

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.652 OF 2021

**DISTRICT: PUNE
SUBJECT: TRANSFER**

Smt. Jayshree Mahesh Kawade)
Age 46 years, working as Circle Officer,)
R/at Golden Palm Building, Flat No.704, A wing,)
Moshi, Pimpri Chinchwad, Pune.)... **Applicant**

Versus

- 1) The State of Maharashtra, through Secretary,)
Forest (Revenue & Forest Dept), Mantralaya,)
Mumbai-32.)
- 2) The Divisional Commissioner, Vidhan Bhavan)
Poona Club Amphitheater, Council, Bund)
Garden Rd. Camp, Pune 411001.)
- 3) The Collector, Collector Office (Revenue Branch))
A wing, 2nd floor, Pune.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 20.10.2021.

JUDGMENT

The Applicant has challenged the transfer order dated 26.08.2021 whereby she is transferred from the post of Circle Officer, Bhosari, Pimpri-Chinchwad Tahsil Office, Tal. Haweli, Dist. Pune to the post of Awal Karkoon, in the office of Deputy Collector, Land Acquisition Office No.1, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant is serving in the cadre of Awal Karkoon. By order dated 31.05.2019, the Collector transferred her to the post of Circle Officer, Bhosari, Pimpri – Chinchwad Tahsil Office, Tal. Haweli, Dist. Pune from Circle Officer, Land Records, Bhor situated at Pune. She being Class-C employee entitled for six years tenure. However, abruptly the Collector by order dated 26.08.2021 transferred her from Bhosari to the office of Deputy Collector, Land Acquisition Office, Pune on the ground of initiation of D.E. by charge sheet dated 08.02.2021 for deficiencies in her performance noted in inspection with approval of the Divisional Commissioner invoking 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'). The Applicant has challenged this transfer order *inter-alia* contending that it is bad in law for want of placing the matter before the Civil Services Board and secondly for want of approval of next higher authority namely Minister in charge of the department as required under the provisions of 'Act 2005'.

3. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

4. Indisputably, the Applicant was posted at Bhosari by order dated 31.05.2019. She being Group-C employee is entitled for six years tenure as per the proviso to Section 3 of 'Act 2005'. However, by impugned order dated 26.08.2021, she is transferred mid-term and mid-tenure. In view of this admitted position, the question posed as to whether the impugned transfer order is legal and valid on the touchstone of provisions of 'Act 2005' and the answer is in negative.

5. True, the transfer is an incident of Government service and a Government servants have no vested right to claim a particular post or particular period. However, now the transfers are governed, regulated

and controlled by the provisions of 'Act 2005' which ensures minimum tenure of a Government servant at a post. Since the Applicant was posted at Bhosari by order dated 31.05.2019, she was entitled to six years tenure. Though a Government servant is entitled to normal tenure of three or six years as a case may be, exceptions are carved out under Section 4 (4)(ii) and 4(5) of 'Act 2005' where mid-term and mid-tenure transfer is permissible in special case which requires recording of reasons in writing and approval of immediately superior transferring authority.

6. In this behalf, Section 4(4) of 'Act 2005' is material which is as follows:-

“4.(4) *The transfers of Government servants shall ordinarily be made only once in a year in the month of April or May :*

Provided that, transfer may be made any time in the year in the circumstances as specified below, namely :-

- (i) *to the newly created post 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 ;*
- (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.*

7. Here, Section 4(5) of 'Act 2005' is relevant which is as under:-

“4(5) : *Notwithstanding anything contained in Section 3 of this Section, the competent authority may, 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, transfer a Government servant before completion of his tenure of post.”*

8. Section 6 of 'Transfer Act 2005' is as follows :-

“6. *The Government servants specified in column (1) of the table hereunder may be transferred by the Transferring Authority specified against such Government servants in column (2) of the table.*

Groups of Government Servants (1)	Competent Transferring (2)
(a) Officers of All India Services, all Officers of State Services in Group "A" having pay-scale of Rs.10,650-15,850 and above.	Chief Minister
(b) All Officers of State Services in Group "A" having pay-scales less than Rs.10,650-15,850 and all Officers in "B".	Minister-in-charge in consultation with Secretaries of the Group concerned departments.
(c) All (Non-Gazetted employees in Group "B" And "C").	Heads of Departments
(d) All employees in Group "D".	Regional Heads of Departments

Provided that, in respect of officers in entry (b) in the table working at the Divisional or District level, the Divisional Head shall be competent to transfer such officers within the Division; and the District Head shall be competent to transfer such officers within the District :

Provided further that, the Competent Transferring Authority specified in the table may, by general or special order, delegate its powers under this section to any of its subordinate authority."

9. It is explicit from the aforesaid provisions that Section 4(4) (ii) of 'Act 2005' and Section 4(5) of 'Act 2005' operates in different situation and there is material difference between transfers under Section 4(4)(ii) and transfers under Section 4(5) of 'Act 2005'.

10. Here, perusal of impugned order reveals that Collector has invoked Section 4(4)(ii) of 'Act 2005'. Whereas, learned Counsel for the Applicant submits that the Applicant having not completed her normal tenure, there has to be compliance of Section 4(5) of 'Act 2005' and Section 4(4)(ii) as invoked by the Collector is totally erroneous. She has pointed out that Section 4(4) (ii) of 'Act 2005' applies where a Government servant has completed her normal tenure but transferred other than in general transfer in that event only Section 4(4)(ii) would attract.

Whereas, in the present case, the Applicant having not completed normal tenure, it is a case of mid-tenure transfer attracting Section 4(5) of 'Act 2005'. I find merit in her submission.

11. It is explicit from the scheme of the Act that Section 4(4)(ii) applies for mid-term transfer i.e. transfer of a Government servant who has completed normal tenure but transferred other than in the month of April or May where transfer is necessitated in situation covered under Rule 4(4)(i) or 4(4)(ii) of 'Act 2005'. True, the Collector has invoked Section 4(4)(ii) where the transfer is permissible by approval of next higher authority in hierarchy but it applies only where a concerned Government servant has completed normal tenure. Whereas in the present case, the Applicant has not completed normal tenure, and therefore, there has to be compliance of Section 4(5) of 'Act 2005'.

12. Suffice to say, the impugned transfer order does not fall within the ambit of Section 4(4)(ii) of 'Act 2005'. Now let us see, whether there is compliance of Section 4(5) of 'Act 2005'.

13. Admittedly, the Collector is head of the department in the present case. The Applicant is transferred with approval of the Divisional Commissioner as contended in Affidavit-in-Reply. However, the question is whether the Divisional Commissioner is next immediately superior authority as contemplated under Section 4(5) of 'Act 2005' so as to render the transfer order legal and valid.

14. The perusal of Section 4(5) read with Section 6 reveals that for transfer of Group – C employees, the head of the department is competent transferring authority and immediately superior authority of the head of the department is Minister in charge in consultation with Secretary of the concerned department. As such, it is explicit from Section 4(5) read with Section 6 of 'Act 2005' that Minister in charge in consultation with Secretary of the concerned department is the only competent transferring authority for mid-term/mid-tenure transfer. In the present case, admittedly, no such approval is obtained from the

Minister in charge. Here, the Applicant is transferred with the approval of Divisional Commissioner who cannot be said competent transferring authority in the eye of law.

15. Shri A. J. Chougule, learned Presenting Officer made feeble attempt on the basis of Circle dated 11.02.2015 that the Divisional Commissioner is next higher authority of Collector in hierarchy and competent for only such mid-term or mid-tenure transfer. Insofar as the Circular dated 11.02.2015 is concerned, it has been issued by G.A.D. State of Maharashtra taking note of several decisions rendered by this Tribunal by way of instructions to the departments. The Circular was issued with the object that the department should follow the provisions of law as reiterated by the Tribunal in various judgments which are noted in the Circular. Indeed, the Tribunal has frowned upon the Government for non compliance of the provisions of 'Act 2005' in the decisions which are noted in Circular dated 11.02.2015.

16. Para No.3 of the Circular which is relied by learned P.O. is as under :-

“ तीन वर्षाचा कालावधी पुर्ण नसलेल्या अधिकारी/कर्मचा-याची बदली करावयाची झाल्यास बदली प्राधिका-याने विशिष्ट कारण नमूद करणे व त्यास त्याच्या लगतच्या वरिष्ठ प्राधिका-याची सहमती घेणे आवश्यक आहे.”

17. The Circular will have to be read along with the provisions of law. The immediate superior authority referred in Para No.3 of the Circular means immediately superior transferring authority mentioned in Section 6 of the 'Act 2005' and nobody else. Needless to mention that the Circular cannot override the provisions of law and it cannot supplant the law. It is only administrative circular which cannot substitute the law. Indeed, in Circular also what is stated is the reiterated position of law and the departments were directed to follow the provisions of law. Such Circular by no stretch of imagination can be construed to override or amend the provisions of 'Act 2005'.

18. Furthermore, though the Applicant has raised specific plea about non placing of the matter before Civil Services Board, the reply filed by the Respondent is evasive. It is nowhere stated in reply that the matter was placed before the Civil Services Board neither the minutes of Civil Services Board are forthcoming. As such, on this account also the transfer order is bad in law being in contravention of the directions given by the Hon'ble Supreme Court in **T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732** which mandates the vetting of transfer orders by Civil Services Board.

19. The totality of the aforesaid discussion leads me to sum that the impugned transfer order dated 26.08.2021 is totally unsustainable being in blatant violation of provisions of 'Act 2005'. It is clearly indefensible and liable to be quashed and set aside. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 26.08.2021 is quashed and set aside.
- (C) Respondent is directed to repost the Applicant on the post from which she was transferred from within two weeks from today.
- (D) No order as to costs.

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

Place: Mumbai
Date: 20.10.2021
Dictation taken by: V.S. Mane

