

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.511 OF 2019

DISTRICT : SANGLI

Shri Jawahar Hindurao Patil.)
Age : 46 Yrs, Occu.: Auditor (Grade-I),)
R/o. At & Post : Vita, Tal.: Khanapur,)
District : Sangli – 415 311.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Co-operation Department,)
Mantralaya, Mumbai – 400 032.)
2. Divisional Jt. Registrar of Co-op.)
Societies (Audit), Kolhapur Division,)
Kolhapur, Plot No.M-4, Shri Shahu)
Market Yard, Behind Post Office,)
Kolhapur – 416 005.)
3. The District Special Auditor (Class-II))
Co-operative Societies (ADF), Sangli,)
Central Administrative Building,)
2nd Floor, Miraj Road, Vijay Nagar,)
Sangli - 416 416.)
4. Shri R.R. Kamble.)
Auditor (Grade-I) under Special)
Auditor Co-op. Society (Sugar),)
Sangli, having office at Central)
Building, 2nd Floor, Vijay Nagar,)
Sangli – 416 416.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

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

Respondent No.4 absent though served.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.11.2019

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 30.05.2019 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving as Auditor (Grade-I). He was posted at Sangli w.e.f.15.06.2015. He claims to be employee of Group 'C' and entitled for two full tenures of three years each in terms of Proviso to Section 3(1) 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). However, by impugned order dated 30.05.2019, he was transferred from Sangli to Satara. He, therefore, contends that his transfer is mid-tenure and there is no compliance of approval of immediately preceding Competent Transferring Authority in terms of Section 4(5) of 'Transfer Act 2005'. The impugned order being passed by Respondent No.2 - Divisional Jt. Registrar of Co-op. Societies, Kolhapur is, therefore, not legal and valid. He contends that, at the time of transfer, he had given 10 options, but his options were not considered in terms of Circular dated 09.04.2018. He further contends that the alleged negligence attributed to him in the matter of audit of Harshvardhan Industrial Co-operative Society Limited,

Islampur, District Sangli for the period 01.04.2010 to 31.03.2013 is not relevant, and therefore, the transfer being mid-tenure and without prior approval of immediately preceding Competent Transferring Authority is illegal. In his place, the Respondent No.2 had posted Respondent No.4 at Sangli. With these pleadings, he sought to assail the impugned transfer order.

3. The Respondent No.2 filed Affidavit-in-reply resisting the O.A. *inter-alia* denying that the impugned transfer order suffers from any illegality. The Respondent denied that the Applicant is Group 'C' employee and entitled to two full tenures. In this behalf, the Respondent contends that the Applicant is Auditor (Grade-I) fall in Group 'B' (Non-Gazetted) category, and therefore, he was entitled for three years' tenure at Sangli. As such, he was due for general transfer of May, 2019. Accordingly, he had given options though he had spent substantial period of service in Sangli. He again gave Options 1 to 7 from Sangli and 8 Option was Satara. Accordingly, he was transferred at Satara. The Respondent further contends that while serving at Sangli, the Applicant had committed several irregularities and found negligent while making audit of Harshvardhan Industrial Co-operative Society Limited, Islampur for the period 01.04.2010 to 31.03.2013. He failed to register FIR against the concerned for misappropriation. At the time of general transfer of May, 2019, the matter was placed before the Civil Services Board (CSB) which considered the Options of the Applicant and having found that he had already worked in Sangli for substantial period, his Option No.8 for Satara was accepted and accordingly, recommendation was made. As regard competency, the Respondent contends that the Divisional Joint Registrar is competent for general transfer of the Applicant in view of delegation of power by letter dated 08.05.2015. Besides, the Respondent No.2 being Divisional Head was competent to transfer the Applicant within Division in terms of Section 6 of 'Transfer Act 2005'. The Respondent, therefore, pleads

that the challenge to the impugned order is unsustainable and prayed to dismiss the O.A.

4. Shri R.M. Kolge, learned Advocate for the Applicant made two-fold submission to assail the impugned order. Firstly, the Applicant being Group 'C' employee is entitled for six years' tenure, and therefore, the impugned transfer order is mid-tenure transfer. Secondly, though it is mid-tenure transfer, there is no compliance of mandatory provisions of Section 4(5) of 'Transfer Act 2005'.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned transfer order contending that the Applicant falls in Group 'B' (Non-gazetted) category and accordingly, due for transfer. Therefore, the Divisional Joint Registrar, by virtue of delegation of power in terms of letter dated 08.05.2015 transferred the Applicant to Satara, as per Option No.8 given by him. As regard Option Nos.1 to 7, she submits that the Applicant had already worked in Sangli District for a longer period and some of the Options were given to others as per preference in terms of Circular dated 09.04.2018, and therefore, the challenge to the impugned transfer order is untenable.

6. In view of pleadings and submissions advanced at the Bar, firstly, it is necessary to determine as to whether the Applicant falls in Group 'B' (Non-gazetted) category or in Group 'C' category in terms of classification of posts in the light of Government Resolutions. The entire fate of matter depends upon this aspect.

7. At the very outset, it is interesting to note that, in impugned transfer order (Page No.28 of Paper Book), the Applicant is shown Group 'III' employee. Furthermore, in the letter delegation of power dated 08.05.2015 on the basis of which, the Respondent No.2 – Divisional Joint Registrar of Cooperative Societies transferred the

Applicant, the post held by the Applicant viz. Auditor (Grade-I) is shown falling in Group 'C' category. As such, in these two important orders relied by the Respondents themselves, the post of Auditor (Grade-I) is shown of Grade 'C'. However, in O.A, the Respondents comes with a different version contending that the post of Applicant falls in Group 'B' (Non-gazetted), and therefore, tenure being three years for the said post, the Applicant was due for transfer and it is not the case of mid-tenure transfer. Suffice to say, the stand now taken by the Respondents in O.A. is inconsistent with their own record.

8. Be that as it may, now let us see whether the post of Applicant fall in Group 'B' (Non-gazetted) category. Indeed, the admission of Respondents in terms of impugned transfer order and letter dated 08.05.2015 is enough. Surprisingly, there is no explanation from the Respondents about this admission in their own record about the classification of the Applicant's post as Group 'C' employee. Nor Respondents have issued any Corrigendum to that effect.

9. Smt. K.S. Gaikwad, learned Presenting Officer sought to contend that in seniority list for the years 2012, 2013 and 2014 published on 11.08.2017 (Page No.234 of P.B.), the Applicant's post is shown Group 'B' (Non-gazetted) and Applicant was contributing G.I.S. Rs.480/- applicable to Group 'B' (Non-gazetted) employees. She has produced pay slip (Page Nos.260 to 265 of P.B.) showing deduction of GIS at the rate of Rs.480/- p.m. and had also produced G.R. dated 02.08.2010 whereby contribution of GIS for Group 'C' was enhanced Rs.480/- p.m. True, in these documents, the Applicant's post is shown Group 'B' (Non-gazetted). However, the classification of the employee needs to be determined on the basis of Recruitment Rules. The classification of the post mentioned while creating post (आकृतीबंध) of the Department and the related Government Resolutions rather shows that the Applicant's post falls in Group 'C' category, apart from

the admission of Respondents in transfer order and letter dated 08.05.2015.

10. In this behalf, it is necessary to see G.R. dated 02.07.2002 whereby the Government has made classification of the post. The contents of the G.R. dated 02.07.2002 are crucial, which are as follows :-

“२. आता राज्य शासनाने पाचव्या वेतन आयोगाच्या अनुषंगाने सुधारीत वेतनश्रेणी मंजूर केल्या असल्याने, उपरोल्लेखित दि.२९ जुलै, १९९३ चा शासन निर्णय अधिक्रमित करून, राज्य शासन सेवेतील पदांचे सुधारीत वेतनश्रेणीनुसार खालीलप्रमाणे नव्याने वर्गीकरण करण्यात येत आहे.

अ.क्र.	पदांचा तपशिल	पदांचे वर्गीकरण
१.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.११,५००/- पेक्षा कमी नाही, अशी पदे,	गट-अ
२.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु.९,०००/- पेक्षा कमी नाही आणि रु.११,५००/- पेक्षा कमी आहे, अशी पदे,	गट-ब
३.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमालमर्यादा रु.४,४००/- पेक्षा कमी नाही आणि रु.९,०००/- पेक्षा कमी आहे, अशी पदे,	गट-क
४.	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमालमर्यादा रु.४,४००/- पेक्षा कमी आहे, अशी पदे,	गट-ड

३. अ) जुन्या वर्गीकरणानुसार ज्या पदांचा दर्जा “अराजपरित्र” समजला जातो, तोच दर्जा सुधारीत वर्गीकरणानंतरही कायम राहिल. तसेच ज्या पदांना अगोदरच राजपत्रित दर्जा घोषित केला आहे, त्या पदांचा तो दर्जा यापुढेही कायम राहिल. अराजपत्रित पदांना केवळ वेतनश्रेणीच्या आधारे किंवा विशिष्ट गटामधील समावेशनामुळे आपोआप राजपत्रित दर्जा प्राप्त होणार नाही.

ब) विद्यमान वर्गीकरणानुसार ज्या पदांकरीता मागासवर्गीयांचे आरक्षण लागू आहे त्या पदांचे सुधारीत वर्गीकरणानुसार गट बदलत असले तरी, त्या पदांना मुळ दर्जा कायम रहात असल्याने विद्यमान तरतुदीनुसार त्या पदांकरीता आरक्षण यापुढेही कायम राहिल.

४. वरील नियमामध्ये काहीही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये ज्या पदांचा उल्लेख विवक्षितपणे गट-क (वर्ग-३) असा आहे व विद्यमान वर्गीकरणानुसार ती पदे गट-ड संवर्गामध्ये अंतर्भूत होत असतील, तर अशी पदे गट-क संवर्गामध्ये असल्याचे मानण्यात यावे, संबंधित पदधाकांच्या बाबतीत गट-क प्रमाणे सध्याच्या सेवाशर्ती / सवलती लागू आहेत, त्यामध्ये बदल करण्यात येऊ नये.

५. विद्यमान गट-ड संवर्गामधील काही वेतनश्रेणीतील पदे, सुधारीत गट-क संवर्गामध्ये अंतर्भूत होतील, त्यामुळे त्यांच्या सेवाशर्ती व सवलतीमध्ये काही संदिग्धता निर्माण होण्याची शक्यता असल्यामुळे, विद्यमान वर्गीकरणप्रमाणे जी पदे वेतनश्रेणीनुसार गट-ड ची समजली जात आहेत, ती पदे सुधारीत वर्गीकरणामुळे गट-क मध्ये अंतर्भूत होणार असली तरी, त्या वेतनश्रेणीतील पदधाकरकांच्या बाबतीत गट-ड प्रमाणे सध्या ज्या सेवाशर्ती/ सवलती लागू आहेत, त्यामध्ये बदल करण्यात येऊ नये.

६. राज्य शासन सेवेतील ज्या पदांना विद्यापीठ अनुदान आयोगाची वेतनश्रेणी लागू आहे त्या पदांना हे वर्गीकरणाचे आदेश लागू होणार नाहीत. अशा पदांबाबत संबंधित विभागांनी स्वतंत्रपणे निर्णय घ्यावेत.”

11. The Applicant's pay scale at the time of issuance of G.R. dated 02.07.2002 was 5500-9000. In terms of G.R. dated 02.07.2002, (Clause 2, Sr.No.3 of Para 2), if the pay scale is between Rs.4400 upto Rs.9000, then such post falls in Group 'C' category. As such, as per G.R. dated 02.07.2002, the Applicant falls in Group 'C' category. It is rightly pointed out by the learned Advocate for the Applicant that the issue of determination of classification of the employee, who fall in pay scale of Rs.5000-9000 has been already adjudicated by Hon'ble High Court in **Writ Petition No.5440/2009 (Dinesh Sonawane Vs. State of Maharashtra & Ors.) decided on 5th February, 2010.** True, it was the matter pertaining to the appointment of heir of the deceased employee on compassionate ground in terms of G.R. dated 28.03.2001 which *inter-alia* provides for grant of compassionate appointment to the employee of Groups 'C' and 'D' died in harness. In that case, the deceased employee was in pay scale of Rs.5500-9000 and the Government took stand that such employee does not fall in Group 'C' category. However, the Hon'ble High Court turned down the objection and held that the deceased employee being in pay scale of Rs.5500-9000 falls in Group 'C' category in terms of G.R. dated 02.07.2002. Para No.5 of the Judgment is important, which is as follows :-

“5. *To examine the correctness of this submission, we would straightway refer to Government Resolution dated 02-07-2002. Clause 1 of the said Government Resolution defines the Group-A category. We are not concerned with the said definition. According to the petitioner, the petitioner would be covered by Group-C category, whereas according to the respondents, the petitioner would be covered by Group-B category. Insofar as Group-B category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.9000/- and not more than Rs.11500/-, the same will be covered by Group-B category. Insofar as Group-C category is concerned, it stipulates that in cases where the Pay Scale is not less than Rs.4400/- and not more than Rs.9000/-, the same will be covered by Group-C category. As aforesaid, it is not in dispute that that the Pay Scale of late Smt. T.D. Sonawane was Rs.5500-9000/-. The natural meaning to be assigned to the above Clauses, in our opinion, is that if the Pay Scale is between Rs.4400/- up to Rs.9000/-, such cases would be covered by Group-C category, whereas if the Pay Scale is between Rs.9001/- up to Rs.11500/-, the same will be covered by Group-B category. If any*

other interpretation is given to the said clauses, it would create anomalous situation. In much as, a person with the Pay Scale of Rs.9000/- will be covered in Group-B category as well as Group-C category since Pay Scale of Rs.9000/- is mentioned in both categories. Such interpretation cannot be countenanced. Thus understood, the stand taken by the respondents that the petitioner is ineligible as his case is covered in Group-B category, cannot be sustained. That stand will have to be stated to be rejected since admittedly the Pay Scale of the petitioner's predecessor was Rs.5500-9000.”

12. The Judgment in Writ Petition No.5440/2009 was confirmed by Hon'ble Supreme Court and it was followed by this Tribunal in **O.A.No.971, 972, 973, 1030, 1031 & 1220 of 2010 (Shri Mangesh R. Jadhav Vs. The In-charge Dy. Director, Vocational Education & Training, Nashik & Anr.) decided on 30.10.2014.** In these matters, the Applicant in pay scale of Rs.5500-9000 is held Group 'C' post in terms of G.R. dated 02.07.2002.

13. Smt. K.S. Gaikwad, learned Presenting Officer made feeble attempt to contend that the employee in pay scale of Rs.5500-9000 falls in Group 'B' as per latest Circular dated 27.05.2016 issued by G.A.D. Material to note that this is only explanation issued by G.A.D. in view of doubt raised about the classification of employee drawing pay scale of Rs.5500-9000. As such, by way of explanation, the G.A.D. sought to clarify that the pay scale of Rs.5000-9000 is of Group 'B'. However, the perusal of entire Circular dated 27.05.2016 reveals that it is subjected to main G.R. dated 02.07.2002 and significant to note that, as per Paragraph No.2 of Circular letter dated 27.05.2016, the Clause Nos.3, 4, 5 and 6 of G.R. dated 02.07.2002 would be applicable as it is. Here, let us see Para No.2 of the Circular 27.05.2016, which is as under :-

“२. दि.०२.०७.२००२ च्या शासन निर्णयातील परिच्छेद ३, ४, ५ व ६ मधील आदेश जसेच्या तसे लागू राहतील. तसेच वरील आदेशामध्ये काहीही अंतर्भूत असले तरी पदनिर्मितीच्या आदेशामध्ये, आकतीबंध निश्चितीच्या आदेशामध्ये अथवा सेवाप्रवेश नियमांमध्ये ज्या पदांचा उल्लेख विवक्षितपणे गट अ/ब/क/ड असा आहे त्यांच्या वर्गीकरणामध्ये बदल होणार नाही.”

14. As such, one needs to look into G.R. dated 02.07.2002, particularly, Para Nos.3 to 6, which are maintained as it is irrespective of clarification by Circular dated 27.05.2016. As per Para 3(a) of G.R. dated 02.07.2002, the classification will remain same irrespective of enhancement of pay structure. Furthermore, Para 2 of G.R. dated 27.05.2016 reproduced above, makes it abundantly clear that irrespective of contents of G.R. 02.07.2002, the classification of the post mentioned in post creation order or Recruitment Rules or आकृतीबंध shall prevail. In other words, the important criteria is to see what is the classification of the post in post creation order or Recruitment Rules or आकृतीबंध. This is crucial for determination of the classification of post. Thus, the position emerges that if a particular post is classified as Class 'C' either in Recruitment Rules, post creation order or आकृतीबंध, then it will have to be treated as a post of Class 'C' for all the purposes irrespective of issuance of G.R. dated 02.07.2002 and Circular dated 27.05.2016. This is the outcome of conjoint reading of G.R. dated 02.07.2002 and Circular dated 27.05.2016.

15. The learned Advocate for the Applicant has tendered Recruitment Rules for the post of Auditor, Grade-I, which are silent about the classification of the post. However, आकृतीबंध prepared by the Government by G.R. dated 05.05.2011 produced during the course of hearing and marked by letter 'X' makes it explicit that the post of Auditor, Grade-I is included in Class 'C' post. 296 sanctioned posts of Auditor (Grade-I) as per entry No.5 of Appendix of G.R. dated 05.05.2011 is shown falling in Group 'C' category. This aspect dispel whatsoever doubts perceived by Respondent No.2 and it is obvious that the post of Auditor (Grade-I) is of Group 'C' as per आकृतीबंध sanctioned by the Government (Respondent No.1).

16. Additionally, in seniority list as on 01.01.2019 published by Respondent No.2 – Divisional Joint Registrar, Kolhapur (Page Nos.223

to 226 of P.B.), the name of Applicant is included in Group 'C' employees and he is at Serial Number 9.

17. Suffice to say, in impugned transfer order dated 30.05.2019, the Circular dated 08.05.2015 about delegation of power on the basis of which, the Respondent No.2 transferred the Applicant, in seniority list as on 01.01.2019 and most importantly in आकृतीबंध, the post held by the Applicant is shown of Group 'C'. There is no explanation offered by the Respondents about the same. It is nowhere the case of Respondents that mistakenly it is shown so. Neither there is Corrigendum order to that effect. This being the position, the stand now taken by Respondent No.2 in reply that the post held by the Applicant is Group 'B' is in fact contrary to its own record and at any rate, in view of आकृतीबंध, which is crucial for determination of classification of the post, it will have to be held that the post held by the Applicant, as of now, falls in Group 'C'.

18. Reliance placed by learned P.O. on the Judgment of Hon'ble High Court in **Writ Petition No.2942/2018 (The Director of Accounts and Treasuries Vs. Mrs. Suvarna U. Sant and Ors.) decided on 2nd November, 2018**, in my considered opinion, is misplaced. True, in this matter, the Hon'ble High Court distinguished the decision in **Dinesh Sonawane's case (Writ Petition No.5440/2009)** with the observation that it was pertaining to the appointment on compassionate ground. In Writ Petition No.,2942/2018, the issue was whether the Assistant Accounts Officer in the Director of Accounts and Treasuries falls in Group 'C' and immuned from the Revenue Division allotment for appointment by nomination and promotion to the post of Group 'A' (Group 'B' – Gazetted and Non-gazetted) of the Government of Maharashtra Rules, 2015. In that case, the post of Assistant Accounts Officers have been declared as Group 'B' post by G.R. dated 6th January, 2017 with retrospective effect. The post was carrying pay scale of Rs.5500-9000.

On the basis of G.R. dated 06.01.2017, as the said post has been classified as Group 'C' post, the Hon'ble High Court distinguished the decision in ***Dinesh Sonawane's*** case. The Hon'ble High Court in that context held that in terms of Rules 2018, the post of Assistant Accounts Officer has been classified as Group 'B' and analogy of pay scale was found not relevant. Whereas, in the present case, there is no such classification of the post held by the Applicant as Group 'B' (Non-gazetted). On the contrary, the post held by the Applicant is shown of Group 'C' in transfer order, Circular dated 08.05.2015 (delegation of power in favour of Respondent No.2) and most importantly in आकृतीबंध dated 05.05.2011 and seniority list as on 01.01.2019.

19. For the aforesaid discussion, I have no hesitation to sum-up that the Applicant's post falls in Group 'C' and once this aspect is set at rest, consequently, the Applicant is entitled for two full tenures as per proviso to Section 3(1) of 'Transfer Act 2005', which is as follows :-

“3(1) For all India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years :

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department :

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.”

20. The Applicant was posted at Sangli by order dated 15.06.2015 and admittedly, had not completed six years' tenure in terms of Section 3(1) of 'Transfer Act 2005'. Consequently, the impugned transfer order comes within the ambit of mid-tenure transfer and it requires compliance of Section 4(5) of 'Transfer Act 2005', which inter-

alia mandates prior permission of immediately preceding Competent Transferring Authority mentioned in Table of Section 6 of 'Transfer Act 2005'.

21. Here, it would be apposite to reproduce Section 4(5) of 'Transfer Act 2005' which is as follows :-

“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.”

22. In so far as the facts of present case are concerned, the Applicant was transferred by Respondent No.2 – Divisional Joint Registrar of Cooperative Societies on the basis of delegation of power by letter dated 08.05.2015 (Page No.185 of P.B.). As such, the Respondent No.2 transferred the Applicant as if it is a case of regular transfer. Admittedly, there is no approval of immediately preceding Competent Transferring Authority, as required for mid-tenure transfer in view of mandate of Section 4(5) of 'Transfer Act 2005'. Resultantly, the impugned transfer order is not sustainable in law.

23. True, there appears to some complaints against the Applicant in respect of audit of Harshvardhan Industrial Co-operative Society Limited, Islampur, District Sangli for the period 01.04.2010 to 31.03.2013. If the mid-tenure transfer of the Applicant was necessitated in view of alleged negligence, in that event also, he could not have been transferred without prior permission of immediately preceding Competent Transferring Authority, which is admittedly, missing in the present case.

24. The totality of aforesaid discussion leads me to sum-up that the impugned transfer order dated 30.05.2019 is indefensible and

sustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 30.05.2019 qua the Applicant is quashed and set aside.
- (C) The Applicant be reposted 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 : 25.11.2019
Dictation taken by :
S.K. Wamanse.

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