

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.211 OF 2016

DISTRICT : MUMBAI

Shri Arun Anand Sariputra. )  
Aged : 52 Yrs. Transferred from the post )  
of Senior Draftsman in the office of the )  
District Collector, Mumbai City and )  
Residing at Government Colony, Bandra )  
(East), Mumbai 400 051. ) **...Applicant**

**Versus**

1. The Deputy Director of Land Records,)  
Konkan Region, Mumbai and having )  
Office at Old Council Hall, Fort, )  
Mumbai - 400 039. )
2. Shri Mahesh Arun Kadu. )  
Aged : Adult, Working as Senior )  
Draftsman in the office of the )  
District Collector, Mumbai City. ) **...Respondents**

**Shri B.A. Bandiwadekar, Advocate for Applicant.**

**Shri K.B. Bhise, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-J)**




**DATE : 23.08.2016**

**JUDGMENT**

1. The original Applicant calls into question the order dated 31.5.2015 being Exhibit 'A' hereto whereby he was transferred from the post of Senior Draftsman in the Office of the District Collector, Mumbai City to the post of Copying Clerk in the Office of Deputy Superintendent of Land Records, Thane and transferring the Respondent No.2 vice him to the post he has been transferred from. In this behalf, in the prayer clause itself, it has been mentioned that the benefit of the decision of this Tribunal in OA Nos.866 to 868/2015 against the same Respondent No.1, dated 118.12.2015 be extended to him.

2. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

3. As a matter of fact, the issue really is as to whether the authority has unbridled power to recall a person sent on deputation and while on deputation, is he entitled to the protection of the Maharashtra Government



Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. If the answer to this question is in the affirmative, then the OA succeeds.

4. The Applicant was working as a Scrutiny Clerk in the Office of District Superintendent of Land Records, Mumbai at Bandra (Department of Land Records) as on 3<sup>rd</sup> August, 2010. Willingness was sought from the employees as to whether they were so minded as to work as Draftsman. The Applicant gave his consent and he was accordingly transferred along with three others as Draftsman, Mumbai City Survey and Land Records. Ultimately, on 31<sup>st</sup> May, 2015, by the impugned order, which is in Marathi, the Applicant along with several others came to be transferred vice Shri Kadam and the 2<sup>nd</sup> Respondent was transferred to his place. It appears that the 2<sup>nd</sup> Respondent's transfer was the request transfer while no such request was made for transfer by the Applicant. The transfer was made on administrative grounds.

5. In fact, the record shows (Exh. 'B', Page 23 of the Paper Book) that even the Collector, Mumbai by his communication to the Settlement Commissioner, Pune wanted the transfer of the Applicant to be cancelled.



6. The sum and substance of the case of the Respondents as would be reflected by the Affidavit-in-reply of Shri S.S. Jagdand, Deputy Superintendent of Land Records is that the period of deputation was for three years, and therefore, once the said period expired, the order of transfer cannot be disputed. The circumstances preceding the deputation by calling willingness, etc. are not contested. From the recitals in the various sub-paras of Para 33 of the Affidavit-in-reply, it appears to be the case of the Respondents that the norms applicable to the normal order of transfers would not be applicable in case of deputation, and therefore, the Applicant cannot invoke the provisions of the Transfer Act in support of his case.

7. In so far as the issue of the position of a depute in the context of the transfer, my attention was invited to an order of this Tribunal in **OA 764 (Dr. Chandrakant G. Gaikwad Vs. The State of Maharashtra and one another, dated 9<sup>th</sup> February, 2009)**. That order was made by the then learned Member (A) of this Tribunal. Therein, the Applicant was a Medical Officer and his earlier transfer was successfully challenged on the judicial side. He was again transferred and this time, the word used was, "on deputation". The Marathi word was "Pratiniyukti". A few months thereafter, he was again transferred and he moved



this Tribunal with the OA adopting a case that he could not have been transferred unless he completed the statutory tenure at the place of deputation. These were the facts, but the issue was the same.

8. In Paras 5 and 6, this aspect was discussed in extenso. It was held that the Transfer Act did not recognize 'transfer on deputation' as a distinct phenomenon from transfer's *per-se*. Thereafter, the provisions of Section 4(4), 4(5) and 6 of the Transfer Act were discussed and the OA was allowed. Mr. Bandiwadekar relied upon an unreported Judgment of the Hon'ble Bombay High Court in **Writ Petition No.7977/2012 (The State of Maharashtra and another Vs. Purshottam R. Pandare and anr., dated 22<sup>nd</sup> August, 2012)**. There, in that matter, internal transfers were made on a few occasions within the same Districts. The word, "transfer" as appearing in the Transfer Act was construed and ultimately, the order of this Tribunal striking down the transfer order was upheld.

9. The above discussion must make it very clear, therefore, that going by the above referred order of this Tribunal, there would be practically no difference between any normal order of transfer and the transfer on



deputation. Having mentioned that, I find that in deciding a group of **3 OAs viz. OA 866/2015, 867/2015 and 868/2015 (Smt. Ruchi R. Ghag Vs. Deputy Director of Land Records and one another and 2 others)**, a Bench of this Tribunal presided over by the Hon'ble Vice-Chairman by the order of 18.12.2015 was required to deal with practically, the same issue as is raised herein. There also, the concerned employees did not complete the statutory tenure before the orders of transfer. It was held that for Group 'C' employees, the normal tenure is six years. The other issues, therefore, were not discussed and the OA was allowed.

10. That being the state of affairs and the Applicant having indisputably not completed the tenure of six years and there being as per the authority of **Dr. Gaikwad's** case, no difference between deputation and ordinary transfer, this OA will have to be allowed.

11. It appears that the Applicant has reported for duty to the transferred place. However, as a result of this pronouncement, the status quo such as it obtained on 31<sup>st</sup> May, 2015 will have to be restored.



12. The order (Exh. 'A', Page 19 of the P.B.) impugned herein, in so far as it relates to the Applicant and the 2<sup>nd</sup> Respondent stands hereby quashed and set aside. The Applicant and the 2<sup>nd</sup> Respondent shall be reposted to the post that they were transferred from by the impugned order within a period of four weeks from today. The Original Application is allowed in these terms with no order as to costs.

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Sd/-

**(R.B. Malik)**  
**Member-J**  
**23.08.2016**

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3.8.16

Mumbai  
Date : 23.08.2016  
Dictation taken by :  
S.K. Wamanse.

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