

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

DISTRICT: THANE

ORIGINAL APPLICATION No.621 of 2019

Shri Nitin G. Ghule)
Age - 33, Occ. – Superintendent of State)
Excise, Thane. O/at. 1st floor, Chendni)
Koliwada, Mithbunder Road, Thane (E),)
Mumbai 400 003.) **....Applicant**

V/s.

- 1) State of Maharashtra, through Principal)
Secretary, Home Department, Home)
Department, Mantralaya, Mumbai 400 032.)
- 2) Smt. Snehlata Shrikar,)
Superintendent of State Excise, Sr. No.61 and)
62, Balvikas Bhavan, Godoli, Satara.) **.....Respondents**

Smt. Punam Mahajan, Advocate for Applicant

Smt. Kranti Gaikwad, Presenting Officer for the Respondent No.1.

Shri Dhakephalkar, Advocate for Respondent No.2.

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 30.08.2019.

JUDGEMENT

1. In the present Original Application, the Applicant has challenged the impugned transfer order dated 03.07.2019 whereby he is transferred from the post of Superintendent of State Excise, Thane to Superintendent of State Excise, Dhule mid-term and mid-tenure invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

Shortly stated facts are as follows:-

2. The Applicant was posted as Superintendent of State Excise, Thane by order dated 31.05.2018 and had not completed normal tenure of three years at Thane. However, by impugned transfer order dated 03.07.2019, he was transferred mid-term and mid-tenure from Superintendent of State Excise, Thane to Superintendent of State Excise, Dhule. The Applicant has challenged the impugned transfer order contending that it is not in consonance with Section 4(4)(ii) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005) and he has been displaced only to accommodate the Respondent No.2 who is posted in his place on her request. The Applicant, therefore, prayed to set aside the impugned transfer order. The Tribunal has already granted interim relief by order dated 05.07.2019 having noticed that prima-facie the impugned transfer order is not in consonance with Section 4(4)(ii) and (4(5) of 'Act 2005'.

3. Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent No.1 sought to justify the impugned transfer order contending that the same has been approved by the Hon'ble Minister as well as by the Hon'ble Chief Minister as an administrative need , and therefore, the challenge to the transfer order is without substance.

4. Whereas Shri Dhakephalkar, learned Counsel for the Respondent No.2 made feeble attempt to justify the impugned transfer order stating that it being approved by the Hon'ble Chief Minister needs no interference.

5. Though, the Respondent No.2 has filed reply opposing the application, she and her Counsel are absent when the matter was taken up for hearing. In reply, it is stated

that she had completed three years service as Superintendent, State Excise, Satara, and therefore, due for transfer. Contrary to it as per reply of the Respondent No.1, the Respondent No.2 was not due for transfer in General Transfer in the year 2019. Apart Minutes of Civil Services Board (CSB) also reveals that she had in fact requested for transfer mid-tenure, and therefore, the matter was placed before the Civil Services Board in respect of 'request transfer' of five officials including the Respondent No.2. The CSB recommended her transfer to Pune. It is explicit that Respondent No.2 was not due for transfer.

6. However, when the matter was placed before the Hon'ble Minister, names of 7 officials were inserted including the Applicant in following words :-

“ अधिका-यांची क्षेत्रीय पातळीवरील कार्ये, गुन्हे अन्वेषण, अवैध दारू विरुद्ध चालवलेली मोहिम, शासकीय वसुलीचे उद्दीष्ट गाठण्यासाठी केलेले प्रयत्न इ. बाबी लक्षात घेता खालील नमूद अधिका-यांची प्रशासकीय दृष्ट्या त्यांचे नावासमोर दर्शवलेल्या जिल्ह्यात जिल्हा अधि.रा.क.शु. या पदावर बदलीने पदस्थापना करण्यात यावी.

- १) राजेश कावळे, अधि.अकोला - अमरावती
- २) मनोहर अंचूले, अधि. धुळे - नाशिक
- ३) श्रीमती स्नेहलता श्रीधर, अधि. सातारा - अधि.ठाणे
- ४) श्री. नितीन घुले, अधि.ठाणे - अधि.धुळे
- ५) श्री.संतोष झगडे, अधि.मुंबई अप.- अधि.पुणे
- ६) श्री.मोहन वर्दे, अधि.नंदूरबार - अधि.मुंबई उपनगर
- ७) श्री.सी.बी.राजपूर, अधि.नाशिक - अधि.मुंबई शहर”

7. Thus, it is explicit that neither the Applicant was due for transfer nor his name figured before the CSB. It is at the level of the Hon'ble Minister, the changes were made without referring the matter to CSB. True, the CSB is recommendatory authority and final decision rest with the executive. However, the facts remain that the Applicant's transfer issue was not at all under consideration of the CSB. Needless to mention that the proposal for transfer by the CSB is mandatory in view of the guidelines in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732** and policy

of Government of Maharashtra adopted through G.R. dated 31.01.2014 in pursuance of the directions given by the Hon'ble Supreme Court. However, in the present case, there is complete disregard to the procedure laid down by the Hon'ble Supreme Court in T.S.R. Subramanian' case as well as instructions containing in G.R. dated 31.01.2014. One can understand the situation if the CSB make recommendation for transfer of the employee at place 'A' but the same is changed by executive at place 'B' and in that event, it may not be interfered with. However, in the present matter as the Applicant was not at all due for transfer, there was no question of figuring his name before the CSB. It is only at the level of Hon'ble Minister only to accommodate the Respondent No.2, the order was passed to transfer the Applicant by displacing him mid tenure from Thane to Dhule.

8. It is, thus, obvious and crystal clear from the Minutes of the CSB and note from the file that only to accommodate the Respondent No.2, the Applicant is displaced from his present post. Needless to mention that the Applicant being not due for transfer, there has to be compliance of Section 4(4)(ii) and 4(5) of the 'Act 2005' and there should be special reasons for such mid-term and mid-tenure transfer. However, no such special reason is forthcoming.

9. The scheme of 'Act 2005' is as follows:-

Sub-section (1) of Section 4 of the Act emphatically provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (2) requires a competent authority to prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year. Sub-section (3) requires that the transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by

the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be. Proviso thereto requires that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary. Sub-section (4) mandates that the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. Proviso to Sub-section (4) permits a transfer to be made any time in the year in the circumstances stated therein. Sub-clause (i) thereof permits such a transfer to be made at any time in a year to a newly created posts or to the posts which become vacant due to retirement, promotion, resignation, reversion, reinstatement, consequential vacancy on account of transfer or on return from leave. Sub-clause (ii) thereof permits such a transfer at any time where the competent authority is satisfied that the transfer is essential due to exceptional circumstances or special reasons, after recording the same in writing and with the prior approval of the next higher authority. Sub-section (5) of Section 4, which begins with a non obstante clause, permits the competent authority, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, to transfer a Government servant before completion of his tenure of post.

10. Suffice to say, for mid-term and mid-tenure transfer as contemplated under Section 4(5) of 'Act 2005', there has to be exceptional circumstance and for such transfer the Competent Authority is required to record special reasons for the same. However, in the present case, no such special reasons are forthcoming. On the contrary, it is manifest that the Applicant has been transferred only to accommodate the Respondent No.2 in blatant violation of Section 4(5) of 'Act 2005'.

11. True, the transfer has been approved by the Hon'ble Chief Minister but mere approval will not legalize the impugned transfer order for the reasons stated above. No special case or exceptional circumstance or administrative exigency is made out to displace the Applicant from his present post. On the contrary, the record clearly exhibits that only to oblige and accommodate the Respondent No.2, the Applicant was displaced mid-term and mid-tenure without recording any reasons much less special reasons.

12. In view of above, I have no hesitation to conclude that the impugned order is unsustainable in law and deserves to be set aside. Hence the following order.

ORDER

- (A) Original Applications is allowed.
- (B) Impugned transfer order dated 03.07.2019 is quashed and set aside
- (C) Interim relief passed by this Tribunal on 05.07.2019 stands confirmed.
- (D) No order as to costs.

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

Place : Mumbai
Date : 30.08.2019
Dictation taken by : V.S. Mane
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