

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.530 OF 2019

DISTRICT : MUMBAI

Shri Rakesh R. Dhaktode.)
Age : 49 Yrs., Occu.: Service,)
Working as Executive Engineer,)
Sindhudurg Irrigation Project,)
Constuction Division, Charate,)
Sawantwadi, M.S, and residing at R-1,)
Tillari Colony, At Post : Charate,)
Tal.: Sawantwadi, District : Sindhudurg.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department, Mantralaya,))
Mumbai – 400 032.)...**Respondents**

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

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 30.08.2019

JUDGMENT

1. The Applicant has challenged his impugned transfer order dated 27th May, 2019 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was serving on the post of Executive Engineer, Sindhudurg Irrigation Project, Construction Division, Charate, Sawantwadi, District Sindhudurg. Earlier, he was promoted by order dated 16th September, 2016 and was posted on the said post. However, before completion of three years' tenure, by transfer order dated 27th May, 2019, he was transferred to the post of Executive Engineer, Employment Guarantee Scheme (EGS), Office of Divisional Commissioner, Konkan Vibhag, Navi Mumbai. The Applicant has challenged the transfer order on the ground that it is mid-tenure transfer but the same is not in consonance with Section 4(5) 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).

3. Shri M.R. Patil, learned Advocate for the Applicant assailed the impugned transfer order on the ground that there is no approval to the transfer by Hon'ble Chief Minister as contemplated under Section 4(5) read with Section 6 of 'Transfer Act 2005' and it being material illegality the transfer order is liable to be set aside.

4. Per contra, the learned P.O. Smt. K.S. Gaikwad sought to defend the impugned transfer order on the ground that by Notification dated 25th April, 2016, the powers of transfer contemplated under Section 4(5) of 'Transfer Act 2005' have been delegated to the Hon'ble Minister. She submits that these powers are delegated to the Hon'ble Minister in view of proviso to Section 6 of 'Transfer Act 2005' and there is no illegality in the impugned transfer order.

5. In view of submissions advanced at the Bar, the question posed for consideration whether the impugned transfer order for want of approval of Hon'ble Chief Minister is legal and valid and the answer is in negative.

6. Admittedly, the Applicant has not completed three years' normal tenure at the time of impugned transfer order. Besides, there is no denying that there is no approval to the transfer by Hon'ble Chief Minister. The transfer order is approved by the Hon'ble Minister of Irrigation Department.

7. True, the perusal of G.R. as well as Notification dated 25th April, 2016 reveals that the powers of transfer contemplated under Section 4(5) of 'Transfer Act 2005' are delegated to the Hon'ble Minister in so far as Group 'A' Officers are concerned. The Applicant is admittedly Group 'A' Officer. However, the question is whether such delegation of powers as done by Notification dated 25th April, 2016 is valid and the answer is in negative.

8. True, Section 6 of 'Transfer Act 2005' provides that the competent transferring authority specified in the Table attached to Section 6 may, by general or special order, delegate its power under this Section to any of its subordinate authority. As such, delegation is permissible for transfer under Section 6 of 'Transfer Act 2005' for general transfer. The Table attached to Section 6 defines "Competent Transferring Authority" and for Group 'A' Officer, the Hon'ble Minister is the competent transferring authority for general transfer.

9. Whereas, Section 4(5) which is material in the present matter 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.”

10. Thus, the Competent Authority may in special case, after recording the reasons in writing with prior permission of immediately preceding competent authority, as mentioned in Table of Section 6 can transfer the Government servant before completion of his tenure of post. As such special case is required to be spelt out by recording reasons in writing and it should be with prior permission of immediately preceding competent transferring authority namely Hon’ble Chief Minister.

11. In so far as the competent transferring authority is concerned, as per Clause (b) of Table attached to Section 6 for Group ‘A’ Officers, the Minister In-charge in consultation with Secretaries of the concerned Departments is the competent authority and as per the same Table, next immediately preceding higher authority is the Hon’ble Chief Minister. As such, if one read Section 4(5) along with Table attached to Section 6, it is crystal clear that for Group ‘A’ Officers, the Minister In-charge in consultation with Secretaries of the concerned Department is the competent authority but where the transfer is done invoking Section 4(5) of ‘Transfer Act 2005’, then it should be approved by the Hon’ble Chief Minister being immediately preceding competent transferring authority.

12. True, by Notification dated 25th April, 2016, the powers of transfer under Section 4(5) of ‘Transfer Act 2005’ purportedly delegated to the Minister. However, these delegation of powers cannot be used for making transfers under Section 4(5) of ‘Transfer Act 2005’, as in law, the next preceding competent authority is Hon’ble Chief

Minister. Such delegation cannot be done dehors the express provision of law. It is inconsistent and contrary to the express provisions of 'Transfer Act 2005'. In my considered opinion, this Notification cannot be allowed to prevail over the express provisions made in 'Transfer Act 2005', particularly Section 4(5) of 'Act 2005' and it would render the Section 4(5) of Act negatory or redundant and very purpose of this provision would be frustrated. This being the position, the impugned transfer order cannot be said approved by the competent transferring authority, and therefore, the same is unsustainable in law.

13. Apart, the perusal of minutes of Civil Services Board (CSB) reveals that one of the member has specifically pointed out that the Applicant had not completed three years' tenure and in respect of the alleged complaints about his performance, no further action in the shape of D.E, etc. has been taken by the Department. Therefore, he opposed the transfer of Applicant. However, it seems to have been approved by remaining two members, but without assigning any reasons over-ruling the opinion given by one of the dissenting member.

14. In view of above, I have no hesitation to conclude that the Notification which is the foundation to justify transfer order is *ex-facie* in contravention of express provision contained in Section 6 and there cannot be such delegation of power of next higher authority in the manner notified in the Notification. Suffice to say, in absence of approval of Hon'ble Chief Minister, who is the only competent authority under Section 4(5) of 'Transfer Act 2005', the impugned transfer order is unsustainable and deserves to be quashed.

15. The necessary corollary of aforesaid discussion leads me to conclude that the impugned transfer order being in defiance of mandatory requirement of Section 4(5) of 'Transfer Act 2005', the

same is liable to be quashed and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 27th May, 2019 is quashed and set aside.
- (C) Interim order is accordingly confirmed.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 30.08.2019

Dictation taken by :

S.K. Wamanse.