

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NOS.399 of 2020
with
ORIGINAL APPLICATION NOS.400 of 2020**

ORIGINAL APPLICATION NO.399 OF 2020

Shri Balaji Audumbar Shinde)
Age : 41 Yrs., Occ. Food & Safety Officer,)
Raigad-118. R/o. 1C/102, Kalpataru)
Riverside Housing Society, Godavari Build.)
Takka, Old Panvel, Dist. Raigad.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Medical Education)
And Drugs Department, Mantralaya,)
Mumbai 400 032.) ...**Respondents**

WITH

ORIGINAL APPLICATION NO.400 OF 2020

Smt. Supriya N. Jagtap)
Age : 35 Yrs., Occ. Food & Safety Officer,)
Raigad-114. R/o. 1C/102, Kalpataru)
Riverside Housing Society, Godavari Build.)
Takka, Old Panvel, Dist. Raigad.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Medical Education)
And Drugs Department, Mantralaya)
Mumbai 400 032.)

2. Shri S. R. Adhav, Aged Adult,)
Working as Food Safety Officer,)
Brihanmumbai -35, being transferred)
In place of the Petitioner at Raigad 114)...**Respondents**

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

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

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

DATE : 16.03.2021

JUDGMENT

In these two Original Applications, the Applicants who are husband and wife have challenged their transfer orders from Raigad to Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The Applicants are serving as Food Safety Officers. At the time of impugned transfer order dated 10.08.2020, they were serving at Raigad. Both were due for transfer in general transfer of 2020 having already completed normal tenure at the time of general transfer of 2020. They have submitted options and further requested the Government to keep both at one place citing that they have small boy of three years old and their family is settled at Panvel. In options, it is further stated that the mother of the Applicant Shri Balaji Shinde suffers from cancer and under treatment at Tata Cancer Hospital, Kharghar. Therefore, they requested for their extension in Raigad itself and also given options from Thane only. However, by transfer order dated 10.08.2020, the Applicant Shri Balaji Shinde (O.A.399/2020) is transferred from Raigad-118 to Pune-

179. Whereas, Applicant Smt. Supriya Shinde (O.A.No.400/2020) is transferred from Raigad-112 to Pune-305. Being aggrieved by the said transfer order, they have filed these OAs *inter-alia* contending that it is in contravention of G.R. dated 09.04.2018 whereby the Government has taken policy decision to transfer a Government servant by counseling / considering their options. In O.A.No.400/2020, the Government has transferred the Respondent No.2 in place of Applicant at Raigad-118 and therefore, he is joined as Respondent No.2.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicants sought to assail both the impugned transfer orders on the following grounds:-

(A) In terms of the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005'), general transfers were to be effected only in the month of April and May but impugned transfer orders being issued on 10.08.2020 those are unsustainable for want of compliance of Section 4(4)(ii) of 'Act 2005'.

(B) G.R. dated 07.07.2020 as well as 23.07.2020 issued by Government for extending deadline for transfer of Government servant are invalid since it cannot override the provisions of 'Act, 2005'.

(C) There is no compliance of G.R. dated 09.04.2018 in letter and spirit since the options given by the Applicants were not considered.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer, and Shri V. Chavan, learned Counsel for the Respondent No.2 in O.A.400/2020 supported the impugned orders contending that there is no such contravention of provisions of 'Act 2005' as well as instructions issued in G.R. dated 09.04.2018. They have further pointed out that both the Applicants were overdue and in fact in terms of G.R. dated

09.04.2018 both were posted in Pune itself so that both should stay together which is one of the policy in terms of G.R. dated 09.04.2018.

5. At this juncture, before adverting to the facts, it would apposite to borne in mind the principles of law holding the field in the matter of transfer of Government servant. The Hon'ble Supreme Court on several decisions outlined the scope of court's powers to interfere with the transfer orders. Following are the settled guideline principles laid down by the Hon'ble Supreme Court :-

i) *The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp.(2) SCC 659)*

ii) *A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses's case (supra)).*

iii) *Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).*

iv) *Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).*

v) *Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal's case supra).*

vi) *The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal's case (supra)).*

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardan Lal's case (supra).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal's case (supra)."

6. At the very outset, it needs to be clarified that though in impugned transfer order dated 10.08.2020 (the date is wrongly typed in order as 10.08.2018) though there is a reference of invoking Sections 4(4)(ii) and 4(5) of 'Act 2005' as well as there is a reference of request transfer, admittedly, the transfer of applicants was on administration ground and not on request. Apart, there is no denying that the Applicants were overdue at Raigad. Reference of Section 4(4)(ii) and 4(5) of 'Act 2005' in the impugned transfer order is superfluous as well as totally unwarranted, since admittedly, it was general transfer which was issued in August 2020 instead of months of April and May. In view of G.R. dated 07.07.2020 and 23.07.2020, the Government had extended the deadline of issuance of general transfer because of Covid-19 pandemic situation and consequent lockdown.

7. Learned P.O. fairly concedes that there is no approval of Hon'ble Chief Minister to the impugned transfer order. However, she has clarified that it is not mid-term transfer but the same was general transfer which were postponed due to Covid-19 pandemic situation and consequent lockdown.

8. True, initially the Government by G.R. dated 04.05.2020 had taken policy decision not to effect transfer of Government servants in view of Covid-19 pandemic situation. However, the Government in its wisdom considering difficulties faced by the administration had subsequently issued G.R. dated 07.07.2020 whereby it was decided to effect general transfer of a government servants who were due for general transfer in

the month of April and May to the extent of 15% of cadre up to 31.07.2020. In G.R. it is further clarified that these general transfers shall be effected in terms of Section 6 of Act 2005 with the approval of competent authority. In so far as this aspect is concerned, in terms of Section 6 of 'Act 2005', the Minister-in-charge in consultation with Secretaries of the concerned department is the competent transferring authority. It is only in case of mid-tenure or mid-term transfer and only in special cases, after recording reasons in writing, transfer can be effected with the prior approval of immediately superior authority. In case of mid-term and mid-tenure transfer immediately preceding superior competent authority would be Hon'ble Chief Minister.

9. Now turning to the facts of present case, even if, initially the Government by G.R. dated 04.05.2020 had decided not to effect general transfer of a Government servants, later it came with G.R. dated 07.07.2020 whereby the deadline was extended upto 31.07.2020. Thereafter, by issuance of G.R. dated 23.07.2020 time limit was again extended upto 10.08.2020. As such, due to Covid-19 pandemic satiation what was extended was the date of issuance of general transfer orders in respect of those who were already due for general transfer in the month of April and May, 2020. Thus, due to this unforeseen situation and administrative difficulties, it was decided to issue transfer orders of a Government servants who were due for transfer upto 10.08.2020. Such administrative decision can hardly be questioned in this peculiar circumstances faced by the Government as well Government servants. Admittedly, the Applicants were due for general transfer which could not be effected in April-May 2020.

10. Shri A.V. Bandiwadekar, learned Counsel for the Applicant sought to place reliance on the decision of the Hon'ble High Court Bench at Aurangabad in ***W.P. No.5402/2018 (Dr. Sanjay Kadam & Ors v/s State of Maharashtra & Ors.)***, decided on 10.03.2020. It was

pertaining to extension of age of medical officers from 58 to 60 years in terms of G.R. dated 30.05.2015, 30.06.2015 and 03.09.2015. The Hon'ble High Court held that in terms of Maharashtra Civil Services (Pension) Rules, 1982 the date of retirement is 58 years, and therefore, in absence of any amendment to rules, the Government Resolutions cannot override the rules and consequently these rules are held arbitrary and quashed. The Hon'ble High Court held that once statutory rules have been made, the executive power could be exercised only to fill in gap but instructions cannot supplant the law but it would only supplement the law. There could be no dispute about legal principle expounded in this judgment. However, in so far as the facts of present case are concerned, G.R. dated 07.07.2020 and 23.7.2020 cannot be termed to supplant the provisions of Act 2005. As stated above by G.R. dated 07.07.2020 and 23.07.2020 extended only deadline for issue of transfer order in view of unforeseen pandemic situation and to tide over various administrative difficulties faced by the Government. The decision was taken to issue transfer orders of those government servants who were due for transfer in general transfer of 2020. The Applicants have already completed their normal tenure. In fact, they were overdue. This being the position, I find no merit in the submission advanced by the learned Counsel for the Applicants that transfer order being issued on 10.08.2018 is mid-term transfer. The submission advanced to that effect is totally misconceived and unsustainable in law and facts.

11. In view of above, the question of approval to the impugned transfer order by the Hon'ble Chief Minister does not survive and I see no legal infirmity in impugned transfer order in this behalf.

12. Now question comes about the grievances for not considering options given by the Applicants. Admittedly, at the time of submitting options form, both the Applicants submitted as under:-

“ ७. कर्मचारी बदली पासून सूट मिळण्यास पात्र असल्यास त्याबाबतची कारणे : माझा मुलगा ३ वर्षांचा असून कुटुंब पनवेल येथे स्थायीक आहे. तसचे माझी आई कर्करोगाने ग्रस्त असून तिच्यावर टाटा कॅन्सर हॉस्पिटल, खारघर येथे उपचार चालू आहेत. सदर दोन्ही ठिकाणे कार्यक्षेत्र क्र. ११४ पासून जवळ असल्याने तसेच आईची देखभाल व मुलाचे संगोपन करण्यासाठी मी व पत्नी दोघेच असल्याने रायगड येथील कार्यक्षेत्र क्र.११४ वर बदली देण्यात यावी.

८. कर्मचारी विविरणपत्र -३ मधील कोणत्या प्राधान्यक्रमांकात अंतर्भूत होतो याबाबतची माहिती: प्राधान्य क्र.५ व ६ (प्राधान्य क्र.५ -पतीपत्नी एकत्रीकरण, प्राधान्य क्र.६-आई कर्करोगाने आजारी)

९. संबंधित प्राधान्यक्रमात अंतर्भूत होत असल्याबाबतचे सक्षम प्राधिका-याने दिलेले [प्रमाणपत्र/कागदपत्रांचे](#) पुरावे : प्राधान्य क्र.५ -विवाह नोंदणी प्रमाणपत्र, प्राधान्य क्र.६ -टाटा कॅन्सर हॉस्पिटल नोंदणीपत्र व फॉर्म.

१०. सर्वसाधारण बदली कोणत्या ठिकाणी करावी याबाबतचे कमाल १० पसंतीक्रम (१० पसंतीक्रमापैकी किमान २ पसंतीक्रम अवघड क्षेत्रातील नमूद करण्यात यावेत):

अ.क्र.	पसंतीक्रम	अवघड/बिगरअवघड कार्यक्षेत्र
१	ठाणे - ७९	बिगरअवघड
२	ठाणे - ७७	बिगरअवघड
३	ठाणे - ७६	बिगरअवघड
४	ठाणे - ७४	बिगरअवघड
५	ठाणे - ७५	बिगरअवघड
६	ठाणे - ११४	बिगरअवघड
७	ठाणे - ११३	बिगरअवघड
८	ठाणे - ६६	बिगरअवघड
९	ठाणे - ९१	अवघड
१०	ठाणे - ९३	अवघड

13. Shri A.V.Bandiwadekar, learned Counsel for the Applicant was much harping on the aspect of non compliance of instructions given in G.R. dated 09.04.2018. According to him since the mother of Applicant Shri Balaji Shinde was suffering from cancer and was taking treatment at Tata Hospital, Kharghar both should have been accommodated on the places of options given by them.

14. The perusal of G.R. dated 09.04.2018 reveals that Government had taken policy decision to effect general transfers by counseling. There are several stages to be complied with in the process of transfer. One of the instructions is to consider the

option given by the Government servant keeping in mind the administrative exigency as well. It also provides that a Government servant should not be reposted at a place where he or she had already served. It further provides that where husband or wife or parents or parents in-laws of a Government servants are suffering from cancer, paralyses, kidney failure, brain tumor, heart diseases, etc. such Government servant should be given posting as per his/her convenience. He further provides that where the spouse is in service of Central Government, State Government, etc. they should be posted in same district or taluka keeping in mind the vacancy position as well as administrative requirement.

15. What is important to note that at the time of submitting option form, all that applicants have appended photocopy of registration of patient namely Shakuntala Audumbar Patil (mother of Applicant Balaji Shinde) dated 28.09.2018. Except this registration form, no other documents were submitted to the department to show that his mother was really diagnosed as cancer patient and was taking any such treatment at Kharghar. Registration form is of 2018, whereas options were given in 2020. This registration form fall short to substantiate that applicant's mother was diagnosed with cancer and she was taking regular treatment at Tata hospital, Kharghar

16. True, Government should be compassionate in such matter if a case to that effect is made out. Since no such documents of continuous treatment of cancer were produced before the competent authority, probably that was the reason for not considering the options given by the Applicants on the ground of ailment of cancer. In O.A. also except registration card, no other document about mother's cancer treatment is produced.

17. Apart, when the matter was placed before the CSB it recommended the transfer of the applicant at Nashik and Jalgaon respectively. However, Government had considered that spouses should live together in view of policy decision of Government as reflected in G.R. dated 09.04.2018 and transferred the Applicant at one place i.e in Pune. In other words, in so far as spouse policy is concerned, there is compliance of G.R. dated 09.04.2018.

18. Now, coming to the options given by Applicant as rightly pointed out by learned P.O., the Applicants were required to give ten different options since the post is transferable throughout Maharashtra. However, applicants have given eight options from Thane only and have given two options from Raigad. The Applicants were already serving at Raigad, therefore, the question of giving them Raigad did not arise. In fact, the Applicant in O.A.No.399/2020 has completed four years and seven months at Raigad. Whereas, his wife Applicant in O.A. 400/2020 was at Raigad from 05.05.2011 to 31.05.2014 for three years and thereafter only for four months, she was at Kolhapur from 01.06.2014 to 10.09.2014 and thereafter she was again brought back to Raigad from 11.09.2014 till the date of passing impugned order. As such, she was at Raigad for more than eight years. Perusal of record reveals that time and again, she had sought extension which was granted to her. Be that as it may, the fact remains that both the Applicants were overdue having stayed at Raigad for longer period. This being so, they cannot ask for Raigad again, as if, it is their legally vested right to continue at Raigad.

19. As stated above, out of ten options, the Applicants have given eight options from Thane District only. Indeed, they ought to have given

different places so as to consider it from the point of administrative convenience as well as to accommodate other Government servants. Thus, options were not given in consonance with the G.R. dated 09.04.2018. Therefore, the Applicants cannot raise grievance of non compliance of G.R. dated 09.04.2018.

20. True, once the Government has taken police decision in terms of G.R. dated 09.04.2018, fairness and transparency requires that as far as possible options should be considered. However, at the same time, fairness is not one sided and Government servants are also equally bound to give options in responsible and fair manner. It is in that event only a Government servant can raise grievance of non compliance of policy. Otherwise, it would amount to give premium to unscrupulous people.

21. Apart, needless to mention that the policy decision in terms of G.R. dated 09.04.2018 is by way of guideline and it does not have any statutory force. In G.R. dated 09.04.2018 itself, it is made clear that options should be considered keeping in mind the administrative exigencies and requirement of a Government as well. In other words, administrative exigency also played important role in the matter of posting of a Government servant. Pune being very big District, number of vacant posts as compare to other Districts are always high. Therefore, considering the vacancy position of Pune District, the Applicants were given Pune. Such transfer order can hardly be questioned much less termed illegal.

22. Indeed, the Government had taken care by posting the Applicants at one station so that spouses should stay together. In Pune District, all medical facilities and other facilities are equally available. Even assuming that the Applicant's mother requires any treatment for cancer then it is also available in Pune.

23. Shri A. V. Bandiwadekar, learned Counsel for the Applicants sought to place reliance on certain decisions rendered by this Tribunal in various Original Applications to drive home his point. He referred **O.A.No.954/2019 (Rakhi Gharage V/s Secretary, Revenue & Forest Department)**, decided on 13.12.2019. In that case, the Applicant gave ten options but none was considered and no reason was shown for not considering a single option. Therefore, in fact situation, O.A. was allowed with direction to reconsider the option given by the Applicant. He further referred to **O.A.No.560/2019 (Prashant Pawar v/s State of Maharashtra & Ors.)**, decided on 05.10.2018. In that case, the options given by the Applicant were kept vacant in general transfer but subsequently it was filled in by giving posting to Respondent No.3 during the pendency of O.A. It is in that context, such action was found unfair in view of G.R. dated 09.04.2018 and O.A. was allowed. The decision referred in **O.A.No.841/2009 (Vaishali Haribhakt V/s State of Maharashtra)** decided on 17.08.2009 and the decision in **O.A.No.633/2019 (Dr Anna Marakwar v/s State of Maharashtra & Ors.)**, decided on 02.03.2020 relates to non compliance of Section 4(4)(ii) 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 'Act 2005'). Consequently, the transfer orders were quashed. Whereas in present case, there is no such issue of applicability of Section 4(4)(ii) and 4(5) of 'Act 2005'. He further referred to decision in **O.A.No.532/2018 (Bhagvat Wagh V/s State of Maharashtra & Ors.)** decided on 25.04.2019. In that case, the dispute was about posting in PESA area. The Applicant gave ten options but later the Government decided to keep those options for PESA and kept it reserved for scheduled Cast candidates in term of G.R. dated 09.06.2014, 05.03.2015 and 26.06.015. Thus, while giving options, it was not made known to the Applicant that the options were kept reserved. Therefore, in peculiar facts and circumstances in O.A. on

direction from Tribunal during hearing, the Respondents have submitted the list of non PESA places to which Applicants have given willingness to transfer on non PESA places. Accordingly, directions were given to accommodate the Applicants on those vacant non PESA places.

24 As such, these decisions given in fact situation are clearly distinguishable. Needless to mention that, the court should not place reliance on the decisions without discussing as to how the fact situation fits in with the fact situation of the decision on which reliance is placed. Each case depends on its own fact and single significant difference in facts is important and can alter the entire aspect. Suffice to say the decisions referred to above are of little assistance to the Applicants in present situation.

25. As stated earlier transfer is incidence of Government service and executive instructions do not confer any legally enforceable right unless it is found in contravention of statutory provisions or vitiated by malafides, it should not be interfered with. In present case, there is no such violation of law.

26. The totality of the aforesaid discussion leads me to conclude that the challenge to the impugned transfer orders is devoid of any merit and Original Applications deserve to be dismissed. Hence the following order:-

ORDER

(A) Original Applications are dismissed.

(B) Interim order passed by the Tribunal in O.A. No.399/2020 permitting the Applicant to work at Raigad-118 stands vacated.

(C) No order as to costs.

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

400/2020

Place :Mumbai

Date : 16.03.2021

Dictation taken by : VSM

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