

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1000 OF 2019**

**DISTRICT : PUNE**

Shri Ganesh M. Kamble )  
Aged 40 years, working as Services Engineer, )  
District Workshop, Civil Hospital, Alibaug, )  
Dist.Raigad. )  
R/at Survey No.29, Shiv Shambho Nagar, )  
Katraj-Kondhawa Road, Pune-46. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary )  
Public Health Department, O/at. G.T. )  
Hospital, Mumbai 400 001. )
2. Shri Subhash P. Kamble, Aged Adult, )  
Working as Services Engineer, District )  
Head Quarter, St.Georges Hospital )  
Compound, Mumbai 1. )
3. The Deputy Director, Health Services )  
(Transport), Pune, O/at 8, Kenedy Road, )  
Pune -1. )....**Respondents**

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

**Smt.Kranti Gaikwad, Presenting Officer for Respondent Nos.1 and 3.**

**Shri M.B. Kadam, learned Counsel for the Respondent No.2.**

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

**DATE : 24.11.2020.**

**JUDGMENT**

1. In the present O.A, the Applicant has challenged the transfer order dated 18.09.2019 whereby he was transferred from Raigad to

Mumbai invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the Original Application are as under:-

The applicant was serving as Services Engineer, District Workshop, Civil Hospital, Alibaug where he was posted since 13.08.2013. He being Class-III employee, normal tenure was six years. However, he made representation on 16.04.2019 requesting the Deputy Director, Health Services for transfer to Pune on the ground of family difficulties. His request was placed before the Civil Services Board (CSB) which recommended for his transfer at Pune. However, the Respondent No.1 - Government transferred the Applicant to Mumbai ignoring recommendations made by the CSB and transferred the Respondent No.2 at Pune which was sought by the Applicant though he had hardly completed one year service at Mumbai and was not due for transfer. The Applicant has therefore, challenged the transfer order dated 18.09.2019 *inter-alia* contending that it is in defiance of mandatory requirement of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005' for brevity).

3. Respondent Nos.1 and 3 resisted the application by filing reply *inter-alia* admitting that the CSB had recommended the transfer of the Applicant to Pune but contend that when the file was placed before the Hon'ble Minister, Public Health Department, he ordered for transfer of Respondent No.2 at Pune and consequently the Applicant was transferred to Mumbai. The Respondents, therefore, contend that the Hon'ble Minister is competent authority for such mid-term transfer and there is no illegality in impugned transfer order.

4. Whereas, the Respondent No.2 resisted the O.A. *inter-alia* contending that though he was not due for transfer, he made request

transfer to Mumbai and accordingly, it was approved by the competent authority.

5. Heard B. A. Bandiwadekar, learned Counsel for the Applicant, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent Nos.1 and 3 and Shri M.B. Kadam, learned Counsel for the Respondent No.2.

6. The issue posed for consideration in the O.A. is whether the impugned transfer order dated 18.09.2019 is in consonance with the provisions of 'Act 2005' and the answer is in negative.

7. Undisputedly, the Applicant was posted at Raigad from 13.08.2013 and his tenure was six years in terms of Section 3(1) of 'Act 2005'. However, he made representation on 16.04.2019 for transfer to Pune citing a family difficulty which is at Page No.18 of the Paper Book (PB). Accordingly, the CSB recommended his transfer as seen from recommendation of the CSB which is at Page No.30 of PB. However, when the file was placed before the Hon'ble Minister, he was pleased to change the posting of the Applicant by transferring him to Mumbai and posted the Respondent No.2 at Pune though he was not due for transfer. Curiously, no record is produced to show that request of Respondent No.2 was placed before the CSB as mandated by the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.*** It is thus obvious that without placing the request of Respondent No.2 before the CSB, he was accommodated at Pune which was sought by the Applicant in his request application. In other words, the Respondent No.2 was favoured by posting him at Pune which was sought by the Applicant. Indeed, the Respondent No.2 had hardly completed one year at Mumbai and was not due for transfer. However, the Hon'ble Minister seems obliged him by accepting his request without placing the matter before CSB.

8. It is true that the transfer is incident of service and no Government servant has vested right to ask for particular place or to continue at the same place for a period more than permissible under 'Act 2005'. However, it cannot be forgotten that now transfers are regulated and governed by the provisions of 'Act 2005' and it is not left to the whims, desire or caprice of the executive. This being the position, the executive is under obligation to comply the provisions of 'Act 2005' where the Government servant is transferred mid-term or mid-tenure.

9. Perusal of Section 3 of 'Act 2005' reveals that normal tenure of Government servant shall be three years except for non secretariat servant in Group -C where normal tenure would be of six years. As per Section 4(1) no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3 of 'Act 2005'. Whereas as per Section 4(2) the competent authority shall prepare every year in the month of January, a list of Government Servants due for transfer, in the month of April and May in the year. As per Section 4(4) the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. Whereas in situation where transfer is required in the period other than April or May then such transfers can be made at any time in the year subject to compliance of Section 4(4)(ii) or 4(5) of 'Act 2005'. Here we are concerned to Section 4(4)(ii) of 'Act 2005' which is as under :-

*"Section 4(4)(ii): Where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority.*

Whereas Section 4(5) provides for mid-terms transfer subject to compliance of Clause 5 which is as under:-

*“Section 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.”*

10. Now turning to the facts of the present case, the Applicant was transferred by order dated 18.09.2019 as such admittedly, it is in the period other than April or May of a year. This being the position, it attracts and partake the character of mid-term transfer for which compliance of Section 4(4)(ii) is mandatory which *inter-alia* requires recording of special reasons to make out the exceptional circumstance for such mid-terms transfer with prior approval of next higher authority. Only because the Applicant had completed six years at the time of passing impugned order that would not absolve the Government from making out a case under Section 4(4)(ii) of ‘Act 2005’. The scheme of ‘Act 2005’ as stated above, clearly spells that there has to be transfers only in the month of April or May and where the transfer is effected other than April or May it must comply the rigor of Section 4(4)(ii) or 4(5) of ‘Act 2005’ which is completely missing.

11. It is nowhere the case of the Respondents that any administrative exigency was felt or there was any such other special reason to transfer the Applicant mid-term. All that learned P.O. tried to contend that the transfer was approved by Minister In charge and who is competent authority for mid-term transfer. However, only approval of Minister-in-charge in absence of special reasons could not render the transfer order legal and valid.

12. Perusal of Section 6 along with table there under reveals that for general transfer of Group-C employees, Head of the Department is

competent authority. Whereas, for mid-term or mid-tenure transfer, it requires prior approval of Minister-in-charge being next immediately preceding competent transferring authority. Thus, there is no denying that Minister-in-charge is competent authority for such mid-term or mid-tenure transfer. However, for such mid-term and mid-tenure transfer, authority is required to record special reasons for circumstances which necessitate such mid-term and mid-tenure transfer. It is condition precedent for valid and legal mid-term transfer.

13. The submission advanced by the learned P.O. as well as learned Counsel for the Respondent No.2 that as the Applicant made request for transfer there was no necessity to record the reasons for such transfers is misconceived and fallacious. The Applicant had requested for transfer to Pune and not Mumbai. Had the Applicant transfer to Pune, in that event only, it would have assumed the character of request transfer. However, it is not so, he was transferred to Mumbai instead of Pune, and therefore, such transfer which is not in terms of request made by the Applicant cannot be termed as a transfer on request. Indeed, his request for Pune has been declined by posting him at Mumbai. This being the position, such transfer order passed other than in April and May certainly assumes the character of mid-term transfer which necessitates compliance of Section 4(4)(ii) or 4(5) of 'Act 2005' which is completely missing. Thus, the Government cannot be allowed to use request application of the Applicant as a foundation for such mid-term transfer unless there is compliance of Section 4(4)(ii) or 4(5) of 'Act 2005'.

14. True, the recommendation of CSB is not binding upon the executive and later may defer with the recommendations made by the CSB. However, the transfer order dated 18.09.2019 being mid-term transfer in the eye of law, it is liable to be quashed in absence of special reasons or circumstance to justify such transfer.

15. It is for this reason, the Tribunal had granted interim relief in favour of the Applicant by order dated 15.10.2019 and on merit no case is made out to take a different view.

16. The totality of the aforesaid discussion leads me to sum up that the impugned transfer order dated 18.09.2019 is in total defiance of provision of 'Act 2005' and liable to be quashed.

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned transfer orders dated 18.09.2019 qua the Applicant is quashed and set aside.
- (C) No order as to costs.

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

Place : Mumbai  
Date : 24.11.2019  
Dictation taken by : VSM  
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