

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.569/2016**

DISTRICT – AHMEDNAGAR

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Subhash s/o Chandrakant Dahale,  
Age: 48 years, Occ : Service,  
R/o : C/o. Balasaheb Chandrakant Dahale,  
Plot No.45, Madhuban Colony,  
Pipada Mala, Behind Market Yard,  
Saras Nagar, Ahmednagar.

...APPLICANT

V E R S U S

1. The State of Maharashtra,  
Through the Secretary,  
Public Health Department,  
Mantralaya, Mumbai-400 032.

2. The Deputy Director,  
Health Service (Transport)  
Organization, Pune-411 001. ...RESPONDENTS

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APPEARANCE :Shri Deepak D. Choudhary, learned  
Advocate for the applicant.  
:Smt. Resha Deshmukh, learned  
Presenting Officer (PO) for the  
respondents.

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CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)  
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DATE : 9<sup>th</sup> January, 2017  
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**J U D G M E N T**  
**[Delivered on 9<sup>th</sup> January, 2017]**

Applicant Subhash Chandrakant Dahale is working as Unskilled Worker at District Workshop and comes under Group-D category. He is working at Ahmednagar from last 10 years with unblemished record. His son and daughter are taking education in Ahmednagar Taluka. As per the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 ('Transfer Act' for short), there is no fixed tenure for Group-D employees and those employees can be transferred only under certain circumstances. There was no reason for the respondents to transfer the applicant. However, respondent no.2 i.e. Deputy Director of Health Service (Transport) Organization, Pune vide impugned order dated 17-05-2016 has transferred the applicant from the District Workshop, Ahmednagar to District Workshop, Beed. Said order of transfer is illegal, arbitrary and against the provisions of Transfer Act. Applicant, has therefore, prayed that the impugned order dated 17-05-2016 be quashed and set aside. Hence this O.A.

2. In the reply affidavit filed by the respondent nos.1 and 2, they have admitted that the applicant is Unskilled Worker and comes under Group D category.

It is stated that one Shri H.P.Thorve, Unskilled Artisan working under Service Engineer (Transport), Beed from 2006 had requested respondent no.2 that his wife is working at District Hospital, Ahmednagar and his son is studying in 10<sup>th</sup> class in Ahmednagar. Therefore, under the facility of "Pati-Patni Ekatrikaran Scheme", he be transferred at Ahmednagar. It is stated that as per Government Regulation dated 27<sup>th</sup> November, 1997, husband and wife are to be adjusted at one place, and therefore, Shri Thorve has been transferred in place of the applicant. Thus, it is a request transfer.

3. Heard Shri Shri Deepak D. Choudhary, learned Advocate for the applicant and Smt. Resha Deshmukh, learned Presenting Officer (PO) for the respondents. Perused memo of O.A. affidavit in reply and various documents placed on record by the parties.

4. Learned Advocate for the Applicant submits that he has no objection for adjustment of Shri Thorve at any place. His only grievance is that he cannot be transferred as per the provisions of Transfer Act being a Group-D employee.

5. Learned Advocate for the applicant has invited my attention to Section 3 of the Transfer Act. Particularly, Section 3(2) of the Transfer Act reads as under:

“3. Tenure of posting.

(1)...

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

6. Plain reading of the aforesaid provisions clearly shows that there is no fixed tenure for Group D employees. Such Group D employees can be transferred only; (1) on clear vacancy when there exists a clear vacancy where posting is sought, (2) on mutual transfer, and (3) when a substantiated complaint of serious nature is received against such employees.

7. On perusal of the reply affidavit filed on record, it is clear that the applicant has never requested for mutual transfer. Shri Thorve has not been transferred at Ahmednagar on a clear vacant post and there was no substantiated complaint of serious nature against the applicant. Thus, there was absolutely no reason for transferring the Applicant. Applicant was transferred

only because respondents wanted to accommodate Shri Thorve under “Pati-Patni Ekatrikaran Scheme”.

8. It is an admitted fact that post where Shri Thorve has been adjusted was not lying vacant since it was occupied by the applicant. From the aforesaid circumstances, it will be thus crystal clear that Transfer of the applicant is against the provisions of Section 3(2) of the Transfer Act, and therefore, it is illegal. Hence, following order:

**ORDER**

- (i) O.A. is allowed.
- (ii) Impugned order of transfer of the applicant dated 17-05-2016 issued by respondent no.2 is quashed and set aside.
- (iii) Applicant be allowed to work at Ahmednagar on his earlier post, as if he was not transferred at all.
- (iv) In the circumstances, there shall be no order as to costs.

**(J. D. Kulkarni)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 09-01-2017.**