

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.864 OF 2021

**DISTRICT: PUNE
SUBJECT : TRANSFER**

Smt. Jayashree Ravan Sonkawade,)
Age : 48 years, working as Deputy Director,)
Working as – Deputy Director,)
Office Address: Other Backward Bahujan)
Welfare, Office of the Directorate of OBC, SBC)
VJNT Welfare, Pune,)
3 Church Road, Pune 411 001.)... **Applicant**

Versus

- 1) State of Maharashtra,)
Through the Principal Secretary,)
Other Backward Bahujan Welfare)
Department, Mantralaya, Mumbai 400 032.)
- 2) Additional Chief Secretary,)
Social Justice Department, Mantralaya,)
Mumbai 400 032.)
- 3) The Director,)
Directorate of Other Backward Bahujan)
Welfare Department, 5th floor,)
3 Church Road, Pune 411 001.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 23.09.2022.

JUDGMENT

1. The Applicant has challenged order dated 15.09.2021 passed by Respondent No.1 whereby under garb of repatriation the Applicant is

sent to his parent Department invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

3. Respondent No.2 – The Social Justice and Welfare Department is a parent Department of the Applicant. Respondent No.2 by order dated 06.09.2018 transferred the Applicant and posted her as Deputy Director, Other Backward Bahujan Welfare, Office of the Directorate of OBC, SBC, VJNT Welfare, Pune which is in control of Respondent No.3. The Applicant contends that in terms 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) she is entitled to three years tenure in the said post. However, before complaining three years tenure, Respondent No.1 who is administrative heard at the level of Mantralaya, displaced her under the garb of repatriation to her parent Department i.e. Social Justice and Welfare Department. She therefore challenged the order dated 15.09.2021 *inter-alia* contending that it amount to mid-term and mid-tenure transfer in contravention of provision of Transfer Act 2005.

4. The Tribunal has granted interim relief staying the execution of impugned order on 16.11.2021 having found that *prima-facie* impugned order is indeed transfer order under the garb of repatriation to the parent Department and it is in contravention of Transfer Act 2005. It was further noticed that there is no recommendation of Civil Service Board (CSB).

5. The perusal of impugned order dated 06.09.2018 reveals that the Applicant was transferred on the establishment of Respondent No.3 and it was not deputation order so to recall her as Department stated in impugned order. In impugned order it is stated that the Applicant has

refused to accept chargesheet of D.E. and she has committed serious mis-conduct. Further alleged that because of attitude and behavior of the Applicant the work of the Department is suffering and citing these reasons the Applicant is shown repatriated to her parent Department. However, in view of transfer order of the Applicant, by order dated 06.09.2018 it cannot be said that the Applicant was on deputation on the establishment of Respondent No.1. It was transfer on specific post ensuring three years tenure of the Applicant under the provision of Transfer Act 2005. Therefore, for any such mid-term or mid-tenure transfer there has to be compliance of Transfer Act 2005 which *inter-alia* provides that competent authority may transfer the Government servant mid-term and mid-tenure in special case after recording reasons in writing and with the prior approval of the immediately superior transferring authority as mentioned in the table of Section 6. That apart, in terms of decision of Hon'ble Supreme Court **2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** there has to be recommendation and consideration by C.S.B.

6. However, in present case admittedly neither matter was placed before CSB nor there is approval of Hon'ble Chief Minister. Learned P.O. also fairly concedes that matter was not placed before CSB nor there is approval of Hon'ble Chief Minister.

7. Learned P.O. however sought to justify the impugned order contending it is repatriation to the parent Department, and therefore it does not require compliance of provision of Transfer Act 2005. This submission is totally untenable. As stated above, the Applicant was not on deputation but she was transferred on the specific post of Joint Director by order dated 06.09.2018. Consequently, she was entitled to three years tenure on the said post as guaranteed under provisions of Transfer Act 2005. Suffice to say it is not a case of deputation and repatriation.

8. That apart, in impugned order certain mis-conduct is attributed to the Applicant as reasons for so called repatriation. Except stating that the Applicant did not accept chargesheet no other details of alleged mis-conduct is mentioned in impugned order. In Affidavit-in-Reply it is stated that the impugned order dated 15.09.2021 has been issued taking into consideration confidential report dated 12.09.2021 and 13.09.2021 and it is not transfer under the provision of Transfer Act 2005. Even assuming for a moment that there was serious mis-conduct warranting mid-term and mid-tenure it could have been done in consonance with Section 4(5) of Transfer Act 2005. However, there being no such compliance of the approval of Hon'ble Chief Minister as a special case as well as absence of placing the matter before CSB the impugned order will have to be termed as bad in law and liable to be quashed.

9. To sum up, the impugned order cannot be termed innocuous order of repatriation but it is transfer under the garb of repatriation and in blatant violation of provision of Transfer Act 2005. Hence, the order.

ORDER

- A) The Original Application is allowed.
- B) The impugned order dated 15.09.2021 is quashed and set aside
- C) Interim relief is made absolute.
- D) No order as to costs.

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

Place: Mumbai
Date: 23.09.2022
Dictation taken by: N.M. Naik.

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