

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.606 OF 2021**

**DISTRICT : THANE**

Smt. Pratibha P. Doiphode. )  
Age : 57 Yrs., Working as Accounts Officer )  
in the Office of Maharashtra State Lottery, )  
APMC Market, Vashi, Navi Mumbai, )  
District Thane and residing at 102, )  
Narmada-Vijaybaug Complex, Murbad )  
Road, Kalyan (W), District : Thane. )...**Applicant**

**Versus**

1. The Director. )  
Accounts & Treasuries, M.S, )  
Mumbai, having Office at )  
Directorate of Accounts & Treasuries) )  
3<sup>rd</sup> Floor, Thakersy House, Bombay )  
Port Trust, Ballard Estate, )  
Mumbai – 400 001. )  
2. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Finance Department, 3<sup>rd</sup> Floor, )  
[Extn.], Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

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

**DATE : 23.11.2021**

## **JUDGMENT**

1. The challenge is to the transfer order dated 19.08.2021 whereby the Applicant is transferred from the post of Account Officer, Maharashtra State Lottery, Vashi, Navi Mumbai to Account Officer, Collector Office, Mumbai 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 in the cadre of Account Officer (Group 'B' Gazetted). She was transferred and posted as Account Officer, Maharashtra State Lottery, Vashi, Navi Mumbai by order dated 10.07.2017. She had completed normal tenure of three years in terms 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) in 2020. As such, she was due for transfer in general transfers of 2020-2021 which were to be effected in the month of April or May in terms of 'Transfer Act 2005'. However, due to unprecedented situation of spread of Covid-19 and consequent pandemic situation followed by Lockdown, the State of Maharashtra extended issuance of general transfer orders upto 9<sup>th</sup> August, 2021. By G.R. dated 29.07.2021, a policy decision was taken to effect general transfers of Government servants who have completed normal tenure of three years in April or May of 2021 upto 9<sup>th</sup> August, 2021. Since Applicant was due for general transfer, she was transferred by order dated 09.08.2021 from Vashi to Mumbai by Respondent No.1 – Director, Accounts and Treasuries, M.S, which is impugned in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned transfer order on the following grounds :-

(i) Though Applicant had completed normal tenure of three years, she was entitled for extension of one year since she was due to retire within one year in terms of Section 5(1)(a) of 'Transfer Act 2005'.

(ii) As per provisions of 'Transfer Act 2005', the general transfers were required to be issued in the month of April or May, as contemplated under Section 4(2) of 'Transfer Act 2005' but in the present case, the transfer order being issued in August, 2021, it partakes to character of mid-tenure transfer which requires the compliance of Section 4(5) of 'Transfer Act 2005' which *inter-alia* provides for making out special case and prior approval of immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005' and being not complied with, the impugned order is bad in law.

(iii) The Applicant being Group 'B' Gazetted Officer, the competent authority for transfer is Minister In-charge in consultation with Secretary of the concerned Department as per Table under Section 6 of 'Transfer Act 2005', and therefore, the impugned transfer order issued on the basis of delegation of power by Respondent No.1 - Director, Accounts & Treasuries is unsustainable in law.

(iv) The Applicant is transferred on the basis of some complaints, and therefore, it is punitive and unsustainable in law.

(v) The composition of Civil Services Board (CSB) which has recommended for the transfer of Applicant is not in terms of G.R. dated 31.01.2014 issued by Government and on that count also, the impugned transfer order is bad in law.

4. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer defended the impugned action of transfer *inter-alia* contending that the

Applicant have no right to ask for one year extension in view of retirement within a year in terms of Section 5(1)(a) of 'Transfer Act 2005' and it applies only in exceptional cases and it is in discretion of the Government. She has further pointed out that in view of Covid-19 pandemic situation and lockdown, the general transfers were postponed by G.R. dated 29.07.2021 upto 9<sup>th</sup> October, 2021 and in accordance to it, the Applicant has been transferred being admittedly due in general transfers of 2021. As regard competency of Respondent No.1, she submits that Government by G.R. dated 30.05.2015 delegated the powers to transfer Group 'B' Gazetted Officers to Respondent No.1 – Director, Accounts and Treasuries and delegation of power is in consonance with 2<sup>nd</sup> proviso of Section 6 of 'Transfer Act 2005'. In respect of allegation of punitive transfer, she submits that the Applicant was due for transfer, and therefore, it being not a case of mid-term or mid-tenure transfer on complaints, the issue of complaints is irrelevant and impugned order cannot be termed punitive or malicious. As regard constitution of CSB, she submits that CSB was constituted by Respondent No.1 in terms of Government letter dated 20.05.2016 headed by Joint Director with two other members which recommended for transfer of Applicant and there is no such illegality much less to render the transfer order illegal.

5. In view of pleadings and submissions advanced at the Bar, the question posed for consideration is whether impugned transfer order is sustainable in law in the teeth of grounds raised by the learned Advocate for the Applicant. Indisputably, the Applicant was posted as Account Officer, Maharashtra State Lottery, Vashi, Navi Mumbai by order dated 10.07.2017 and she has completed three years' tenure as ensured under the provisions of 'Transfer Act 2005' in July, 2020. As such, there is no denying that she was due for general transfer in 2020-2021 having completed more than three years in the said post.

6. Needless to mention that the order of transfer being an incidence of service is an administrative order and no Government servant have vested right to be posted or remained posted at particular place, and therefore, transfer should not be interfered with except where transfer is punitive or *malafides* or in contravention of express provisions of law. Now, transfers of Government servants are controlled and regulated by 'Transfer Act 2005' which provides minimum three year' tenure and where mid-term or mid-tenure transfer is necessitated or warranted due to administrative exigencies, it should be in compliance with Section 4(5) of 'Transfer Act 2005' which *inter-alia* provides for making out special case for transfer with reasons recorded in writing and with the approval of immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'.

7. **As to Ground No.1** :-

Though Applicant has completed three years' tenure and was due for transfer in general transfers of 2020-2021, when options were called for transfer in terms of G.R. dated 09.04.2018, the Applicant made representation on 13.07.2021 that she would be retiring on 31.05.2022 and left with 10 months' service. She, therefore, requested for retention in the present post. As per Section 3 of 'Transfer Act 2005', Applicant's normal tenure in a post shall be three years. Whereas, Section 5 provides for extension of tenure in certain exceptional circumstances. In this behalf, Section 5(1)(a) is relevant which is as under :-

**“5(1)** The tenure of posting of a Government servant or employee laid down in section 3 may be extended in exceptional cases as specified below, namely :-

(a) the employee due for transfer after completion of tenure at a station of posting or post has less than one year for retirement.”

8. It is thus explicit that it is only in exceptional cases, the Government may grant exemption from transfer where a Government

servant is retiring within a year and it is not as of vested right much less legally enforceable. The legislature has specifically used the word 'may' and not 'shall'. Thus, it is in discretion of the Government to extend the tenure having regard to the attending circumstances. Undoubtedly, the discretion has to be exercised judiciously and not arbitrarily.

9. The Applicant has joined in the said post by virtue of order dated 10.07.2017 and has completed three years' normal tenure in July, 2020. Whereas, she is transferred by impugned order having completed more than three years in a post. There were complaints against her, and therefore, Respondents seem declined to grant extension. This cannot be construed as transfer on complaint, since Applicant was already due for transfer. However, at the same time, it cannot be forgotten that Joint Director, Director of Accounts and Treasuries by letter dated 05.04.2021 brought to the notice of Director, Directorate of Lottery, State of Maharashtra about the complaints from subordinates against the Applicant and proposed transfer. The aspect and nature of complaints will be dealt with a little later in detail while discussing as to whether impugned transfer order is punitive or otherwise, presently suffice to say, there were complaints about the functioning of the Applicant and perhaps that weighed the concerned authority for declining extension. Be that as it may, the extension as contemplated under Section 5(1)(a) is not a matter of right and it is only in exceptional cases, the competent authority can grant it. Where for smooth functioning of the Department, the transfer of employee who has completed normal tenure is necessitated, in such situation, a Government servant cannot ask for extension as of a vested right which would otherwise hamper or affect smooth functioning of the Department. Suffice to say, where a conscious decision to transfer the Applicant thereby declining to grant extension is taken, it cannot be said that it is for extraneous consideration or against statutory provisions of law.

10. **As to Ground No.(ii) :-**

Since Applicant was due for transfer in general transfers of 2020-2021, the transfer orders were required to be issued in the month of April or May of 2021 in terms of 'Transfer Act 2005'. However, due to unprecedented circumstances and situation due to spread of Covid-19 disease pandemic situation followed by lockdown, it was impossible for the Government to complete the exercise of transfers in the month of April or May. There were restrictions for free travel and movement. Even in Government offices, directions were issued to have minimum strength, so that disease is not spread. It was totally unprecedented situation which played havoc throughout the country. It is on this background, the Government in its wisdom by G.R. dated 29.07.2021 extended the period of issuance of transfer of a Government servants who were due for transfers in general transfers and orders were to be issued and completed by the end of 9<sup>th</sup> August, 2021. Accordingly, the Applicant was transferred by order dated 9<sup>th</sup> August, 2021.

11. The submission advanced by the learned Advocate for the Applicant that since general transfers were required to be issued in the month of April or May only in terms of provisions of 'Transfer Act 2005', but the impugned transfer order being issued on 9<sup>th</sup> August, 2021, it partakes character of mid-tenure is fallacious and misconceived. Here is not a case of mid-tenure transfer requiring compliance of Section 4(5) of 'Transfer Act 2005'. It is because of totally unprecedented Covid-19 and pandemic situation, the decision was taken in the interest of public and all concerned that transfer orders of those who have completed normal tenure in April or May will be issued upto August, 2021. It was policy decision taken by the Government keeping in mind the gravity of situation and I see no unreasonableness or arbitrariness in the policy decision.

12. True, the Government Resolution cannot substitute or supplant the provisions of Rules or law. It is equally true that G.R. is in nature of

executive instructions and it should not override the provisions of Rules. However, it is because of total unforeseen and unprecedented situation, the Government had taken policy decision to postpone issuance of orders of transfer upto 9<sup>th</sup> August, 2021. Thus, what was postponed was the issuance of transfer orders of the Government servants who have already completed normal tenure in the month of April or May. Therefore, it cannot be said that the G.R. dated 29.07.2021 contravened the provisions of 'Transfer Act 2005'.

13. The submission advanced by the learned Advocate for the Applicant that even if Government has taken policy decision by G.R. dated 29.07.2021 to issue transfer orders upto 9<sup>th</sup> August, 2021, in that event also, for such transfers, there has to be compliance of Section 4(5) of 'Transfer Act 2005' which *inter-alia* provides for mid-tenure transfer in special case with prior permission of immediately preceding competent transferring authority is totally unpalatable. Section 4(5) of 'Transfer Act 2005' is attracted where a Government servant is transferred before completion of tenure where it is necessitated as a special case and in that situation only, prior approval of immediately preceding competent transferring authority is required. Whereas, in the present case, the question of compliance of Section 4(5) of 'Transfer Act 2005' does not survive. If submission advanced by the learned Advocate for the Applicant is accepted, it would open pandora box and would unsettle the position creating various administrative problems.

14. True, no amendment is made in 'Transfer Act 2005' so as to give legal shape to G.R. dated 29.07.2021. But in my considered opinion, it would not render the impugned transfer order illegal, since due to pandemic situation, the immediate remedial measure was required to be taken, which was ultimately taken by G.R. dated 29.07.2021. Above all, the G.R. dated 29.07.2021 postponed issuance of general transfer orders and it does not provide for mid-tenure transfer. Therefore, it cannot be said that there is infringement on the provisions of 'Transfer Act 2005'

much less to cause serious prejudice to a Government servant or deprivation of legally vested right.

15. **As to Ground No.(iii) :-**

True, in terms of Section 6 of 'Transfer Act 2005', the Applicant being Group 'B' Officer, the Minister Incharge in consultation with Secretary of the concerned Department is the competent transferring authority for general transfer. However, in the present case, the Applicant is transferred by Respondent No.1 – Director, Accounts and Treasuries to whom powers of transfer were delegated. By issuance of G.R. dated 30.05.2015, the Government in Finance Department delegated powers of general transfers of Group 'B' Officers to Respondent No.1 – Director, Accounts & Treasuries.

16. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of G.R. dated 30.05.2015 *inter-alia* contending that no such delegation of powers is permissible. He further sought to assail the impugned order of transfer on the ground that there is no publication of G.R. dated 30.05.20-15, as contemplated under Section 7 of 'Transfer Act 2005'.

17. At this juncture, it would be apposite to reproduce Section 6 as well as 7 of 'Transfer Act 2005' for ready reference which is as under :-

**“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 Services, 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	Minister-in-charge

Group "A" having pay-scales less than Rs.10,650-15,850 and all Officers in Group "B".	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.

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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 purpose of this Act prepare and pubic 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."

18. True, as per Table to Section 6, the Minister Incharge in consultation with Secretary of the concerned Department is competent transferring authority for general transfer. But it should not be forgotten that, as per 2<sup>nd</sup> proviso, the competent transferring authority is empowered to delegate its power under this Section to any of its subordinate authority by general or special order. As such, the delegation of power by a competent transferring authority is specially provided in law and it is by virtue of that source of power, the Government delegated the powers of general transfer to Respondent No.1. Needless to mention that where law provides for delegation of powers to some authority and by G.R./special order, the authority to whom powers are delegated can exercise all the powers of the said authority unless it is shown that delegation of powers is unauthorized or delegatee authority has exceeded its power. Whereas, in the present case, it is not so.

19. The learned Advocate for the Applicant, however, tried to bolster-up his contention in reference to the Judgment delivered by this Tribunal in **O.A.No.444/2017 (Harishchandra S. Jadhav Vs. State of Maharashtra) decided with O.A.No.446/2017 by common Judgment dated 28.07.2017**. The perusal of Judgment reveals that the transfer orders impugned in these O.As were mid-term and mid-tenure transfers of Naib-Tahasildars were transferred by Divisional Commissioner on the strength of G.R. of delegation of power dated 23.06.2016. Therefore, in fact situation, the transfer orders were quashed on the ground that for mid-tenure transfer of Naib-Tahasildars, the competent authority is Hon'ble Chief Minister and Divisional Commissioner is not competent to transfer Naib-Tahasildars mid-term and mid-tenure. As such, the facts are quite distinguishable and this Judgment is of little assistance to the Applicant. In the present case, by G.R. dated 30.05.2015, what was delegated was the powers of general transfers to Respondent No.1 and not powers of mid-term and mid-tenure transfers. I, therefore, see no illegality in the delegation of powers of general transfers to Respondent No.1. Indeed, it is in consonance with second proviso of Section 6 of 'Transfer Act 2005'.

20. As regard non-compliance of publication of G.R, material to note that Section 7 speaks about preparation and publication of list of Heads of Departments and Regional Heads of the Department for transfer of Group 'C' and Group 'D' employees. Whereas, in the present case, for Group 'B' Officers, the Minister Incharge in consultation with Secretary of concerned Department is the competent authority and the powers are delegated to Respondent No.1 by G.R. dated 30.05.2015. It is rightly pointed out by learned CPO that the G.R. dated 30.05.2015 is already notified and published in website of Government of Maharashtra, as specifically mentioned in G.R. dated 30.05.2015. I, therefore, see no substance in the submission made by the learned Advocate for the Applicant.

21. **As to Ground No.(iv) :-**

The learned Advocate for the Applicant vehemently urged that the Applicant is transferred on unsubstantiated complaint, and therefore, it being punitive, bad in law liable to be quashed. In this behalf, he referred to the decision of Hon'ble Supreme Court in **(2009) 2 SCC 592 [Somesh Tiwari Vs. Union of India]** wherein it has been held that where order of transfer is based in lieu of punishment, the same is liable to be set aside. It was the case of transfer of an employee on the basis of non-existent facts, which was held malice in law and consequently, transfer order was quashed. Reference was also made to the decision of **Writ Petition No.7960/2011 [Harish Baijal Vs. State of Maharashtra] decided by Hon'ble Bombay High Court on 21<sup>st</sup> September, 2011** where Petitioner was transferred cutting short his three years' normal tenure on account of alleged complaints. The Hon'ble High Court held that if order of transfer suffers from malice and has been issuing by way of victimization or by way of penal action, then Court would be justified in setting aside such transfer orders. Reference was also made to a decision of Hon'ble Bombay High Court in **Writ Petition No.9781/2014 [State of Maharashtra Vs. Padmashree Bainade]** wherein mid-term and mid-tenure transfer having found punitive was quashed and set aside, since principles of natural justice were not followed.

22. There could be no dispute about settled principles of law enunciated in the aforesaid decisions. However, in the present case, we are not dealing with the matter of mid-term or mid-tenure transfer, but it is a case of transfer on completion of normal tenure. Only because extension was denied due to complaints that *ipso-facto* cannot be construed as a punitive transfer. It is only in case where transfer is made in lieu of punishment before completion of tenure provided in law and transfer is found unsubstantiated or by way of victimization or in colourable exercise of powers, in that event, transfers could be interdicted by the Tribunal, since it attracts principles of malice in law.

Therefore, all these decisions referred by the learned Advocate for the Applicant are hardly of any help to him.

23. Insofar as nature of complaints are concerned, the perusal of record reveals that one Smt. Bhatkar, Assistant Accounts Officer made complaint dated 25.03.2021 addressed to Respondent No.1 alleging harassment and insulting treatment by the Applicant. In complaint, she had given some instances stating that it has become impossible for her to work in the Office and she is constantly under pressure. One another employee Smt. Anita Jamne, Assistant Accounts Officer also lodged complaints dated 22.02.2021 and 23.02.2021 alleging harassment and mental torture by the Applicant. It is on this background, the Joint Director, Directorate of Accounts and Treasuries Smt. Smita Kulkarni forwarded letter dated 05.04.2021 to Commissioner, Maharashtra State Lottery invited his remarks on complaints, so that further action for transfer of Applicant could be taken. True, no further report or remark was submitted by the Commissioner, Maharashtra State Lottery as asked for. However, mere non-forwarding of remark or inaction on the part of said authority is hardly of any significance much less to render the impugned transfer order illegal.

24. Notably, even in 2020, the Deputy Director, Maharashtra State Lottery by letter dated 14.02.2020 has pointed out certain serious discrepancies in the performance of the Applicant and sent proposal to Commissioner for transfer of the Applicant. However, in 2020, no such step for transfer of the Applicant was taken, since she was not due for transfer. It cannot be construed that Applicant was given clean chit only because she was not transferred immediately in 2020. Apart, earlier in 2019, the Deputy Director issued Show Cause Notice to the Applicant on 30.11.2019 noticing serious irregularities in her functioning and reply given by her found not satisfactory, as seen from record tendered by the learned CPO.

25. In any event, this being a case of general transfer of a Government servant having completed normal tenure by no stretch of imagination, it can be termed as punitive transfer.

26. At this juncture, it would be apposite to refer the decision of Hon'ble High Court in **V.B. Gadekar, Deputy Engineer Vs. MHADA : 2007 (6) BOM CR 579** wherein it has been held as follows :-

*“Ordinarily, orders of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the Administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the orders of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the Court would decline to interfere in such matter. The transfer could be due to exigencies of service or due to administrative reasons. The Petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or is a patent arbitrary exercise of power.”*

27. Reference of the decision of Hon'ble Supreme Court in **(2004) 4 SCC 245 (Union of India & Ors. Vs. Sri Janardhan Debanath & Ors.)** is also inevitable, wherein it has been held as under :-

*“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”*

28. Suffice to say, in view of principles laid down in the aforesaid authorities unless transfer order is shown in contravention of express

provision of law or *malafide*, the Tribunal should decline to interfere in the transfers which are made due to exigencies of service, particularly when, it is on completion of normal tenure.

29. **As to Ground No.(v) :-**

The learned Advocate for the Applicant further sought to assail the illegality of impugned transfer order on the ground of bad composition of Civil Services Board. He has invited attention to G.R. dated 31.01.2014 whereby Government has constituted CSB-1 and CSB-2 for vetting transfer of Government servant in view of decision of Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** wherein directions were issued to constitute CSB for vetting service related proposals of Government servants. As per G.R. dated 31.01.2014, the CSB No.1 is constituted for transfer, posting of Government servants falling in Group 'A' and Group 'B' (Gazetted Government Officers) headed by Additional Chief Secretary/Principal Secretary or Secretary of concerned Administrative Department. Whereas, CSB No.2 has been constituted for the transfer of Group 'B; (non-gazetted) and Group 'C' Government servants headed by Divisional Head. Whereas, in the present case, the CSB which recommended for transfer of the Applicant is headed by Joint Director (Administration), Director of Accounts & Treasuries with 2 other members in the cadre of Joint Director (Administration) and Assistant Director (Administration). In this behalf, the Respondents have placed on record certain correspondence exchanged between Respondent No.1 and Government. By letter dated 20.05.2016 (Page No.217 of Paper Book), the Finance Department informed Director, Accounts and Treasuries to constitute CSB headed by Joint Director at his level. True, that letter pertains to transfers of 2016. However, the fact remains that it is in pursuance of the said letter, the Director, Accounts and Treasuries by order dated 05.11.2018 constituted CSB for transfer of Group 'B' Gazetted Government Officer serving under Finance Department headed by Joint Director (Administration) with Member Joint Director (Administration)

and Assistant Director (Administration). Accordingly, the proposal of transfer of the Applicant was placed before the CSB headed by Joint Director (Administration) Smt. Smita Kulkarni and noting the complaints against the Applicant, her transfer was proposed, since she was due for transfer.

30. Needless to mention that CSB was constituted to examine the proposals of transfer, posting of the Government servants, so as to check the arbitrariness in the matter of posting and transfer of the Government servants. It goes without saying that the recommendation of CSB are not binding upon the executive and ultimate decision of transfer vests with the executive.

31. Since powers of transfer were delegated to Director, obviously, the members of CSB ought to be below the rank of Director. It is in that context, in terms of Government letter, the Director, Accounts and Treasuries has constituted CSB which recommended the transfer of the Applicant. As such, I see no such illegality much less fatal to render impugned transfer order illegal.

32. The totality of aforesaid discussion and law and facts leads me to conclude that there is no contravention of any express provision of law or malice in the impugned action of transfer and challenge to the transfer is devoid of merit. The grounds raised to challenge hold no water. The O.A. is, therefore, deserves to be dismissed. Hence, the order.

### **ORDER**

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 23.11.2021

Dictation taken by :

S.K. Wamanse.

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