical) and Social Service Superintendent (Psychiatric) are two different cadres having different Recruitment Rules and different staffing pattern. The applicant is from Social Service Superintendent (Psychiatric) Cadre. Such post does not exist on the establishment of Government Medical College, Pune. Therefore, the request of the applicant transferring him at Pune has not been considered. There was a proposal to merge these 2 cadres but the Government after due

consideration had not approved the said proposal. It is their contention that because of the said reasons request of the applicant to transfer him at Pune has not been considered favourably. It is their contention that the impugned order is in accordance with the provisions of Transfer Act. Therefore, they prayed to reject the O.A.

7. Respondent no.4 filed his affidavit in reply and resisted the contention of the applicant. It is his contention that the applicant has completed his tenure at Aurangabad, and therefore, the applicant has been transferred at Solapur. It is his contention that posting of the applicant at Solapur is more convenient as he can access Pune easily from Solapur. It is his contention that there is no provision in the rules or statute that a handicapped person shall not be transferred in his lifetime even on completion of his tenure. It is his contention that his wife is serving in the District Court, Aurangabad, and therefore, he made request to the respondents to make his transfer at Aurangabad by way of couple arrangement. Respondents have considered his request and transferred him. He has completed 4 years and 5 months service at Solapur. It is his contention that there is no violation of any statutory provisions while

making such transfer order. Therefore, he prayed to reject the O.A.

8. I have heard Shri M.R.Kulkarni Advocate for the Applicant, Shri S.K.Shirse Presenting Officer for the respondent nos.1 to 3 and Shri S.D.Dhongde Advocate for respondent no.4. Perused documents placed on record by the parties.

9. Admittedly, the applicant has completed MSW course in the year 2004 and has been appointed as a Psychiatric Social Worker on the reserved post of handicapped category Low Vision by order dated 30-12-2006. He has joined duty at Government Medical College and Hospital at Aurangabad on 15-03-2007. Admittedly, the applicant is having 75% disability (Low Vision). Admittedly, the applicant is serving at Aurangabad since 15-03-2007. He was due for transfer as he has completed his tenure at Aurangabad. Admittedly, the applicant has been transferred to Government Medical College and Hospital at Solapur by the impugned order dated 28-06-2017 (though date has been wrongly mentioned as 31-05-2017 on it). Admittedly, the applicant has made several representations with the respondents to transfer him at Pune at his native place where his parents

and brother are residing. Admittedly, the impugned order issued on 28-06-2017 is a mid-term transfer.

10. Learned Advocate for the applicant has submitted that the respondents issued the impugned order dated 28-06-2017 without following provisions of S.4(4) and 4(5) of the Transfer Act. No such proposal to make transfer of the applicant on administrative ground has been placed before Civil Services Board and no approval of the higher/next competent transfer authority has been obtained to issue impugned order of transfer. Therefore, the impugned transfer order is illegal. He has further submitted that the impugned transfer order has been issued *mala fide* with intent to favour respondent no.4, who has been transferred and posted at the place of the applicant by impugned order. He has submitted that as the impugned order of transfer is in contravention of the provisions of Transfer Act, it is liable to be quashed.

11. Learned Advocate for the applicant has submitted that in the case of a similarly situated person Principal Seat of the Tribunal at Mumbai has cancelled the transfer order challenged in **O.A.No.1127/2017** in the case of **Dr. Sushilkumar S. Wakchaure V/s. State of Maharashtra &**



**Ors.** on 27-02-2018. He has submitted that considering the principles laid down therein it is just to quash and set aside the impugned order of transfer of the present applicant.

12. Learned P.O. has submitted that the impugned transfer order has been issued as per the directions given by the concerned department of Government of Maharashtra. He has submitted that the government has given approval to the said transfer order by letter dated 15-06-2017, and therefore, the impugned order dated 28-06-2017 has been issued. He has submitted that the respondent no.4 has been transferred on his request at Aurangabad in view of the letter dated 15-06-2017, and consequently, the applicant has been transferred from Aurangabad to Solapur. He has submitted that the said order has been issued on administrative ground and there is no violation of the provisions of Transfer Act.

13. On going through the record, it reveals that the respondents effected transfer of the applicant on the basis of letter dated 15-06-2017 issued by the Government, which shows that Government had decided to consider request of some of the employees including the respondent

no.4 and approved their transfer on request, and accordingly, directions were given to the respondent no.2 to make transfer of those employees. As per request of the respondent no.4, he has been transferred at Aurangabad. Therefore, transfer of the applicant has been made to create vacancy for posting the respondent no.4 at Aurangabad, and accordingly, the impugned order of transfer dated 28-06-2017 has been issued and the applicant has been transferred to Solapur.

14. No doubt, the applicant has completed his tenure at Aurangabad but his transfer has not been considered at the time of general transfer of the year 2017. The impugned order of transfer is a mid-term transfer. Record shows that no proposal regarding his mid-term transfer has been made by the respondents and it has not been placed before Civil Services Board. Even Civil Services Board had not been established to consider the said proposal. Not only this but meeting of the Civil Services Board was also not called and held. Civil Services Board had not recommended the transfer of the applicant. Not only this but the respondent no.2 had not thought it proper to prepare a proposal regarding transfer of the applicant and to place the said

proposal before the Civil Services Board and to obtain recommendation of the Board. It is also pertinent to note that respondent no.2 had not obtained approval to the transfer of the applicant from next/higher competent transferring authority as required u/s.4(4) and 4(5) of the Transfer Act. No special reasons or exceptional circumstances for transferring the applicant in the mid of the term from Aurangabad to Solapur had been recorded by the respondent no.2 while making transfer of the applicant. All these facts show that the respondent no.2 had not followed mandate of provisions of S.4(4) and 4(5) of the Transfer Act while making transfer of the applicant. Procedure adopted by the respondent no.2 is strange to the provisions of S.4(4) and 4(5) of the Transfer Act. Respondent no.2 acted upon the letter dated 15-06-2017 issued by the concerned department of the Government of Maharashtra in which approval to the request transfer of the respondent no.4 has been given but it does not disclose anything regarding proposal and approval to the transfer of the applicant which is a mid-term transfer. All these facts show that respondent no.2 had acted arbitrarily, *mala fide* and issued transfer of the applicant in the mid of the term. Respondents had not made the mandatory compliance of

the provisions of Transfer Act. Without recording special reasons or exceptional circumstances and without obtaining approval of the next/higher competent transferring authority for transfer, respondent no.2 issued the impugned transfer order. This shows that there was gross violation of mandatory provisions of S.4(4) and 4(5) of the Transfer Act by the respondent no.2. The impugned transfer order is in violation of the provisions of Transfer Act. Consequently, it requires to be quashed and set aside by allowing the O.A.

15. I have gone through the decision of Principal Seat of the Tribunal at Mumbai in **O.A.No.1127/2017** in the case of **Dr. Sushilkumar S. Wakchaure V/s. State of Maharashtra & Ors.** decided on 27-02-2018. I have no dispute regarding principle laid down therein. In this case also there is gross violation of S.4(4) and 4(5) of the Transfer Act and therefore principle laid down therein is also applicable in the instant case.

16. Considering the abovesaid discussion and the facts and circumstances of the case, the impugned order requires to be quashed and set aside by allowing the O.A. Resultantly, the O.A. stands allowed. Impugned transfer

order dated 28-06-2017 (wrongly mentioned as 31-05-2017) is hereby quashed and set aside. Respondent no.2 is directed to issue order re-posting the applicant at Aurangabad immediately. There shall be no order as to costs.

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

**Place : Aurangabad**  
**Date : 20-04-2018.**