

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION 557 OF 2016**

**DISTRICT : PUNE**

Shri Ratnadip Rangnathrao Hendre )  
Deputy Commissioner of Labour, with )  
Additional charge of the post of )  
Additional Commissioner of Labour, )  
Pune, Dist-Pune and having residential )  
Add at 1003, F-Wing, Indradhanu Soc. )  
Paud Road, Pune. )...**Applicant**

**Versus**

1. Government of Maharashtra )  
Through the Secretary, )  
Industry, Energy and Labour )  
Department, Mantralaya, )  
Mumbai 400 032. )  
2. Shri A.R Lakaswar, )  
Deputy Commissioner of Labour, )  
Presenting posted as O.S.D )  
to the Hon'ble Minister, )  
Labour Department, Mantralaya, )  
Mumbai 400 032. )...**Respondents**

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Shri M.D Lonkar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondent no.1.

Shri A.V Bandiwadekar, learned advocate for Respondent no. 2.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 05.07.2016**

**ORDER**

1. Heard Shri M.D Lonkar, learned advocate for the Applicant, Shri K.B. Bhise, learned Presenting Officer for the Respondent no.1 and Shri A.V Bandiwadekar, learned advocate for Respondent no. 2.

2. This Original Application has been filed by the Applicant challenging his transfer from the post of Deputy Commissioner, Labour (Pune) to Chairman, Iron & Steel Board, Mumbai by order dated 10.6.2016. The order of posting of the Respondent no. 2 as Deputy Commissioner, Labour, (Pune) by order dated 9.6 .2016 is also challenged.

3. Learned Counsel for the Applicant argued that the Applicant was posted as Deputy Commissioner of Labour, Pune by order dated 13.9.2012 and he actually joined on 15.9.2012. He was also given additional charge of the post of Additional Commissioner of Labour, Pune from 31.10.2012. The Applicant is due to retire on superannuation on

31.12.2016. The Applicant was asked by letter dated 27.1.2016 by the Commissioner of Labour, Maharashtra State, Mumbai to indicate his choices for transfer as he had completed 3 years as Deputy Commissioner of Labour, Pune and was due for transfer during general transfers of 2016. The Applicant by letter dated 29.2.2016, informed the office of Commissioner of Labour, Mumbai that he was due to retire on 31.12.2016 and he may, therefore, not be transferred out of Pune. Learned Counsel for the Applicant stated that his name did not figure in the list of general transfers in April-May, 2016. However, by impugned order dated 10.6.2016, he has been transferred from Pune to Mumbai. This order is in violation of Sections 4 and 5 Maharashtra Government Servants (Regulation of Transfers and Prevention of Delays in Discharge of Official Duties), Act, 2005. Learned Counsel for the Applicant argued that the matter was never referred to the Civil Services Board as required under relevant instructions of the Government issued in the wake of Supreme Court judgment in the case of T.S.R SUBRAMANIAN Vs. UNION OF INDIA : AIR 2014 SC 263. Learned Counsel for the Applicant argued that there was no special reasons / exceptional to issue order dated 9.6.2016 posting the Respondent no. 2 as Deputy Commissioner of Labour, Pune. Also, the said post was not vacant on 9.6.2016, as the Applicant was transferred on 10.6.2016 from that post. Learned Counsel for the Applicant prayed that both orders dated 9.6.2016 and 10.6.2016 may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent no. 1, that the Applicant was transferred

on his own request from Nasik to Pune by order dated 13.9.2012. He had completed his tenure of 3 years at Pune in September, 2015 and was due for transfer. Before transfer order dated 10.6.2016 was issued, the Secretary of the Department had personally spoken to the Applicant on telephone and he was posted to Mumbai as per his oral choice. Learned Presenting Officer argued that the Applicant had agreed to be transferred to Mumbai and now he cannot challenge that order.

5. Learned Counsel for the Respondent no. 2 argued that this Original Application is not maintainable, as the Applicant was duly consulted before the impugned order dated 10.6.2016 transferring him to Mumbai was passed. The Applicant has not denied that the Secretary of the Department had personally spoken to him telephonically and ascertained his choice of posting. Learned Counsel for the Applicant stated that the Respondent no. 1 was not aware that the Applicant was desirous of staying in Pune till his retirement. Two letters dated 29.2.2016 and 7.6.2016, produced by the Applicant at the time of hearing are not part of the proceedings of this Original Application. There is no acknowledgement to show that the same were received by the Respondent no. 1 or Commissioner of Labour. The Applicant was due for transfer as he had completed his tenure of 3 years long back. The Applicant is not entitled to any relief under Section 5(1)(a) of the Transfer Act as he had more than one year left for retirement when he completed his tenure as Deputy Commissioner of Labour, Pune on 15.9.2015. Also, this is an enabling provision and not legally binding.

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6. Learned Presenting Officer has placed the Mantralaya file dealing with transfer of officers in the Labour Department for my perusal. It is seen that Minister of Labour has given order on 7.6.2016 that Shri A.R Lakaswar may be posted as Deputy Commissioner of Labour, Pune. There were no reasons recorded for transfer of Shri Lakaswar, though he was posted as Officer on Special Duty (O.S.D) in the office of Minister of Labour, less than a year back. The orders dated 9.6.2016 posting Shri Lakaswar, the Respondent no. 2 were issued, though evidently on that date the post was occupied by the Applicant. The order dated 9.6.2016 is a mid-term (issued in the month other than April or May) transfer order, which requires approval of next higher authority citing exceptional circumstances or special reasons. No such exceptional circumstances or special reasons were cited for transfer of the Respondent no. 2. This is in clear violation of section 4(4)(ii) of the Transfer Act. Similarly, the transfer is issued in the month of June and no special case was made out for issuing order in a month other than April-May. Section 4(5) of the Transfer Act is clearly violated. The transfer order dated 9.6.2016 was never referred to the Civil Services Board. This order cannot be sustained for violation of legal provisions, S.C orders and due to the fact that the Respondent no. 2 was posted in a post, which was not vacant, when the impugned order was issued.

7. Coming to the order dated 10.6.2016, it is seen on perusal of file, that it was not referred to the Civil Services Board. The Applicant had completed his normal tenure, so section 4(4)(ii) of the Transfer Act is not attracted. However,

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the impugned order is issued in June, so section 4(5) is attracted. However, there was no special case made out for transferring the Applicant. On these grounds alone this order is unsustainable. There was no mention in the file regarding telephonic conversation, the Secretary of Labour Department had with the Applicant, before the order was issued. It is claimed in the affidavit in reply dated 23.6.2016 filed by the Respondent no. 1 that:-

“5. I further say that the fact that Applicant is due to retire on superannuation in December 2016 was sympathetically considered while transfer and after due telephonic consultation with the Applicant and as per the choice orally given by him, he was transferred in the said vacant post.”

On perusal of the concerned file, I did not find any mention that the Applicant had chosen to be transferred to Mumbai. In fact, there was absolutely no mention of any telephonic conversation. It is fruitless to speculate on the said telephonic conversation as the Applicant had chosen to remain silent on that. However, if a Government <sup>servant</sup> is told that he is to be transferred (decision to post the Respondent no. 2 to Pune was taken by Minister before 7.6.2016, as can be inferred from file notings), he might give choice of posting, which is least inconvenient to him. In such circumstances, it can hardly be said that he had consented to the new posting.

8. Section 5(1)(a) of the Transfer Act reads:-

“5(1). The tenure of posting of a Government servant or employee laid down in Section 3 may be extended in exceptional case as specified below, namely:-  
(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement,”.

The Applicant had completed his tenure of 3 years on 15.9.2015. However, whether he was due for transfer immediately is the moot question. Learned Counsel for the Respondent no. 2 had argued that on 15.9.2015, the Applicant had more than one year for his retirement, so section 5 (1)(a) of the Transfer Act is not applicable. This proposition is difficult to accept as though, the Applicant had completed his tenure on 15.9.2015, his transfer immediately would have required procedure under Section 4(5) of the Transfer Act to be complied with. Normally, he would have been transferred in April-May, 2016, when he had less than 1 year for retirement. In actual fact, he was transferred by impugned order dated 10.6.2016, when he would have less than one year to retire. In my opinion, his case is covered by Section 5(1)(a) of the Transfer Act and there is nothing on record to suggest that this aspect was considered by the Respondent no. 1, notwithstanding his claim of telephonic conversation. The transfer of the Applicant by impugned order dated 10.6.2016 is clearly unsustainable.

9. Having regard to the aforesaid facts and circumstances of the case, the impugned orders dated



9.6.2016 and 10.6.2016 are quashed and set aside. This Original Application is allowed. The Respondent no. 1 will allow the Applicant to join as Deputy Commissioner of Labour, Pune, within a period of two weeks from the date of this order. There will be no order as to costs.

Sd/-

(Rajiv Agarwal)  
Vice-Chairman

**Place : Mumbai**  
**Date : 05.07.2016**  
**Dictation taken by : A.K. Nair.**