

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.319 OF 2023

DISTRICT : PUNE

SUB : TRANSFER

1. Shri Sadashiv S. Survase,)
Age : 55 Yrs, working as Joint)
Director of Industries, Pune Region,)
Regional Office at Pune.)
R/o Flat No.5, 3rd floor, Tamhane)
Chambers, Lane No.1, Prabhat Road,))...**Applicants**
Deccan Gymkhana, Pune 411 004.)

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
(Industries), Industries, Energy and)
Labour Department (Industries),)
O/at Mantralaya, Mumbai 400 032.)
2. K. G. Dekate, working as Joint)
Director of Industries, Mumbai,)
Metropolitan Region, MMR, Mumbai.)...**Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

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

Smt. Punam Mahajan, Advocate for Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.05.2023

JUDGMENT

1. The Applicant has challenged the transfer order dated 16.03.2023 whereby he is transferred from the post of Joint Director of Industries, Pune to Joint Director of Industries, Mumbai and in his place Respondent No.2 was posted as vice versa.

2. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant, Shri A. J. Chougule, learned Presenting Officer for the Respondent No.1 and Smt. Punam Mahajan, learned Counsel for the RespondentNo.2.

3. Indisputably, the Applicant was posted at Pune by order dated 06.08.2019 and had completed normal tenure of three years. However, he was continued at Pune and instead of transferring him in general transfers of 2023, the Government transferred him by order dated 16.03.2023 invoking Section 4(4) and 4(5) 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) and posted the Respondent No.2 in his place. The Applicant has challenged the transfer order dated 16.03.2023 *inter-alia* contending that he is transferred mid-term and mid-tenure without there being any special case or any such administrative exigency to invoke Section 4(5) of Transfer Act, 2005. Apart, the matter was not placed before the Civil Services Board (CSB) as mandated by the Hon'ble Supreme Court in case of ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.***

4. The Tribunal granted interim relief by order dated 21.03.2023 with following observations :-

5. *True, Applicant was posted at Pune by order dated 06.08.2019 and would be due for transfer in general transfers of 2023. However, he is transferred abruptly by order dated 16.03.2023 only to accommodate Respondent No.2. The perusal of file makes it quite clear that Respondent No.2 was posted at Mumbai on 05.03.2021 and has not completed normal tenure. However, he made request for transfer to Pune in place of Applicant. The Department made endorsement that the post of Pune is not vacant, but despite this situation, directions were given by Hon'ble Minister as well as Hon'ble Chief Minister to transfer him in place of Applicant and that is why, Applicant is displaced.*

6. *As such, there is absolutely no special reason or administrative exigency for such mid-term transfer as contemplated under Section 4(5) of 'Transfer Act 2005'. Only to accommodate Respondent No.2 who was not due for transfer, the impugned order is passed which is totally arbitrary and nothing but classic example of favoritism and misuse of power. Apart, non-placing the matter before CSB as mandated by Hon'ble Supreme Court in (2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.) is also fatal. If transfers in such manner are allowed to continue, it would defeat the very purpose of 'Transfer Act 2005'.*

5. Shri A. J. Chogule, learned Presenting Officer and Smt. Punam Mahajan, learned Counsel for Respondent No.2 resisted the O.A. *inter-alia* contending that Applicant is already due for transfer and infact had already served at Pune for more than 12 years from time to time but Respondent No.2 never served at Pune and, therefore, he requested for posting at Pune in view of his ensuing retirement in October, 2023. Learned P.O. however fairly concedes that the matter was not placed before the CSB.

6. True, the perusal of impugned order dated 16.03.2023 reveals that the Applicant and Respondent No.2 were to be relieved after 01.03.2023. However, that mentioned in the order will not render the transfer order legal and valid for the reason that it was not vetted by CSB as mandated by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case. Indeed, the general transfer orders are required to be issued in the month of April and May in terms of provision of Transfer Act, 2005 but in present case, it is issued on 16.03.2023 apparently only to accommodate the Respondent No.2. It is apparent from file noting that Respondent No.2 though not due for transfer, requested for posting at Pune and the Hon'ble Chief Minister obliged to accept his request. Suffice to say, there was no such special case or administrative exigency to transfer the Applicant in the period other then general transfer.

7. As stated above, since the Applicant is already due for transfer, he has no right to continue at Pune as a vested right much less legally enforceable right. All that he could be transferred in general transfers of 2023. Now, the general transfer of 2023 are in process.

This being so, the Respondent No.1 is free to transfer him in ensuing general transfer of 2023 in accordance to law.

8. Since admittedly the impugned transfer order dated 16.03.2023 pertake character of mid-term and mid-tenure transfer and in blatant violation of direction of the Hon'ble Supreme Court in **T.S.R. Subramanian's** case, the transfer order is liable to be quashed and set aside. Hence, the following order :-

ORDER

- (A) Original Application is allowed.
- (B) The impugned transfer order dated 16.03.2023 is quashed and set aside and interim relief is made absolute.
- (C) The Respondent No.1 is however free to transfer the Applicant in ensuing general transfers in accordance to law.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 03.05.2023
Dictation taken by : V.S. Mane
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