

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.514 OF 2018

DISTRICT : SOLAPUR

Shri Nilkanth K. Gaikwad.)
Age : 51 Yrs., transferred from the post of)
Junior Auditor from the office of Assistant)
Director, Local Funds Account, Zilla Parashad)
Compound, Solapur to the same office at)
Sangli and residing at A/P. Shelgaon (R),)
Taluka Barshi, District : Solapur.)...**Applicant**

Versus

1. The Joint Director.)
Local Funds Account, Pune Division,)
Pune, having office at Accounts)
Treasuries Bhavan, 3rd Floor, in the)
Campus of District Collector, Pune-1.)
2. The Director.)
Local Funds Account, having office at)
Kokan Bhavan, 6th Floor, C.B.D. Belapur,)
Navi Mumbai.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai - 400 032.)...**Respondents**

Mr. B.A. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : **13.02.2019**

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 28th May, 2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the application are as follows :

The Applicant is serving as Junior Auditor. At the time of impugned transfer, he was working as Junior Auditor in the office of Assistant Director, Local Funds Account, Solapur. He was due for general transfer of 2018. By impugned order dated 28.05.2018, he was transferred from Solapur to Sangli. The Applicant has challenged the said transfer order *inter-alia* on the ground that he was not given posting as per his preferential choice in terms of G.R. dated 9th April, 2018. He had given options for Pune, Satara and then Sangli. Despite the vacancies in the office of Assistant Director, Pune, he has been transferred to Sangli, which is in contravention of G.R. dated 09.04.2018. He contends that, due to family difficulties, Pune was convenient to him, but his choice was not considered in proper perspective. He made representation on 30.05.2018, but in vein. The Applicant, therefore, contends that the impugned transfer is in contravention of G.R. dated 9th April, 2018. Secondly, the impugned transfer has been passed by Joint Director, Local Funds Account, Pune Division, Pune who is not competent authority within the meaning of provisions of "The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (hereinafter referred to as "Transfer Act 2005". According to Applicant, the delegation of power by Circular dated 31.03.2015 is not in consonance with the provisions of 'Transfer Act, 2005'. The

Applicant, therefore, contends that the impugned transfer is bad in law and prayed to set aside the same.

3. The Respondent Nos.1 to 3 resisted the application by filing Affidavit-in-reply (Page 34 of Paper Book) *inter-alia* denying that the impugned transfer suffers from any illegality. As regard non-giving transfer as per the choice, the Respondents contend that, in terms of G.R. dated 09.04.2018, the vacancies were to be filled-in in proportion, and therefore, the Applicant could not be transferred at Pune. The vacancies in Sangli were 10 whereas in Pune only 5, and therefore, it was administrative need to transfer the Applicant at Sangli. In so far as competency of transferring authority is concerned, the Respondents contend that the powers to transfer the employees in Group 'C' are delegated to Regional Joint Director, Local Funds Account as per G.R. dated 31st March, 2015 exercising the powers under Section 7 of 'Transfer Act, 2005'. This being the position, the Regional Joint Director was legally empowered to issue transfer orders of Group 'C' employees, and therefore, the challenge to the competency of transferring authority is without any substance. The Respondents further contend that the Director, Local Funds Account is also declared Head of the Department by Finance Department under its G.R. dated 01.08.2008. With these pleadings, the Respondents contend that the impugned transfer order is legal and valid and prayed to dismiss the application.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant made two-fold submission to challenge the suspension order. Firstly, the Respondents have not followed its own policy contained in G.R. dated 09.04.2018 whereby transfer is required to be made as per preferential choices given by the Government servants, which having not done, the impugned transfer order is unsustainable. Secondly, the Respondent No.1 i.e. Joint Director, Local Funds, Pune Division is not at all competent or authorized to transfer the Applicant, and therefore, the

impugned order suffers from vital illegality being in contravention of express provisions contained in 'Transfer Act 2005'.

5. Per contra, the learned P.O. retorted that there is no breach of instructions contained in G.R. dated 09.04.2018 in not giving posting as per preference. The Applicant was transferred at Sangli in view of 10 vacancies at Sangli. Therefore, he could not be accommodated at Pune or Satara as per the choice given by the Applicant. He was posted at Sangli which was his third choice. As such, it was the requirement of administrative exigencies to post the Applicant at Sangli. As regard competency or empowerment of Respondent No.1, the learned P.O. sought to contend that the powers of transfer of the employees in Group 'C' are delegated to Respondent No.1 by G.R. dated 31st March, 2015 which was issued in exercise of power under Section 6 of 'Transfer Act 2005', and therefore, there is no illegality in the impugned order.

6. In so far as the contention of the Applicant that he was not given posting as per choice, and therefore, Respondents contravened instructions in G.R. dated 09.04.2018 is concerned, I find no substance therein. The Applicant gave three chances i.e. Thane, Satara and Sangli. True, there were vacancies at Pune and Satara, but he was posted at Sangli. The vacancy position was 5 at Satara, 5 at Pune and 10 at Sangli. The Respondents have come with a specific contention that the vacancies were required to be filled in proportionately for the school administration, and therefore, the Applicant was required to be posted at Sangli on the post of Junior Auditor being requirement of the Department. There is absolutely no material to show that in the said transfer, any other Junior Auditor was posted at Pune or Satara. One Smt. Vaichal who was posted from Sangli was in the cadre of Clerk and not Junior Auditor. Needless to mention that public servant has no vested right to claim posting at a particular place and all that policies to consider their preferences vis-à-vis the administrative exigencies. In the present case, it is quite clear that there was requirement of administrative

exigencies, and therefore, the Applicant was posted at Sangli. Therefore, it cannot be said that there is arbitrariness and malafides in the decision. Suffice to say, the challenge to the transfer order on this ground is devoid of merit.

7. Now comes to the question of competency or jurisdiction of Respondent No.1 to pass impugned order of transfer, which is very vital in the present case and goes to the root of the matter.

8. At this juncture, it would be apposite to reproduce Sections 6 and 7 of 'Transfer Act 2005' for proper appreciation, which are as follows :

“6. The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.

Groups of Government Servants (1)	Competent Transferring Authority (2)
(a) Officers of All India Servants, all Officers of State Services in Group “A” having pay scale of Rs.10,650-15,850 and above.	Chief Minister
(b) All Officers of State Services in Group “A” having pay scales less than Rs.10,650-15,850 and all Officers in Group “B”.	Minister-in-charge in consultation with Secretaries of the concerned Departments.
(c) All employees in Group “C”	Heads of Departments.
(d) All employees in Group “D”	Regional Heads of Departments :

Provided that, in respect of officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division ; and the District Head shall be competent to transfer such officers within the District :

Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority.

7. Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act.”

9. Now, turning to the facts of the present case, admittedly, the Applicant falls in Group ‘C’ and he was due for general transfer in 2018. As per table below Section 6 as reproduced above, the competent authority to transfer employees in Group ‘C’ are Heads of Departments. Whereas, as per Section 7 of ‘Transfer Act 2005’, every Administrative Department of Government was required to prepare and publish list of the Heads of Departments and Regional Heads within their jurisdiction and to notify the authorities competent to make transfers within jurisdiction for the purposes of the ‘Transfer Act 2005’. At the same time, proviso 2 of Section 6 empowers competent transferring authority specified in the table to delegate its power to subordinate authority by general or special order.

10. In view of above express provision of ‘Transfer Act 2005’, it is necessary to find out whether the Heads of the Departments have been notified and published by the Respondents for the transfer of Group ‘C’ employees and whether there is legal delegation of power in favour of transferring authority, which is Respondent No.1 in the present case.

11. Here, it would be apposite to refer Para No.12 of the reply, which is as follows :

“12. With reference to para 6.10, I say and submit that as per provision of section 6 of the said Act 2005 competent transferring authority for employees in Group “C” is Head of Department. I say that as per the provisions of 7 of said Act 2005 power to transfer employees in group – C are delegated to Regional Joint Director, Local Fund Account’s Audit, which is mentioned in Serial No.6 of table appended in Government Resolution, Finance Department dated 31st March, 2015.”

12. The Respondents have also produced G.R. dated 31.03.2015 as referred in their reply and which is the source of power or authority for passing the impugned transfer order. It is pertinent to note that the Respondents admit that the Head of the Department is competent authority for the transfer of Group 'C' employees and further comes with a plea that, those powers are delegated to Regional Joint Director i.e. Respondent No.1.

13. Therefore, it is necessary to find out who is declared and notified as Head of the Department for proper publication as contemplated in Section 7 of 'Transfer Act 2005' and secondly, whether there is legal and valid delegation of power in favour of Respondent No.1.

14. At the fag end of the arguments, the learned P.O. has tendered a copy of Notification dated 13.03.2013, which is as follows :

“महाराष्ट्र शासन
वित्त विभाग,
क्रमांक - संकीर्ण २०१०/प्र.क्र.२४९/कोषा(प्रशा-३)
मंत्रालय, मुंबई ४०००३२, दिनांक:- १३ मार्च, २०१३.

अधिसूचना

क्रमांक संकीर्ण १०१३/प्र.क्र.१४१/प्रशासन-१ महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडतांना होणाऱ्या विलंबास प्रतिबंध अधिनियम २००५ (२००४ ची महा.२१) अन्वये विहित करण्यात आलेल्या कलम-७ मधील तरतूदीनुसार या अधिनियमाच्या प्रयोजनाकरीता वित्त विभागाच्या अधिपत्याखालील महाराष्ट्र वित्त व लेखा सेवेतील अधिकारी व कर्मचाऱ्यांच्या बदल्या करण्यासाठी सक्षम असणारे प्राधिकारी पुढील प्रमाणे अधिसूचित करण्यात येत आहेत.

अ.क्र.	बदली करण्यासाठी सक्षम अधिकारी (पदनाम)	प्रदान करण्यात आलेले अधिकार (विभाग प्रमुख, प्रादेशिक विभाग)	शासकीय कर्मचाऱ्यांचा गट
१	संचालक, लेखा व कोषागारे	विभाग प्रमुख	महाराष्ट्र वित्त व लेखा सेवा गण-ब अराजपत्रित कर्मचारी

			तसेच वर्ग-क मधील राज्यस्तरीय कर्मचारी वर्ग
२	I) विभागीय सहसंचालक II) अधिदान व लेखा अधिकारी	प्रादेशिक विभाग प्रमुख	नियुक्ती प्राधिकारी या नात्याने विभागीय सहसंचालक कार्यालयातील तसेच कोषागार कार्यालयातील नवनिर्मित ग३-क व ग३-ड मधील कर्मचारी यांच्या विभागातील बदल्या.
३	कोषागार अधिकारी	प्रादेशिक विभाग प्रमुख	कोषागार कार्यालयातील अस्थिगित ग३-क, ग३-ड कर्मचाऱ्यांच्या नियतकालिक बदल्या.
४	संचालक, स्थानिक निधी लेखापरीक्षा, नवी मुंबई	विभाग प्रमुख	विभागातील बदल्या :- ग३-क संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या
५.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, कोकण विभाग, नवी मुंबई	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.
६.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, पुणे विभाग, पुणे	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.

७.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, नाशिक विभाग, नाशिक	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.
८.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, औरंगाबाद विभाग, औरंगाबाद	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.
९.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, अमरावती विभाग, अमरावती	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.
१०.	सहसंचालक,स्थानिक निधी लेखा परिक्षा, नागपूर विभाग, नागपूर	प्रादेशिक विभाग प्रमुख	सर्वसाधारण बदल्या:- ग३-ड संवर्गातील कर्मचाऱ्यांच्या विभागातील बदल्या.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सही/-

(स.ह.भोसले)

अवर सचिव, महाराष्ट्र शासन

15. The above Notification depicts that at Serial No.4, the Director, Local Funds Account, Navi Mumbai (Respondent No.2) is declared Head of the Department for the transfer of Group 'C' employees. Admittedly, in the present case, the impugned transfers order is not issued by Director, Local Funds Account, Navi Mumbai but the same has been issued by the Joint Director, Local Funds Account, Pune Division. As per Serial No.6 of the Notification, the Joint Director, Local Funds Account, Pune Division is declared as Regional Head of the Department and authorized for transfer of Group 'D' employees within Division. The Applicant being Group 'C' employee as per this Notification itself, the competent authority was Director, Local Funds Account, Navi Mumbai as a Head of Department.

16. Secondly, there is absolutely no iota of material to substantiate that the said Notification has been published either in Official Gazette or in any other mode, so as to fulfill the requirement of Section 7 of 'Transfer Act 2005' which mandates the publication of list of competent authority. The learned Advocate for the Applicant has produced snap-shot of the website of Government of Maharashtra to show that there is no publication of Notification dated 13.03.2013 on website. There is no counter to this document by the learned P.O. to show that it is incorrect and it was published on website. Suffice to say, there is absolutely no evidence on record about publication of Notification dated 13.03.2013 either in Official Gazette or in website or in any other manner to establish that the same has been notified and published.

17. Needless to mention that, as per mandatory requirement of Section 7 of 'Transfer Act 2005', there has to be publication of list of Heads of the Departments and Regional Heads of Departments and the absence of the same is fatal. This aspect is no more open to debate in view of various decision rendered by this Tribunal. Reference in this behalf may be given to the Judgment of this Tribunal passed in ***O.A.No.243/2016 (Suresh Shelar Vs. Special Inspector General of Police) decided on 06.09.2016, O.A.No.490/2012 (Smt. Urmila L. Joshi Vs. The Controller, Legal Metrology) decided on 04.10.2012, O.A.No.743/2012 (Manohar B. Satav Vs. The Commissioner, Social Welfare), decided on 15.01.2013 and O.A.No.221/2017 (Steven P. Joseph Vs. The Deputy Director, Sports & Youth Services) decided on 15.09.2017.***

18. Now, the question comes whether the G.R. dated 31.03.2015 can be said in compliance of proviso 2 of Section 6 of 'Transfer Act 2005' in view of the defence of delegation of powers in favour of Respondent No.1. No doubt, the delegation of power by competent authority to its subordinate authority is permissible in Section 6 of 'Transfer Act 2005'. In the present case, as per Notification dated 13.03.2013, the Director was the competent authority being Head of the Department to transfer Group 'C' employees and this being the position, there has to be compliance of the requirements – First, the publication of the Head of Department and Second, valid delegation of power in favour of Respondent No.1. As stated above, there is absolutely nothing to suggest that Notification dated 13.03.2013 was published which itself is fatal to the Respondents. As regard delegation of powers, no material is produced to establish that the Director has delegated his power to Respondent No.1. All that the Respondents contend that the G.R. dated 31.03.2015 is the source of power in favour of Respondent No.1 to issue transfer orders.

19. The perusal of G.R. dated 31.03.2015 which seems to have been issued by Finance Department shows that the same was issued in terms of Section 6 of

'Transfer Act 2005' thereby delegating powers to Respondent No.1. What is significant and pertinent to note that the G.R. dated 31.03.2015 though issued by Finance Department, Government of Maharashtra, the question is whether it legal and valid delegation of power by Respondent No.1 (who has been declared competent authority) in favour of Respondent No.1 and in my considered opinion, the answer is in negative.

20. Here, it is significant to note that as per Section 6 of 'Transfer Act 2005', the Regional Heads of the Departments are competent authority for Group 'D' employees and Heads of the Departments are the competent authorities for Group 'C' employees. Whereas, as per G.R. dated 31.03.2015, the Regional Joint Director (Regional Head of the Department) are empowered to transfer Group 'C' employees. Suffice to say, there is material inconsistency in the express provisions of 'Transfer Act 2005' and the manner in which G.R. dated 31.03.2015 has been issued. Needless to mention that the express provisions of the Act should prevail and override G.R, if the same is not consistent with the express provisions of 'Transfer Act 2005'.

21. The situation also needs to be examined from another angle of delegation of powers. Needless to mention that the delegation of power in present case should have been from Head of the Department for Group 'C' employees as per table attached to Section 6 of 'Transfer Act 2005'. No other authority, howsoever high in law, can delegate such powers to its subordinate authority. In other words, another authority howsoever high, cannot delegate the powers to some other authorities as the power of delegation is with the person who is declared as a competent authority which is Director, Local Funds Account in the present case by virtue of Notification dated 13.03.2013. The one in who power vests can only delegate the powers to other. It is well settled that, no one can delegate unless he possessed it. In the present case, it is Director, who possesses the power of delegation and not anybody else. Therefore, the G.R. dated 31.03.2015 cannot

be said delegation of power by the Director, Local Funds Account in favour of Respondent No.1, so as to empower to pass transfer orders. True, the G.R. dated 31.03.2015 has been issued by Finance Department, Government of Maharashtra. It seems to have been issued under the name of Hon'ble Governor. However, the power of delegation vests only with Head of the Department and not with the Government in view of express provisions of 'Transfer Act 2005'. Therefore, such G.R. dated 31.03.2015 which is only the source of authority cannot be said in compliance of Section 6 of 'Transfer Act 2005'.

22. Even assuming for a moment that the G.R. dated 31.03.2015 has to be construed as a delegation of power by competent authority in favour of Respondent No.1, in that event also, in absence of proper publication and Notification inviting Head of the Department as contemplated under Section 7 of 'Transfer Act 2005'. Further, the delegation of power by virtue of G.R. dated 31.03.2015 is not legal and valid.

23. Needless to mention that the delegation of powers is open to the scrutiny of Court / Tribunal and shall be declared invalid, if it is in express violation of the provisions of substantive Act or enabling Act. If the delegation of power is not in consonance of the substantive provisions of the Act, then it is not legal, even if the same is issued by authority howsoever high. It must be in consonance to its express provisions of substantive Act. It is well settled that the administrative powers entrusted by a statute to a particular authority, cannot be further delegated except as otherwise provided in the statute. The principle against sub-delegation is based on the maxim "*delegatus non-protest delegare*". In other words, when the substantive Act which is in the present case 'Transfer Act 2005', by express words permits delegation in the manner laid down therein, then it has to be exercised by the delegatee in that manner only.

24. The learned Advocate for the Applicant in this behalf rightly referred to the Judgment passed by this Tribunal in ***O.A.No.444/2017 (Harishchandra Jadhav Vs. State of Maharashtra) decided on 28.07.2017***, wherein the issue of delegation of power has been extensively dealt with and the impugned order was quashed for the very reason of absence of legal delegation of powers to the authority who passed the transfer orders. The legal principles discussed in this Judgment are severely attracted to the present case.

25. True, as per Notification issued by the Finance Department dated 18.04.2017, the Director, Local Funds Account and Audit, Navi Mumbai has been declared as a Head of Department for the purposes of Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Admittedly, it is for the purpose of MCS (General Conditions of Service) Rules, 1981 and not for the purposes of 'Transfer Act 2005'. Similarly, the declaration of Chief Auditor, Legal Funds Account, State of Maharashtra as a Head of Department in terms of G.R. dated 1st August, 2008 (Page No.87 of P.B.) is also not of any significance in the present matter for the simple reason that it was for financial purposes and issued under Financial Power Rules, 1978. Therefore, it is of no avail or relevant for the purpose of transfer under 'Transfer Act 2005'.

26. As such, in the present case, having examined the validity of G.R. dated 31.03.2015, there is no escape from the conclusion that it is not legal and valid for the reasons first not being in consonance with the express provisions contained in Section 6 of 'Transfer Act 2005' and second, there is no legal and valid delegation of powers by competent authority in favour of Respondent No.1.

27. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned transfer order dated 28.05.2018 is not sustainable for the reasons

stated above and deserves to be quashed and set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 28.05.2018 is hereby quashed and set aside.
- (C) The Applicant be reposted on the post he had transferred from, within four weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 13.02.2019

Dictation taken by :

S.K. Wamanse.

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