

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.653 OF 2021**

**DISTRICT : PUNE**

Shri Popat Khanderao Shelar. )  
Age : 57 Yrs., Working as Sub-Divisional )  
Officer, Mutha Canal, Sub-Division, Pune )  
and residing at 29/34, Saiprasad Society, )  
Chaityananager, Dhankawadi, )  
District : Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai – 400 032. )
2. The Executive Director. )  
MKVDC, Sinchan Bhavan, )  
Baner road, Pune – 411 011. )
3. Chief Engineer (I.D), )  
Sinchan Bhavan, Mangalwar Peth, )  
Pune – 411 011. )
4. Executive Engineer. )  
Khadakwasla, Irrigation Division, )  
Pune. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 03.12.2021**

## **JUDGMENT**

1. The Applicant has challenged his mid-term and mid-tenure transfer order dated 24.08.2021 whereby he is transferred from the post of Sub-Divisional Officer, Mutha Canal Sub-Division, Pune to the Office of Chief Engineer, Special Project, Water Resources Department, Pune invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving in the cadre of Deputy Engineer in Water Resources Department, State of Maharashtra. By order dated 18.09.2019, he was posted in the present post i.e. Sub-divisional Officer, Mutha Canal Sub-Division, Pune. He is entitled to 3 years' normal tenure as ensured under the provisions 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). However, by impugned transfer order dated 24.08.2021, abruptly, he is transferred mid-term and mid-tenure to the Office of Chief Engineer, Special Project, Water Resources Department, Pune on the ground of certain complaints of his subordinates alleging harassment at the hands of Applicant. Therefore, with the recommendation of CSB, the Minister Incharge of the Department approved the proposal of the transfer of the Applicant which culminated in transfer order dated 24.08.2021, under challenge in the present O.A.

3. Mrs. Punam Mahajan, learned Advocate for the Applicant vehemently urged that the transfer order dated 24.08.2021 is in blatant violation of provisions of 'Transfer Act 2005' since admittedly, it is not approved by Hon'ble Chief Minister as a competent transferring authority in terms of Section 4(5) of 'Transfer Act 2005'. She further sought to contend that the composition of Civil Services Board (CSB) which

recommended the transfer of the Applicant is not legal and valid and the complaints of staff are motivated and in absence of detailed enquiry on the complaints and findings, the impugned transfer order is vitiated in law. She has further pointed out that the Applicant is retiring in May, 2020 and now hardly six months are left for retirement.

4. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer sought to justify the impugned transfer order *inter-alia* contending that Water Resources Department by Notification dated 25.04.2016 delegated the powers of mid-term and mid-tenure transfer to the Minister, Water Resources Department in terms of 2<sup>nd</sup> proviso to Section 6 of 'Transfer Act 2005' and being delegated authority, the Minister Incharge, Water Resources Department in view of recommendation of CSB and the complaints of subordinate staff alleging harassment, the transfer was found necessitated as a special case for smooth administration and need not be interfered.

5. In view of submissions advanced at the Bar, the question posed for consideration is whether impugned transfer order is in consonance with Section 4(5) of 'Transfer Act 2005' and sustainable in law.

6. Indisputably, the Applicant was posted in the present post as Sub-Divisional Officer, Mutha Canal Sub-Division, Pune by order dated 18.09.2019 and hardly completely two years' tenure in the present post. His normal tenure in terms of Section 3 of 'Transfer Act 2005' is three years. Furthermore, admittedly, transfer is approved at the level of Minister, Water Resources Department and not approved by the Hon'ble Chief Minister. As such, the issue of competency goes to the root of the matter.

7. True, the transfer is an incidence of service and no Government servant have vested right to stay at a particular place, since transfer falls exclusively within the domain of Government. However, now transfers are regulated and governed by the provisions of 'Transfer Act 2005' for

fair and transparent transfers of Government servants, so as to ensure normal tenure in a post. As per the scheme of 'Transfer Act 2005', the normal tenure of the Applicant is admittedly three years and on completion of three years, the transfers are required to be effected once in a year in the month of April or May. However, exception is carved out for mid-tenure transfer where as a special case, it is necessitated and it has to be done after recording reasons in writing with the prior permission of immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'. The competent transferring authorities are tabulated under Section 6 of 'Transfer Act 2005'.

8. At this juncture, it would be apposite to reproduce Section 6 of 'Transfer Act 2005', which is as under :-

**“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 Authority (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 Group “B”.	Minister-in-charge in consultation with Secretaries of the concerned departments.
(c) All employees in Group “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. Section 4(4) & 5 of ‘Transfer Act 2005’ are 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.

**(5)** Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.”

10. Mrs. Punam Mahajan, learned Advocate for the Applicant referred the decision rendered by the Tribunal recently in **O.A.No.528/2021 (Shri Dattatray Mundhe Vs. Government of Maharashtra) decided on 27.08.2021** wherein transfer effected by the authority on the basis of delegation of powers is quashed with the finding that there cannot be delegation of powers for mid-term and mid-tenure transfer and powers vest only with the authorities incorporated in Section 6 of ‘Transfer Act 2005’. In this decision, the Tribunal referred earlier decision rendered by this Tribunal in **O.A.Nos.889 and 890/2015 (Ramchandra A. Morwadkar Vs. State of Maharashtra) decided on 16.06.2016** which

was reiterated in **O.A.Nos.444 and 446 of 2017 (Harishchandra L. Jadhav Vs. State of Maharashtra) decided on 28.07.2017.**

11. In **O.A.No.528/2021** (cited supra), while quashing mid-tenure transfer effected on the basis of delegation of power, the Hon'ble Chairperson in Para No.12 held as under :-

**"12.** Considered submissions. Though under the proviso to Section 6 the power of delegation vests with the competent authority however Section 4(5) is a controlling section in the event of mid-tenure transfer, therefore when such transfer is made then the power vested with the authorities incorporated in table of Section 6, cannot be delegated. I rely on para 10 of the judgment in R.A. Morwadkar (supra) which reads as under:

*10. The impugned order dated 30.5.2015 is purportedly passed under the provisions of section 4(4)(ii) and 4(5) of the Transfer Act. As the order was passed in the month of May, (i.e. on 30.5.2015), there was no need to invoke section 4(4)(ii). However, invoking section 4(5) clearly shows that the Applicant had not completed their tenures. As per section 4(5) of the Transfer Act, such transfers can be made with the prior approval of the 'immediately superior Transferring Authority' mentioned in the table of Section 6, in special cases. Admittedly, the 'Transferring Authority' as per section 6 of the Transfer Act is 'Minister-in-charge in consultation with Secretaries of the concerned Departments'. Second proviso to section 6 reads:-*

*"Provided further that the Competent Transferring Authority specified in the table may be general or special order, delegates its power under this section to any of the subordinate authority."*

*Section 6 deals with Transferring Authority and powers to transfer employees of various categories to be exercised by such authorities. This section does not deal with transfer envisaged in section 4 of the Transfer Act, which are so to say extraordinary powers. The terms used in section 4 and 'next higher authority' and 'immediately superior Transferring Authority'. Prior approval of these authorities in writing is required in exceptional circumstances or for special reasons. However, after prior approval is given, the order issued by the Transferring Authority will be valid. Second proviso to section 6 permits delegation of powers under that section only. It cannot be enlarged to include delegation of powers of authorities mentioned in section 4(4)(ii) and 4(5), who are not the Transferring Authorities. Learned Counsel for the Applicant contended that section 4 of the Transfer Act deals with cases, where extraordinary powers are being exercised and if such powers are delegated to lower level functionaries, the very purpose of enacting the Transfer Act would be defeated. I agree with his*

*contention fully. The law does not provide for delegation of powers of the authorities under section 4(4)(ii) and 4(5) of the Act and transfer under these sections will have to be with the approval of original authorities mentioned in Table of Section 6, and not by the authorities to whom powers have been delegated, as was done by circular dated 5.12.2014. The impugned order has not been issued with the approval of Hon'ble Chief Minister as required under section 4(5) of the Transfer Act and is unsustainable."*

Thus the issue is not res integra on the ground of delegation of powers and approval of immediately superior transferring authority under Section 4(4) and 4(5) of the Transfer Act. Hence, both the orders of transfer will have to be quashed and set aside."

12. Thus, since the issue of competency and the power validity of delegation of power for mid-term and mid-tenure transfer to the authorities other than the authorities mentioned in Table of Section 6 of 'Transfer Act 2005' goes to the root of the matter, it needs to be taken up firstly.

13. It is thus explicit from the provisions of 'Transfer Act 2005' that the Applicant being admittedly Group 'A' Officer for general transfer, his competent authority is Minister Incharge in consultation with secretaries of the concerned Departments. Whereas for mid-tenure transfer, in terms of Section 4(5) of 'Transfer Act 2005', it should be with prior permission of immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'. As such, the Chief Minister is the immediately preceding competent authority for mid-tenure transfer of the Applicant.

14. Undoubtedly, as per 2<sup>nd</sup> proviso, the competent transferring authority specified in Table made by general or special order delegates its powers under this Section to any of its subordinate authority.

15. Now let us see the Notification dated 25.04.2016 issued by Water Resources Department (Page No.75 of Paper Book). As per this Notification, the powers are purportedly delegated invoking 2<sup>nd</sup> proviso of Section 6 of 'Transfer Act 2005'. The perusal of said Notification reveals that for transfer of Group 'A' officer in pay scale of Rs.15600-39100, the

powers of general transfers are delegated to Principal Secretary, Water Resources Department and powers of mid-term and mid-tenure transfers under Section 4(4) and 4(5) of 'Transfer Act 2005' are delegated to Minister Incharge of Water Resources Department. It is on the basis of this Notification issued by Water Resources Department, the Minister Incharge of Water Resources Department approved the impugned transfer order.

16. Now important question comes whether such delegation of power of mid-term and mid-tenure transfers to some other authority other than the authorities mentioned in Table of Section 6 is legal and valid. Indeed, in the decisions referred by the learned Advocate for the Applicant, the Tribunal has consistently taken a view that delegation of powers for mid-term and mid-tenure transfer to other authorities is not legal and there has to be approval of authorities only specified in Table of Section 6 for mid-term and mid-tenure of a Government servant. Significant to note that the Notification is issued by Water Resources Department which aspect has much significance in the present situation.

17. As stated above, as per Section 6, the competent transferring authority for mid-tenure transfer is admittedly Chief Minister being immediately preceding competent transferring authority above Minister Incharge of the Department. Undoubtedly, as per 2<sup>nd</sup> proviso, the competent transferring authority specified in the Table by general or special order may delegate its power under Section 6 to any of its subordinate authority. Curiously, the 2<sup>nd</sup> proviso does not speak about the delegation of powers to other subordinate authorities for mid-tenure transfer which is specifically governed and controlled by Section 4(5) of 'Transfer Act 2005'. Apart, in law, the delegation of powers to somebody else or subordinates necessarily should be by the authority in whom, such powers vests. No one can delegate it to others unless he himself possesses it. In other words, in whom powers vests as per law can only delegate its powers to subordinate authority. If the authority who has



delegated the powers which he did not possess, the question of delegation of powers would not survive and where on the basis of such deletion of power anything is done, it is *ex-facis* beyond the purview of law and clearly without jurisdiction.

18. Now turning to the Notification dated 25.04.2016, it is obvious therefrom that it has been issued by Water Resources Department whereby Minister, Water Resources Department who is competent authority for general transfers in law usurped the powers of Chief Minister purportedly delegating powers to himself. When the powers of such mid-tenure transfer vests with the Chief Minister, then obviously, delegation of powers for such mid-tenure transfers should be by the same authority i.e. Chief Minister and not by his subordinate. The Minister Incharge of the Department under such delegation thus cannot usurp the powers which vests only with Chief Minister. Suffice to say, this is a case where the Minister of Water Resources Department unilaterally usurped powers of Chief Minister under the garb of delegation of powers. This being the position, *ex-facie*, such delegation of powers by him in himself is totally bad in law. Consequently, the transfer order issued on the basis of such Notification is without jurisdiction. On this point alone, the impugned transfer order deserves to be quashed and set aside.

19. In so far as challenge to the impugned transfer order on the ground of incorrect composition of CSB is concerned, I find no substance therein in view of G.R. dated 22.08.2019 issued by Water Resources Department whereby for Deputy Engineers, CSB has been constituted headed by Chief Engineer and Joint Secretary, Water Resources Department, Mantralaya, Mumbai. In the present case, CSB headed by the said authority vetted the proposal of transfer of the Applicant. True, it is approved by circulation and it is not signed by 3<sup>rd</sup> Member. However, there is no such express bar for approval in circulation and it

being vetted by majority members, it cannot be termed illegal much less to render the impugned transfer order illegal.

20. As regard complaints, though learned Advocate for the Applicant sought to make much capital that the complaints were motivated and Applicant's ACRs being excellent, the complaints could not have been the ground for transfer, in my considered opinion, if on complaints, some enquiry is conducted and continuation of a Government servant in a particular place found unworthy, in that event, the Government is always empowered to transfer such a Government servant for smooth administration of the Department. Needless to mention, it is for the Government whether to continue a particular Government servant in a post and where administrative exigencies warrants transfer, then it cannot be questioned and Tribunal should not interfere therein on that ground. However, in the present case, since impugned transfer order is without jurisdiction, it is liable to be quashed.

21. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is bad-in-law and liable to be quashed being issued by authority who has no jurisdiction for such mid-term and mid-tenure transfers. As such, the impugned transfer order is in contravention of express provisions of 'Transfer Act 2005' and liable to be quashed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 24.08.2021 is quashed and set aside.
- (C) Interim relief granted by the Tribunal is made absolute.

(D) No order as to costs.

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

Mumbai

Date : 03.12.2021

Dictation taken by :

S.K. Wamanse.

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