

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.649 OF 2019

DISTRICT : PUNE

Dr. Sunanda M. Gawli.)
Age : 49 Yrs., presently working as)
Livestock Development Officer – Mycology)
Grade-A, Disease Investigation Section,)
Aundh, Pune 411 067 and residing at)
Roseland Residency, Pimple Saudagar,)
Pune – 411 027.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Animal Husbandry Dairy and)
Fisheries Department, M.S.,)
Mantralaya, Mumbai – 400 032.)
2. Dr. Shubhangi G. Devkar.)
Working as LDO (B.Q) Institute of)
Veterinary Biological Products,)
Pune – 411 067.)
3. Dr. Pradeep S. Todmal.)
Livestock Development Officer,)
V.D. Kinohala, P.S. Chikali, Z.P.,)
Buldhana, Buldhana.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

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

Mr. Pramod Londhe, Advocate for Respondent No.2 but absent.

Respondent No.3 served but absent.

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

DATE : 05.11.2020

JUDGMENT

1. Heard Shri D.B. Khaire, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent No.1. Respondent No.2 and his Advocate are absent when the matter is taken up today for final hearing. The Respondent No.2 had filed reply thereby contending that the transfer order dated 04.07.2019 shall be treated as 'general transfer order' and Ministry Incharge of the Department is competent to pass such transfer order. This stand taken by Respondent No.2 is totally unacceptable for the reasons to follow.

2. The issue posed for consideration in the present O.A. is whether the impugned transfer dated 4th July, 2019 is legal and valid on the anvil 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) and the answer is in emphatic negative.

3. The Applicant was working as Livestock Development Officer, Pune. By transfer order dated 04.07.2019, she was transferred from Pune to Livestock Development Officer, Dhamni, Tal. Ambegaon, District Pune. The Applicant has challenged the transfer order dated 04.07.2019 on the ground that it is in complete defiance of provisions of 'Transfer Act 2005'.

4. Shri D.B. Khaire, learned Advocate for the Applicant submits that the transfer order dated 04.07.2019 being mid-term, it has to satisfy rigor of Section 4(4)(ii) read with 4(5) of 'Transfer Act 2005'. He has pointed out that the issue of transfer was not placed before Civil Service Board (CSB) for its recommendation as contemplated in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.** and secondly, there is no prior approval of immediately preceding competent

authority. He further pointed out that no reasons are recorded to bring it within the ambit of Section 4(4)(ii) read with 4(5) of 'Transfer Act 2005'.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned transfer order contending that the Applicant was in Pune for more than 10 years, and therefore, by order dated 04.07.2019, she was transferred to Dhamni, Tal. Ambegaon in District Pune itself and there is no inconvenience or infringement of any sort of right of the Applicant.

6. At this juncture, before going ahead, it needs to be mentioned that in this O.A, the Tribunal by order dated 10.07.2019 having found absence of recommendation of Civil Service Board, absence of approval of Hon'ble Chief Minister and absence of reasons granted interim relief and transfer order dated 04.07.2019 was stayed and it was not challenged before higher forum.

7. Surprisingly, despite stay order dated 10.07.2019 knowingly and audaciously, the Applicant was again transferred by order dated 07.08.2020 from Pune to Dingore, Tal. Junnar, District Pune which was in clear defiance and contempt of the order of stay passed by this Tribunal. When this aspect was noticed by this Tribunal, having found that *ex-facie* the Respondents have committed contempt of the order passed by this Tribunal, a reference was made to the Division Bench for initiating contempt proceedings. Accordingly, the Contempt Application No.01/2020 was initiated against the Government. However, the Respondent No.1 – Principal Secretary tendered unconditional apology on Affidavit, and therefore, contempt was disposed of by order dated 15.10.2020.

8. In the meantime, the Government by order dated 07.08.2020 appointed Respondent No.3 – Dr. Pradeep S. Todmal in place of Applicant at Pune. Therefore, the Applicant had amended the O.A. and

has also challenged the order dated 07.08.2020 which was passed during the pendency of the O.A.

9. The learned P.O. on the basis of record fairly concedes that the matter was not placed before the Civil Service Board nor there is approval of Hon'ble Chief Minister to the transfer order dated 04.07.2019. Today also, he was asked to produce record showing the approval of CSB and the approval of Hon'ble Chief Minister, if any, but he was not able to produce the same. Indeed, this aspect has been dealt with by this Tribunal while granting interim relief by order dated 10.09.2019.

10. Suffice to say, neither the matter was placed before the CSB as mandated by Hon'ble Supreme Court in **T.S.R. Subramanian's** case nor there is approval of Hon'ble Chief Minister to the transfer order dated 04.07.2019. *Ex-facis*, the transfer order dated 04.07.2019 has been issued treating it as general transfer order without bothering the compliance of provisions of 'Transfer Act 2005'.

11. 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 require 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) read with 4(5) of 'Act of 2005' as the case may be. Here, we are concerned with Section 4(4)(ii) of 'Act of 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 attracts rigor of Section 4(4)(ii) of 'Act of 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 which is completely missing rather ignored and trampled upon.

12. It is obvious that the transfer order dated 04.07.2019 was treated as a general transfer whereby 99 officials were transferred without assigning any reason or making out a special case as mandated under the provisions of 'Act of 2005'. Indeed, near about 40 O.As were filed in this Tribunal challenging common transfer order dated 04.07.2019 and in almost all mates, the interim relief was granted having found that *ex-facis* transfer orders are illegal. Later, the Government in its face saving exercise, recalled, having realized the mistake, those transfer orders by adjusting the transferred employees on other places as per the choice which was called afresh and accordingly, those O.As were disposed of. But in one O.A. i.e. O.A.633/2019 (Dr. Anna Marakwas Vs. State of Mahashtra), it was decided on merit and by order dated 02.03.2020, the O.A. was allowed and on the similar line, this O.A. also deserves to be allowed. Suffice to say, the impugned transfer order dated 04.07.2019 is in total defiance and contravention of mandatory requirement of Section 4(4)(2) read with 4(5) of 'Act of 2005'. Only because the Applicant was at Pune for longer period, that would not justify the Government to transfer him mid-term without following due process of law.

13. This being the position, the transfer order dated 07.08.2020 passed during the pendency of O.A. whereby attempt was made to post Respondent No.3 in place of Applicant being in clear contempt of the order passed by this Tribunal, it must be quashed. The Government should not have ventured to tinker with the orders passed by this Tribunal and should have refrain itself from passing any such order during the validity of stay order granted by this Tribunal. True, in Contempt Application No.01.2020, no further action regarding contempt

was taken, but it should not be forgotten that it was on unconditional apology, the contempt proceedings were closed. Be that as it may, the fact remains that the subsequent transfer order dated 07.08.2020 being passed during the subsistence of stay order of this Tribunal, it too, deserves to be quashed, so as to maintain the rule of law and majesty of the Court. Such illegal order passed during the pendency of O.A, particularly, despite stay order of the Tribunal should not vest any right in favour of Respondent No.3. As such, the subsequent transfer order dated 07.08.2020 is also liable to be quashed to give effect to the relief claimed by the Applicant in the present O.A. Once transfer order dated 04.07.2019 is quashed, the Applicant is liable to be continued on the same post who is illegally displaced by posting of Respondent No.3 by order dated 07.08.2020.

14. The totality of aforesaid discussion leads me to conclude that the impugned transfer orders dated 04.07.2019 as well as 07.08.2020 are liable to be quashed. As stated above, the Respondent No.1 tried to play with the orders passed by this Tribunal and despite stay, transferred the Applicant during the pendency of O.A. The Respondent No.1 has no regard or sanctity for the orders passed by this Tribunal and this tendency needs to be deprecated and curbed. I am, therefore, inclined to allow the O.A. with cost. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 04.07.2019 as well as 07.08.2020 are quashed and set aside.
- (C) The Applicant be reposted at her original posting at Pune within two weeks from today.

(D) The Respondent No.1 shall pay cost of Rs.10,000/- to the Applicant as a cost of this litigation.

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

Mumbai

Date : 05.11.2020

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\November, 2020\O.A.649.19.w.11.2020.Transfer.doc

Uploaded on