

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.302 OF 2019

DISTRICT : NASHIK

Shri Anil Punjaji Gaikwad.)
Age : 55 Yrs., Occu.: Service, Working as)
Awal Karkoon in the Office of Collector,)
Nashik and residing at Flat No.5,)
Quadra Gloria, Bhavanjali Nagar,)
Anandwalli, Nashik – 422 013.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. The Collector.)
Nashik District, Nashik – 422 002.)
3. Shri R.S. Dolse.)
Awal Karkoon, Office of Food)
Distribution Officer, Nashik Road,)
Nashik – 422 101.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent Nos.1 & 2.

Respondent No.3 served but absent.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 27.08.2020



JUDGMENT

1. The Applicant has challenged the transfer order dated 07.03.2019 whereby he was transferred from the post of Office Superintendent, District Supply Office, Nashik to the post of Awal Karkoon, Rehabilitation Branch, Collector Office, Nashik invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was posted as Office Superintendent, District Supply Office, Nashik by order dated 20.07.2018 and has not completed normal tenure of three years. However, abruptly, the Respondent No.2 – Collector, Nashik by impugned order dated 07.03.2019 transferred the Applicant mid-term and mid-tenure on the ground of certain complaints. The Applicant has, therefore, challenged the transfer order dated 07.03.2019 inter-alia on the ground that the complaints were manipulated and false and particularly on the ground of competency of Respondent No.2 – Collector to transfer him mid-term and mid-tenure. The Applicant has contended that the impugned transfer is in contravention of Section 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity).

3. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the impugned transfer order mainly on the following grounds :-

(i) The impugned transfer order is in contravention of Section 4(5) read with Section 6 of 'Transfer Act 2005' as Collector is not competent to effect such mid-term and mid-tenure transfer.

(ii) The Applicant was transferred on the ground of certain complaints without investigating the veracity of the complaints, and therefore, the transfer is punitive and unsustainable in law.

4. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer for the Respondents in reference to reply filed by Respondents 1 and 2 sought to support the impugned transfer order contending that the transfer of the Applicant was necessitated in view of various complaints regarding performance of duties and negligence noticed by the Department. As regard competency, she submits that the Applicant being Class 'C' employee, the Collector being appointing authority was competent and with the approval of Civil Services Board (CSB), the Applicant is transferred.

5. In view of the submission advanced at the Bar, the question is whether the impugned transfer order is sustainable in law and the answer is in negative.

6. Indisputably, the Applicant was posted as Office Superintendent of District Supply Office by order dated 20.07.2018 and within a span of nine months, he was transferred by impugned order. As such, it being mid-term and mid-tenure transfer, it must be in consonance with provisions of 'Transfer Act 2005', particularly Section 4(5) read with Section 6 of 'Transfer Act 2005'. The normal tenure of the Applicant was 3 years and if situation arises, he could have been transferred mid-term and mid-tenure in special case after recording reasons in writing with permission of immediately preceding competent transferring authority, as mentioned in Table of Section 6 of 'Transfer Act 2005'. As per Table of Section 6, the competent transferring authority for Group 'C' employees is head of the Department. Material to note that, in terms of Section 7 of 'Transfer Act 2005', the administrative department of Mantralaya was under obligation to prepare a list of the Head of Department and to notify the authorities competent to make transfers within their jurisdiction for the implementation of the provisions of 'Transfer Act 2005'.

7. In the first place, such notification empowering Collector as Head of the Department is not forthcoming. However, there is no denying that Collector is Head of the Department and appointing authority for Group



'C' employee. As such, he is competent authority for general transfer of Group 'C' employees within district. However, in the present case, the Applicant being transferred mid-term and mid-tenure, it needs prior approval of immediately preceding competent transferring authority which is Minister Incharge in consultation with Secretary of concerned Department as provided under Section 6 of 'Transfer Act 2005'. Whereas, in the present case, the Collector himself usurped the authority of next preceding authority and passed the impugned transfer order, which is clearly in contravention of Section 4(5) of 'Transfer Act 2005'.

8. The learned P.O. made feeble attempt to support the impugned transfer order contending that it was done with post approval of immediate superior authority viz. Divisional Commissioner, Nashik. The perusal of minutes of CSB reveals that the recommendation of transfer of the Applicant was forwarded to Divisional Commissioner, Nashik for ex-post facto approval. However, no such ex-post facto approval has seen the day of light. As per reply, the Divisional Commissioner, Nashik accorded ex-post facto approval on 30.03.2019, which is also not forthcoming on record. Even assuming that the Divisional Commissioner, Nashik granted ex-post facto approval, it being not in consonance with law has no legal sanctity. What law requires is prior approval of immediately preceding competent transferring authority, which is Minister Incharge in consultation with Secretary of concerned Department and ex-post facto approval given by Divisional Commissioner, Nashik, does not validates or legalise the transfer order. Suffice to say, the impugned transfer order is in defiance and contravention of express provisions contained in Section 4(5) read with Section 6 of 'Transfer Act 2005'.

9. Nothing was placed on record that there is a delegation of power by competent transferring authority to his subordinate authority as contemplated in 2nd proviso of Section 6 of 'Transfer Act 2005'.

10. Thus, factual situation emerges that there is no prior approval of immediately preceding competent transferring authority as mandated under Section 4(5) and Section 6 of 'Transfer Act 2005', which render impugned transfer order ex-facie illegal and unsustainable in law. On this ground alone, the impugned transfer order is liable to be quashed.

11. Insofar as complaints against the Applicant are concerned, in view of aforesaid discussion and findings that the impugned transfer order is in contravention of Section 4(5) of 'Transfer Act 2005' for absence of approval of immediately preceding competent transferring authority as mentioned in Section 6 of 'Transfer Act 2005', whether the complaints were investigated in terms of Government instruction or it was punitive, need not be looked into and O.A. deserves to be allowed on the point of competency of transferring authority.

12. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is clearly indefensible and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 07.03.2019 is quashed and set aside.
- (C) The Respondents 1 & 2 are directed to repost the Applicant on the post he is transferred from within three weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)

Member-J

Mumbai
Date : 27.08.2020
Dictation taken by :
S.K. Wamanse.