

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1060 OF 2023

DISTRICT : PUNE
Sub.:- Transfer

Shri Anil Marutrao Chormale.)
Age : 57 Yrs, Working as Deputy Director)
of Sports and Youth Services, Pune (HQ),)
Having Office at Shiv Chhatrapati Krida)
Sankul, Balewadi, Pune – 45 and residing)
at Survey No.73, Piyush Villa Apartment,)
Opp. Narayani Dham Mandir, Katraj,)
Pune – 411 046.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
School Education & Sports Dept.,)
[Sports], Mantralaya, Mumbai – 32.)

2. The Sanjay Sabnis.)
Aged : Adult, Working as Deputy)
Director of Sports and Youth)
Services, Kolhapur Division,)
Kolhapur, Having Office at Kasaba)
Bawada, District : Kolhapur.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent No.1.

None for Respondent No.2.

CORAM : Debashish Chakrabarty, Member-A

DATE : 29.02.2024

JUDGMENT

1. The Applicant who was working as 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune' has invoked provisions of 'Section 19' of 'Administrative Tribunal Act 1985' to challenge 'Transfer Order' dated 18.08.2023 of School Education and Sports Department by which he has been posted as 'Deputy Director of Sports and Youth Services, Pune Division, Pune' and also 'Transfer Order' dated 18.08.2023 of School Education and Sports Department by which Respondent No. 2 who was working as 'Deputy Director of Sports and Youth Services, Kolhapur' has been posted in his place as 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune'.

2. The Applicant was represented by Shri A.V. Bandiwadeker, learned Advocate. Respondent No.1 was represented by Shri A.J. Chougule, learned PO. Respondent No.2 was not present 'In Person' or represented by any learned Advocate.

3. The learned Advocate for Applicant stated that upon promotion, Applicant had worked on post of 'Deputy Director of Sports and Youth Services, Pune Division, Pune' from 16.05.2018 to 10.12.2020 when he came to be transferred to post of 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune' and worked there till Respondent No. 2 was posted in his place by 'Transfer Oder' dated 18.08.2023 of School Education and Sports Department.

4. The learned Advocate for Applicant contends that Applicant has been subjected to 'Mid Term' and 'Mid Tenure' transfer in contravention of provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005'. Further, there were no 'Special Reasons' or 'Exceptional Circumstances' for transfer of Applicant, as

Respondent No.2 could have been directly transferred to 'Vacant Post' of Deputy Director of Sports and Youth Services, Pune Division, Pune or Respondent No.2 could have himself requested to be posted on 'Vacant Post' of Deputy Director of Sports and Youth Services, Pune Division, Pune being junior in service to Applicant.

5. The learned Advocate for Applicant further contended that Respondent No.2 had thus used 'Political Influence' to be posted in place of Applicant as Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune.

6. The learned Advocated for Applicant emphasized that the guidelines in GAD GR of 11.02.2015 regarding 'Mid Term' and 'Mid Tenure' transfer were contravened to transfer Applicant on the 'Vacant Post' of Deputy Director of Sports and Youth Services, Pune Division, Pune. Further, no consideration was given to the fact that Applicant was due to retire within One Year and his 'Normal Tenure' of 3 Years was come to an end on 10.12.2023 which could have also been extended upto his retirement on 31.03.2024.

7. The learned PO relied on Affidavit-in-Reply filed on behalf of 'Principal Secretary, School Education and Sports Department' dated 09.10.2023 to justify the transfer of Applicant from post of Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune.

8. The learned PO stated that Applicant was working on post of Dy. Director, Sports and Youth Services, (HQ), Pune since 10.12.2020 till 29.08.2023. The important work of 'Selection of Awardees' for 'Shiv Chhatrapati State Sports Awards' for years 2019-20, 2020-21 & 2021-22 came under specific responsibilities assigned to Applicant. However, Applicant failed to take effective steps to coordinate with offices of District Sports Officers and properly 'Scrutinize Applications' and examine 'Objections to Nominees' for 'Shiv Chhatrapati State Sport

Awards'. Therefore, as Applicant did not work with due diligence to discharge his specific responsibilities regarding 'Shiv Chhatrapati State Sport Awards' for years 2019-20; 2020-21 & 2021-22, it is justifiable 'Special Reason' for transfer of Applicant to 'Vacant Post' of Deputy Director of Sports and Youth Services, Pune Division, Pune and bring Respondent No. 2 in his place as 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune based on recommendations of 'CSB' made in its meeting held on 29.05.2023. The 'Transfer Orders' dated 18.08.2023 of School Education and Sports Department were issued after approval of 'Competent Transferring Authority' and next 'Superior Transferring Authority'.

9. The learned PO contended the averments made in 'Affidavit-in-Rejoinder' dated 15.10.2023 filed by Applicant which related to the 'Composition of CSB' and participation of 'Commissioner of Sports & Youth Services, Pune'. The learned PO on basis of 'Affidavit-in-Sur-Rejoinder' dated 07.11.2023 argued that Applicant had no right whatsoever to question the 'Composition of CSB' which was as per School Education and Sports Department GR dated 10.04.2014 and participation of 'Commissioner of Sports & Youth Services, Pune' in meeting of CSB held on 30.05.2023. She refuted all contents of Affidavit-in-Rejoinder dated 15.10.2023 and re-emphasized about failure of Applicant to discharge his specific responsibilities related to 'Shiv Chhatrapati State Sport Awards' for years 2019-20; 2020-21 & 2021-22.

10. The learned Advocate for Applicant was heard at length on 22.08.2023 for grant of 'Interim Relief' but it was refused by reasoned order which also highlighted the principle of harmonious construction known of 'Heydons Rule of Interpretation'. The provisions of 'Clause 8' of GAD GR dated 11.02.2015 was not found to be applicable, as the transfer of Applicant from post of Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune to post of Deputy Director of Sports and Youth Services, Pune Division, Pune was not made on

'Account of Complaints' but on the basis of 'Assessment of Work'. The principal reason cited to refuse grant of 'Interim Relief' was that when 'Senior Officers' had assessed performance of Applicant and found that he is not working efficiently, then it constituted 'Special Reason' for transfer of Applicant.

11. The contentions made on behalf of Applicant at the stage of 'Final Hearing' remained identical to those which had been argued at length at the stage of 'Interim Relief'. No new averments of facts or circumstances came to be made by way of Affidavit-in-Rejoinder dated 15.10.2023 filed by Applicant and all contentions were refuted comprehensively by Affidavit-in-Sur-Rejoinder dated 07.11.2023 filed on behalf of 'Principal Secretary, School Education, Sports and Youth Affairs'.

12. The 'Transfer Order' of School Education and Sports Department dated 18.08.2023 of Respondent No.2 by which he was posted in place of Applicant as Deputy Director of Youth Sports and Youth Services (HQ), Maharashtra State, Pune has also been issued after due recommendations of 'CSB' and with approval of 'Competent Transferring Authority' and next 'Superior Transferring Authority' in exercise of 'Statutory Powers' under provision of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005'. Thus transfer of Applicant from post of 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune' cannot be held to have been done with 'Malafides' or as result of any 'Arbitrary Exercise' of 'Statutory Powers' just because Applicant is due to retire on 31.05.2024. The 'Extension of Tenure' given to 'Government Servants' when they have less than 'One Year' for retirement is not an entitlement, as it is to be considered only in 'Exceptional Cases' as per provisions of Section 5(1)(a) of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005' otherwise it

can also become the 'Shield of Protection' for delinquent Government Servants.

13. The 'Competent Transfer Authority' and next 'Superior Transferring Authority' while exercising 'Statutory Powers' under 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005' must to have kept in mind the undue hardships which may have been suffered by Applicant, if he was to be transferred outside of Pune District even in place of Respondent No.2 on post of Deputy Director of Sports & Youth Affairs, Kolhapur; as Applicant is due to retire on 31.03.2024. The Applicant instead was transferred laterally to 'Vacant Post' of Deputy Director of Sports and Youth Services, Pune Division, Pune.

14. The Applicant has served on post of Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune from 10.12.2020 till 18.08.2023 when he came to be transferred to post of Deputy Director of Sports and Youth Services, Pune Division, Pune just shy by few months of completing his expected 'Normal Tenure' of 3 Years. However, the provisions of 'Section 3(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005' is not to be understood as an infrangible assurance under law to Government Servants; as it is required to be read along with provisions of 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005'.

15. The Hon'ble Supreme Court of India in its Judgment in ***B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has observed that transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of

service to disadvantage of Government Servants. The Hon'ble Supreme Court of India has also observed that an employee cannot, as a matter of right, seek transfer to a place of his choice in ***K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) SLR 13 (Kant); Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee, (1995) 2 SCC 532 : SC 813 : (1995) 2 SLR 1.***

16. The Hon'ble Supreme Court of India in ***B Varadha Rao v State of Karnataka, 1986 (3) SLR 60 (SC) : (1986) 4 SCC 624 : AIR 1987 SC 287*** has also observed that continued posting at one station or in one department not conducive to good administration as such continued posting creates vested interest. Further in ***UI v NP Thomas, AIR 1993 SC 1605 : (1993) Supp (1) SCC 704*** Hon'ble Supreme Court of India has observed that since posts in public employment are generally transferable post, it follows that an employee has no vested right to remain at the post of his posting. In ***UI v S.L. Abbas, AIR 1993 SC 2444 : (1993) 4 SCC 357*** it has been observed by Hon'ble Supreme Court of India that who is to be transferred where, is a matter for the appropriate authority to decide.

17. The Transfer Order dated 18.08.2023 of School Education and Sports Department to transfer the Applicant from post of 'Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune' to 'Deputy Director of Sports and Youth Services, Pune Division, Pune' need not be interfered with by making 'Hyper Technical Interpretation' of the provisions of 'Section 3(1)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005' regarding completion of 'Normal Tenure' of 3 Years. Further grant of 'Extension of Tenure' to Government Servants on ground of 'One Year' left from the date of retirement is also not be considered as an unfettered entitlement under 'Section 5(1)(a)' of the 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005'. The

transfer of Applicant from post of Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune to post of Deputy Director of Sports and Youth Services, Pune Division, Pune cannot be construed as being 'Stigmatic Transfer' because Applicant had held post of Deputy Director of Sports and Youth Services, Pune Division, Pune earlier also for substantial period of time from 16.05.2018 to 10.12.2020. Hence, against this backdrop, it would be fair to appreciate that Applicant must have rendered meritorious service as Deputy Director of Sports and Youth Services (HQ), Maharashtra State, Pune from 10.12.2020 till 18.08.2023 which was substantially long to establish credentials of Applicant as being diligent officer not withstanding his inability to achieve expected performance level relating to 'Shiv Chatrapati State Sports Awards' for years 2019-20; 2020-21 & 2021-22. The Applicant, must thus take efforts as in his earlier tenures to contribute his best while serving on post of Deputy Director of Sports and Youth Services, Pune Division, Pune till retirement on 31.03.2024. Hence, the following order.

ORDER

- (i) The Original Application is Dismissed.
- (ii) No Oder to Costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Mumbai
Date : 29.02.2024
Dictation taken by :
S.K. Wamanse.

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