

O.A. 291/2021 (D.B.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 01/04/2021.

C.A. No. 104/2021 -

Heard Shri G.I. Dipwani, Id. counsel for the applicants and Shri S.A. Deo, Id. CPO for the State.

2. The learned counsel for the applicants has filed C.A.No.104/2021 for Joint O.A. As aggrieved by both the learned counsel for the parties, the C.A.No. 104/2021 is allowed.

O.A. 291/2021 -

Heard Shri G.I. Dipwani, Id. counsel for the applicants and Shri S.A. Deo, Id. CPO for the State.

2. Issue notice to the respondents returnable **after four weeks**. Learned C.P.O. waives notice for State. Hamdast allowed.

3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

4. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is

put to notice that the case would be taken up for final disposal at the stage of admission hearing.

5. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules,1988, and the questions such as limitation and alternate remedy are kept open.

6. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

7. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

S.O. after four weeks.

Vice-Chairman

dnk.

C.P. 01/2021 in O.A. 879/2017 (D.B.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 01/04/2021.

C.A. No. 67/2021 -

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

2. In order dated 11/3/2020 in O.A. No.879/2017 the operative part is on page no.17 of C.P.01/2021 and order is very specific which is again reproduced below –

“The application is partly allowed. The respondent no.2 is directed to arrange the DPC for consideration of the case of the applicant in view of the directions issued in the G.R. dated 15/12/2017 in para 1 (6) & 1(9). The decision shall be taken by the respondent no.2 within a period of three months from the date of this order. No order as to costs.”

3. The respondents have filed correspondence dated 3/2/2021 (P-28) and in para-2 they have mentioned about para 1 (6) & 1(9) of the G.R. dated 15/12/2017. It seems that it has been ignored. The respondents are directed to file their say only to the extent of their compliance of order related to para 1 (6) & 1(9) of the G.R. dated 15/12/2017 as per order dated

11/3/2020. In case of any exigency, the matter will be adjourned. Both the counsels have agreed.

S.O.15/4/2021.

Steno copy is granted.

Vice-Chairman

dnk.

C.P. 02/2021 in O.A. 487/2018 (D.B.)

**Coram: Shri Shree Bhagwan,
Vice-Chairman.**

Dated : 01/04/2021.

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The learned P.O. has filed correspondence dated 11/2/2021 and along with that he has attached the G.R. dated 11/2/2021 issued by the Medical Education and Drugs Department, Mantralaya, Mumbai. By this G.R. the order of this Tribunal dated 3/8/2020 has been fully complied. However, learned counsel for the applicant desires to take instructions from the client.

S.O. 5/4/2021.

Vice-Chairman

dnk.

O.A.No.94/2021 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.

Heard Shri S.V.Deshmukh, the Id. counsel for the applicant, Shri A.M.Ghogle, the Id. P.O. for the Respondents and Shri T.M.Zaheer, the Id. counsel for the respondent nos. 3 to 5.

2. The Id. P.O. has filed reply on behalf of the respondent nos. 1 & 7. It is taken on record. Copy is served to the other side.

3. In para no. 4 of reply of respondent nos. 1 & 7 following observations have been made which are reproduced below:-

"It is submitted that, even though the applicant has possessing the qualification of Diploma in Civil Engineering on 09.06.2016 and same has been informed by the applicant to the respondent no. 3 by letter dated 27.09.2018. It is duty on the part of respondent no. 3 to make the necessary corrections or informed the Collector, Nagpur to make the same. But the same has not been done till the answering respondent send the requisition to the Collector, Nagpur, therefore the answering respondent has not considered the case of the applicant for giving appointment on compassionate ground."

4. *Prima Facie*, it appears that respondent no. 3 has failed in upgrading the qualification of the applicant and for that he got aggrieved.

5. In view of these, respondent nos. 3 to 5 are directed to file reply as early as possible. If reply is not file till date of hearing, matter be heard on merit.

6. **S.O. 15.04.2021.**

Vice Chairman

Date:-01/04/2021.
aps.

O.A.No.280/2020 (S.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.**

Heard Shri N.R.Saboo, the Id. counsel for the applicant and Shri A.M.Ghogre, the Id. P.O. for the Respondents.

2. The Id. P.O. pointed out that due to vacation from 14 to 18/04/2021; requires some time to file reply. Hence, **S.O. 19.04.2021 for filing reply as a last chance.**

Vice Chairman

Date:-01/04/2021.
aps.

O.A.No.214/2020 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.

Heard Dr.P.S.Khatwani, the applicant in person. Shri M.I.Khan, the Id. P.O. for the Respondents.

2. In O.A. No. 214/2020; applicant grievance was for joining and as per this Tribunal's order dated 28.01.2021; applicant had joined.

3. Applicant relief clause no. 9 (i) has been solved though he has joined duty. However, relief clause no. 9 (ii) which is reproduced below:-

"By suitable order/ direction, this Hon'ble Tribunal may be pleased to direct the respondent to pay me salary from the date 23.06.2017 when i was not allowed to join the duty and was forced to return home."

4. The respondents are directed to file reply on relief clause no. 9 (ii) before next date of hearing.

5. **S.O. 22.04.2021.**

6. *On next date M.C.A. No. 08/2019, Mumbai Bench should be club with the O.A. No. 214/2020.*

Vice Chairman

Date:-01/04/2021.
aps.

O.A.No.114/2021 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.

Heard Shri N.R.Saboo, the Id. counsel for the applicant and Shri P.N.Warjekar, the Id. P.O. for the Respondents.

2. As per record vide order dated 26.11.2019 (Annexure-A-1, P.B., Pg. No. 12); it appears that applicant was under suspension and he was reinstated. He was suspended vide order dated 17.05.2019 and after reinstatement he was posted to Gadchiroli vide order dated 26.11.2019 (Annexure-A-1, P.B., Pg. No. 12). Posting the applicant in Nagpur Division was against the policy decision of Government of Maharashtra, G.A.D. vide Circular dated 20.04.2013 (Annexure-R-7, P.B., Pg. No. 162) were in para no. 2 (v) following decision has been taken:-

v½ jkT; Lrjh; I 0xkz-hy vf/kdkjh® deþkjh ; kulk R; kpk eG egl nyh foHkkx ¼Division½ o T; k i nkoj dkk; Jr vl rkuk fuyicr dsys rks egl nyh foHkkx oxGuu vU; = vdk; Zdkjh i nkoj fu; Þrh dj.; kr ; koh-

3. Posting to Gadchiroli was against the Government policy, since constitutional provision for posting such officers who do not have good record should not be posted in Scheduled-5 area of constitution and Gadchiroli comes under Scheduled-5 area of the constitution.

4. Respondents have filed their reply to the Rejoinder by applicant dated 25.03.2021 and in para no. 12 they have explained about non-following of circular dated 30.04.2013 which are reproduced below:-

"12. It is submitted that, the as per clause 2 of the GAD Circular dated 20.04.2013 the applicant was required to be posted on Non-Executive post after his reinstatement on revocation of suspension. The copy of the G.A.D. Circular dated 20.04.2013 is annexed herewith as Annexure-R-7. It is further submitted that, when the applicant was reinstated the non-executive posts which are only available at Navi Mumbai were not vacant and therefore he was not given posting at New Mumbai on non executive post and posted at Gadchiroli. It is submitted that, since the non executive posts at New Mumbai got vacant and looking to the misbehaviour and complaints against the applicant from the Gadchiroli Office, the applicant has been rightly posted and transferred at New Mumbai within the very powers of respondents following necessary Rules, Regulations and prescribed procedure and there is no illegality in the said order of transfer of applicant."

5. The impugned order has been taken after civil services board meeting dated 05.01.2021 at P.B., Pg. No. 85 to 87 which has been approved by Secretary and Chairman of the Department, Commissioner and Jointed Secretary. The Id. counsel for the applicant has filed notes of argument on behalf of the applicant, which is on P.B., Pg. Nos. 165, 166 & 167 that is taken into consideration while

deciding the matter. The matter raised by Id. counsel for the applicant in Rejoinder had been considered. However, it is made clear that those points have not been taken into consideration for issuing impugned transfer order of the applicant it has been taken in view of general guidelines of Circular dated 20.04.2013 and vacancy of the post. So, after considering the Rejoinder, it is made clear that since those grounds have not been taken into account for transferring the applicant it cannot be a supportive point against the impugned transfer order.

6. The Id. P.O. has relied upon Judgment in **W.P. No. 2585 of 2019 of Bombay High Court in the case of Soudamini S. Chaudhari Vs. The State of Maharashtra and 3 Ors. decided on 16.12.2020.** In paragraph no. 17 the Hon'ble High Court has observed that Government Servants in Maharashtra being guided by Statutory provisions of **"The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005"** hereinafter referred as Transfer Act, 2005. In the said W.P., the Hon'ble High Court in para nos. 18, 20, 21 and 22 has observed as below:-

"18. In terms of section 2(i) of the Transfer Act, 'transfer' means posting of a Government servant from one post, office or department to another post, office or department. A look at section 4 thereof, which has "Tenure of transfer" as the marginal note, is necessary because such provision appears to be the very heart of the enactment. Sub-section (1) ordains that no Government servant shall ordinarily be

transferred before completion of his tenure of posting as provided in section 3, i.e., 3 (three) years. The procedure for preparation of 'transfer list' is envisaged in sub-sections (2) to (4). Sub-section (4) sets out that ordinarily, transfers be made only once in a year in the month of April or May. Clause (ii) of the proviso to sub-section (4) lays down that a transfer may be made any time in the year where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons which ought to be recorded, and must have the prior approval of the next higher sng WP-2585.2019 authority. Sub-section (5), which is a non-obstante clause, empowers the competent authority, in special cases, to record reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, to transfer a Government servant before completion of his tenure of post as provided in section 3.

20. That the complaint received by the Dean from the staff of Podar Medical College and forwarded to the Director, Ayush formed the plinth of the petitioner's transfer, is the admitted position. There is nothing oblique on that count as such to cast a doubt. Question is, whether by reason of the order of transfer the petitioner has been punished, or in other words, whether the weapon of transfer has been used against her as a punitive sng WP-2585.2019 measure, or whether it is in public interest that it was considered necessary to transfer and post her at the Govt. College. Having regard to the law laid down in Janardhan

Debanath (supra), to amount to a punishment it is incumbent for the petitioner to show that the order of transfer has entailed penal consequences for her. There is no allegation from the side of the petitioner that by reason of the impugned transfer order, she has been asked to discharge duty on a post lower than that she held at Podar Medical College, or that there has been downgrading of her pay, or that her promotional prospects are jeopardised or that the order is stigmatic in the sense that she would have to carry an indelible stain for the rest of her service career without there being any finding of guilt recorded against her. On the contrary, the complaint together with the report of the Dean acted as a catalyst to meet two ends, i.e., avoid further conflict between the petitioner and the staff and to secure the interests of the patients, which was taking a beating because of such conflict. The petitioner's presence at Podar Medical College was not found desirable, on facts and in the circumstances, which resulted in the respondents deciding to post her at the Govt. College but keeping her entitlements intact.

21. The submission of Mr. Anturkar with reference to a single sentence in paragraph 14 of the decision in Janardhan Debanath (supra) that no prima facie conclusion has been recorded, has not impressed us for the simple reason that the entire matter was considered by the Dean and then by the Board, followed by the Hon'ble Minister and the Hon'ble Chief Minister in that order, and an order has been passed to sub-serve public interest. As noticed before, the impugned transfer order was preceded by

consideration of the report of the Dean. The prima facie satisfaction has to be inferred from such report as well as the remarks in the impugned order of transfer. Moreover, the petitioner had completed two years when the impugned transfer order was issued. The terms of the Transfer Act are such that no Government servant can claim that he has a right not to be dislodged before 3 (three) years. In the exigency of administration, an order could indeed be passed transferring a Government servant even prior to completion of the tenure of 3 (three) years, which is the normal tenure. We see no reason to fault the respondents 1 to 3 in not being inclined to have an enquiry conducted or to act on any adverse findings arrived at behind the petitioner's back but to order her transfer in sng WP-2585.2019 administrative interest for ensuring unhindered and smooth working conditions at Podar Medical College noting the situation prevailing at Podar Medical College. For the machinery of the Government to work, there cannot be any doubt that some free play in the joints has to be conceded to the administrative body in the administrative sphere.

22. Of course, we are not unmindful that a case could arise where a person in public employment often creates situations (without violating his service terms and conditions) which are not too comfortable or palatable for the employer and perceiving the employee's further presence undesirable at the particular place and to deter him from creating similar such situations in future, the employer under the veil of a seemingly innocuous order of transfer,

which does not affect duty, responsibility, pay and promotional prospects and issued purportedly in administrative interest transfers the employee to get rid of him as a punitive measure. Indeed, a purpose of the nature referred to above could be achieved by the employer without passing a stigmatic order. However, despite not having suffered any penal consequences, the employee could feel sng WP-2585.2019 aggrieved even by such order of transfer claiming that he has been punished for no fault on his part and may argue that the impugned order should be interdicted bearing in mind the law laid down in Somesh Tiwari (supra). Such cases, as and when they are brought before the Court, have to be dealt with in a manner known to law. Although the Courts are loath to interfere in matters relating to transfer issued in administrative exigencies, nothing prevents a Court, if it is prima facie satisfied with the case of the aggrieved employee, to lift the veil and ascertain whether any mala fide motive has triggered the transfer and/or the employee has been dealt with in any manner violative of his rights in the matter of public employment.”

7. The transfer of Government servant is also clarified by order of Hon'ble Apex Court Judgment, in the case of ***T.S.R. Subramanian v. Union of India, reported in (2013) 15 SCC 732***

“To make the transfer more logical and transparent, it was directed to have a Civil Services Board and after consideration, scrutiny and recommendation of Civil Services Board, competent authority was to decide the transfer of employees.”

8. The respondent nos. 1 & 3 have filed their reply on 08.03.2021 and in para no. 12 they have submitted as follows:-

"It is further submitted that, the transfer order dated 01.02.2021 is well within the powers vested with them as it was an administrative exigency caused by the very behaviour of the applicant. It is not passed in lieu of punishment but the behaviour of the applicant was such that it was found necessary to transfer him from Gadchiroli to Navi Mumbai on administrative grounds."

After availability of post they have followed all the procedures including circular dated 20.04.2013.

9. As per direction of Hon'ble Apex Court Judgment the Court has given direction for Civil Services Board and after recommendation of Civil Services Board transferring authority will decide the transfer order and in case of differences specific reason should be recorded. In present case, it is crystal clear that as per the said Hon'ble Apex Court Judgment in Civil Services Board meeting has taken place on 05.01.2021, where Secretary of the Department has chaired the meeting and other members have attended meeting, the minutes of meeting is also attached with the same. The impugned order is issued as per recommendation of Civil Services Board dated 05.01.2021; where applicant name appears at Sr. No. 4. Since, all the procedures are as per directions of **Maharashtra Government Servants Regulation of Transfers**

and Prevention of Delay in Discharge of Official Duties Act, 2005 hereinafter referred as Transfer Act, 2005 and following rules and regulations. Tribunal is not required to interfere with the impugned order.

10. In view of this, impugned order does not require any interference. **Hence, O.A. is dismissed.**

Vice Chairman

Date:-01/04/2021.

aps.

O.A.No.282/2021 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.

Heard Shri S.Y.Deopujari, the Id. counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the State.

2. As submitted by Id. counsel for the applicant, the impugned order dated 02.12.2020 (Annexure-A-1, P.B., Pg. No. 21) shows that recovery has been affected from pension of the applicant and in the said letter it has been pointed out that excess payment of Rs. 2,68,947/- has been made and recovery has been fixed at Rs. 20,000/- per month. This order has been passed without giving any chance of hearing to the applicant.

3. In view of this situation, **the impugned order dated 02.12.2020 (Annexure-A-1, P.B., Pg. No. 21) is stayed till filing of the reply.**

4. Issue notice to Respondents, returnable on six weeks. Learned C.P.O. waives notice for R-1. Hamdast allowed.

5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

6. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to

notice that the case would be taken up for final disposal at the stage of admission hearing.

7. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

9. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

10. **S.O. six weeks.**

Vice Chairman

Date:-01/04/2021.

aps.

O.A.No.286/2021 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :01/04/ 2021.

Heard Shri S.R.Charpe, the Id. counsel for the applicant and Shri A.P.Potnis, the Id. P.O. for the State.

2. The applicant's representation dated 23.02.2021 (Annexure-A-4, P.B., Pg. No. 29) pointed out that applicant has been working in Veternery Dispensary, Kurkheda, Dist. Gadchiroli since 01.07.2017. She has also mentioned in her representation's reference column nos. 1 & 2 the Government of Maharashtra G.A.D., G.R. dated 28.04.2015 and G.R. dated 06.08.2002. Since, both the G.Rs. are policy decision by Government that employees who have worked satisfactory for the period of 2 – 3 years in Tribal and Naxal affected area; they should be given posting out of their choices. Applicant in the application has also pointed out at P.B., Pg. No. 30; about posting of husband and wife together and for that applicant has mentioned G.R. dated 06.08.2002 for posting husband and wife together.

3. The Id. P.O. has filed G.R. dated 09.04.2018. It is taken on record. Copy is served to the other side.

4. The Id. counsel for the applicant is directed to submit choices as per column no. 10 of ifjf'kV 1 I kcrpsfooj.ki=&1 of the G.R. dated 09.04.2018 as early as possible and respondents are directed to consider

the said choices while transferring the applicant in the transfer season, 2021.

5. In view of these directions, **O.A. stands disposed of with no order as to costs.**

Vice Chairman

Date:-01/04/2021.
aps.