

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.434 OF 2020

DISTRICT : RAIGAD

Smt. Surekha Ravindra Chavan.)
Age : 51 Yrs., Working as Rationing)
Officer transferred from 36F, Rationing)
Office, Thane and R/o. 601, Vama)
Paradise CHS Ltd., Sector 13, Khanda)
Colony, New Panvel, Dist : Raigad.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Food, Civil Supplies and Consumer)
Protection Department, Mantralaya,)
Mumbai – 400 032.)
2. The Controller of Rationing and)
Director, Civil Supplies, M.S,)
Having office at Royal Insurance)
Building, 5th Floor, Churchgate,)
Mumbai – 400 020.)
3. The Deputy Controller of Rationing,)
F-Zone, Thane, Aaram Bag Estate,)
First Floor, Veer Savarkar Marg,)
Thane (W).)
4. Shri Raju Baburao Palaskar.)
Aged : Adult, Working as Rationing)
Officer transferred in place of)
Applicant from 41F, Rationing)
Office, Thane.)...**Respondents**

Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent Nos.1 to 3.

Respondent No.4 though served remained absent.

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

DATE : 05.03.2021

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 07.07.2020 passed by Respondent No.2, the order dated 31.07.2020 whereby the Government had posted Respondent No.4 in place of the Applicant as well as order dated 10.08.2020 whereby Applicant has been transferred from the post of Rationing Officer, 36-F, Thane to D-Zone, Andheri, Mumbai.

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

The Applicant was serving as Rationing Officer, Class-II at 36-F, Thane. The Respondent No.2 – Controller of Rationing and Director, Civil Supplies, Mumbai had received the report dated 06.07.2020 about the illegalities in the distribution of ration by Ration Shop holders in conspiracy with transporters. The Respondent No.2 found the conduct of the Applicant suspicious, and therefore, by order dated 07.07.2020 directed Respondent No.3 - Deputy Controller of Rationing, Zone Thane to withdraw the work from Applicant and make some alternative arrangement. Simultaneously, he directed to initiate the process for regular departmental enquiry. It is on this background, the Government by order dated 31.07.2020 posted Respondent No.4 in place of Applicant and by order dated 10.08.2020 transferred and posted the Applicant to D-Zone, Andheri, Mumbai. The Applicant has challenged these three orders in the present O.A. contending that those are in contravention of provisions of law.

3. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents at length.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that Applicant has been transferred on alleged complaints mid-term and mid-tenure without compliance of Section 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). He has pointed out that though there is approval of Civil Services Board (CSB), the approval of Hon'ble Chief Minister as contemplated under Section 4(5) of 'Transfer Act 2005' is absent and on that ground alone, the O.A. deserves to be allowed.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to canvas that in view of serious complaint in the distribution of ration, initially, Respondent No.2 – Controller of Rationing and Director, Civil Supplies by order dated 07.07.2020 rightly withdrawn the work and thereafter with the recommendation of CSB and approval of Hon'ble Minister Incharge of the Department, the Applicant has been transferred to Andheri, Mumbai. However, she fairly concede that file was not placed before the Hon'ble Chief Minister for his approval, as required under Section 4(5) of 'Transfer Act 2005'.

6. In view of above, the small issue posed for consideration is whether the impugned transfer order is in consonance with Section 4(5) of 'Transfer Act 2005' and the answer is in emphatic negative.

7. Indisputably, the Applicant was posted at 36-F, Thane on promotion by order dated 25.02.2019 and this being the position, she was entitled for three year's tenure at Thane in terms of Section 3 of 'Transfer Act 2005'. However, by order dated 10.08.2020, she was transferred mid-term and mid-tenure invoking Section 4(5) of 'Transfer

Act 2005'. There is a reference of invocation of Section 4(5) of 'Transfer Act 2005' in impugned order dated 10.08.2020. However, the perusal of record, particularly Page Nos.83 and 84 of Paper Book reveals that after taking recommendation of CSB, the Applicant was transferred to Andheri, Mumbai on complaint. The file was approved by Hon'ble Minister Incharge of the Department only. Whereas, it being mid-term and mid-tenure transfer, it was required to be approved by Hon'ble Chief Minister being immediately preceding competent transferring authority, as contemplated under Section 4(5) of 'Transfer Act 2005'.

8. Section 4(5) of 'Transfer Act 2005' reads as under :-

“4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

9. It is thus explicit that in the matter of mid-tenure transfer, it is only in special cases after recording reasons in writing with prior approval of immediately preceding competent transferring authority, mid-tenure transfer is permissible. As per Section 6 of 'Transfer Act 2005', for general transfer, the Minister Incharge is the competent transferring authority and the immediately preceding competent transferring authority for mid-tenure transfer is Hon'ble Chief Minister. Despite this legal position, the file was not placed before the Hon'ble Chief Minister. Needless to mention that the approval of Hon'ble Chief Minister as next immediately preceding competent transferring authority is not mere formality. It is inbuilt provision by way of check and balances for fair and transparent administration. Apart, when law expressly provides for prior permission of immediately preceding competent transferring authority, there could be no latitude or excuse for not compliance of the same. When law provides for doing certain exercise in a particular manner, then it should be done in that manner only. However, in the present case, the Department did not place the file

before Hon'ble Chief Minister for the reasons best known to them, which is fatal to the matter. Suffice to say, on this ground alone, the impugned transfer order dated 10.08.2020 is liable to be quashed.

10. In so far as Respondent No.4 is concerned, he was posted in place of Applicant by order dated 31.07.2020. He is served with the notice of O.A., but chose to remain absent. Since the transfer of the Applicant by order dated 10.08.2020 is unsustainable in law, the posting order of Respondent No.4 in place of Applicant by order dated 31.07.2020 is also liable to be quashed.

11. As regard order dated 07.07.2020 issued by Respondent No.2, it was in the form of direction to Respondent No.3 to withdraw the work of the Applicant and to give charge to somebody else. However, thereafter, no separate order of withdrawing the work of the Applicant has been issued by Respondent No.3. In the meantime, the Government itself by order dated 10.08.2020 directed transferred the Applicant from Thane to Andheri, Mumbai. Significant to note that, in order dated 10.08.2020 also, the previous posting of the Applicant is shown 36-F, Thane Zone. Suffice to say, she continued on the same post till the date of transfer order dated 10.08.2020. As such, the order dated 07.07.2020 is merged in transfer order dated 10.10.2020. In other words, the order dated 07.07.2020 issued by Respondent No.2 – Collector of Rationing and Director, Civil Supplies has become infructuous in view of transfer order dated 10.08.2020.

12. The learned P.O. has pointed out that after the transfer of the Applicant, the D.E. was initiated by issuance of charge-sheet on 31.12.2020. In so far as this aspect is concerned, that itself would not legalize the transfer order of the Applicant. The preliminary enquiry will have to be completed independently in accordance to Rules. It is advisable that the D.E. is expedited and completed at the earliest.

13. The totality of aforesaid discussion leads me to sum-up that the impugned transfer order dated 10.08.2020 is in blatant violation of section 4(5) of 'Transfer Act 2005' for want of approval of Hon'ble Chief Minister and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer orders dated 31.07.2020 in respect of Respondent No.4 as well as impugned order dated 10.08.2020 are hereby quashed and set aside.
- (C) The Applicant be reinstated on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

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

Mumbai
Date : 05.03.2021
Dictation taken by :
S.K. Wamanse.

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