

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.639 OF 2020**

**DISTRICT : SATARA**

Shri Suhas Hindurao Pawar. )  
Age : 39 Yrs., Occu.: Additional Treasury )  
Officer at Treasury Office, Satara and )  
Residing at Shrikrushna Jaimalhar CHS, )  
Khed, Satara. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Finance Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Director. )  
Finance Department, Directorate of )  
Accounts & Treasuries, Mumbai )  
Port Trust, Thakarsi House, )  
3<sup>rd</sup> Floor, J.N. Heredia road, )  
Ballard Estate, Mumbai – 400 001. )
3. Mr. Yogesh Suresh Karanjekar. )  
Additional Treasury Officer, )  
Treasury Office, Satara. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents 1 & 2.**

**Mr. U.V. Bhosle, Advocate for Respondent No.3.**

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

**DATE : 13.08.2021**

## **JUDGMENT**

1. The Applicant has challenged the transfer order dated 7<sup>th</sup> October, 2020 issued by Government alleging that it is in contravention of 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) invoking Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was working as Audit Officer, Zilla Parishad, Satara and due for general transfers of 2020. Therefore, the Respondent No.2 – Director, Finance Department transferred the Applicant as Additonal Treasury Officer, Satara on the vacant post previously held by Smt. S.D. Patil. Accordingly, the Applicant joined in Treasury Office, Satara. However, the Government later by order dated 07.10.2020 modified the order dated 10.08.2020 issued by Director, Finance Department thereby making certain modification and posted the Applicant as Additional Treasury Officer (Computer), Treasury Office, Satara. By the same order, the Respondent No.3 is posted as Additional Treasury Officer (Audit), Treasury Office, Satara. This order dated 7<sup>th</sup> October, 2020 is challenged by the Applicant in the present O.A. *inter-alia* contending that it amounts to mid-term and mid-tenure transfer in contravention of Section 4(5) of 'Transfer Act 2005' since no such case of administrative exigency for modification of posting has made out.

3. The Respondent Nos.1 & 2 resisted the O.A. *inter-alia* contending that the impugned posting order dated 07.10.2020 is not transfer order, but it is posting order giving specific posting as Additional Treasury Officer (Computer) to the Applicant and giving posting to Respondent No.3 as Additional Treasure Officer (Audit). They further contend that both posts i.e. Audit and Computer are in same Office viz. Treasury

Office, Satara and there is no such prejudice or inconvenience of any kind to the Applicant.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to contend that after the initial posting of the Applicant as Additional Treasury Officer, Satara by order dated 10.08.2020, there was no reason to change his post, but only to accommodate Respondent No.3, the Government has passed order dated 07.10.2020 without compliance of Section 4(5) of 'Transfer Act 2005'. He tried to emphasize that this change of posting is made only to accommodate Respondent No.3, that too, on the recommendation of Hon'ble Minister, but there being no such special case for mid-term and mid-tenure transfer, the posting order dated 07.10.2020 is unsustainable in law. He has further pointed out that there is no such approval of Civil Service Board for modified posting order dated 07.10.2020.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer for Respondent Nos.1 & 2 and Shri U.V. Bhosle, learned Advocate for Respondent No.3 submit that the order dated 07.10.2020 is the only clarificatory posting order giving specific posting to the Applicant as Additional Treasury Officer (Computer) and Additional Treasury Officer (Audit) to Respondent NO.3. They have further pointed out that by transfer order dated 10.08.2020, no such specific posting of Treasury Officer (Audit) was given to the Applicant and all that, he was given posting as Treasury Officer, Satara where there are 2 posts of Treasury Officer viz. Treasury Officer (Audit) and Treasury Officer (Computer). Therefore, by modified posting order dated 07.10.2020, specific assignment in particular post was given to the Applicant and Respondent No.3 and the same was approved by Hon'ble Deputy Chief Minister holding the port-folio of Cabinet Minister, Finance. On this line of submission, they submit that the posting order dated 07.10.2020 is not transfer order but specific posting assignment order in the same Office

which does not require any such compliance of Section 4(5) of 'Transfer Act 2005'.

6. In view of submissions advanced at the Bar, the question posed for consideration is whether the impugned order dated 07.08.2020 is transfer order in contravention of Section 4(5) of 'Transfer Act 2005' or it is modified order of assigning specific post.

7. In the first place, material to note that in general transfer of 2020, the Applicant was admittedly due for transfer. Indeed, he had completed 9 years at Satara at different post, as seen from the minutes of CSB. However, in general transfers of 2020, he was again accommodated in Satara itself though the post held by him is transferable inter-district as seen from Circular issued by Finance Department dated 20<sup>th</sup> April, 2018. In the said Circular, it has been clarified that maximum tenure of Treasury Officer would be six years and it can be extended in exceptional circumstances or three years more, but in any case, one should not remain in District for more than nine years. Suffice to say, the Applicant's post was transferable through State of Maharashtra, but he managed to stay in Satara for decade.

8. Be that as it may, now reverting back to transfer order dated 10.08.2020 while Applicant was due for general transfer, he was given posting on transfer as Additional Treasury Officer, Treasury Office, Satara on post vacated by Smt. S.D. Patil. The perusal of order dated 24.01.2017 reveals that Smt. S.D. Patil was posted as Additional Treasury Officer, Treasury Office, Satara. She was not given any such specific posting as Treasury Officer (Audit). Suffice to say, the post on which Applicant was transferred by order dated 10.08.2020 was Additional Treasury Officer, Treasury Office, Satara and not Additional Treasury Officer (Audit) as sought to contend by learned Advocate for the Applicant.

9. In O.A, the Applicant contends that after joining in terms of order dated 07.08.2020, he worked as Treasury Officer (Audit) but by impugned transfer order dated 07.08.2020 under the name of modification, he was given posting as Audit Officer (Computer) and it amounts to change of post and mid-tenure transfer in the eye of law. In my considered opinion, this submission is misconceived and fallacious.

10. As stated earlier, there was no such specific posting given to the Applicant as Treasury Officer (Audit) which he claims. He was posted as Additional Treasury Officer, Treasury Office, Satara without specifying port-folio of Department. As such, it appears that there are two posts of Additional Treasury Officer viz. Additional Treasury Officer (Audit) and Additional Treasury Officer (Computer) in Treasury Office, Satara. Material to note that by order dated 10.08.2020, the Applicant as well as Respondent No.3 were transferred showing their new post as Additional Treasury Officer, Treasury Office, Satara and there was no such specific assignment.

11. True, it appears that later, Respondent No.3 had requested for Additional Treasury Officer (Audit) and that time, file was placed before the Hon'ble Minister, Finance who approved the posting of Respondent No.3 as Additional Treasury Officer (Computer) and in consequent to it, the Applicant was given specific posting as Treasury Officer (Computer), Treasury Office, Satara.

12. The question of compliance of Section 4(5) of 'Transfer Act 2005' would arise where a Government servant is posted on a specific post and he is transferred mid-tenure or mid-term on account of certain administrative exigencies. It is in that event only, it requires approval of next preceding competent transferring authority as per Table of Section 6 of 'Transfer Act 2005'. Whereas, in the present case, there is no such specific posting order in the name of Applicant posting him as Additional Treasury Officer (Audit), Treasury Office, and therefore, the submission

advanced by the learned Advocate for the Applicant that Section 4(5) of 'Transfer Act 2005' attracts, is totally misplaced.

13. Suffice to say, the order dated 07.08.2020 is nothing but specific posting orders with little modification in the order dated 10<sup>th</sup> August, 2020 for allocation of Department in the same Office. This being the position, there is absolutely no prejudice of whatever kind to the applicant. Indeed, the Applicant ought to have remained satisfied that he is accommodated in Satara for more than ten years.

14. Needless to mention that the transfer is an incidence of Government service and no Government servant can claim particular post or place as a vested right. True, now the transfers are governed by the provisions of 'Transfer Act 2005' and it is not left to the whims and caprice of the executives. In transfer matter, the Tribunal should not interfere unless it is established that transfer is in contravention of express provisions of law or colourable exercise of power or malicious. In the present case, no such case is made out. All that, by order dated 07.10.2020, the Applicant is given specific Department in the same Office i.e. Treasury Office (Computer), Satara under the same designation of Additional Treasury Officer without there being any change in his other service conditions.

15. At the cost of repetition, again it needs to be reiterated that there is no such specific order of posting of the Applicant as Additional Treasury Officer (Audit), and therefore, it cannot be said that the impugned order dated 07.10.2020 is transfer order whereby he was only given the specific assignment of computer division.

16. Suffice to say, the transfer orders can be interfered only when it is found in contravention of mandatory provisions, arbitrary or *malafide*. In this behalf, it would be apposite to refer the Judgment

of Hon'ble High Court in **2008 (2) Mh.L.J. 640 (Shri V.V. Gadekar, Deputy Engineer Vs. MHADA)**, 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. The authorities concerned have made a class of persons against whom disciplinary action is contemplated. In fact, it has been stated in the reply filed by the respondents in no uncertain terms that they are taking disciplinary action in accordance with the opinion of the Vigilance Department against these Officers for irregularities committed in the special and current repairs in the transit camps all over Mumbai. If the authorities have taken a view that they need to transfer the Officers upon whom show cause notices were served and disciplinary action is contemplated that decision cannot be termed as arbitrary or mala fide. It is a decision obviously taken for administrative reasons and there is no occasion for the Court to go behind the order and examine, like an Appellate Authority, whether or not such order needs to be passed. The expressions "exceptional circumstances" or "special circumstances" have to be read ejusdem generis provided that transfer may be made any time in the year in question under the circumstances stated in those provisions. The expression "exceptional circumstances" has been explained in Black's Law Dictionary, Sixth Edition, as conditions which are out of the ordinary course of events, unusual or extraordinary circumstances. The Shorter Oxford English Dictionary on historical principles, Vol. 1 A-Markworthy explains the word "exceptional" - of the nature of or forming an exception, unusual. The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned, he should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power. In the present case, from the record before us, there are no patent mala fides or arbitrariness in exercise of power by the respondents.”*

17. The totality of aforesaid discussion leads me to sum-up that the challenge to the order dated 07.10.2020 holds no water and O.A. is liable to be dismissed. Hence, the following order.

**ORDER**

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

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

Mumbai

Date : 13.08.2021

Dictation taken by :

S.K. Wamanse.

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