

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.442 OF 2015**

DISTRICT : THANE

Shri Mahesh Harbuxrai Chainani,)
Rationing Inspector in Rationing Office-1A,)
Azad Maidan, Mumbai 400001)
R/o Barrack No.B-75, Ulhsanagar, Dist. Thane)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, "Ram-Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400016)..Applicant

Versus

1. The Controller of Rationing and Director,)
Civil Supply, Royal Insurance Building,)
Churchgate, Mumbai 400020)
2. Shri M.M. Pagare,)
Rationing Inspector, Rationing Office)
No.19/A, Dadar, Mumbai 400028)



3. Shri S.M. Mujawar,)
Rationing Inspector transferred from the)
Rationing Office 31/E to 37/F i.e.)
Bhiwandi, District Thane)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 7th July, 2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant challenging his transfer by order dated 30.5.2015 from Rationing Office, V.T., Mumbai to Rationing Office, Dadar, Mumbai.

3. Learned Counsel for the Applicant argued that by order dated 9.6.2015, this Tribunal had stayed the operation of order dated 30.5.2015 and the Applicant had continued to work as Rationing Inspector in Rationing Office, V.T., Mumbai. Learned Counsel for the Applicant argued that the Applicant

was transferred by order dated 4.1.2012 from Ambernath, District Thane to V.T. Mumbai. On 30.5.2015, the Respondent No.1 transferred the Applicant from VT, Mumbai to Bhiwandi, District Thane. On the same date, another order was issued posting the Applicant to Dadar, Mumbai. Learned Counsel for the Applicant argued that the Respondent No.1 has not been declared as Head of Department under Section 7 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 ('Transfer Act'). He, therefore, has no authority to transfer the Applicant. Learned Counsel for the Applicant contended that the Applicant is a Group 'C' employee and is eligible to get two tenures of 3 years each before he can be transferred. He was posted to Mumbai by order dated 4.1.2012, and accordingly, he was not due for transfer. Such transfer before completion of tenure require compliance of Section 4(4)(ii) of the Transfer Act. However, there were no exceptional circumstances or special reasons to transfer the Applicant. Learned Counsel for the Applicant argued that by order dated 30.5.2015, the Applicant was transferred to Bhiwandi. However, for no reason, the order was changed on the same day and he was posted to Dadar. Learned Counsel for the Applicant stated that the Respondent No.1 has not constituted Civil Services Board as per GR dated 31.1.2014. Learned Counsel for the Applicant prayed that order dated 30.5.2015 may be quashed and set aside.



4. Learned Presenting Officer (PO) argued on behalf of the Respondent No.1 that the transfer of the Applicant from VT to Dadar was as per recommendations of the Civil Services Board. Learned PO argued that there were many serious complaints against the Applicant. Moreover, the contention of the Applicant that Applicant was transferred to Bhiwandi is wrong. In fact it was a typographical error, which was corrected.

5. I find that the Respondent No.1 has stated that the Applicant was not transferred by order dated 30.5.2015 to Bhiwandi. It was a typographical error, which was corrected. The Applicant was transferred from VT to Dadar in Mumbai. The Respondent No.1 has not been able to counter the argument that the Applicant is entitled to two tenures of 3 years each, as he is a Group 'C' employee. On that ground his transfer order dated 30.5.2015 can be said to be flawed. However, the transfer of the Applicant was considered by the Civil Services Board. Another issue raised by the Applicant is non-declaration of the Respondent No.1 as Head of Department under Section 7 of the Transfer Act. The Respondent No.1 has produced a copy of notification dated 14.10.2004 to show that the Respondent No.1 was declared as Head of Department. However, that notification is before the Transfer Act was notified on 12.5.2006. As such, the validity appears to be doubtful. However, it is not necessary to delve into that matter.



There have been judgments of Hon'ble Bombay High Court in Writ Petition No.3301 of 2010 (Ramesh P. Shivdas Versus The State of Maharashtra & Others) and Writ Petition No.8898 of 2010 (Rajendra S. Kalal Versus the State of Maharashtra & Others) wherein it is held that if a Government servant is posted from one post to another at the same station, it does not amount to transfer within the meaning of 'Transfer' under the Transfer Act. The Applicant has been 'transferred' from VT to Dadar within Bombay City (Municipal Corporation of Greater Mumbai). It cannot be termed as transfer under the Transfer Act.

6. As a result, the challenge of the Applicant to his posting to Dadar, Mumbai by impugned order dated 30.5.2015 fails. This OA is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
7.7.2016

Date : 7th July, 2016

Dictation taken by: S.G. Jawalkar.

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