

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.353 OF 2020

DISTRICT : PUNE

Shri Purshottam Dada Saheb Kokare.)
Age : 40 Yrs., Occu.: API (FP),)
R/o. 104/A, Binavanta Paradise,)
Bhekrainagar, Hadapsar,)
Pune – 412 308.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Addl. Director General of Police)
(CID), (M.S), Pune, having office at)
Near Law College, Pashan Road,)
Pune – 400 018.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

**Mr. A.J. Chougule, Presenting Officer for Respondents assisted by
Mrs. Kavita M. Kotkar, Law Officer.**

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.03.2021

JUDGMENT

1. The Applicant who is serving as Junior Finger Print Expert/Assistant Police Inspector (API) has challenged the transfer order dated 24.07.2020 from Pune to Chandrapur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was initially appointed on the post of Searcher on the establishment of Respondent No.2 by order dated 22.08.2012. Later, he was promoted to the post of Junior Finger Print Expert, which was equivalent to API by order dated 28.01.2016 and posted at Pune on vacant post. The Respondent No.2 – Additional Director General of Police, Crime Investigation Department, Pune considered the Applicant due for promotion in general transfer of 2020, since the Applicant has completed three years' tenure at Pune. Accordingly, Respondent No.2 transferred the Applicant at Chandrapur by order dated 24.07.2020. The Applicant made representation dated 27.07.2020 raising grievance of inconvenience on the ground of illness of parents and prayed for extension of one year. In alternative, he prayed for transfer at Navi Mumbai, Thane or Pune. However, it was not responded. The Applicant, has therefore, filed the present O.A. challenging transfer order dated 24.07.2020 contending that the same is unsustainable in law. The grounds on which the impugned order is challenged will be dealt with during the course of discussion.

3. Indeed, the Applicant's pleading to the extent of his tenure is self-contradictory. He contends that the impugned transfer order being passed under the 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) is unsustainable since transfer is required to be governed by the provisions of Maharashtra Police Act, which *inter-alia* provides for transfer on the recommendation of Police Establishment Board (PEB). At the same time, he contends that as per Section 3 of 'Transfer Act 2005', he is in Class 'C' cadre of non-secretariat services, and therefore, in terms of proviso to Section 3 of 'Transfer Act 2005' entitled to six years' tenure at Pune. There is no such provision for six year tenure in

Maharashtra Police Act. As such, at one place, he sought to contend that transfer order being not issued invoking provisions of Maharashtra Police Act is illegal and at the same time, fall back upon the provisions of 'Transfer Act 2005'.

4. To bolster-up the contention that the transfers are governed by Maharashtra Police Act, reference was made to the decision rendered by the Tribunal in **O.A.385/2015 (Gopinath Lokhande Vs. Director General of Police) decided on 01.12.2015.**

5. When this present O.A. was head, the Tribunal found the view taken in O.A.No.385/2015 is incorrect, and therefore, by order dated 03.02.2021 made reference to Division Bench. Accordingly, the Hon'ble Chairperson was pleased to constitute Division Bench consists of myself and Shri P.N. Dixit, Hon'ble Vice-Chairman (Administrative Member). Following was the reference made to Division Bench.

Whether the transfer of Junior Finger Print Experts working on the establishment of Respondent No.2 is governed by Maharashtra Police Act or by the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005.

6. The Division Bench accordingly heard the matter and by order dated 23.02.2021 held that the view taken by the Tribunal in O.A.No.385/2015 is incorrect and transfer of the Applicant is governed by the provisions of 'Transfer Act 2005'. After decision on reference, the matter is remitted back to this Bench for decision of O.A. in accordance to law. It is on this background, the matter was again heard.

7. Shri R.M. Kolge, learned Advocate for the Applicant sought to assail the impugned transfer order on the following grounds.

(a) Since in view of decision of Full Bench, the transfer is governed by 'Transfer Act 2005', the Applicant is entitled to six

years' tenure being Group 'C' employee, but he is transferred on completion of 3 years' treating him as Group 'B' employee, and therefore, the impugned order is unsustainable in law.

(b) The options called by Respondent No.2 at the time of transfer were not considered and there is breach of G.R. dated 09.04.2018.

(c) The recommendation of transfer of the Applicant by Civil Services Board is not in consonance with G.R. dated 31.01.2014.

8. Per contra, Shri A.J. Chougule, learned P.O. assisted by Mrs. Kavita M. Kotkar, Law Officer sought to justify the impugned order contending that the Applicant falls in Group 'B' and his tenure in terms of Section 3 of 'Transfer Act 2005' is 3 years and accordingly, after completion of 3 years tenure, the CSB headed by Additional Director General of Police (CID) transferred the Applicant to Chandrapur considering the administrative requirement to fill the post of Chandrapur. According to her, the CSB was duly constituted in terms of Notification dated 31.01.2014. It is further pointed out that Respondent No.2 is Head of the Department for the purpose of transfers under the provisions of 'Transfer Act 2005' and there is no illegality in impugned transfer order.

9. As stated above, initially, when the matter was heard, the issue of applicability of Maharashtra Police Act was raised and the matter was referred to Division Bench, which ruled that the transfer of the Applicant is governed by the provisions of 'Transfer Act 2005'. As such, this issue is set at rest. Therefore, the issue remains whether the impugned transfer order passed on the basis of recommendations of CSB invoking the provisions of 'Transfer Act 2005' suffers from any infirmity, so as to interfere the same.

10. The thrust of the submission of learned Advocate for the Applicant was centered around the status of Applicant as a Group 'C' for whose normal tenure being non-secretariat service would be two tenures (6 years) in terms of proviso to Section 3 of 'Transfer Act 2005'. Therefore, it is necessary to find out as to whether Applicant falls in Group 'C', so as to enjoy 6 years' tenure or he falls in Group 'B; for whom normal tenure is 3 years.

11. Indisputably, initially, the Applicant was appointed as Searcher in 2012 and later by order dated 06.12.2016, he was promoted to the post of Junior Finger Print Expert. His initial appointment as Searcher was on Group 'C' post. Later, he was selected to the post of Junior Finger Print Expert in the recruitment process in terms of Clause 61 and 62 of Police Manual, which *inter-alia* provides for the selection of ministerial staff for examination of documents in the Department. It was not intra-departmental examination. The promotion order dated 28.01.2016 is at Page No.12, which is silent about the group as to in which the post of Junior Finger Print Expert falls. Material to note that later the Government by G.R. dated 09.05.2000 (Page No.160 of P.B.) equated the post of Junior Finger Print Expert equal to the cadre of API carrying pay scale 6500-10500. Admittedly, Applicant's pay scale is in pay scale of Rs.6500-10500. Furthermore, it is an admitted position that till date, no Recruitment Rules for the post of Junior Finger Print Expert are framed. The posts of Junior Finger Print Expert are being filled-in taking recourse of Clause 61 and 62 of Police Manual. This being the position, the classification of the post of Applicant is required to be determined on the basis of relevant Government Resolutions in this behalf.

12. The Government of Maharashtra by G.R. dated 02.07.2002 clarified the position about classification of posts in Group 'A', 'B', 'C' and 'D' on the basis of pay scale. The relevant portion of G.R. is as under :-

“२. आता राज्य शासनाने पाचव्या वेतन आयोगाच्या अनुषंगाने सुधारित वेतनश्रेणी मंजूर केल्या असल्याने, उपरोल्लेखित दि. २९ जुलै १९९३ चा शासन निर्णय अधिक्रमित करून, राज्य शासन सेवेतील पदांचे सुधारित वेतनश्रेणीनुसार खालील प्रमाणे नव्याने वर्गीकरण करण्यात येत आहे.

अ.क्र.	पदांचा तपशील	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- पेक्षा कमी नाही, अशी पदे,	गट - अ
२.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.९,०००/- पेक्षा कमी नाही आणि रु.११,५००/- पेक्षा कमी आहे, अशी पदे,	गट - ब
३.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमालमर्यादा रु.४,४००/- पेक्षा कमी नाही आणि रु.९,०००/- पेक्षा कमी आहे, अशी पदे,	गट - क
४.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमालमर्यादा रु.४,४००/- पेक्षा कमी आहे, अशी पदे,	गट - ड

३. अ) जुन्या वर्गीकरणानुसार ज्या पदांचा दर्जा “अराजपत्रित” समजला जातो, तोच दर्जा सुधारित वर्गीकरणानंतरही कायम राहिल. तसेच या पदांना अगोदरच राजपत्रित दर्जा घोषित केला आहे, त्या पदांचा तो दर्जा यापुढेही कायम राहिल. अराजपत्रित पदांना केवळ वेतन श्रेणीच्या आधारे किंवा विशिष्ट गटामधील समावेशनामुळे आपोआप राजपत्रित दर्जा प्राप्त होणार नाही.”

13. Apart, one more clarification was issued by G.R. dated 27.05.2016 about the classification of posts to remove the doubt raised by the Departments. In so far as Group ‘B’ is concerned, the following is the clarification.

“शासन निर्णय :-

दि. २.७.२००२ च्या शासन निर्णयातील तपशिलाबाबत व पदांच्या वर्गीकरणाबाबत या शासन निर्णयात खालील प्रमाणे स्पष्टीकरण करण्यात येत आहे:-

अ.क्र.	पदांचा तपशील	स्पष्टीकरण	वेतनश्रेणी	पदांचे वर्गीकरण
१.
२.	त्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. ९०००/- पेक्षा कमी नाही आणि रु. ११५००/- पेक्षा कमी आहे, अशी पदे	ज्या वेतनश्रेणीची कमाल मर्यादा रु. ९०००/- ते ११४९९ या दरम्यान आहे अशी पदे	१. ५५००-१७५-९००० २. ६०००-१७५-९८५०-१५०-१०००० ३. ६५००-२००-१०५०० ४. ७२२५०-२२५-११०५० ५. ७४५०-२२५-११०५०	गट ब

दि.०२.०७.२००२ च्या शासन निर्णयातील परिच्छेद ३, ४, ५ व ६ मधील आदेश जसेच्या तसे लागू राहतील. तसेच वरील आदेशामध्ये काहीही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये, आकृतिबंध निश्चितीच्या आदेशामध्ये अथवा सेवा प्रवेश नियमांमध्ये या पदांचा उल्लेख विवक्षितपणे गट अ/ब/क/ड असा आहे त्यांच्या वर्गीकरणामध्ये बदल होणार नाही.”

14. Thus, the combine reading of this G.R. invariably establishes that the Government servant carrying pay scale of Rs.6500-10500 falls in

Group 'B'. True, in Note No.2 of G.R. dated 27.05.2016, it is stated that despite the position clarified in G.R. dated 27.05.2016, there would be no change in classification of the posts, which is specifically mentioned in staffing pattern of the office or Recruitment Rules. In other words, the classification of the posts mentioned in staffing pattern or Recruitment Rules prevail. However, admittedly, neither Recruitment Rules are framed nor there is any order of Government about staffing pattern for ministerial staff of Crime Investigation Department. This being the position, the classification will have to be determined on the basis of pay scale in terms of G.R. dated 02.07.2002 as well as G.R. dated 27.05.2016. Therefore, it will have to be held that Applicant's post being in pay scale of Rs.6500-10500 falls in Group 'B'.

15. Apart, significant to note that Applicant himself in his representation dated 27.07.2020 (Page No.152 of P.B.) candidly admits that his post falls in Group 'B' and was due for transfer. By the said representation dated 27.07.2020, all that, he requested for extension of one year's time at Pune and in alternative gave options of Navi Mumbai and Thane. It was the representation made by him on receipt of impugned transfer order for modification of posting. The material part of this representation in this behalf is as follows :-

“महोदय,

उपरोक्त संदर्भाकित विषयान्वये सविनय सादर कि, मी दि.०६/०२/२०१६ रोजी पदोन्नती मिळून अंगुली मुद्रा केंद्र, पुणे येथे कनिष्ठ तज्ञ / स.पो.नि.(अं.मु.) या राजपत्रित (गट-ब) या पदावर आदर झालेलो आहे.

संदर्भ क्र. १ अन्वये, मी एका ठिकाणी (अं.मु.कें, पुणे) येथे ३ वर्षांची सेवा पूर्ण केल्याने मी बदलीस पात्र होतो.”

16. Suffice to say, the Applicant himself admits that his post falls in Group 'B' (non-gazetted) and was due for transfer having completed 3 years' tenure in Pune.

17. Apart, from the admission, in the light of G.R. referred to above, it is crystal clear that by virtue of pay scale of Rs.6500-10500, the said

post falls in Group 'B' for which in terms of Section 3 of 'Transfer Act 2005', the normal tenure would be 3 years.

18. Shri R.M. Kolge, learned Advocate for the Applicant, however, sought to place reliance on the information obtained by one Nitin G. Indrale from the office of Director General of Police, Mumbai about the classification of the posts in Crime Investigation Department availed by him under RTI Act, which is at Page Nos.227 to 229 of P.B. The perusal of it reveals that Public Information Officer of the office of Director General of Police, Mumbai furnished him information wherein the post of Junior Finger Print Expert is shown non-gazetted Group 'C'. It appears that Shri Nitin Indrale asked for the said information by his application dated 11.09.2014 under RTI Act and the same was supplied to him by letter dated 24.09.2014. In the first place, this was the information under RTI Act from the office of Director General of Police, Mumbai and not from Additional Director General of Police, Crime Investigation Department, Pune who is the Head of the Department for Crime Investigation Department. Secondly, it was the position of 2014. As stated above, in 2016, the Applicant was promoted and was placed in pay scale of Rs.6500-10500. As such, in terms of G.R. dated 02.07.2002 as well as G.R. dated 27.05.2016, a Government servant in pay scale of Rs.6500-10500 falls in Group 'B' as discussed above. This being the position, the status of Applicant will have to be determined on the basis of G.Rs. and not on the basis of information sought under RTI Act in past. If Public Information Officer in ignorance of G.Rs. furnishes any such information, that will not prevail. Suffice to say, on the basis of information sought under RTI Act, the status of the Applicant cannot be classified as Group 'C' employee. I have, therefore, no hesitation to sum-up that the Applicant falls in Group 'B' Class and his tenure was three years in terms of Section 3 of 'Transfer Act 2005'.

19. The learned Advocate for the Applicant further sought to assail the impugned transfer of the Applicant posting him at Chandrapur

contending that his options given in his representation was not considered in terms of G.R. dated 09.04.2018. According to him, Applicant's wife being serving in State Bank of India in Pune, in the light of Government policy, he should have been accommodated nearby Pune.

20. True, in representation, the Applicant has cited family difficulties and in reference to G.R. dated 09.04.2018 requested to post him at Thane or Navi Mumbai, if the request for extension of one year is not accepted. In this behalf, the perusal of G.R. dated 09.04.2018 reveals that the Government had taken policy decision to effect general transfers by counseling. True, according to this G.R, a Government servant should be given District or Taluka where his spouse is in service as per administrative convenience and availability of post. The said Clause is as under :-

“५. पती-पत्नी एकत्रीकरण अंतर्गत ज्या शासकीय कर्मचारी यांचे पती किंवा पत्नी केंद्र किंवा राज्य शासकीय किंवा निमशासकीय कार्यालये, महानगरपालिका, नगरपरिषदा, जिल्हा परिषद किंवा पंचायत समिती अथवा शासकीय शैक्षणिक संस्थेमध्ये (शासकीय अनुदानित खाजगी शिक्षण संस्था वगळून) कार्यरत आहेत, अशा शासकीय कर्मचा-यांना त्यांच्या पती व पत्नी यांचे ज्या जिल्ह्यात व तालुक्यात वास्तव्य आहे, यथास्थिती त्या जिल्ह्यात वा तालुक्यात प्रशासकीय सोयीनुसार व पद उपलब्धतेनुसार बदली करण्यात यावी.”

21. Thus, the administrative convenience/exigency is important and a Government servant cannot ask for a particular place as of right. At the same time, the perusal of G.R. (टप्पा क्र.४) further reveals that vacant post from difficult area were required to be filled-in on priority. The Applicant was posted at Chandrapur since it was vacant for a long time. While giving options, the Applicant, admittedly, gave option of Chandrapur at Serial No.8. The option Nos.1 to 7 were around Pune and Thane. The Applicant has admittedly worked only at Mumbai and Thane. In terms of G.R. dated 06.08.2002 (Page Nos.71 to 77 of P.B.), the post in naxalite affected area were required to fill-in without keeping it vacant. As such, it was the administrative exigency to post the Applicant at Chandrapur. Needless to mention that the transfer is an incident of service and in transferable service, a Government servant cannot ask for a particular

place or posting as of right. It is for the administration to take care of the vacant post, particularly in naxalite/adiwasi area and to fill the same on priority. Hence, in such situation, the posting of Applicant at Chandrapur cannot be termed illegal.

22. Shri Kolge, learned Advocate for the Applicant further tried to pick hole in the impugned order contending that the constitution of CSB, which recommended the transfer of the Applicant was not in terms of Circular dated 31.03.2014 and matter ought to have been referred to CSB-1.

23. In this behalf, the perusal of G.R. dated 31.01.2014 reveals that the CSB were to be constituted as per classification of a Government servant. The CSB-1 is for Group 'A' and Group 'B' (Gazetted) Government servant headed by Additional Chief Secretary of the Department. Whereas, the CSB-2 is for Group 'B' (Non-Gazetted) and Group 'C' employees at Regional level. As per the said G.R, for constitution of CSB at Regional level, the Head of the Departments were required to constitute CSB at their level. In the present case, as rightly pointed out by the learned P.O. that the Government by Notification dated 29.03.2011 (Page No.156 of P.B.) declared Respondent No.2 – Additional Director General of Police as Head of the Department for entire transfers within Crime Investigation Department. Thus, it is Notification issued under Section 7 of 'Transfer Act 2005'. As such, it is CSB for entire state headed by Director General of Police (CID) who is the head of the Department of Crime Investigation Department.

24. Accordingly, the Respondent No.2 by order dated 23.07.2020 had constituted CSB consists of himself and Shri Pravin Salunkhe, Special Director General of Police, Crime West, CID, Pune, Dr. J.D. Supekar, Deputy Director of Police, Administration, CID, Pune and Smt. Kalbande, Additional Superintendent of Police (Head Quarter), CID, Pune. Accordingly, the said constituted CSB recommended for the transfer of

Applicant from Pune to Chandrapur. I see no illegality in constitution of CSB.

25. The submission of learned Advocate for the Applicant that in terms of Clause No.3.6 of G.R. dated 31.01.2014, the matter was required to be placed before the CSB-1 is totally misconceived. Clause No.3.6 relied upon is as under :-

“३.६ गट ब (अराजपत्रित व गट क संवर्गातील जिल्हास्तरावर बदलीपात्र कर्मचाऱ्यांच्या बाबतीत जिल्हाबाहेर तसेच महसूली विभाग / परिमंडळ / संभाग / प्रादेशिक स्तरावर बदलीपात्र कर्मचा-यांच्या बाबतीत अन्य महसूली विभाग / परिमंडळ कार्यालयांमध्ये बदलीसाठी शिफारशीचे प्रस्ताव नागरी सेवा मंडळ (१) समोर ठेवणे आवश्यक राहिल.”

26. Obviously, the aforesaid Clause applies where a Government servant is transferred out of Division. Whereas, in the present case, the CSB headed by Additional Director General of Police, CID was for the entire State of Maharashtra and there is no question of out of Division transfer. It is the transfer within the Department itself. Therefore, the question of placing the transfer matter before CSB-1 did not arise.

27. Suffice to say, the Applicant was due for transfer having completed 3 years' normal tenure and was required to be transferred in general transfers which were required to be effected in the month of April or May in terms of provisions of 'Transfer Act 2005'. However, due to Covid-19 pandemic situation and lockdown, the general transfer of a Government servant could not be effected in the month of April or May, 2020. The Government, therefore, by G.R. dated 07.07.2020 had extended the deadline upto 31st July, 2020. Accordingly, the Applicant was transferred by order dated 24.07.2020 before the deadline mentioned in G.R. dated 07.07.2020.

28. The totality of aforesaid discussion leads me to conclude that challenge to the transfer order holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

- (A) The Original Application is dismissed with no order as to costs.
- (B) Interim relief granted by the Tribunal stands vacated.

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

Mumbai

Date : 05.03.2021

Dictation taken by :

S.K. Wamanse.

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