

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.944 OF 2017**

DISTRICT : PUNE

Dr. (Mrs.) Smita Kalyan Deshpande,)
Associate Professor, Age 57 years,)
Residing at Flat No.3, Chintamani Heaven,)
S. No.12/7, Near city Pride, Kothrud, Pune 411 038)..Applicant

Versus

1. The State of Maharashtra,)
Through Chief Secretary, Mantralaya, Mumbai)
2. The Additional Chief Secretary,)
Medical Education and Drugs Department,)
Mantralaya, Mumbai 400032)
3. Dean, B.J. Government Medical College,)
Jai Prakash Narayan Road,)
Near Pune Railway Station, Pune 411001)
4. Dr. (Smt.) Sushma Pednekar,)
Associate Professor of Microbiology,)
B.J. Government Medical College,)
Jai Prakash Narayan Road,)
Near Pune Railway Station, Pune 411001))..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Miss Savita Suryawanshi – Presenting Officer for Respondents No.1 to 3

Shri Tushar L. Pimple, Advocate holding for

Shri Sushil Inamdar – Advocate for Respondent No.4

CORAM : Shri Justice A.H. Joshi, Chairman

DATE : 12th October, 2017

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant, Miss Savita Suryawanshi, learned Presenting Officer for Respondents No.1 to 3 and Shri Tushar L. Pimple, learned Advocate holding for Shri Sushil Inamdar, learned Advocate for Respondent No.4.

2. The applicant has challenged the transfer order dated 21.9.2017, which is Annexure A-2 at page 15 of this OA. By this order the applicant is transferred under the title 'Administrative reasons' from B.J. Government Medical College, Pune to RCSM Government Medical College, Kolhapur and respondent no.4 is transferred on her request from Kolhapur in place of the applicant.

3. The record was produced. The OA is contested by both the respondents on the basis of record and oral submissions.

4. The applicant has challenged the transfer on the ground viz:-

The transfer is not supported by the special reasons or exceptional circumstances. The averments in this regard are contained in para 6.9 at page 5 of the OA.

5. Perused the record. Copy thereof is taken on record.
6. It is seen that Civil Services Board had considered various cases and inter alia case of the respondent no.4.
7. The record shows that respondent no.4's transfer from Kolhapur to Pune was recommended by writing a letter by Hon'ble Minister, Social Justice, Union of India.
8. The Civil Services Board has recorded (at page 95 of the office record) that applicant was not due for transfer and her request was considered and was declined.
9. After decision of Civil Services Board, the matter was put up before the competent authority. It is seen that Hon'ble Minister, Medical Education who is the competent authority has vetted the transfer as incorporated in the lists which are at pages 109, 111 and 113. The transfers as vetted by the Hon'ble Minister, Medical Education Department have been approved by the Hon'ble Chief Minister.
10. The case proceeds on admitted position namely:-
 - (i) The recommendations of Civil Services Board have to be sought, though those are having recommendatory value.
 - (ii) Respondent no.4 was not due for transfer.
 - (iii) Impugned transfer is midterm and qua Respondent No.4 mid-tenure.

- (iv) Whether transfers as proposed by the Civil Services Board or any other decision be taken depends upon the decision at the level of competent authority.
- (v) 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') have to be followed rigorously whenever the transfer is in the mid of the year/mid-term or by curtailing the statutory tenure, and for this purpose the special reasons and exceptional circumstances, which do propel the decision to transfer have to be recorded in the file and noting leading to the decision.

11. In view that the original record was produced, Ld. PO was called to pinpoint and show if the special reasons or exceptional circumstances for transfer of the applicant and/or transfer of respondent no.4 are borne on record.

12. Learned PO was able to put a finger on the noting which has led to the transfer. Text of said note consists of following words:-

“प्र.क्र.१०९ ते ११३/टि.वि येथील प्रस्ताव मान्य करण्यास हरकत नसावी.”

13. The quotation made hereinbefore does not contain an iota of reason whatsoever. Thus, applicant's impugned transfer is camouflaged to put to believe that it is ordered for administrative reasons which are not disclosed in the order. Those reasons – special reasons or exceptional circumstances are not disclosed as recorded. All that is disclosed is that Respondent No.4's transfer was recommended by Hon'ble Minister, Social

Justice Department of Union Government and applicant is moved out to create a vacancy showing administrative reason.

14. The set of facts as has emerged proves that impugned transfer is ordered in patent violation of Section 4(4) and 4(5) of the Transfer Act.

15. Power to transfer mid-term and mid-tenure very well exists. However, exercise thereof is permissible only when facts withstand and the due process as is laid down in the provisions of the policy legislation enacted to guarantee freedom from arbitrary, capricious, vindictive orders and favoritism in the matters of transfer.

16. In the result, OA is allowed and the impugned transfer order is quashed and set aside.

17. In view that the order is set aside the effect of this order shall have to be given within ten days of receipt of this order.

18. Steno copy and hamdast is allowed. Ld. PO is directed to communicate this order to the respondents.

Sd/-
(A.H. Joshi, J.)
Chairman
12.10.2017

Dictation taken by: S.G. Jawalkar.