

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.197 OF 2021

DISTRICT : THANE

Shri Vikas Eknath Jog , Age 50 years,)
Working as Inspector of Legal Metrology,)
Mandavi Division –II, Masjid Bandar (W),Mumbai)
R/at 602, Spring Season Complex, Khadakpada)
Circle, Kalyan (W), Dist. Thane.)... **Applicant**

Versus

The Controller, Legal Metrology, (M.S.))
Mumbai, having office at Fountain Telecom)
Building No.1, 7th floor, M.G. Road, Fort,)
Mumbai 400 001.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 21.12.2021.

JUDGMENT

1. In present Original Application, challenge is to the order dated 01.03.2021 (wrongly typed as 01.03.2020 in order) issued by Respondent - Controller Legal Metrology, Mumbai whereby on the allegation of complaints, the Applicant was shifted from Mandavi-II Division to Vehicle Tank –I Division till further order invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1984.

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

The Applicant is working as Inspector of Legal Metrology and was posted at Mandvi-II Division by Government by order dated 16.03.2018. Admittedly, by G.R. dated 09.05.2017, the post of Inspector of Legal Metrology was upgraded in Group-B Gazetted post. The Applicant claims to have three years normal tenure in terms of provision of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (herein after referred to as 'Act 2005' for brevity). However, by order dated 01.03.2021, the Respondent under the garb of temporary shifting transferred him to Vehicle Tank-I Division. The Applicant contends that impugned order dated 01.03.2021 amounts to mid-term and mid-tenure transfer and punitive.

3. Learned Counsel for the Applicant sought to assail the impugned order *inter-alia* contending that though the impugned order is styled as office order and temporary arrangement, it is transfer under guise of temporary shifting and has further pointed out that the Competent Authority for transfer of the Applicant is the Government and it can be done only on recommendation of Civil Services Board (CSB).

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that there were serious complaints in functioning of the Applicant from petroleum dealers and in the light of those complaints Controller Legal Metrology temporarily shifted the Applicant and it is not amount to transfer. He has further pointed out that show cause notices were given to the Applicant, in response to it, he assures to be careful in future. Thus, according to him in view of complaints from petroleum dealers, shifting of the Applicant was necessitated. As regard D.E. for

alleged misconduct, he submits that the matter is in process at the level of Government and D.E. will be initiated soon.

5. Another development in the matter is that subsequently by order dated 28.06.2021 the Applicant was suspended in contemplation of D.E. invoking Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979. The Applicant has challenged that suspension order by filing O.A. 452/2021. The said O.A. was disposed of by this Tribunal on 27.10.2021 giving directions to take review of suspension since the Applicant was subjected to suspension for more than three months in defiance of judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India &Anr.)**. In pursuance of the directions given by the Tribunal, the Government order dated 16.12.2021 revoked the suspension of the Applicant and gave temporary posting in the office of Controller Legal Metrology, Mumbai (Head Quarter). In order dated 16.12.2021, it is further stated that regular posting order of the Applicant will be issued in due course with approval of Competent Authority.

6. As such, presently suspension of the Applicant is revoked. He is reinstated by giving temporary posting in Head Quarter. This aspect has bearing over the issue in present O.A.

7. Now turning to the impugned order dated 01.03.2021 admittedly, it is passed by Respondent- Controller, Legal Metrology, Mumbai. It is shown as temporary shifting from Mandavi Division-II to Vehicle Tank-1 Division alleging complaints against him. Indisputably, the Applicant was posted at Mandavi -2 by order dated 16.03.2018 and in terms of provision of 'Transfer Act 2005' was entitled for three years normal tenure.

8. Furthermore, indisputably the competent authority for the transfer of the Applicant is Government in view of the provisions of

'Act 2005'. By G.R. dated 09.05.2017, his post is upgraded as Group-B Gazetted post. As per Section 6, clause (b) of 'Act 2005' for transfer of Group-B Gazetted officer Minister in charge in consultation with Secretaries of the concerned department is competent authority for transfer. Apart in view of the decision of the Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732***, the transfer was required to be placed before Civil Services Board.

9. Though, the Applicant was displaced under the garb of temporary shifting on allegation of complaints, till date no charge sheet in D.E. is served upon the Applicant though the period of near about 21 months from the date of impugned is over. Indeed, where a Government servant is suspended in contemplation of D.E., D.E. is required to be initiated immediately and has to be completed within six months in terms of Circular dated 07.04.2008. However, in the present case no such steps were taken for initiation of D.E. much less about its completion.

10. Now important issue posed for consideration is whether the impugned order dated 01.03.2021 amounts to transfer in the eye of law. Material to note that though it is shown temporary shifting, no specific period of temporary shifting is mentioned in the impugned order. Though the order was passed on 01.03.2021, till date no further orders were passed till issuance of order of suspension dated 28.06.2021. Even assuming for a moment that on account of certain complaints, shifting of the Applicant was necessitated in that event also it would have been by the Competent Authority and not by Controller Legal Metrology. Undisputedly, even if the 'Act 2005' ensures normal tenure to a Government servant, he can be transferred mid-tenure where administrative exigency arises and it should be with approval of next Competent Transferring Authority as contemplated under Section 4(5) of 'Act 2005'.

11. Whereas in the present case, the Applicant is displaced from his post by Controller Legal Metrology by curtailing his normal tenure of three years. Under Section 2(g) of 'Act 2005', the post is define as job or seat of duty to which a Government servant is assigned or posted. Thus, once the Applicant was posted by the Government as Inspector Legal Metrology at Mandavi-II Division, he was entitled to three years tenure and where his mid-tenure transfer is necessitated. It should have been on compliance of Section 4(5) of 'Act 2005' which *inter-alia* provides that in special cases, after recording reasons in writing and with prior approval of immediately superior Transferring Authority, it is permissible. As such, if such orders of temporary shifting are allowed, it would amounts to circumvent the provisions of 'Act 2005'. Suffice to say, even if the transfer is necessitated due to certain administrative exigencies, there has to be compliance of Section 4(5) of 'Act 2005'. The impugned order dated 01.03.2021 amounts to transfer under the garb of temporary shifting.

12. Apart, the Applicant is displaced on allegation of complaints from petroleum dealers. If this is so, it amounts to punitive orders which cannot be countenanced in law. True, where there is serious misconduct of a Government servant and in preliminary enquiry continuation at particular place is found inappropriate, in that event, he can be transferred but by Competent Authority without waiting for the decision of regular inquiry. However, in the present case, it being not so and punitive, it is liable to be quashed and set aside.

13. However, here one needs to see the effect of suspension of the Applicant as well as order dated 16.12.2021 issued by the Government thereby reinstating the Applicant by giving temporary post in Head Quarter. This is subsequent development which had taken place after issuance of impugned order dated 01.03.2021. This being the position, since the Applicant was suspended, he cannot be

reinstated in service at Mandavi-II Division. Even if, the impugned order dated 01.03.2021 is held bad in law. After revocation of suspension, the Applicant is reposted at Head Quarter. So long as D.E. is not completed, it cannot be said that suspension was illegal so as to claim earlier posting of Mandavi-II Division. Mere reinstatement in service will not wipe out effect of suspension. He has to be continued on non-executive post which is given to him now.

14. The totality of the aforesaid discussion leads me to sum up that the impugned order dated 01.03.2021 is bad in law and liable to quashed. However, since the Applicant was earlier suspended and reinstated by way of temporary posting in the Head Quarter, he cannot be reinstated at Mandavi-II Division from which he was shifted by order dated 01.03.2021. Hence the following order:-

ORDER

- (A) The Original Application is allowed partly.
- (B) Impugned order dated 01.03.2021 is declared bad in law.
- (C) However, the Applicant cannot be reposted at Mandavi-II Division in view of his subsequent suspension and order of reposting at Head Quarter, Mumbai on non-executive post on which he shall be continued subject to further order by respondents, if any.
- (D) No order as to costs.

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

Place : Mumbai
Date : 21.12.2021.
Dictation taken by : VSM

