

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.481 OF 2020

**DISTRICT: PUNE
SUBJECT: TRANSFER**

Dr. Kanunje Sanjay Jagannath,)
Age 56 years, Occupation Service,)
Survey No.34/18/6, Dhankwadi, Ambegaon-Shiv Road)
Dhankwadi Pune 411043.)... **Applicant**

Versus

- 1) The Secretary,)
Animal Husbandry, Dairy Development, and)
Fisheries Department, Mantralaya, Mumbai-32.)
- 2) Commissioner of Animal Husbandry,)
Maharashtra State, Aundh Pune 411067.)
- 3) Dr. Kavita Ashok Khose,)
Livestock Development Officer)
Panchyat samiti (Extension) Velhe)
Tal. Velhe, Dist. Pune)... **Respondents**

Shri S. B. Gaikwad, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

Respondent No.3 though served but absent.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 14.10.2021.

JUDGMENT

The Applicant has challenged the transfer order dated 07.09.2020 whereby he was transferred from the post of Livestock Development Officer, Group-B (Gazetted), Panchayat Samiti, Velhe, Dist. Pune to Veterinary Dispensary, Grade-1 Nahvara, Tal. Shirur, Dist. Pune

invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

The Applicant is working as Livestock Development Officer, Group-B (Gazetted). He was serving at Velhe from 2014 and was due for transfer. Initially, the Government by order dated 07.08.2020 posted the Respondent No.3 – Dr. Kavita Khose in place of the Applicant at Velhe with the approval of Civil Service Board (CSB) but did not pass any consequent transfer and posting order of the Applicant and he was left without posting. It is only after his representation dated 12.08.2020 and 14.10.2020, the Government by order dated 07.09.2020 posted him at Veterinary Dispensary, Grade-1, Nhavara, Tal. Shirur, Dist. Pune 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 'Act 2005) which is under challenge in the present O.A.

3. Shri S.B. Gaikwad, learned Counsel for the Applicant sought to assail the transfer order dated 07.09.2020 on the following grounds:-

(A) In the year 2020, due to covid-19 pandemic situation, time limit for issuance of transfer order of employees who were due for transfer in general transfer of April & May, 2020 was extended up to 10.08.2020 only but the Applicant is transferred and posted after cut-off date by order dated 07.09.2020, and therefore, it takes partake of character of mid-tenure and on this ground alone it is bad in law.

(B) Since the impugned transfer order takes partake character of mid-tenure transfer, it requires recording of special reasons necessitating transfer with approval of next competent authority namely Chief Minister and in absence of it impugned transfer order is ex-facie illegal.

4. Shri A. J. Chougule, learned Presenting Officer sought to contend that the Applicant was overdue for transfer and the Respondent No.3 Dr.

Kavita Khose was also due for transfer. According to him, initially the Government by order dated 07.08.2020 transferred and posted the Respondent No.3 in place of the Applicant and later, by order dated 07.09.2020 gave posting to the Applicant at Nahvara. He, therefore, made feeble attempt to justify the transfer order.

5. True, the transfer is an incident of service and a Government servants have no vested right to claim a particular post or particular period. However, now the transfers are governed, regulated and controlled by the provisions of 'Act 2005' and it is not left to whims and caprice of the executive. Where transfer is found in contravention of express provisions of law, interference in transfer is inevitable and such transfer order is liable to be quashed.

6. True, in the year 2020, due to Covid-19 pandemic situation and lockdown, the deadline for issuance of general transfer orders were extended firstly up to 31.07.2020 by G.R. dated 07.07.2020 and again time was extended to 10.08.2020 by G.R. dated 23.07.2020. As such, what was extended was the time limit for issuance of transfers of a Government servants who were due for general transfers which were required to be effected in the month of April or May of a year as contemplated under Section 4(2) of 'Act 2005'.

7. Whereas, in the present case, though initially the transfer order of Respondent No.3 was issued on 07.08.2020, the Applicant's transfer order has been issued on 07.09.2020 which is after cut-off date of 10.08.2020. In this behalf, significant to note that there is a specific pleading in Para No.6.14 about extension of time limit upto 10.08.2020 which is not denied by the Respondents in their Affidavit-in-Reply. Apart, no further G.R. or any document is tendered to establish that the deadline for issuance of transfer was extended beyond 10.08.2020. In absence of any such G.R., the transfer order dated 07.09.2020 partakes the character of mid-tenure transfer in the eye of law and consequently to render such transfer order legal and valid it requires vetting by Civil Services Board along with compliance of Section 4(5) of 'Act 2005' which

inter-alia provides for recording of special reasons or special circumstances for such transfer that too with the approval of next higher authority as per table of Section 6 of 'Act 2005'.

8. In the present case, learned P.O. fairly concedes that before issuance of transfer order of Applicant his case was not placed before the Civil Services Board. The file was placed before the Civil Service Board only in respect of Respondent No.3. Here interesting to note that when the matter was placed before the Civil Services Board to consider the posting of Respondent No.3, it specifically recorded that the post at Velhe is occupied by the Applicant and it is not vacant and no such recommendation for transfer of the Applicant is made as seen from the minutes of PEB (Page No.49 of PB).

9. Apart, the impugned transfer order dated 07.09.2020 has been admittedly approved only by Minister in charge of the department and not by the Hon'ble Chief Minister as required in law.

10. Here reading of file noting approved by the Minister is rather interesting. In the note, it is stated that the Applicant is due to retire within two years and on personal grounds, he requested for transfer at Veterinary Dispensary, Tal Payachi, Tal. Bhor, Dist. Pune. However, the Principal Secretary made note that he be posted at Nahvara, Tal. Shirur, Dist. Pune. The file was accordingly approved by the Minister and consequently transfer order has been issued. It is thus explicit that it was not a case of administrative exigency necessitating mid-tenure transfer but he was displaced mid-tenure only for accommodating the Respondent No.3. Furthermore, it is not approved by the Hon'ble Chief Minister who is competent authority for mid-tenure transfer as contemplated under Section 4(5) of 'Act 2005' read with table under Section 6 of 'Act 2005'. The Applicant being Group-B (Gazetted) officer, the Minister in charge in consultation with the Secretary of the concerned department is transferring authority for general transfer only but for mid-tenure transfer, it requires approval of next higher authority i.e. Chief Minister along with making out special case or administrative

exigency for such mid-tenure transfer which is completely missing in the present case. Applicant was transferred treating it as general transfer.

11. As such, what transpires from the record that there was no recommendation of Civil Service Board for the transfer of the Applicant nor any such special case on administrative exigency has been made out nor it is approved by the Hon'ble Chief Minister which is condition precedent to render the transfer order dated 07.09.2020 legal and valid.

12. In this way of the matter, I have no hesitation to sum that the impugned transfer order dated 07.09.2020 is totally indefensible being in blatant violation of provisions of 'Act 2005'. It is, therefore, liable to be quashed and set aside. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 07.08.2020 qua the Respondent No.3 as well as transfer order dated 07.09.2020 of the Applicant are quashed and set aside.
- (C) Respondent Nos.1 and 2 are directed to repost the Applicant on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

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

Place: Mumbai
Date: 14.10.2021
Dictation taken by: V.S. Mane