

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.522 OF 2019

DISTRICT : Raigad

Shri Sanjay Aboo Shinde)
Aged : 37 years, working as Head Clerk)
In the office of Assistant Registrar, Co-op.)
Societies, Alibaug, Dist. Raigad,)
R/o P.N.P. Nagar, Alibaug, Dist. Raigad.)...**Applicant**

Versus

1. The Divisional Joint Registrar,)
Co-operative Societies, Konkan)
Division, Navi Mumbai, O/at Konkan)
Bhawan, 3rd floor, Navi Mumbai,)
Dist. Thane.)
2. Shri Laxman Bhere, Aged Adult,)
Working as Co-operative Officer,)
Grade-II in the office of Assistant)
Registrar, Co-operative Societies,)
Bhiwandi, Dist. Thane.)...**Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.10.2020

JUDGMENT

1. In the present Original Application, the Applicant has raised grievance for not considering his request for transfer invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

3. The Applicant is working as Head Clerk in the office of the Assistant Registrar, Co-operative Societies, Alibag. He worked as Co-operative Assistant Officer in the office of Assistant Registrar, Co-operative Societies, Alibag and thereafter Respondent No.1-Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai transferred him on the post of Head Clerk in the same office by order dated 08.06.2016. In general transfers of 2019, he was not due for transfer having not completed six years tenure as Group-C employee but he made representation on 05.04.2019 requesting his transfer at Kalyan, Ulhasnagar or Bhiwandi on the ground of illness of his mother who was suffering from Thyroid. However, his request was not considered. On the contrary, the Respondent No.1 by order dated 30.05.2019 posted the Respondent No.2 at Bhiwandi which was sought for by the Applicant in his representation. Being aggrieved by it, the Applicant has challenged the transfer order of Respondent No.2.

4. The Respondent No.2 though served with the notice, he remained absent.

5. The Respondent No.1 resisted the Original Application by filing reply mainly on the ground that the ground of illness of mother does not fit in the Circular dated 15.03.2018 which *inter-alia* enumerates the disease for request transfer.

6. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant sought to contend that though the Applicant's transfer was recommended by Assistant Registrar, Co-operative Societies as well as by District Deputy Registrar, Co-operative Societies, Alibag, the

Respondent No.1 ignored the same and on the contrary Respondent No.2 was accommodated in the place which was sought by the Applicant. He, therefore, submits that the impugned order is unsustainable in law.

7. Per contra, Smt. Kranti Gaikwad, learned P.O. submits that the Respondent No.2 was due for transfer and he was posted at Bhiwandi as per the options given by him. Whereas, the request transfer of the Applicant was not in consonance with the Circular dated 15.03.2018, and therefore, it was rightly rejected.

8. Needless to mention that the transfer is incidence of transfer and no Government Servant has vested right in the matter of transfer and it falls exclusively within the domain of executive. Admittedly, the Applicant was not due for transfer at the time of general transfer of 2019. However, he made representation for transfer seeking posting at Kalyan, Dombivali, Ulhasnagar or Bhiwandi on the ground that his mother suffers from Thyroid. It is also equally true that his request was recommended by the Assistant Registrar, Co-operative Societies, Alibag and District Deputy Registrar Co-operative Societies, Alibag. However, the Competent Authority for transfer is Respondent No.1 namely the Divisional Joint Registrar Co-operative Societies, Kokan Division, Navi Mumbai.

9. Request of the Applicant was placed before the Civil Services Board (CSB). In its meeting dated 22.05.2019, the CSB declined to accept the request on the ground that the illness of Thyroid does not fit in Circular dated 15.03.2015 (Circular is wrongly mentioned as 15.03.2015, the correct date is 15.03.2018). Thereafter, the CSB in its meeting held on 24.05.2019, recommended for the transfer of Respondent No.2 at Bhiwadi as per options given by him.

10. Perusal of Circular dated 15.03.2018 (Page No.77 of PB) reveals that it provides for mid-term transfer on certain grounds. Para No.5 of Circular is material which is as follows:-

“गंभीर आजारपण, (शासकीय कर्मचारी स्वतः किंवा यथास्थिती पती/पत्नी/त्यांची मुले/त्यांच्यावर अवलंबून असलेले शासकीय कर्मचा-यांचे आई किंवा वडील यांचा पुढील आजार - (हृदय शस्त्रक्रियेची प्रकरणे, मुत्रपिंड प्रत्यारोपण शस्त्रक्रिया किंवा किडनी डायलेसीस, कर्करोग, ब्रेन ट्युमर किंवा मेंदुवरील शस्त्रक्रिया, निश्चेतनावस्था (कोमा), मनोविकृतीने ग्रस्त इत्यादी) कारणामुळे प्राप्त विनंती अर्जावर विचार करताना, त्याबाबतची खात्री करून आणि मागणी केलेल्या बदली पदाबाबतची उपरोक्त निकष पुर्तता असेल तर नियुक्ती प्राधिका-याने स्वयंस्पष्ट शिफारशीसह वरिष्ठ प्राधिकारी यांचेकडे शिफारस करावी.”

11. Whereas, the illness of Applicant's mother as seen from medical certificate (Page No.18 of PB) is of Thyroid which does not find place in the Circular dated 15.03.2018. Suffice to say, it is only in certain serious illnesses as enlisted in the Circular dated 15.03.2018, request of the employee for mid-tenure transfer can be considered and the employee cannot ask for transfer on the ground of other illness as of right. Thyroid is common and it cannot be termed as severe illness.

12. The submission advanced by the learned Counsel for the Applicant that the Respondent No.1 had ignored G.R. dated 09.04.2018 is misplaced as the said G.R. pertains to transfer of employee by counseling who are due for transfer. It is Circular dated 15.03.2018 which provides for mid-tenure transfer on the ground of certain specified illnesses or serious diseases.

13. Thus what emerges from the record that the request of the Applicant for mid-tenure transfer on the ground of illness was not in consonance with the Circular dated 15.03.2018, and therefore, it was not accepted. In so far as impugned order is concerned, it is the Respondent No.2 who was posted at Bhiwandi having completed normal tenure at his earlier post. As such, only because of

Respondent No.2 is posted at one of the place sought by the Applicant that itself cannot be the ground to challenge the transfer of Respondent No.2 particularly when it does not infringe any vested or fundamental right of the Applicant.

14. The totality of the aforesaid discussion leads me to sum up that challenge to the impugned transfer order is devoid of merit and O.A. deserves to be dismissed.

ORDER

Original Application is dismissed with no order as to cost.

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

Place : Mumbai
Date : 20.10.2020.
Dictation taken by : VSM
Uploaded on : 20.10.2020.