

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.267 OF 2023

DISTRICT : Mumbai

SUB : TRANSFER

1. Shri Sunil Govind Aher,)
Age : 47 Yrs, OCC : Service)
R/at & Post : E/402, Harivihar Apt.)
Jail Road, Nasik Road, Nasik.)...**Applicants**

Versus

1. The State of Maharashtra,)
Through its Additional Chief)
Secretary, Department of Home)
(Transport), Mantralaya,)
Mumbai 400 032.)
2. Transport Commissioner, 5th floor,)
Fountain Telecom Bhavan)
M. G. Road, Fort, Mumbai 400 001.)
3. Additional Commissioner Transport,)
both Resp. Nos.2 and 3 having office)
at 5th floor, Telecom Bhavan,)
Fountain, M.T.N.L. Build. No.2,)
Mahatma Gandhi Road, Fort,)
Mumbai 400 001.) ...**Respondents**

Shri S. S. Deokar, Advocate for Applicant.

Shri A. J. Chougule, Presenting Officer for Respondents

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.07.2023

JUDGMENT

1. The Applicant has challenged the transfer order dated 01.09.2022 whereby he is shown temporarily deputed as Assistant Motor Vehicle Prosecutor in the office of Transport Commissioner, Mumbai invoking

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

2. Shortly stated facts giving rise to O.A. are as under :-

While Applicant was serving in clerical cadre on the establishment of Regional Transport Office, Nashik, he was promoted by way of (ad-hoc) promotion to the post of Assistant Motor Vehicle Prosecutor in pay band of Rs.9300-34800, GP 4400, (Group 'B' post) by order dated 01.11.2010. Since then he was functioning as Assistant Motor Vehicle Prosecutor at Nashik. The Respondent No.3 - Additional Commissioner Transport, Mumbai by order dated 01.09.2022 abruptly asked him to join at Transport Commissioner Officer, Mumbai stating that for administrative reasons, his services are required in the office of Transport Commissioner, Mumbai. Thus, by order dated 01.09.2022, the Respondent No.3 temporarily deputed Applicant in the office of Transport Officer, Mumbai which is under challenge in the present Original Application.

3. Heard Shri S. S. Deokar, learned Counsel for the Applicant, Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Shri Deokar, learned Counsel for the Applicant sought to assail impugned order dated 01.09.2022 *inter-alia* contending that it amounts to mid-term and mid-tenure transfer of a Government servant under the garb of temporary attachment and in absence of compliance of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity), it is totally unsustainable in law. He has further raised the issue of competency of Respondent No.3 - Additional Commissioner Transport, Mumbai to transfer the Applicant under the garb of temporary attachment. According to him, the Applicant being Group 'B' official as per Section 6 of 'Transfer Act 2005', the Minister in Charge in consultation with Secretaries of the concerned

department is the only competent authority. On this line of submission, he urged that impugned order has to be construed as a transfer order and it being in contravention of 'Transfer Act 2005' and same is liable to be quashed and set aside.

5. Per contra, Shri A. J. Chougule, learned P.O. in reference to contentions raised in Affidavit in Reply submits that due to shortage of manpower at Mumbai office, the services of Applicant were required and, therefore, by impugned order dated 01.09.2022 the Applicant was temporarily deputed in Mumbai office for administrative purpose.

6. In view of submission, the issue posed is whether impugned order is temporary adjustment or it amounts to transfer in the eye of law.

7. By impugned order dated 01.09.2022, the Applicant is shown temporarily attached to the office of Transport Commissioner, Mumbai. Now, the period of more than 9 months is over but alleged temporary attachment is continued. One can understand if for administrative exigency, a Government servant is deputed to some other office for a short period. However, in present case, impugned order cannot be termed as a temporarily attachment since period of 10 months is already over. Admittedly, Applicant did not give consent for such temporarily attachment. As such, if a Government servant is posted on at another place for such a long time, it amounts to transfer of a Government servant from one post to another post in the eye of law.

8. Now, the transfers of Government servants are not left to whims and caprice of the executive but are governed by the provisions of 'Transfer Act, 2005' which *inter alia* provides for complete procedure and mechanism for transfer of a Government servant by competent authority. As per Section 6 for Group 'B' officers, the Minister-in-Charge in consultation with Secretaries with concerned department is competent authority for general transfer which are to be issued in the month of April and May in a year. It further provides for mid-term and mid-tenure

transfer by next competent transferring authority. In case of mid-term and mid-tenure transfer, it is only in case of administrative exigency or special case, next preceding competent authority is empowered to transfer a Government servant as contemplated under Section 4(5) of 'Transfer Act, 2005'. True, Section 6 further provides for delegation of power by the competent transferring authority to subordinate authority but in present case, no such delegation of power is forthcoming. That apart, the matter was not placed before the CSB which is mandatory in terms of directions issued by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.**

9. As such, impugned order dated 01.09.2022 has to be construed as transfer order and it being not in compliance of the provision of 'Transfer Act 2005', the same is totally unsustainable in law. Apparently only to circumvent the powers of 'Transfer Act, 2005', the Applicant is displaced under the garb of temporary attachment. There could be no such temporary attachment for such a long period which in present case exceeds nine months till date.

10. If there was any such administrative exigency due to paucity of manpower at Mumbai, the Respondents ought to have adopted and availed the provisions of 'Transfer Act, 2005'. But instead of adopting legal mode, the Applicant is transferred from Nashik to Mumbai under the garb of temporarily attachment which is totally in contravention of law and clearly indefensible. The Respondent No.3 is not competent authority for such transfer.

11. The totality of aforesaid discussion leads me to conclude that impugned order dated 01.09.2022 is totally arbitrary and unsustainable in law and liable to be quashed and set aside. Hence, the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 01.09.2022 is quashed and set aside.
- (C) The Applicant be posted as Assistant Motor Vehicle Prosecutor, Nashik within a week from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 28.07.2023
Dictation taken by : V.S. Mane
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