

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.633 OF 2019

Dr. Anna Balajirao Marakwar)
Age : 46 years, working as Livestock Devlp.)
Officer, Class -I, Deonar Abattoir, Gowandi,)
Mumbai 43.)
R/at Him-Sagar C. H. S. Ltd., Section 19, Nerul)
(E), Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Principal Secretary, Animal Husbandry,)
Dairy Development & Fisheries Dept.)
(Animal Husbandry), Mantralaya,)
Mumbai 400 032.)
2. Dr. Prajkta Vilas Vaidya, Livestock)
Development Officer (Technical),)
Zilla Parishad, Thane.)...**Respondents**

Shri Arvind V. Bandiwadekar , Advocate for Applicant.

Shri A. J. Chougule, Presenting Officer for Respondent No.1

Shri A.G. Gavale holding for Dr. Gunratan Sadavarte, Advocate for Respondent No.2.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.03.2020

JUDGMENT

1. The Applicant has challenged the transfer order dated 04.07.2019 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the O.A. are as follows:-

The Applicant was serving as Livestock Development Officer, Class-I, Deonar Abattoir, Govandi, Gowandi, Mumbai. He was due for general transfer of 2019. Earlier by order dated 31.05.2019, the Applicant

was transferred on the post of Livestock Development Officer, Rayata, Tal. Kalyan, Dist. Thane. However, the said order was not implemented and cancelled by the Government at their own. Subsequently, the Government had issued another order on 04.07.2019 whereby the Applicant was transferred to TMVP Badlapur, Tal. Badlapur, Dist. Thane. By the same order Respondent No.2 was transferred in the place of Applicant at Deonar Abattoir, Mumbai. The Applicant has challenged the transfer order dated 04.07.2019 contending that it is mid-tenure transfer without compliance of mandatory requirement of Section 4(4)(ii) 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 secondly, bad in law for want of fresh recommendation by Civil Services Board (CSB).

3. When the matter was taken up for admission, on perusal of file tendered by learned P.O., the Tribunal has granted interim relief on 09.07.2019 and transfer order dated 04.07.2019 was stayed having found that there is no approval of Hon'ble Chief Minister and absence of approval of CSB. The Tribunal granted interim relief in this O.A. as well as connected OAs arising from common transfer order dated 04.07.2019.

4. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant, Shri A. J. Chougule, learned Presenting Officer for Respondent No.1 and Shri A.G. Gavale holding for Dr. Gunratan Sadavarte, learned Counsel for the Respondent No.2.

5. At the very outset, it needs to be stated that while considering the issue of interim relief, the Tribunal has passed reasoned order having noticed the absence of approval of the Hon'ble Chief Minister and approval of CSB to the transfers implemented by order dated 04.07.2019. There is no change in factual position.

6. Learned P.O. fairly concedes that before issuance of transfer order dated 04.07.2019, the matter was not placed before CSB afresh. He further fairly concedes that there is no approval of Hon'ble Chief Minister to the transfer order dated 04.07.2019. This being the position, there is no reason as to why interim relief should not be made absolute.

7. Thus what transpires from O.A. and on hearing of learned Counsel for the Applicant that initially in view of general transfer order of 2019, the Government had passed the order on 31.05.2019 (Page No.35 of PB) whereby the Applicant was transferred to Rayata, Tal. Kalayan, Dist. Thane. However, that transfer order was not implemented and it was kept in abeyance. Subsequently, the Government came with another order on 04.07.2019 whereby earlier posting given to the Applicant as well as other Veterinary Livestock Officers were changed without placing the matter before CSB afresh and secondly without approval of the Hon'ble Chief Minister.

8. In view of above, small question posed for consideration is whether the impugned order dated 04.07.2019 is legal and valid and answer is in negative.

9. The perusal of provision of 'Act 2005' reveals that as per Section 4 (1) of 'Act 2005' normal tenure of the Government servant for Group -A, B and C shall be of three years and transfer of Government servant shall required to be made only once in a year in the month of April or May whereas as per Section 4(4)(ii) 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 approval of next higher authority, transfer can be effected any time in the year. In other words, where the Government

servant is required to be transferred other than in the month of April or May (General Transfer) there has to be compliance of Section 4(4)(ii) or 4(5) of 'Act 2005' as the case may be. Here, we are concerned with Section 4(4)(ii) of 'Act 2005' as the Applicant had already completed his tenure and was due for transfer in general transfer which was required to be effected in April or May of 2019. In reality, he is transferred in the month of July by order dated 04.07.2019, and therefore, it attracted rigors of Section 4(4)(ii) of 'Act 2005' which inter-alia mandates to make out exceptional circumstances or special reasons for such transfer and secondly prior approval of next higher authority is condition precedent for such transfer.

10. True, the Applicant was due for transfer and by order dated 31.05.2019 he was transferred to Rayata, Tal. Kalyan, Dist. Thane. However, the Government at his own kept the said order in abeyance without implementing the same for more than one month. Surprisingly, the Government later issued the fresh order on 04.07.2019. As such, impugned order being issued on 04.07.2019, it falls within the term 'mid-tenure' and requires compliance of Section 4(4)(ii) of 'Act 2005'. However, admittedly, the proposal of fresh transfer as implemented by order dated 04.07.2019 was not placed before CSB though mandatorily required, in terms of the judgment of Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732**. There is no denying that in pursuance of decision of the Hon'ble Supreme Court in **T.S.R. Subramanian's** case (supra), the Government had issued various Circulars for constitution of CSB and placing the matter of transfer before CSB for its recommendation. Suffice to say, earlier transfer order dated 31.05.2019 having been cancelled in its totality, it was obligatory on the part of Respondent No.1 to place the matter before CSB afresh and having not done so, the impugned transfer order is in defiance of mandatory requirement laid down by the Hon'ble Supreme Court in **T.S.R. Subramanian's** case (supra).

11. Secondly, as stated above, the transfer order dated 04.07.2019 falls in the category of mid-tenure transfer and this being so it requires compliance of Section 4(4)(ii) of 'Act 2005' which is as follows:-

“4(4)(ii) : 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.”

12. As stated above, admittedly the impugned transfer order is not approved by the Hon'ble Chief Minister and it has been approved at the level of Hon'ble Minister only as if it is general transfer. Whereas in law, it amounts to mid-tenure transfer which requires recording of special reasons and prior approval of the Hon'ble Chief Minister being next higher authority of Minister as contemplated under Section 6 of 'Act 2005' which is completely missing.

13. The totality of the aforesaid discussion leads me to sum that impugned order dated 04.07.2019 is in defiance of the decision of Hon'ble Supreme Court in **T.S.R. Subramanian's** case as well as mandatory compliance of Section 4(4)(ii) of 'Act 2005' and interim relief, therefore, deserves to be confirmed. Needless to mention that Respondent No.1 is at liberty to consider the issue of transfer of the Applicant in ensuing general transfer of 2020 in accordance to law.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 04.07.2019 qua the Applicant is quashed and set aside.
- (C) Interim relief granted by the Tribunal on 09.07.2019 is made absolute.
- (D) No order as to cost.

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

