

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.01 OF 2021**

**DISTRICT: THANE  
SUBJECT: TRANSFER**

Shri Pankaj Gokul Patil, )  
Aged 40 years, Occ. Government Service as, )  
Chief Officer, Karjat Municipal Council, Dist. Raigad, )  
and transferred now as Assistant Commissioner, )  
Mira Bhayandar Municipal Corporation, Dist. Palghar, )  
R/o. 1201, Raj Residency, Plot No.26, Sector 19, )  
Kharghar, Navi Mumbai, Dist. Thane. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary, )  
Urban Development Department, )  
Having office at Mantralaya, Mumbai-32. )
- 2) Shri Samir Jadhav, )  
Aged Adult, Occ. Government Service as Assistant )  
Commissioner, Panvel Municipal Corporation, )  
Transferred as Chief Officer, Karjat Municipal )  
Council in place of the Petitioner. )... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondent.

Shri Kishor R. Jagdale, learned Advocate for the Respondent No.2.

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 13.12.2021.**

**JUDGMENT**

1. The Applicant has challenged his transfer order dated 31.12.2020 transferring the Applicant from the post of Chief Officer, Karjat Municipal Council, Raigad to the post of Assistant Commissioner, Mira

Bhayandar Municipal Corporation, Palghar and also challenged transfer order of Respondent No.2 posting him in his place by order dated 31.12.2020.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant is serving in the cadre of Chief Officer, Karjat Municipal Council, which is equivalent to Assistant Commissioner, Municipal Corporation. By order dated 13.02.2020 he was transferred from Aurangabad Municipal Corporation to the post of Chief Officer, Karjat Municipal Council, District Raigad. He being group 'B' Government servant is entitled to three years tenure in terms of provision of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity). However, abruptly by order dated 31.12.2020 he is transferred to Mira Bhayandar Municipal Corporation. The Applicant has challenged the transfer order dated 31.12.2020 *inter-alia* contending that there is no such administrative exigencies or special case to warrant mid-tenure transfer as contemplated under section 4 (5) of Transfer Act 2005 and secondly the proposal of transfer of the Applicant was not placed before Civil Service Board (C.S.B.) which is mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

3. Respondents sought to justify impugned orders *inter-alia* contending that the same were necessitated to handle COVID-19 Pandemic situation and it being approved by Hon'ble Chief Minister challenge to the transfer order holds no water.

4. Indeed, when the O.A. was filed and stay to the impugned order dated 05.01.2021 was sought the Tribunal granted interim relief in favour of the Applicant, having noticed that *prima-facie* impugned transfer order is vitiated due to not placing the same before C.S.B. and

secondly no such special case was made out in terms of section 4 (5) of Transfer Act 2005. In para. Nos.4 & 5, Tribunal held as under:-

“4. The perusal of file reveals that the issue of transfer of 15 Government servants was placed before Civil Services Board on 10.11.2020 and recommendations were made by CSB in respect of those 15 Government servants only. The name of Applicant as well as Respondent No.2 does not figure in the proposal vetted by CSB. However, the Hon'ble Minister at the level of Government suggested transfers of 46 employees at Schedule 'A' and requested Hon'ble Chief Minister to approve the same to handle Covid-19 pandemic situation in State. Accordingly, Hon'ble Chief Minister approved the transfers proposed by the Hon'ble Minister.

5. Thus, admittedly, the issue of transfer of Applicant as well as Respondent No.2 was not placed before the CSB. It is only at the level of Government when the recommendations of other 15 Government servants made by CSB was placed for approval, that time another list (Schedule 'A') showing transfer of 46 employees was prepared and the same was approved by the Hon'ble Chief Minister. Thus, there is no denying that the subject of transfer of Applicant was not at all placed before the CSB as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.”

5. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant, Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondent and Shri Kishor R. Jagdale, learned Advocate for the Respondent No.2.

6. In view of submission advanced at bar issue posed for consideration is whether the impugned transfer order dated 31.12.2020 is sustainable in law and answer is in emphatic negative for the reasons to follow.

7. Undisputedly, the Applicant and Respondent No.2 have hardly completed 10 months and 4 months respectively in their present post and they were transferred mid-tenure. True, transfer is an incidence of Government service and no Government servant has vested right to claim particular post for a particular period, since it falls within the domain of executives. However, now transfers are not left to the whims and caprice of the executives and regulated and controlled by ‘Transfer

Act 2005'. It *inter-alia* provides normal tenure of 3 years to Government servant in a post. Whereas for mid-tenure transfer, it is permissible as special case or for administrative exigencies with the reasons in writing and with the approval of next competent transferring authority as per table below, section 6 of Transfer Act 2005. Admittedly Hon'ble Chief Minister is the next competent authority for such mid-tenure transfer, which is as under.

**Section 6 of 'Transfer Act 2005' is as follows :-**

**“6.** The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

Groups of Government Servants (1)	Competent Transferring (2)
(a) Officers of All India Services, all Officers of State Services in Group “A” having pay-scale of Rs.10,650-15,850 and above.	Chief Minister
(b) All Officers of State Services in Group “A” having pay-scales less than Rs.10,650-15,850 (and all Gazetted Officers) in Group “B”.	Minister-in-charge in consultation with Secretaries of the concerned departments.
(c) All (Non-Gazetted employees in. Group “B” & “C”).	Heads of Departments.
(d) All employees in Group “D”.	Regional Heads of

Provided that, in respect of officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division; and the District Head shall be competent to transfer such officers within the District :

Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority.”

8. Needles to mention that mere approval of the Hon’ble Chief Minister will not render transfer order legal, unless it comply rigor of section 4(5) of Transfer Act 2005 which mandates recording of reasons to justify such mid-tenure transfer. Section 4 (5) of Transfer Act 2005 reads as under:-

**(4) (5)** Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

9. Now turning to the facts of the present case as seen from the file examined tendered by learned P.O. issue of transferring 15 Government servants was placed before C.S.B. and after recommendation thereon file was placed before Hon’ble Chief Minister for approval. Admittedly name of the Applicant as well as Respondent No.2 does not figure in the said proposal forwarded by C.S.B. However, Hon’ble Minister in charge of Department at the level of Government suggested transfers of 46 employees (Schedule 'A') and requested Hon'ble Chief Minister to approve the same to handle COVID-19 Pandemic situation in State. Accordingly, same has been approved by Hon'ble Chief Minister.

10. Curiously, it was nowhere the case of the Government that the Applicant was not competent to handle COVID-19 Pandemic situation at Karjat or there were any short coming while functioning there which necessitated his mid-term transfer. All that it is stated in the file in single sentence that transfer is made to handle COVID-19 Pandemic situation and in one-go 46 employees were transferred. This can hardly be treated as compliance of section 4(5) of Transfer Act 2005. True, in view of COVID-19 Pandemic situation if there is any necessity or

emergency, Government was empowered to reshuffle employees. However, it should be for some reasons recorded in writing though not elaborate reasons. Otherwise if the transfers are allowed in such manner it would give handle to the executive to transfer the Government servant arbitrarily in the garb of COVID-19 Pandemic situation for that matter. Suffice to say, there is absolutely no such allegation against the Applicant that he was not able to handle COVID-19 Pandemic situation, and therefore, his transfer was necessitated. In such transfer orders possibility of giving undue advantage to some of employees or favoritism cannot be ruled out. It is for this reasons law mandated recording of some reasons and there should not be such mid-tenure transfer on vague ground.

11. Secondly, there is no denying that the proposal of transfer of the Applicant was not at all placed before C.S.B. as mandated by Hon'ble Supreme Court in **T.S.R. Subramanian case (supra)** whereby directions were given to establish C.S.B. at different level for considering transfers by same independent authority namely C.S.B. to ensure fairness and transparency in the matter of Transfer of a Government servant. No doubt recommendations made by C.S.B. are not bidding and the decision of executive is final. However, the placing of matter before C.S.B. cannot be dispensed with as done in the present case with impunity. As such, non placing of matter before C.S.B. also rendered transfer order unsustainable since it is in blatant violation of the Judgment of Supreme Court in **T.S.R. Subramanian case (supra)**.

12. In view of above, there is no escape from the conclusion that impugned order of the Applicant is totally bad in law and liable to be quashed.

13. At this juncture, while dictating the order, learned P.O. pointed out that Respondent No.2 is already transferred by subsequent order dated 08.09.2021 as Assistant Commissioner, Thane Municipal

Corporation. Learned Advocate for the Applicant, Shri K.R. Jagdale for Respondent No.2 when asked about this development, all that he stated that his client is not in touch with him.

14. The totality of the aforesaid discussion leads me to sum up that impugned transfer order dated 31.12.2020 pertaining to the Applicant being in contravention of the express provision of Transfer Act 2005 and mandate in Judgment of Supreme Court in **T.S.R. Subramanian case (supra)** deserves to be quashed. Hence, the order.

**ORDER**

- A) The Original Application is allowed partly.
- B) Transfer order dated 31.12.2020, transferring the Applicant from the post of Chief Officer, Karjat Municipal Council, Raigad to the post of Assistant Commissioner, Mira Bhayandar Municipal Corporation, Palghar is quashed and set aside.
- C) Interim relief granted by order dated 05.01.2021 is made absolute.
- D) No order as to costs.

**Sd/-  
(A.P. Kurhekar)  
Member (J)**

Place: Mumbai  
Date: 13.12.2021  
Dictation taken by: N.M. Naik.