

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.511, 512, 514, 515,516 & 523 OF 2017

DISTRICT : MUMBAI / THANE

ORIGINAL APPLICATION NO.511 OF 2017

Shri Dhananjay A. Jadhav.)
Working as Drugs Inspector,)
Intelligence Branch, Head Quarter,)
On the establishment of Resp.No.2,)
Residing at 4/504, Highland Residency,)
Dhokali, Thane (W) – 400 607.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner.)
Food & Drugs Administration,)
Survey No.341, Bandra-Kurla)
Complex, Bandra (E),)
Mumbai – 400 051.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.512 OF 2017

Smt. Lorna D. Pinto.)
Working as Drugs Inspector,)
Greater Mumbai – 13, On the)
establishment of Resp.No.2,)
Residing at 7, Flamingo CHS.,)
Malad (W), Mumbai – 400 607.)...Applicant

Versus

1. The State of Maharashtra & Anr.)...Respondents

WITH**ORIGINAL APPLICATION NO.514 OF 2017**

Smt. Arti S. Kambli.)
Working as Drugs Inspector,)
Greater Mumbai – 16,)
On the establishment of Resp.No.2,)
Residing at 11, Laxmi Niwas,)
Anant Waman Vartak Road, Vile Parle (E),)
Mumbai – 400 607.)...Applicant

Versus

1. The State of Maharashtra & Anr.)...Respondents

WITH

ORIGINAL APPLICATION NO.515 OF 2017

Shri Sunil S. Jain.)
Working as Drugs Inspector,)
Brihan Mumbai – 10,)
On the establishment of Resp.No.2,)
Residing at 201-B-2 Vihangs Garden,)
Opp. Raymond, Pokharan Road No.2,)
Samata Nagar, Thane (W) – 400 607.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.516 OF 2017**

Shri Nitin D. Deore.)
Working as Drugs Inspector,)
Head Quarters,)
On the establishment of Resp.No.2,)
Residing at 203, Eternityi CHS Ltd.,)
Teen Hath Naka, LBS Marg,)
Thane (W) – 400 604.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.515 OF 2017

Shri Sunil S. Jain.)
Working as Drugs Inspector,)
Brihan Mumbai – 10,)
On the establishment of Resp.No.2,)
Residing at 201-B-2 Vihangs Garden,)
Opp. Raymond, Pokharan Road No.2,)
Samata Nagar, Thane (W) – 400 607.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

AND**ORIGINAL APPLICATION NO.523 OF 2017**

Shri Prakash H. Mhanvar.)
Working as Drugs Inspector,)
Greater Mumbai – 11,)
On the establishment of Resp.No.2,)
Residing at 701, Sushila Apartments,)
Kaka Sohoni Path, Ghantali,)
Thane – 400 602.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Mr. M.R. Patil, Counsel for the Applicants.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : SHRI J.D. KULKARNI (VICE-CHAIRMAN)

DATE : 7th September, 2018

J U D G M E N T

1. Heard Mr. M.R. Patil, learned Counsel for the Applicants and Mrs. K.S. Gaikwad, learned Presenting Officer (P.O) for the Respondents.

2. The Applicants in all these Original Applications are Drug Inspectors and have challenged respective orders of their transfer dated 31.05.2017 issued by the Respondent No.2 on recommendation of Respondent No.1.

3. The Applicant in O.A.511/2017 Shri D.A. Jadhav has been transferred from Mumbai to Sangli, the Applicant in O.A.512/2017 Shri L.D. Pinto has been transferred from Greater Mumbai to Pune, the Applicant in O.A.514/2017 Smt. Arti Kambli has been transferred from Greater Mumbai to Nashik, the Applicant in O.A.515/2017 Shri S.S. Jain has been transferred from Greater Mumbai to Solapur, the Applicant in O.A.516/2017 Shri N.D. Devre has been transferred from Head Quarter Mumbai to Chandrapur whereas the Applicant in O.A.523/2017 Shri P.H. Mhanvar has been transferred from Greater Mumbai to Mumbai.

4. According to the Applicants, none of the Applicants have completed their tenure at their respective places, and therefore, the transfers are mid-term as well as mid-tenure. The Applicants have,

therefore, requested that, since the respective transfer orders are against the provisions of Section 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and the same may be quashed and set aside and Applicants be allowed to continue to work at their respective posts prior to transfer.

5. In all the OAs, a separate reply has been filed by the Respondents. The Respondents justified the transfers of the Applicants. Common reason for the transfer of the respective Applicants is that, the Applicants have completed a long tenure at Mumbai and Thane, for example is stated that the Applicant Shri D.A. Jadhav in O.A. 511/2017 has completed 18 years at various postings at Mumbai and Thane and in similar fashion, the other Applicants have also completed their long tenure, and therefore, the Respondents have taken decision to transfer the Applicants. In short, the Respondents justified the respective orders of transfer and submitted that no breach of Rules have been committed by the Respondents by transferring the Applicants. It is denied that the transfer is mid-term.

6. The learned Counsel for the Applicants has placed on record the written submissions, which are marked as Annexure 'A' for the purposes of identification. The Respondents also submitted the written arguments, which are marked as Annexure 'B' for the purposes of identification.

7. According to the learned Counsel for the Applicants, even though the order of transfer is dated 31.05.2017, the same has been sent

by e-mail to the Applicants by Respondent No.2 on 05.06.2017, and therefore, it is mid-term. The said contention cannot be accepted for the reasons that, admittedly, the order has been passed on the last day of the month of May, 2017.

8. It is further stated that, none of the Applicants have completed three years at their posts prior to alleged transfer, and therefore, the transfer is mid-tenure. In this regard, it is material to note that, though the Applicants might not have completed full three years of their tenure on their respective places. From the record, it seems that the Applicant in O.A.511/2017 Shri D.A. Jadhav will be completing three years of tenure on 31st May, 2018, the Applicant in O.A.512/2017 Smt. L.D. Pinto two years and nine months, the Applicant in O.A.514/2017 three years, the Applicant in O.A.515/2017 two years and nine months, the Applicant in O.A.516/2017 three years whereas the Applicant in O.A.523/2017 will be completing two years only on 31st May, 2018. Thus, it seems that, on the date of impugned order of transfer, the Applicants have not completed three years. In such circumstances, it is necessary for the Respondents to prove that the orders have been passed under special circumstances or for some administrative exigencies.

9. The learned Counsel for the Applicants submitted that the competent authority has not followed the G.Rs. dated 11.02.2015 and 24.09.2015 respectively. Vide G.R. dated 11th February, 2015, some guidelines have been issued as to how annual transfers and mid-term transfers shall be effected and what procedure shall be followed. As per the said G.R, if the Officer has not completed three years of his tenure and

in case, the administration wants to transfer him for whatever reason, such reason shall be mentioned and the approval of the higher authority has to be taken. As per G.R. dated 24th September, 2015 also, some guidelines have been issued for effecting mid-term transfers. The reason shall be mentioned for transfer of the employee before completion of his tenure at a particular place. In order to see whether such reason is mentioned or not, the Respondents have placed on record the notings and minutes of the Civil Services Board. One of such minutes is at Page No.34 in O.A.511/2017 at Exh. 'R-1'. In Para No.5 of the said minutes, it has been mentioned as under:

“५. यास्तव अन्न सुरक्षा अधिकारी वर्ग-२ आणि औषध निरीक्षक वर्ग-२ या दोन्ही संवर्गातील अधिका-यांच्या नियतकालिक बदल्या तसेच यां संवर्गातील बदलीस पात्र नसलेल्या अधिका-यांच्या विनंती बदल्या आणि मुंबई, ठाणे परिसरामध्ये दिर्घ काळ सेवा झालेल्या अधिका-यांच्या प्रशासकिय कारणास्तव व अन्य कारणास्तव बदल्या बाबत नागरी सेवा मंडळ - १ यानी केलेल्या शिफारशीच्या अनुषंगे आवश्यक आदेश निर्गमित करण्याच्या सूचना अन्न व औषध प्रशासनास देणे आवश्यक आहे. मान्यतेनंतर याबाबत आवश्यक कार्यवाही करण्याच्या सूचना अन्न व औषध प्रशासनास देण्यात येतील.”

10. From the aforesaid observation of the competent authority, it seems that it was decided by the competent authority to transfer those Officers who were serving for a long period at Mumbai and Thane and considering this recommendation of the Civil Services Board-1, it was decided to transfer the Applicants. The Respondent No.1 Government has approved the decision taken by the Board. If the Government has taken a policy decision to transfer the Officers who were serving for a long period in a particular area out of that region, it will not be correct on the part of this Tribunal to interfere in such decision. The Respondents could not place on record any *mala-fides* against the Officers of the competent authority constituting Civil Services Board-1 nor they have alleged that the Applicants have been transferred because of some prejudices. In such circumstances,

it will not be proper to interfere in administrative action taken by the Respondents. Even though, it is treated that the Respondents have applied pick and choose policy for mid-term transfers, to accept allegations, there is no proof in this regard.

11. In the Affidavit-in-reply, it has been specifically stated that the Applicants are serving in their region i.e. Mumbai / Thane for a long term prior to the date of impugned order and this has not been denied by filing an counter Affidavit to that effect. Section 4(5) of the Transfer Act empowers authority to transfer the employees at any time. It 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.”

12. The learned P.O. has placed reliance on the Judgment in **Writ Petition No.1428/2007 in case of V.B. Gadekar Vs. Maharashtra Housing and Area Development Authority (MHADA) and Anr.** and particularly, the observation made in Para 7 which is as under :

“7. As mentioned earlier, the Hon’ble High Court has held that the provisions of ROT Act are regulatory and not prohibitory in their application. The purpose of enacting the ROT Act is fairness in administration and introduces transparency.”

13. As already stated in this particular case, admittedly, the Applicants are serving in their respective regions i.e. Mumbai / Thane for a long tenure, and therefore, if the Respondents authority thought it proper

to transfer such Officers, I do not find any reason to interfere in such exercise.

14. The learned P.O. has also placed reliance on the Judgment reported in **Writ Petition No.8898/2010 in case of Rajendra S. Kalal Vs. State of Maharashtra and others, dated 30th November, 2010** of the Hon'ble Bombay High Court and the Judgment in **O.As. 396 and 397 of 2015 (Shri Avinash P. Bhanushali Vs. State of Maharashtra) passed by this Tribunal dated 03.08.2015**. In the later Judgment, this Tribunal was pleased to observe in Para 71 as under :

“71. Having considered all the authorities cited at the Bar and having taken guidance therefrom, I conclude by holding that the uninterrupted postings of the Applicants in Thane Circle for more than 25 years is not a matter which is innocuous. Therefore, if one could not consider the duration of their last posting only which was less than three years as the period to be counted from, then the impugned transfer order was not a mid-term transfer. It was effected in the month of May, 2015 and as to the question of the merit of the matter, I have discussed it sufficiently hereinabove and I am very clearly of the view that it is not possible for me to sit in judgment over the decision taken by the concerned authorities after the approval granted by the Hon'ble Chief Minister. That is not because I cannot do so, but because within my jurisdiction, I find no case for judicial interference or even intervention. This jurisdictional limitation is a very real concept of law, and therefore, in an undeserving matter, the judicial forum would not rush in where the administrators have already treaded. Examining it from any possible angle, even if it was an instance of mid-term transfer, as per the discussion earlier made, I hold that there was nothing worth taking exception to and the provisions of the Transfer Act were they applicable have not been offended.”

15. In view of the discussion in foregoing Paras, I do not find any merit in these O.As. Hence, the following order.

ORDER

The Original Applications stand dismissed with no order as to costs.

Sd/-

(J.D. Kulkarni)
Vice-Chairman
07.09.2018

Mumbai

Date : 07.09.2018

Dictation taken by :

S.K. Wamanse.

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