

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.665 OF 2018

Shri Raju Anna Chougule,)
R/o. Plot No.19, Sant Janardan Swami)
Chowk, Ashok Nagar, Satpur, Nashik-12.)...**Applicant**

Versus

1. The Deputy Director (Information), Nasik)
In the office of the Divisional Information)
Office, having office at Ashiwini Barrack)
Nos.5 to 8 in a Campus of office of the)
Divisional Commissioner, Nashik Road,)
Nashik.)
2. Shri Ashok B. Sonawane,)
Working as Driver being transferred from)
Jalgaon to Nashik in the office of the)
Divisional Information Officer, Nashik)
In place of the Petitioner but still working)
In office of the District information officer)
Jalgaon.)
3. The Director General, Information and)
Public Relation, (M.S.) Mumbai, having)
Office at New Administrative Building,)
17th floor, Madam Cama Road, opp.)
Mantralaya, Mumbai - 400 032.)
4. The State of Maharashtra, through)
Principal Secretary, General Administration)
Department, having office Mantralaya,)
Mumbai - 400 032.) **....Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicant.
Ms. S. Suryawanshi, Presenting Officer for the Respondent No.1, 3 & 4.

CORAM : SHRI A. P. KURHEKAR, MEMBER (J)

DATE : 20.11.2018

J U D G M E N T

1. The Applicant has challenged his transfer by impugned order dated 31.05.2017 by filing this O.A. under Section 21 of the Administrative Tribunal Act, 1985.

2. Briefly stated the facts giving arise to this application are as follows :-

The Applicant has joined the Government service as a Driver, Class-C employee on 27.08.1997. At the time of impugned order dated 31.05.2017, he was working as Driver in the office of Divisional (Information) office at Nashik. By impugned transfer order dated 31.05.2017 he was transferred to Jalgaon in the office of District Information Officer in place of Respondent No.2 and Respondent No.2 was posted at his place at Nashik. The Applicant had already completed his tenure of six years at the time of impugned transfer. However, the transfer order has been challenged on the ground that transferring authority i.e. Respondent No.1 (The Deputy Director (Information), Nashik, Office of Divisional Information Office, Nashik.) was not properly notified as contemplated under Section 7 of the Maharashtra Government Servants Regulation and Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as 'Act 2005').

3. The Applicant contends that he had come across the office order dated 17.08.2007 issued by the Respondent No.4 (Principal Secretary, General Administration Department, Mantralaya, Mumbai, thereby declaring various head coming under the establishment of General Administrative Department as head of the department and regional head of the department. In this behalf, the Applicant sought to contend that though it has been purportedly issued in exercise of the powers under Section 7 of the Act, 2005, it has no sanctity in eye of law in absence of appropriate Notification in the Official Gazette.

4. The Applicant further contends that the order passed by the Respondent No.3 namely the Director General (Information) & Public Relation, Maharashtra State without making any reference of Office Order dated 17.08.2007 delegated his power of transfer to subordinate Officers as regard Group-C employees, as per Office Order dated 24.05.2017. As per Order dated 24.05.2017, the powers are delegated to Deputy Director (Information), Divisional Information Office, Nashik i.e. Respondent No.1 for issuance of transfer orders.

5. Foremost contention of the Applicant is that there being no Notification in Official Gazette as contemplated under Section 7 of the Act, 2005, the Respondent No.3 cannot act as Head of the Department and consequently, he cannot validly and legally delegate the powers of transfer of Group-C employees to Respondent No.1 i.e. Deputy Director (Information), Divisional Information Office, Nashik. The Applicant has also made representation on 25.05.2017 on health ground, but it was not considered and in his place, Respondent No.2 who had not completed his full tenure has been posted.

6. On the above pleading, the Applicant contends that the impugned transfer order dated 31.05.2017 issued by Respondent No.1 is not legal and valid for want of appropriate Notification in the Official Gazette and there is no

compliance of Section 7 of the Act, 2005. The Applicant, therefore, prayed to quash and set aside the impugned order dated 31.05.2017.

7. Respondent Nos.1, 3 and 4 have resisted the application by filing Affidavit-in-Reply *inter-alia* denying that the impugned transfer order dated 31.05.2017 suffers from any illegality. There is no denying that at the time of impugned transfer order, the Applicant had completed 6 years' tenure at Nashik and was due for transfer. The Respondents contend that by Office Order dated 17.08.2007 issued by the G.A.D., the Respondent No.3 was declared as Head of the Department and in the same Office Order, the Respondent No.1 was also notified as a competent authority to transfer the employees. The said Office Order was published on the Official Website of the Government of Maharashtra and it is in compliance of Section 7 of the Act, 2005. There is no requirement of law to notify the said list in the Official Gazette as the applicant sought to contend. Respondent No.3 being head of the department was authorized to delegate the powers of transfer of Group-C employees and accordingly, by this Office Order dated 24.05.2017, he had delegated the powers for transfer of Group-C employees to Respondent No.1 viz. the Deputy Director (Information), Divisional Information Office, Nashik. This delegation of powers are in consonance with Section 6 of the Act, 2005. The transfer of the Applicant was also recommended by Civil Services Board. Though the Respondent No.2 had not completed 6 years tenure, he was transferred to Nashik on his request on the ground of ill health and continuous treatment at Nashik. Unfortunately, the Respondent No.2 passed away on 09.03.2018 i.e. during the pendency of this proceeding in Nashik Hospital which goes to show that his request for transfer from Jalgaon to Nashik was genuine. There is urgent requirement of Driver in Jalgaon Office. Even if, there is no interim relief to the transfer order, the applicant preferred not to

join at Jalgaon. The Respondents thus denied that the transfer order suffers from any illegality or malice and prayed to dismiss the application.

1. The Applicant has filed Affidavit-in-Rejoinder reiterating the contention raised in the Original Application and further sought to contend that the contentions of Respondent Nos. 1, 3 and 4 that the Office Order dated 17.08.2007 was published on the Official Website of the Government is after thought and in any case, there being no publication in Official Gazette, the Respondent No.1 has no jurisdiction to transfer the Applicant. He further contends that the constitution of Civil Services Board is not in consonance with G.R. dated 31.01.2014 as one of the Member was not adequately qualified, and therefore, the recommendation made by the Civil Services Board is not in consonance with the direction of Hon'ble Supreme Court in the matter of ***T.S.R. Subramaniam V/s. Union of India reported in (2013)15 SCC 732.***

8. In view of the pleadings and submissions advanced at the bar, following point arises for determination.

- a) Whether the Respondent No.1 was legally authorized and competent to pass the impugned transfer order dated 31.05.2017.

Reasons

9. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Ms. S. Suryawanshi, learned Presenting Officer for the Respondents Nos.1, 3 and 4.

10. At every outset, it needs to be stated that this is not a case of mid-term or mid-tenure transfer. Admittedly, at the time of impugned order, the

Applicant had completed 6 years tenure as Driver, Group-C employee at Nashik. By impugned transfer order dated 31.05.2017, he was transferred at Jalgaon from Nashik and in his place, the Respondent No.2 was posted at Nashik. Unfortunately, during the pendency of the proceeding, the Respondent No.2 passed away on account of illness and the post of Driver at Jalgaon is still vacant as the Applicant has not joined the said post given to him by impugned order dated 31.05.2017.

11. Shri B.A. Bandiwadekar, the learned Advocate for the Applicant strenuously urged that the impugned transfer order is unsustainable in law for want of proper authorization and jurisdiction by way of Notification in the Official Gazette authorizing the Respondent No.1 as Competent Authority to transfer Group-C employees. His emphasize was on the publication of the competent transferring authority in Official Gazette from the Government. Thus, according to him, mere issuance of Office Order dated 17.08.2007 and its publication on Official Website does not satisfy the statutory requirement, and therefore, the Respondent No.3 who was declared as Head of the Office in the Office Order dated 17.08.2007 cannot delegate the powers of transfer legally and validly in favour of Respondent No.1 by mere issuance of the Office Order dated 24.05.2017. In support of his submission, he referred to certain decisions of this Tribunal.

12. Per contra, Ms. S. Suryawasnhi, the learned P.O. countered that there is no requirement of law that the names of competent transferring authorizes are required to be published in the official gazette. She, further emphasized that requirement of Section 7 of the Act, 2005 is of publication of authorities competent to make transfer and publication of website fulfill the requirement of Section 7 of the Act, 2005. She further pointed out that on the basis of order

dated 17.08.2007, the Respondent No.3 delegated his powers of transfer to Respondent No.1, which is in consonance with the provisions contained in Section 6 of the Act, 2005. As regards constitution of Civil Services Board, the learned P.O. contends that there is no such material illegality to vitiate the transfer order. During the course of oral submission, learned P.O. has also produced screenshot of website of the Government of Maharashtra (Which is marked as 'A' for identification purpose) to show that office order dated 17.08.2007 was factually published on the Website.

13. The whole controversy revolves around the powers and the authority of the Respondent No.1 in issuance of the transfer order dated 31.05.2017. At this juncture, it would be useful to reproduce sections 6 and 7 of the 'Act 2005'.

"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.

7. Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish list of the Heads of Department and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act.”

14. Thus, what is material to note that Section 7 of the Act, 2005 only speaks about the publication of list of competent authority i.e. head of the department authorizing them to make transfer within their jurisdiction. Section 7 does not provide that such list has to be published in official gazette. All that requirement is to notify the authorities competent to make transfers. In absence of any such specific and express provision that the list of the head of the department by regional head of the department should be published in the official gazette, it cannot be read in that manner as sought to contend by the learned Counsel for the applicant. It is well settled principle of law of interpretation of statute that the intention of legislature is primarily to be gathered from the words “and expression” used therein and it is contrary to the Rule of construction to substitute or add something in the provisions which is not there. Legislative “*causes omissus*” cannot be supplied by judicial interpretative process. The golden Rule is that the words of statute and terminology must be given ordinary and natural meaning without addition or substitution. Legislature always chose appropriate words to express what it intends, and therefore, it is permissible to add or read something which is not there. Suffice to say, there being no express provision in Section 7 that the list of Head of the Departments has to be published in Official Gazette, it cannot be assumed that legislature intends to notify the same in the Official Gazette. The publication in Official Gazette is only one mode of publication. But where

statute does not provide so in express words, it could be published in other suitable manner so as to known to the concerned authority and the person who would be affected thereby.

15. Learned Counsel for the applicant in support of his submission tried to seek assistance from the orders passed by this Tribunal in somewhat similar situation. He referred to the order passed in ***O.A.No.555 of 2016 (Rajesh S. Devare V/s State of Maharashtra & Ors.), decided on 26.08.2016***. It was the case of mid-term transfer by Police Establishment Board institute under Section 22(I)(2) of the Maharashtra Police Act. The constitution of the Board was found not properly constituted.

16. He further referred to the order passed in ***O.A. No.480/2011 (Rajendra V. Markad V/s Divisional Joint Registrar & Anr.), decided on 16.09.2011***. It was also the case of mid-term and there was absence of publication of list of competent authority under Section 7 of the Act, 2005. As such, there was total absence to notify competent authority and it is in that context the transfer order was quashed. In ***O.A. No.1231/2010 (Shri R. P. Jadhav & Others V/s. The Commissioner of Police, Thane), decided on 01.03.2011***, there was a mid-term transfer in absence of publication of list of head of the department. Reference was also made in ***O.A. No.421 of 2013 (Smt. Madhavi B. Bhujbal V/s. The Commissioner, Social Welfare(M.S.), Pune), decided by this Tribunal on 27.09.2013***, it was also the case of mid-term transfer and there was absence of publication list of head of the department. In ***O.A. No.243 of 2016 (Shri Suresh V. Shelar V/s. The Special Inspector General of Police, Kolhapur & Anr.), decided on 06.09.2016***, in this case the authority competent to pass transfer order were not notified and it was one of the ground to quash the transfer order. Whereas in ***O.A. No.221/2017 (Steven Patrick Joseph V/s. State of***

Maharashtra & 2 others), decided on 15.09.2017 by this Tribunal, it was a case of the transfer of Group-D employee having no fixed tenure and the transfer was based on complaint. Besides non publication of list of competent authority was also one of the grounds. The transfer was quashed mainly on the ground that complaint which is basis for transfer was not found substantiated. So far the judgment is concerned, the observation made in the judgment goes to show that there was absolutely no material on record that the list of transferring authorities was published in whatsoever manner so as to become known to those who would be affected thereby.

17. Needless to mention that the ratio of any decision must be understood in the background on the facts of that case and little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision. In the Judgments referred to above, there was no evidence of publication of competent authorities authorized to transfer the employees in any manner whatsoever and it is in that context, the observations were made that there is no publication of the list of competent authorities and this difference in the facts is distinguishing feature in the present case and it needs to be considered in view of the Judgment of Hon'ble Apex Court laying down the principle that, publication is always not essential in the Official Gazette. This aspect will be dealt with little later in detail.

18. On the other hand, the learned P.O. for the respondents also referred to judgment passed by this tribunal in **O.A.No.440/2013 (Chandrakant B. Landge V/s. The Director General & Inspector General of Police), decided on 04.03.2014 and O.A.No.455/2013 (Shri Vijay T. Ovhal V/s. Deputy Director, Health Services, Pune & Anr.), decided on 04.03.2014**. Significantly in both the judgments, the order passed by this Tribunal in O.A.No.1231/2010 (on which

reliance was placed by the learned Counsel for the Applicant as referred to above) was discussed. In these two O.As i.e. O.A. 440/2013 and 455/2013, the Tribunal referred judgments of Hon'ble Supreme Court and the Hon' ble High Court and concluded that circulation of the list of competent authorities to transfer the employees in subordinate office is sufficient publication and there is no requirement that such list should be published in the official gazette only. With these observations the challenge to the transfer order on the ground of absence of Notification in the official gazette was turned down.

19. In O.A.440/2013 and O.A.455/2013, this Tribunal referred to certain Judgments of Hon'ble Supreme Court and Hon'ble Bombay High Court and arrived at a conclusion that there is no mandatory requirement of law to publish the list of competent authorities in Official Gazette and all that, Section 7 of 'Act 2005' contemplates publication of list. Besides, Section 23 of Bombay General Clauses Act, 1904 has been also discussed in these two Judgments and it has been held that Section 23 of Bombay General clauses Act, 1904 does not make the publication of Notification in Official Gazette as a mandatory requirement and if it is not published then it will be invalid. As per Section 23 of Bombay General Clauses Act, 1904, if it is published in Gazette, the requirement of publication is satisfied, it does not debar or exclude other form of publication.

20. It would be appropriate to reproduce the observations and relevant Paragraph Nos.18, 19, 20, 21, 22, 24 and 25 from O.A.440 of 2013 and the Judgment referred therein are reproduced as follows.

“18. There are many pronouncements of the Hon'ble Supreme Court and the High Court to this effect. It is undisputed that there must be a publication of statutory rules or orders. In HARLA VERSUS STATE OF RAJASTHAN, AIR1951 SC 467: 1952 SCR 110: 1952 Cr.L.J. 54, it was laid down that while publication

is a must, mode of publication may vary. The judgment only laid down that “promulgation or publication of some reasonable sort is essential”. To quote,

“Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is: or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law, cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.”

This judgment, therefore, lays down only that “promulgation or publication of some reasonable sort is essential.” “It must be broadcast in some recognizable way, so that all men know what it is.” Further, it is also stated there must be some “customary channel” by which such knowledge can be acquired. Sending copies of the notification to all subordinate offices is publication of some reasonable sort, it is a customary channel and it is broadcast thus.

19. For “due publication” all that the subordinate law making body can or need do, would be to publish it in such a manner that the persons can, if they are interested, acquaint themselves with its contents. (**STATE OF MAHARASHTRA VERSUS M.H. GEORGE AIR 1965 SC 722**) Where mode of publication is prescribed by the statute, that mode has to be followed. Where the statute does not prescribe any mode it should be published in the usual form, for example, the official gazette.

It is pertinent to note that reference to official gazette, in the said judgment, is by way of an example and nowhere it is stated that publication therein is mandatory, without which the purpose of the legislation will be totally defeated, especially keeping in view the fact that the disputed issue pertains to a notification, contents of which the stakeholders are quite familiar, either by custom or by its publication as part of the Act in the official gazette. There is no need of invention of the wheel in this case; the wheel has already been invented and known to persons concerned.

20. In **B.K. SRINIVASAN VERSUS STATE OF KARNATAKA, AIR 1987 SC 1059: (1987) 1 SCC 658**, the Hon’ble Supreme Court observed as under:

“It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such

publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channels, namely, the Official Gazette or some other reasonable mode of publication."

The relevant part is "customarily recognized official channels, namely, the official gazette or some other reasonable mode of publication". If the statute requires publication in the official gazette, it is necessary to do so; if it is silent, it cannot be held that it is mandatory to do so.

Broadcasting the notification, thus, to all subordinate offices is a "customarily recognized channel" and it is a reasonable mode of publication. The stake holders have, thus, access and knowledge and the matter is no longer a "secret".

21. A clear statement of the law in this regard, was made by the Hon'ble Supreme Court in **COLLECTOR OF CENTRAL EXCISE VERSUS NEW TOBACCO CO., AIR 1998 SC 668**. Distinguishing **PANKAJ JAIN AGENCIES VERSUS UNION OF INDIA, AIR 1995 SC 360**, the Court held that a proper publication would mean a publication in such a manner that persons could, if they were so interested, acquaint themselves with its contents and if the publication was through a Gazette mere printing of it in the Gazette would not be enough. The Court emphasized that unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

It can be seen, therefore, that even publication per se in the gazette would not fulfill the requirement; what is important is 'knowledge' or availability. The notification under discussion, does not concern the public at large, it concerns only a section of employees in a department of the Government, who in any case are familiar as to who are regional heads, department heads etc. and their powers, by custom and by way of notification of the Transfer Act in the gazette.

22. In **CHANDRAKANT SAKHARAM KARKHANIS VERSUS STATE OF MAHARASHTRA, AIR 1977 BOM 193 (FB)**, it was held that:

"Since the power under the proviso to Art.309 is of legislative character and the rules framed thereunder are to affect Government employees in public

services, it is absolutely essential that promulgation or publication of some reasonable sort of such rules would be essential and, although no particular mode of publication is prescribed either by the proviso to Art. 309 or by any other law on the subject, it is unquestionably necessary that there should be some publication in the sense that the rules so framed, whatever form they take (e.g. a letter, memorandum, circular, order or resolution) must be made known to all persons who are likely to be affected thereby or such persons must have access to such rules. In that sense promulgation or publication of rules is essential. There is no requirement that publication should be in a particular manner viz. by publication in the Official Gazette. It has been specifically held that non-publication in the Gazette does not by itself exclude the operation of Art. 309 and the requirement of publication is satisfied where copies of the rules were marked and forwarded to all offices and Departments of the State. But public notification in some form is essential.”

24. In the whole argument to the effect that since the said notification has not been published in the official gazette, a legitimate transfer order issued by an authority is bad in law, is an underlying assumption, albeit wrong, that transfer is a only a weapon to harass employees. The authorities of the very same department must have issued hundreds of transfer orders and if all such orders are called into question or cancelled on this specious, technical ground, bonafide interests of hundreds of employees will be jeopardized leading to a chaotic situation. As a matter of fact, if a transfer order is quashed on the ground that the notification empowering an authority for transfer is not published in the gazette, hundreds of transfer orders could become illegal and liable to be cancelled and resulting governance issues would be insurmountable. The issue has to be seen, therefore, in a logical and practical perspective too. Transfer is an important administrative tool and also a welfare measure. Transfer may inconvenience to some; but it benefits many and it is a cyclical periodic process which may involve inconvenience and convenience of various degrees by rotation. Thus such a specious ground, keeping in view various pronouncements of the Hon’ble Supreme Court, cannot be allowed to defeat the propose of the Transfer Act, which basically seeks to endow a security of tenure on deserving Government servants and deny the same to undeserving persons.

25. Therefore, keeping in view the judgments of the Hon’ble Supreme Court referred to above, it is evident that a publication of the notification in the official gazette is not mandatory, and lack of publication therein cannot render the notification, ineffective or bad in law as long as the matter does not remain a “secret” and the same is widely circulated. As the Hon’ble Supreme Court states, “some sort of reasonable publication” is necessary.”

21. Thus, the conspectus of the decisions of the Hon’ble Supreme Court and Hon’ble High Court referred to above is that the publication of the list of

competent authorities in Official Gazette is not mandatory requirement and the publication of such list in other mode is permissible. All that, the requirement is the publication so that it is known to all, who would be affected thereby. This being the settled legal position, the submission advanced by the learned Advocate for the Applicant that the publication of list of competent authorities in Official Gazette is mandatory requirement is not misconceived.

22. At this juncture, it is material to note that the Applicant himself has referred to the order issued by G.A.D, State of Maharashtra dated 17.08.2007 in his petition. It is not his case that he was not aware of any such order or publication dated 17.08.2007. As such, it can be inferred that the publication of the list of competent authorities was within his knowledge. In fact, as stated above, the learned P.O. has produced screen shot of Website of State of Maharashtra to substantiate that the list was actually put on Website on 17.08.2007. Only because some other Departments have published the list under Section 7 of the concerned Head of Departments in Official Gazette, it does not mean that it was mandatory requirement of law. Some Departments might have chosen to publish the list in Official Gazette, whereas in the present case, it was published on Website. What is requirement of law under Section 7 of 'Act 2005' is the publication which is sufficiently demonstrated in the present case.

23. Thus, the record clearly spells that there was publication of Office Order issued by G.A.D. of 17.08.2007 whereby Respondent No.3 was declared Head of the Department and by virtue of it, Respondent No.3 has delegated his powers by issuing another Office Order dated 24.05.2017 exercising the powers under Section 6 of 'Act 2005'. This being the factual position, the contention raised by the learned Advocate for the Applicant that Respondent No.1 was not

competent to issue transfer order of Group 'C' employees is misconceived and not sustainable in law and facts.

24. The learned Advocate for the Applicant also referred to ***Laxman R. Vajage Vs. Collector of Bombay and Ors. reported in 2005(1) Mh.L.J. 487*** arising out of interpretation of Section 139 (2) of Bombay Prohibition Act which provides the Notification of order in the Official Gazette. However, in the present case, there is no such mandatory requirement in Section 7 of the 'Act 2005'. Therefore, this Judgment is of no assistance to the Applicant in the present set of facts.

25. The learned Advocate for the Applicant further sought to place reliance on ***Collector of Central Excise Vs. New Tobacco Co. etc. reported in AIR 1998 SC 668*** and ***M/s. Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune reported in AIR 1999 SC 844*** which in fact enunciate the principle that, mere printing of Notification in Gazette is not sufficient and it becomes effective only from the date it is made available to public. As such, the emphasize is on the publication and not on printing of the same in Official Gazette. Therefore, these Judgments are of no assistance to him in the present context.

26. Lastly, feeble attempt was made by the learned Advocate for the Applicant that the constitution of Civil Services Board is not proper in terms of G.R. dated 31.1.2014 as one of the Member of Civil Services Board was the employee holding the post of Typist. It is material to note that Civil Services Board was headed by Respondent No.1 who himself is the competent authority for issuance of transfer. Therefore, I do not think that, merely because one of the Member of Board was the employee holding the post of Typist, it would render impugned transfer order illegal. The Applicant was due for transfer

having completed normal tenure and has no right to ask for continuation on the same post forever.

27. Needless to mention that the transfer is an incidence of service which are made in exercise of administrative authority to meet the exigencies of service and unless transfer order is in contravention of the mandatory provisions or made for ulterior motive or in patent arbitrary exercise of power, the Court would decline to interfere in such matter, as held by the Hon'ble Bombay High Court in **2007(6) BomCR 579 (V.B. Gadekar, Deputy Engineer Vs. MHADA)**.

28. In view of above said discussion of law and facts, I have no hesitation to conclude that Respondent No.1 was legally competent to pass impugned order of transfer and there is no such illegality or arbitrariness or *malafide* in passing the impugned order. The transfer order is legal and valid and challenge thereto is unsustainable.

29. The upshot of above discussion needs me to conclude that, there is no merit in the O.A. and it deserves to be dismissed.

ORDER

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

Sd/-

(A.P. KURHEKAR)
MEMBER-J

Mumbai

Date: 20.11.2018

Dictation taken by:

S.K. Wamanse.