

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.221 OF 2017

DISTRICT : PUNE

Shri Steven Patrick Joseph.)
Working as Lascar in the office of 3,)
Maharashtra Naval Unit, NCC, Near)
College of Engineering, Shivaji Nagar,)
Pune 5 and residing at C-28,)
Bhimashankar Colony, Erwada, Near)
Gunjan Theatre, Pune – 6.)...**Applicant**

Versus

1. The Deputy Director.)
Sports and Youth Services, Pune)
Division, Pune and having office at)
Divisional Sports Campus, Opp.)
Moze College, Yerwada, Pune 6.)
2. Shri R.B. Pandit.)
Working as Lascar in the office of)
57, Maharashtra Battalion,)
Ahmednagar.)
3. The State of Maharashtra.)
Through Principal Secretary,)
School Education, Sports and Youth)
Services Department (Sports),)



- Mantralaya, Mumbai - 400 032.)
4. The Commanding Officer.)
3, Maharashtra Naval Unit, NCC,)
Pune having Office at Pune.)
5. The Executive Engineer.)
Public Works Department, Pune,)
Having office at Bandhkam Bhawan,)
Pune.)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent Nos. 3 & 5.

Mr. Parag Bhosale, Advocate for Respondent No.1.

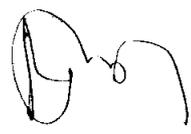
None for Respondent Nos. 2 & 4.

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 15.09.2017

JUDGMENT

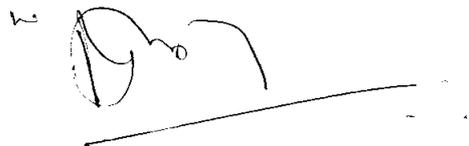
1. The Applicant being a Group 'D' employee calls into question the order of his transfer to 17, Maharashtra Battalion, NCC, Ahmednagar from 3, Maharashtra Naval Unit, NCC, Pune. The order was dated 27.2.2017 and the Applicant was relieved on the same day. The 1st Respondent is the Deputy Director, Sports and Youth Services, the 2nd Respondent is the successor in Office of



the Applicant and in fact, they have been transferred vice each other, the 3rd Respondent is the State of Maharashtra in the Department of School Education, Sports and Youth Services, the 4th Respondent is the Commanding Officer, 3 Maharashtra Naval Unit, NCC, Pune and the 5th Respondent is the Executive Engineer, PWD, Pune. The last mentioned two Respondents came to be impleaded by way of an amendment. The 5th Respondent has been impleaded because the official accommodation at Pune is under charge of the said Respondent No.5.

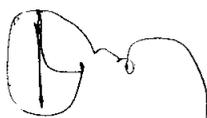
2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant, Mr. Parag Bhosale, the learned Advocate for Respondent No.1, None for Respondents 2 and 4 and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents 3 and 5.

3. The decision of this OA turns on the issue of transfer of a Group 'D' employee. The service condition of transfer in the present matter is governed by "the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" ('Transfer Act' hereinafter). Section 3(2) of the Transfer Act reads as follows :



“3(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

4. It is, therefore, clear that in limited class of contingencies only the Group ‘D’ employees could be transferred otherwise they are not having fixed tenure. The three contingencies when they can be transferred are, on request when a clear vacancy existed at the station where transfer was sought, mutual transfer or and this is important, when a substantiated complaint of serious nature is received against the said Group ‘D’ employees. Be it noted quite clearly that, here in this matter, the first two contingencies are immediately ruled out and it will only have to be examined as to whether there were substantiated complaint/s of serious nature against the Applicant. In my opinion, the word, “substantiated” appearing before the word, “complaint” and the words, “serious nature” following the word, “complaint” are of great significance. Therefore, the complaint should not be

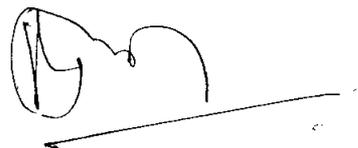


of routine nature and in the context of the facts, the same should be of serious nature and that too, it should be substantiated. The Transfer Act is a duly enacted law that came into force in 2006, and therefore, even if there are authoritative pronouncements of the period prior thereto and if they pertained to some other State or Establishment, than the State of Maharashtra then that aspect of the matter will have to be carefully borne in mind.

5. The post that the Applicant held is called "Lascar". To the Affidavit-in-reply of Respondent No.1 filed by the Deputy Director, Sports and Youth Services, Pune Division Mr. Vijay B. Santan, material in the form of the complaints from Pages 30 to 51 are annexed. In all fairness to both the sides, I shall not be entering any finding with regard to the truism or otherwise of the complaints. There is another file also which I have perused. It appears that the Applicant has been making his grievances to the authorities of the land, almost at the drop of a hat. Regardless of the ultimate outcome, I do not think that in normal circumstances, such an attitude should be supported, but so be it. The crux of the matter is that, when one examines these complaints and tests the same on the anvil of "substantiated complaints", one finds that the said complaints were not enquired into in that



background. It was open to the concerned Respondent to hold some kind of an enquiry where the Applicant was also given an opportunity to present his case and to defend himself in accordance with the principles of natural justice. And why, even if the present OA succeeds and the Applicant is reposted still it is open to the authorities depending upon the facts and circumstances to make the enquiry. But in view of the fact that the complaints have to be substantiated, enquiry probably is the only way to do so. Although I shall not read the details of each fact component about the complaint, but when one tests it on another anvil of "serious nature", it was in my view, incumbent on the Respondents to fortify their case that in the factual fact situation, the complaints were of serious nature. That has not been done. I am quite clearly of the opinion that the case of the Respondents in defending the impugned order of transfer suffers. This to my mind is the most significant failing of the Respondents because of which the impugned order becomes unsustainable. I do not think, I can quite lose sight of the fact that the legislature in its wisdom has given a special treatment to the Group 'D' employees by keeping them generally immune from a fixed tenure. The judicial forum will have to bear this fact in mind while considering the case presented before it.



6. The above conclusion is sufficient to decide the OA, but then as is their wont, several other fronts were opened for consideration and once opened, the other side had to pursue the same. Section 6 (2nd proviso) of the Transfer Act lays down that the competent transferring authority specified in the table appended to the said Section may by general or special order delegate its powers under this Section to any of its subordinate authority. Otherwise, the competent authority in the matter of transfer of Group 'D' employees thereunder is the Regional Heads of the Department. Section 7 of the Transfer Act lays down *inter-alia* that, every Administrative Department of Mantralaya for the purposes of the Transfer Act prepare and publish a list of Heads of the Department and Regional Heads of the Departments within their jurisdiction for the purposes of the said Act. The crucial words therein are "prepared" and "published". That would mean that a list has to be prepared and also published.

7. Now turning to the facts, I find that at Exh. 'B' (Page 14 of the Paper Book (PB)), there is a G.R. of the State in School Education and Sports Department, dated 4th June, 2015. It is in Marathi. The side title indicates that it is in the matter of the Junior Clerks and their cadre as far as the transfers were concerned. This fact has been



made clear in the preface as well as the first limb thereof. As far as the second limb is concerned, I think I had better reproduced it in Marathi itself.

“त्याचप्रमाणे क्रीडा व युवक सेवा संचालनालयाच्या अधिपत्याखालील कार्यालयामधील गट-ड मधील कर्मचा-यांनी शासकीय कर्तव्यात कसूर केल्यास किंवा त्यांनी वरिष्ठांच्या आदेशाचे पालन न केल्यास त्यांची विभागांतर्गत बदली करण्याचे अधिकार संबंधित विभागाचे विभागीय उप संचालक, क्रीडा व युवक सेवा यांना प्रत्यार्पित करण्यास शासनाची मान्यता देण्यात येत आहे.”

8. In the first place, I find that, in so far as the service conditions of transfer of Group 'D' employees are concerned, they are now governed by the Transfer Act which is a duly enacted law. I have already discussed the various ingredients of its provisions relevant hereto. Now, a G.R. issued by the Government in a particular Department has got an efficacy which is much weaker and lesser than a duly enacted law. Therefore, the above extract of the said G.R, in my opinion, tends to supply something to the relevant provisions of the Transfer Act which the legislature decided against. The provision itself is self-explanatory. In my opinion, Mr. Bandiwadekar is right in contending that, this G.R. in so far as it is relevant hereto, violates the provisions of the Transfer Act and by mentioning that, if there is any default in discharge of duties or failure to comply with the directions of the



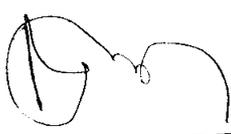
superiors, then that provision would come into force. On one side, it is clearly unguided more particularly in the context of clear words used in the Transfer Act in so far as the complaints were concerned that they should be substantiated complaints. Secondly, they do not tend to supplement the said provision of the Transfer Act, but either they run parallel thereto or supplant it, in which case, examine it from any angle and in my opinion, it is not enforceable. Regardless of whether there is a challenge to this GR or not, in as much as its portion relevant hereto is violative of the express provisions of the Transfer Act, the same can quite simply be ignored.

9. Mr. Parag Bhosale, the learned Advocate for Respondent No.1 also invited my attention to an instrument issued by the Government of Maharashtra in the form of a Notification dated 25th July, 2007 whereby the Regional Deputy Director of Greater Mumbai and certain other places came to be nominated as competent transferring authorities and the powers were delegated to the Regional Head of the Department. Now, in view of the foregoing, even if I were to presume that the delegation was in order, I am quite clearly of the view that, examined from any point of view and the G.R. of 4th June, 2015 in so far as Group 'D' employees are concerned, cannot be acted



upon especially in the context of the clearly enacted provisions of Transfer Act.

10. The learned PO Smt. K.S. Gaikwad and Mr. Parag Bhosale, the learned Advocate for Respondent No.1 both relied upon a Judgment rendered by the then Administrative Member of this Tribunal in **OA 455/2003 (Shri Vijay T. Ovhal Vs. The Deputy Director, Health Services and one another, dated 4th March, 2014)** in the matter of publication of the instrument by which the powers were delegated. Mr. Bandiwadekar's contention has been that, in as much as there was no Gazette Notification, the publication was legally infirm. In **Vijay Ovhal** (supra), this Tribunal relied upon a number of Judgments of the Hon'ble Supreme Court and held in effect that, even as the publication by way of Gadget Notification may be one way of publication, but that is not the only one. There should be material to show that it was published in the manner so as to make it known to the persons who would be affected thereby. Now, in the first place, I find that the Respondents have apparently not placed any material on record to show that the said instrument was so published as to become known to those that would be affected thereby, but even then, if I proceed on the assumption that there is no infirmity in the case of



the Respondents in this behalf, for the reasons already discussed hereinabove and the conclusions drawn, I do not think, this aspect of the matter can salvage the case of the Respondents. I have taken guidance from the Judgment in the matter of **State Government M.P. V/s. Seth Parasmal : AIR 1952 Nagpur Page 10** cited by Mr. Parag Bhosale, the learned Advocate for the 1st Respondent. That Judgment was in the context of a criminal matter and the issue of publication arose. However, as I have already mentioned above, the present facts are such that, even if I were to grant everything to the Respondents in the matter of publication, the ultimate outcome will not be altered.

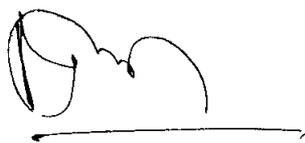
11. Mr. Bandiwadekar, the learned Advocate for the Applicant relied upon **OA 743/2012 (Shri Manohar B. Satav Vs. The Commissioner, Social Welfare, dated 15.1.2013)** with regard to the competence of a particular authority to make the order of transfer in the context of Section 7 of the Transfer Act. For the same proposition, he relied upon **OA 612/2010 (Shri Uttam D. Mhaske Vs. Sub-Divisional Officer, Malshiras, dated 3.12.2010)**. He also relied upon **OAs 889 and 890 of 2015 (Shri Ramchandara A. Morwarkar Vs. State of Maharashtra and one another and another OA, dated 16.6.2016)**. It was effectively held in that OA by the then Vice-Chairman



that, there can be no delegation of power in so far as Section 4(4)(ii) and 4(5) of the Transfer Act was concerned, while powers could be delegated in the context of Section 6 thereof. Mr. Bandiwadekar then relied upon **OA 243/2016 (Mr. Suresh V. Shelar Vs. Special I.G.P., Kolhapur and one another, dated 6.9.2016)**.

12. The upshot, therefore, is that on a very formidable point, the impugned order is unsustainable and the Applicant will have to be reposted to the place he had been transferred from, even if it results in the displacement from there of the private Respondent No.2. He was duly served but he decided against appearing before this Tribunal. But I must reiterate that just because this OA has succeeded, that itself is no guarantee for all time to come in future for the Applicant to go berserk. A proper procedure will be followed in the event, the circumstances so demand and the powers and rights of the concerned Respondents are still intact. But, this is not my direction.

13. For the foregoing and subject to the observations in the preceding Paragraph, the order herein impugned is hereby quashed and set aside. The concerned Respondents are directed to repost the Applicant to the post he had been transferred from by way of the impugned



order within four weeks from today and give his earlier posting to the Respondent No.2. The Original Application is allowed in these terms with no order as to costs.

Sd/-

~~(R.B. Malik)~~ 15-9-17
VICE-CHAIRMAN
15.09.2017

Mumbai

Date : 15.09.2017

Dictation taken by :

S.K. Wamanse.

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