

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 607 OF 2016

DISTRICT :Pune

Sandeep Madhukar Taru)
R/a. Army Institute of Technology,)
Alandi Raod, Dighi Hill,)
Pune-411015.)...Applicants

VERSUS

1. The Director)
Higher Technical Education,)
Maharashtra State, Mumbai.)
2. The Joint Director,)
Higher Technical Education,)
Divisional Office, Pune,)
412 E, Shivaji Nagar,)
Pune 411016.)
3. Shri D.T. Madhe)
Chargeman (wk/sp),)
Production Department,)
Government College of)
Engineering, Shivaji Nagar,)
Pune 5.)....Respondents

Shri S.S. Dere, learned Advocate for the Applicant.

Smt. Archana, B.K., learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 19.08.2016

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ORDER

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. Archana, B.K., learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, challenging his transfer by order dated 27.05.2016 to Government, Polytechnic, Solapur from the Government College of Engineering, Pune.

3. Learend Counsel for the Applicant argued that the Applicant was promoted to the post of Chargeman by order dated 26.10.2015. He belongs to NT (B) category. He has not completed his tenure of 6 years as Chargeman at Government College of Engineering, Pune. His transfer, therefore, required special reasons and approval from the immediately Superior Transferring Authority mentioned in Section 6 of the Maharashtra Government Servants Regulation of Trasnfers and Presentation of Delay in Discharge of official Duties Act, 2005 (the Transfer Act). However, the Applicant has been transferred an administrative grounds by the Respondent No.2, without taking approval from the immediately Superior Transferring Authority as required under Section 4(5) of the Transfer Act. Learned Counsel for the Applicant argued that the Respondent No.3, who has been tranferred in the place of the Applicant has also not

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completed his tenure of six years. He could not have been transferred by the Respondent No.2.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos.1 & 2 that the Applicant has been working in Pune since 3.3.1990. He has been working in Pune for more than 25 years. He was promoted as Chageman on 26.10.2015 in the Government College of Engineering, Pune. As the Applicant had been overdue for transfer he has been transferred to Solapur on the recommendations of the Civil Services Board. The Respondent No.3 has been transferred from Solapur to Pune as his request for personal reasons for transfer to Pune was considered by the Respondent No.2.

5. Learned Counsel for the Applicant stated that the Respondent No.3 was posted in Pune from 2.8.1985 to 30.6.2013. He was working in Solapur for slightly more than 3 years, and as a Group 'C' employee, not liable to be transferred before completion of six years in that post. For his transfer also, approval of immediately Superior Transferring Authority was required, which has not been taken.

6. It is seen that the minutes of the Civil Services Board are at Exhibit R-'1' (page 33 of the Paper Book). It is mentioned that the post being considered are in Group 'C'. However, it is also mentioned that under Section 4(1) (of the Transfer Act), an employee cannot be transferred unless he

has completed 3 years in a post. It seems that the C.S.B. has not considered the first proviso to Section 3(1) of the aforesaid Act which reads:

“Provided that, when such employee is from the non-recretariat 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.”

It is also seen that two out of four members of C.S.B. were not present in the meeting. The proposal of the C.S.B. was approved by the Respondent No.2. The Applicant's case is that he has not completed six years in the post of chargeman, to which was promoted on 26.10.2015. His earlier posting as A.C.Mechanic was in the solitary post, and he was not liable to be transferred out of Pune. Considering this fact, he cannot be said to have completed 6 years of his tenure.

7. This is a case, where both the Applicant and the Respondent No.3 have spent more than 25 years at Pune. Really speaking, there is nothing much to choose between them. If the earlier tenure of the Applicant in Pune is considered, he cannot claim that his transfer was mid-tenure. The Applicant has not challenged the competence of the Respondent No.2 to effect general transfers of Group ‘C’ employees. The transfer order is issued on 27.5.2016 and it is not a mid-term transfer. It is not a mid-tenure transfer order due to his continuous posting in Pune for more than 25 years. The decision to transfer him out of Pune can not be faulted. The Respondent No.3 has a somewhat better case,

as he has spent 3 years in Solapur. Considering all the facts and circumstances, I am of the opinion that this is not a fit case requiring interference by this Tribunal.

8. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-

(**RAJIV AGARWAL**)
(**VICE-CHAIRMAN**)

Date : 19.08.2016

Place : Mumbai

Dictation taken by : SBA

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