

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.152 OF 2022**

**DISTRICT: PUNE  
SUBJECT: TRANSFER**

Shri Vinit N. Pawar , Age – 36 years, )  
Occupation – Accounts Officer in the office of )  
Tribal Research & Training Centre, Pune. )  
R/at Jui-3, P.W.D. Government Quarters, )  
Shastri Nagar, Yerwada, Pune – 9. ).... **Applicant**

**Versus**

1. The State of Maharashtra, through )  
Secretary, Tribal Development Department )  
Mantralaya, Mumbai 32. )
2. The State of Maharashtra, through )  
Principal Secretary, Accounts and Finance )  
Department, O/at 3<sup>rd</sup> floor, (Extn.), )  
Hutatma Chowk, Mantralaya, Mumbai 32. )...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.  
Smt. Archana B. K., learned Presenting Officer for the Respondent

CORAM : A.P. Kurhekar, Member (J)

DATE : 31.03.2022

**JUDGMENT**

The Applicant has challenged order dated 02.02.2022 issued by the Respondent No.1 thereby redirecting his services to the Finance Department (Respondent No.2) *inter-alia* contending that it amounts to mid-term and mid-tenure in contravention of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005).

2. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

3. Indisputably, the Applicant's parent department is Respondent No.2 - Accounts & Finance Department, Mantralaya, Mumbai. The Applicant is serving in the cadre of Account Officer. The Respondent No.2 which is his parent department, transferred the Applicant by order dated 31.05.2018 as Accounts Officer, Tribal Research and Training Centre, Pune which is under the control of Respondent No.1 -Secretary, Tribal Development Department. The posts of Accounts Officers at various Government offices are manned by Accounts Officers of Finance Department. As such, in view of transfer order dated 31.05.2018, Applicant's normal tenure at Pune was three years in terms of 'Act 2005'. However, abruptly the Respondent No.1 - Tribal Development Department returned the services of the Applicant to Finance Department and relieved him unilaterally by order dated 02.02.2022 which is under challenge in present Original Application.

4. At the very outset, it needs to be stated that impugned order dated 02.02.2022 is not the order of transfer by parent department. In fact, as per transfer order dated 31.05.2018 passed by parent department, the Applicant was transferred as Account Officer, Tribal Research and Training Centre, Pune. This being the admitted position, the Applicant was entitled to three years normal tenure as contemplated under Section 3 of 'Act 2005'. Therefore, if there was any necessity of mid-term or mid-tenure transfer, it ought to have been in consonance with Section 4(5) of 'Act 2005'. However, in the present case, no such transfer order has been issued by the parent department of the Applicant for recalling him in consonance of Section 4(5) of 'Act 2005'. The impugned order dated 02.02.2022 is passed by the Respondent No.1 -Tribal Development Department stating as under:-

“वित्त विभागाच्या वरील संदर्भीय आदेशान्वयक श्री.विनित नारायणराव पवार यांची लेखा अधिकारी, आदिवासी संशोधन व प्रशिक्षण संस्था, पुणे या पदावर बदलीने नियुक्ती करण्यात आली आहे. प्रशासकीय कारणास्तव श्री.विनित पवार, लेखाधिकारी यांच्या सेवा वित्त विभागास परत करण्यात येत आहेत.”

5. It is thus explicit that Respondent No.1 unilaterally redirected the services of the Applicant to parent department i.e. Finance Department without there being any proper transfer order in compliance of Section 4(5) of 'Act 2005' by parent department.

6. The reply is filed on behalf of the Respondent No.1-Tribal Development Department only and no reply is filed by Respondent No.2 – Finance Department. All that Respondent No.1 in Affidavit in Reply stated that there were certain complaints against the performance of the Applicant and inquiry was initiated and on the backdrop of complaints, impugned order has been passed.

7. Indeed, as pointed out by learned Counsel for the Applicant, the Commissioner, Tribal Development Department, Pune by his letter dated 24.12.2011 (page no.20 to 23 of PB) has already forwarded the report to Respondent No.1 – Secretary, Tribal Development Department that no substance is found in some complaints made by contractual employees and regular employees. In inquiry report, he submitted his conclusion as under :-

“तसेच संबंधित अधिकारी यांनी कोणत्याही कंत्राटी कर्मचारी किंवा महिला कर्मचारी यांचेवर अन्याय केलेबाबत किंवा गैरवर्तणुक केलेबाबत कोणतीही माहिती उपलब्ध झाली नाही. याबाबत, या कार्यालय स्तरावर गठित विशाखा समितीने सविस्तर अहवाल तत्कालीन आयुक्त, आदिवासी संशोधन व प्रशिक्षण संस्था, पुणे यांचे मार्फत शासनास सादर केला असल्याचे समजते. सद्यस्थितीत प्राप्त निवेदनातील मुद्द्यांची चौकशी केली असता श्री.पवार, लेखाधिकारी यांचे विरुद्ध करण्यात आलेल्या तक्रारीमध्ये तथ्य नाही असे प्रथमदर्शनी निदर्शनास येत आहे. एकंदरीत तक्रारदार अर्जदार/संस्था यांनी केवळ वैयक्तिक आकसातून अथवा ऐकीव माहितीने प्रेरित होऊन गैरसमजातून मोघम प्रकारच्या तक्रारी थेट शासनाकडे केल्याचे दिसून येते.

उपरोल्लेखित वस्तुस्थिती विचारात घेता, आपणांस विनंती करण्यात येते की, सदरहू प्रकरणी श्री.विनित पवार, लेखाधिकारी यांच्या जागी महाराष्ट्र वित्त व लेखा संवर्गातील समकक्ष दर्जाचा अधिकारी या कार्यालयात रुजू होईपर्यंत संबंधितांच्या सेवा वित्त विभागाकडे वर्ग करणे संयुक्तिक होणार नाही. तसेच श्री.दौंडकर, प्रशासकीय अधिकारी यांचेकडे या कार्यालयातील एकूण ०५ कार्यासनांचा अतिरिक्त कार्यभार असून तो अतिरिक्त कार्यभार ते त्यांच्या विरुद्ध सबळ पुराव्या अभावी विभागीय चौकशी प्रस्तावित करणे संयुक्तिक होणार नाही याउलट या कार्यालयाच्या कामकाजावर विपरीत परिणाम होण्याची शक्यता नाकारता येत नाही. सबब शासनाकडे प्राप्त उपरोल्लेखित तक्रारी नस्तीबध्द करण्यात याव्यात असे वाटते.

माहिती तथा उचित कार्यवाहीस्तव सविनय सादर.’’

Thus, the Applicant was given clean chit.

8. Learned P.O., however, sought to contend that there are complaints other than inquired by the Commissioner, Tribal Development Department in his inquiry report and it is on the basis of those complaints, services of the Applicant are redirected. However, except oral submission, no other details of subsequent complaints or fresh complaints are forthcoming. Not a single document is annexed along with Affidavit in Reply filed by Respondent No.1 what are the nature of complaints, its seriousness, gravity etc. Affidavit in Reply is totally silent.

9. Apart, if there was any such requirement or necessity of mid-term and mid-tenure transfer then it should have been by parent department after complying the provisions of Section 4(5) of 'Act 2005'. However, instead of doing so, the Respondent No.1 – Tribal Development Department unilaterally sent the Applicant back to Finance Department. It is thus obvious that there is no compliance of placing the matter before Civil Services Board or transfer order by competent authority. Impugned order of transfer or returning the services of Applicant to Finance Department has trapping of transfer in the eye of law.

10. It is for this reason, having found *prima-facie* case, the Tribunal has granted interim relief by order dated 15.02.2022.

11. The totality of the aforesaid discussion leads me to sum up that impugned order dated 02.02.2022 is *ex-facie* bad in law and liable to be quashed. Hence the following order :-

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned order dated 02.02.2022 is quashed and set aside.
- (C) Interim relief granted by the Tribunal on 15.02.2022 is made absolute.
- (D) No order as to costs.

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

Place: Mumbai  
Date: 31.03.2022  
Dictation taken by: V.S. Mane