

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 721 OF 2017**

**DISTRICT : MUMBAI**

Smt. Madhuri Manohar Pawar, )  
Working as Assistant Commissioner )  
[Drugs], now transferred to Dist. Beed )  
From Thane, R/o: 501, Sushila Smruti, )  
Chakarawarti Ashok Road, )  
Kandiwali [E], Mumbai. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Addl. Chief Secretary, )  
Medical Education and Drugs, )  
Department, Mantralaya, )  
Mumbai 400 032. )
2. The Commissioner, )  
Food & Drugs Administration, )  
[M.S], having office at Bandra-Kurla )  
Complex, Bandra [E], Mumbai. )
3. Shri P.V. Pawar, )  
Working as Assistant Commissioner )  
[Drugs], being transferred from )  
Latur to Thane, having office at )  
Room No. 33, 4<sup>th</sup> floor, )  
ESIS Hospital Bldg, Wagle Estate, )  
Thane [W]. )...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for Respondents No.1&2

Shri M.R Patil, learned advocate for Respondent No.3.

**CORAM : Shri Justice A.H Joshi (Chairman)**

**RESERVED ON : 10.10.2017**

**PRONOUNCED ON : 16.10.2017**

**O R D E R**

1. By consent of both sides present Original Application is taken up for final hearing.

2. Learned Presenting officer had produced original record for perusal. It is perused. Inspection is given to both sides and one copy is produced by learned Presenting Officer for record of this Tribunal.

3. Learned Presenting Officer was called to take instructions on the point as to whether the State wants to place any other /additional material on record.

4. Learned Presenting Officer is assisted/instructed by Shri Vivek Sapkal, Section Officer, Medical Education & Drugs Department, Mantralya, Mumbai, who reports after taking instructions from the Secretary, Medical Education & Drugs Department that no new or additional material is to be produced or to be shown to this Tribunal.

5. Heard Shri A.V Bandiwadekar, learned Advocate for the Applicant, Shri K.B Bhise, learned Presenting Officer for the Respondents No.1 & 2 and Shri M.R Patil, learned Advocate for Respondent No.3.

6. Applicant was selected through M.P.S.C and was appointed as Assistant Commissioner (Drugs) w.e.f 14.1.2011. Applicant had completed 3 years tenure at Mumbai in the office of Respondent no. 2.

7. By order dated 31.5.2017, applicant was posted at Thane on administrative grounds and she has joined at Thane on 6.6.2017.

8. By order dated 19.7.2017 applicant is transferred to Beed, which order at Exhibit 'A', is impugned in the present Original Application.

9. Text of impugned order reads as follows:-

“ शास आदेश -

आयुक्त, अन्न व औषध प्रशासन, महाराष्ट्र राज्य, मुंबई या कार्यालयाच्या अधिपत्याखालील “सहायक आयुक्त (औषधे)” (गट -अ) या पदावर कार्यरत असलेल्या खाली नमूद करण्यात आलेल्या अधिका-यांच्या संदर्भात दि. ३१.०५.२०१६ च्या आदेशान्वये मुख्यालय येथून बीड येथे बदली करण्यात आली होती. सदरचे आदेश रद्द झालेले नसताना आयुक्त, अन्न व औषध प्रशासन यांनी दि.३१.०५.२०१७ च्या आदेशान्वये त्यांची ठाणे (परिमंडळ-१) येथे बदली केली आहे. ही कार्यवाही प्रशासकीयदृष्ट्या उचित नसल्याने श्रीम. पवार यांच्या बदलीबाबतचे संदर्भित दि.३१.०५.२०१७ चे आदेश रद्द करण्यात येत आहे आणि पुर्वीचे दि.३१.०५.२०१६ चे आदेश कायम ठेवण्याकरिता, महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियम, २००५ मधील कलम ४(५) मधील तरतुदीनुसार त्यांची बदली त्यांच्या नावासमोर दर्शविलेल्या पदावर करण्यात येत आहे :-

अ. क्र.	अधिका-याचे नाव	सध्याचे ठिकाण	बदलीने नियुक्त करावयाचे ठिकाण	शेरा
१	श्रीम.मा.म.पवार	ठाणे (परिमंडळ-१)	बीड	रिक्त पदी

२. उपरोक्त अधिका-यांची बदली प्रशासकीय कारणास्तव करण्यात येत असल्याने त्यांना बदलीच्या ठिकाणी रुजू होण्यासाठी नियमानुसार पदग्रहण अवधी, प्रवास भत्ता इ. अनुज्ञेय आहे. हे आदेश प्राप्त होताच कार्यालय प्रमुखांनी वरील अधिका-यांना बदलीच्या ठिकाणी हजर होण्यासाठी त्वरीत कार्यमुक्त करावे व त्याबाबतचा अनुपालन अहवाल शासनास तात्काळ सादर करावा.”

(Quoted from page 23 of OA)

10. In the present case, notice was ordered by this Tribunal, returnable on 2.8.2017.

11. By another order dated 20.7.2017, the Respondent no.3 has been transferred from Latur to Thane in the vacancy which had occurred due to transfer of applicant, which is impugned in present O.A..

12. The Respondent no.3 has filed affidavit opposing present Original Application. The State has relied only on record, mostly because the action has to be justified on the basis of record and no new grounds which may not be borne on record can be supplanted.

13. Perusal of record reveals that :-

- (i) Civil Services Board held meeting on 30.5.2016. The Board considered three cases for transfer.
- (ii) The minutes disclose the reasons considered for transfer. The text of minutes is quoted adverbatis as follows:-

अ. क.	अधिका-याचे नाव	सध्याचे कार्यरत ठिकाण	सध्याच्या कार्यरत ठिकाणी झालेला कालावधी	अधिका-यांनी कळविलेला पसंतीचे ठिकाण	ध्वनंती बदलीसाठी नमूद कारण	मंडळाची शिफारस
१	२	३	४	५	६	७
१	श्री.वि.के. बियाणी	ठाणे परिमंडळ-७	२ वर्ष ९ महिने		शासनाचे पत्र क्र. एफडीएस-२४१६/५३७/प्र. क्र.८६/१६/औ-१, दिनांक २६/५/२०१६ अन्वये, नवी मुंबई यांनी केलेली तक्रार तसेच आयुक्त, अन्न व औषध प्रशासन यांना प्राप्त झालेली मौखिक तक्रारीच्या अनुषंगाने	यवतमाळ
२	श्रीमती मा. म. पवार	मुख्यालय का.क.५ गुप्तवार्ता	३ वर्ष मुख्यालय का-१३ २ वर्ष मुख्यालय गुप्तवार्ता	ठाणे	शासनसेवा व कौटुंबिक जबाबदा-या पार पाडण्यासाठी व वैयक्तिक कारणास्तव	ठाणे परि.७
३	श्री.रा.वि. झाडबुके	औ.बाद परि.१	१ वर्ष ५ महिने	मुंबई ठाणे	शासनसेवा व कौटुंबिक जबाबदा-या पार पाडण्यासाठी व वैयक्तिक कारणास्तव	मुख्यालय (गुप्तवार्ता)

- (iii) In 2016, an office note was put up and proposal of transfer was modified. Respondent no.3's transfer at Thane and applicant's transfer to Beed was approved.
- (iv) It appears that though the order of transfer was passed, the applicant was never relieved and she has continued to work at Mumbai.
- (v) The Civil Services Board held meeting on 30.5.2017. The Board again considered various transfers. In the note before Civil Services Board, applicant's posting at Thane was proposed amongst other transfer. The Civil Services Board has approved the said proposal, and transfer order dated 31.5.2017 was issued and applicant joined at Thane.

- (vi) The Civil Services Board held another meeting on 21.6.2017. In the said meeting, the names of 17 officers were considered in which applicant's name is seen at page 17. The note placed before Civil Services Board contains a recited that though the applicant was transferred to Beed in 2016, the said order was not implemented and that this fact was not brought to the notice of the Civil Services Board during the meeting held on 30.05.2017, and therefore it was proposed that the applicant be posted at Beed.
- (vii) The minutes of the Civil Services Board were placed before the Hon'ble Minister as well as Chief Minister and various transfers including that of the applicant were approved. Thereafter, impugned order dated 13.7.2017 has been issued, which is challenged by the applicant in present Original Application.

14. When this case was heard for interim relief, this Tribunal passed detailed order on 8.8.2017 (Hon'ble Member [J] Shri R.B Malik). This Tribunal has recorded in para 8 as follows:-

"The order of transfer is subjected to challenge before the Tribunal may succeed on the anvil of the various provisions of the Transfer Act including Section 4(4) and 4(5) thereof. Therefore, the crux of the matter is as to whether any cause is made out which can be categorized as special case or exceptional circumstances."

15. Now, therefore, the limited question which was already crystalized and is to be considered, is :-

Whether the Government is able to demonstrate that for mid-term transfer of applicant special reasons or exceptional circumstances existed/are borne on record ?

16. Case proceeds on certain admitted facts, namely:-

- (i) Applicant has put in tenure of about 3 years at Mumbai. Applicant's tenure at Thane is about 2 months, and she is not due for transfer.

- (ii) Respondent no.3 has not completed his tenure of 3 years at his last posting and he too is not due for transfer.
- (iii) Moreover, though Respondent no.2's case was considered by Civil Services Board in 2016, there were comments adverse to him, and his transfer was not vetted by Civil Services Board.
- (iv) The applicant had requested for transfer to Thane on personal grounds, that she is the sole parent of two children who are taking education.
- (v) Applicant was relieved from last point at Mumbai and has joined at Thane. The applicant's transfer for all purpose is mid-term and mid-tenure.

17. Though the Government has powers to transfer, the power is subject to the mandatory compliance of recording the reasons which has to constitute the basis of Transfer as to existence "special reason or exceptional circumstances" due to which mid-term and mid tenure transfer can be ordered.

18. It has transpired after perusal of record that reason that emerges from the minutes of the Civil Services Board is that 'the applicant was transferred to Beed last year and that she was not relieved'.

19. It is nobody's plea that the applicant is blamed for said failure. Moreover, even remotest imputation of suppression or malice is alleged against applicant towards the fact that history of previous years transfer did not come or was not brought before Civil Services Board.

20. It is evident from record, the reasons whatsoever for mid-term transfer do not find place either in the proposal or decision.

21. Be it may as the record exists, yet in absence of recording of special reasons and exceptional circumstances, the impugned order, it emerges that the impugned order of transfer is passed in utter violation of mandatory provision, i.e. Sections 4(4) and 4(5) of Transfer Act, 2005.

22. The fact that Applicant's earlier transfer was not brought to the notice of the Civil Services Board, in all fairness cannot be used as a ground or cause adverse to applicant or against the applicant, unless it could be shown that the said non-disclosure is fraudulent and is attributable to the applicant.

23. As it has transpired from record, applicant is transferred from Thane by order dated 19.7.2017, while Respondent no.2's order is dated 20.7.2017. In the order of transfer of the Respondent No.2 it shows that he is posted on a vacant post. The Government is supposed to act with utmost fairness. When both transfers were approved in one decision, common order could have been issued instead of camouflaging one order on administrative ground, while issuing another order showing that Respondent No.2's transfer on a vacant post instead of making a show that he was transferred on administrative ground, however, on a vacant post.



24. It is an admitted fact that as is seen from the affidavit of Respondent No.2 that his tenure in Mumbai is as follows:-

<b>Sr. No.</b>	<b>Period</b>	<b>Posting</b>
1.	June 2005 to May 2008	Greater Mumbai
2.	June 2008 to May 2011	Thane
3.	June 2011 to May 2014	Greater Mumbai
4.	June 2014 to May 2015	Thane

(Quoted from Respondent No. 2's affidavit at page 59 of OA)

25. It is evident from record that though Civil Services Board had proposed Respondent No.2's transfer to Yavatmal in 2016 that too on account of circumstances which were adverse to the Respondent No.2. In the background of whatever was brought on record before Civil Services Board in 2016 against the Respondent No.2, now Respondent No.2 has earned a favour and now he is being sent to Thane without change in circumstances rather by withholding circumstances of complaints against him.

26. Thus it is evident that Respondent No.2's posting at Thane is not free from doubt and circumstances lead to an adverse inference that applicant is Transferred to Beed only with an object of accommodating the Respondent No.2 at Thane, while making a show that persons seeking preferential posting are being sent out.

27. This Tribunal holds that impugned transfer order is issued by camouflaging administrative grounds and under the veil of fairness, however the factual and legal malice does not remain covered and the truth is surfacing upon perusal of minutes of Civil Services Board held on 30.05.2016 as well one held on 21.06.2017.

28. In the result, Original Application succeeds. The impugned order of transfer dated 19.7.2017 is quashed and set aside. The applicant is already serving at Thane, because of the interim order passed by this Tribunal.

29. In the facts and circumstances of the case, parties are directed to bear their own costs.

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

**Place : Mumbai**  
**Date : 16.10.2017**  
**Dictation taken by : A.K. Nair.**