

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.680 OF 2021

DISTRICT : MUMBAI

Shri Sanjay Khemraj Rathod.)
Age : 50 Yrs., Presently working as)
Administrative Officer at Regional Mental)
Hospital, Yerawada, Pune.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
G.T. Hospital Compound, Mumbai.)
2. The Commissioner,)
Public Health Department,)
St. George Compound, Near CSMT,)
Mumbai.) **...Respondents**

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

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.02.2022

JUDGMENT

1. The challenge is to the transfer order dated 30.08.2021 whereby Applicant is transferred from the post of Administrative Officer, Regional Mental Hospital, Yerwada, Pune to Sub-District Hospital, Pandharpur, District Solapur 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 was serving as Administrative Officer, Regional Mental Hospital, Yerwada, Pune and was posted there by virtue of order dated 04.07.2018. He is entitled to 3 years' tenure in terms of Section 3 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 order dated 30.08.2021, he is transferred mid-term and mid-tenure to Sub-District Hospital, Pandharpur, District Solapur on the ground of some complaints invoking Section 4(5) of 'Transfer Act 2005'. The Applicant challenged the transfer order dated 30.08.2021 mainly on the ground that he was not due for transfer, but transferred without compliance of pre-requisites of Section 4(5) of 'Transfer Act 2005' which *inter-alia* provides for mid-tenure transfer by competent authority in special case after recording reasons in writing with the prior approval of immediately superior transferring authority as mentioned in Table below Section 6 of 'Transfer Act 2005'. However, in the present case, the Applicant is transferred by the approval of Minister Incharge of Public Health Department with reference to G.R. dated 27.08.2021, which is bad in law.

3. Shri D.B. Khaire, learned Advocate for the Applicant sought to assail the legality of transfer order dated 30.08.2021 mainly on the ground that Applicant being Group 'B' (Gazetted) Officer, the Minister Incharge is competent only for general transfers as provided in Section 6 of 'Transfer Act 2005', but present transfer being admittedly mid-tenure transfer, it requires approval of immediately superior competent transferring authority viz. Chief Minister and in absence of it, transfer order is *ex-facis* bad in law. Insofar as delegation of power by G.R. dated 27.08.2021 is concerned, he submits that there could be no such delegation of power in case of mid-tenure transfer which mandates

approval of Hon'ble Chief Minister, as contemplated under Section 4(5) read with Table below Section 6 of 'Transfer Act 2005' .

4. Per contra, learned Presenting Officer sought to defend impugned transfer order *inter-alia* contending that there were complaints about the functioning of the Applicant which were enquired into and Joint Director as well as Director, Health Services has submitted preliminary enquiry report (Page Nos.50 and 67 of Paper Book). She has pointed out that the matter was placed before Civil Services Board (CSB) which recommended for transfer of the Applicant to Pandharpur and with the approval of Minister Incharge of the Department, the Applicant is transferred. As regard competency of Minister Incharge of the Department, she submits that by G.R. dated 27.08.2021, the powers were delegated to Incharge of Public Health Department in view of second proviso to Section 6 of 'Transfer Act 2005'. On this line of submission, she pleads that transfer order is legal and valid and needs no interference.

5. Insofar as nature of complaints are concerned, the first preliminary enquiry report (Page No. 50 of P.B.) forwarded by Joint Director with forwarding letter dated 28.05.2021 pertained to some irregularities in the flag hoisting function held on Maharashtra Day wherein all that lack of coordination in between Applicant and Medical Superintendent is attributed. However, Director, Health Services, Pune on scrutiny of CC TV footage found no such irregularity in the flag hoisting function as seen from her report dated 04.06.2021 (Page No.67 of P.B.). As regard other complaints in the functioning of Applicant, in report, she found lack of coordination between Medical Superintendent and Applicant regarding administration and functioning of the Hospital. She, therefore, proposed transfer of Shri Abhijeet Fadnis, Medical Superintendent as well as Applicant. The Respondents have not placed on record anything about the action taken by Government in the matter of Dr. Abhijeet Fadnis. Be that as it may, the question is about compliance of Section 4(5) of 'Transfer Act 2005'.

6. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether impugned transfer order dated 30.08.2021 is issued by competent transferring authority, as contemplated under Section 4(5) of 'Transfer Act 2005'.

7. Indisputably, the Applicant was posted as Administrative Officer, Regional Mental Hospital, Yerwada, Pune by order dated 04.07.2018 and was not due for transfer in general transfers of 2021. In the year 2021, in view of spread of Covid-19 pandemic situation, the Government had taken decision by G.R. dated 29.07.2021 (Page No.33 of P.B.) to extend upto 09.08.2021. As such, the Government servants who have completed normal tenure of 3 years in May of 2021 (general transfers) were to be transferred upto 9th August, 2021. In other words, what was extended the deadline for issuance of transfer orders who have already completed normal tenure of 3 years in May, 2021 in which month, general transfers were required to be issued in terms of 'Transfer Act 2005'. Material to note, the Applicant has admittedly not completed 3 years' tenure in the present post in May, 2021. As such, there is no denying that he was transferred mid-term. It may be noted that by G.R. dated 29.07.2021, it was clarified that special transfers (mid-term and mid-tenure) will have to be issued in the period from 10th August, 2021 to 30th August, 2021. As such, Respondents treated Applicant's transfer as special transfer and invoked Section 4(4) and 4(5) of 'Transfer Act 2005'.

8. At this juncture, it would be apposite to reproduce Sections 4 and 6 of 'Transfer Act 2005', which is as under :-

“4. (1) No Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3.

(2) The competent authority shall prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year.

(3) Transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the

table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be :

Provided that, any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary.

(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.

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. It is this explicit that for general transfer for Group 'B' Gazetted Government servants, the Minister Incharge in consultation with the Secretary of concerned Department is the competent transferring authority. Whereas, as per Section 4(4)(2) and 4(5) of 'Transfer Act 2005', in special case, where a Government servant is required to be transferred mid-term or mid-tenure, it can be done only in exceptional cases after recording reasons in writing and importantly, with the prior approval of immediately superior transferring authority, as mentioned in the Table of Section 6. Hon'ble Chief Minister is immediately superior transferring authority above Minister Incharge of the Department as explicit from Table of Section 6 read with Section 4(5) of 'Transfer Act 2005'.

10. Whereas in the present case, transfer order is approved at the level of Minister Incharge of the Department on the basis of G.R. dated 27.08.2021. As per this G.R, the powers were purportedly delegated in terms of second provision of Section 6 of 'Transfer Act 2005' to Minister Incharge of the Department. The contents of G.R. dated 27.08.2021 is as under :-

“शासन निर्णय :-

वाचा क्र.५ येथील पत्र रद्द करण्यात येत असून खालील प्रमाणे आरोग्य सेवा आयुक्तालयातील एस-२० (रुपये ५६१००-१७७१००)(जुनी वेतनश्रेणी रु.९३००-३४८०० अधिक ग्रेड पे रु.५४००) अशी वेतनश्रेणी किंवा यापेक्षा कमी वेतनश्रेणी घेणा-या गट-ब (राजपत्रित) संवर्गातील अधिका-यांच्या बदली करण्यासाठी पुढीलप्रमाणे सक्षम प्राधिकारी व नागरी सेवा मंडळ गठित करण्यात येत आहे.

गट-ब संवर्ग	बदलीचा/पदस्थापनेचा प्रकार	नागरी सेवा मंडळाचे अध्यक्ष	बदली करण्यास सक्षम प्राधिकारी
महाराष्ट्र वैद्यकीय व आरोग्य	सर्वसाधारण बदली	आयुक्त, आरोग्य सेवा तथा	सचिव/प्रधान सचिव/ अप्पर

सेवा आणि सामान्य राज्य सेवा, गट-ब (राजपत्रित) एस-२० (रु.५६१००-१७७५००) (जुनी वेतनश्रेणी रु. ९३००-३४८०० अधिक ग्रेड पे रु.५४००) अशी वेतनश्रेणी किंवा यापेक्षा कमी वेतनश्रेणी	विशेष कारणास्तव/विनंती बदली/सरळसेवेने पदस्थापना/पदेन्नतीने पदस्थापना	अभियान संचालक राष्ट्रीय आरोग्य अभियान, मुंबई सचिव/प्रधान सचिव/ अप्पर मुख्यसचिव, सार्वजनिक आरोग्य विभाग, मंत्रालय, मुंबई	मुख्य सचिव, सार्वजनिक आरोग्य विभाग, मंत्रालय, मुंबई प्रभारीमंत्री, सार्वजनिक आरोग्य विभाग
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11. Thus, the perusal of G.R. reveals that the powers of request transfers, special transfers, posting on appointment are given to Minister Incharge of the Department. This G.R. has been issued by Public Health Department of Government of Maharashtra.

12. If, G.R. dated 27.08.2021 is read in conjunction with second proviso to Section 6 of 'Transfer Act 2005', which is referred in G.R. dated 27.08.2021, it is manifest that what is intended by law is delegation of power of competent transferring authority mentioned in the Table. As per Table below Section 6, the Minister Incharge in consultation with Secretary of the Department is the competent transferring authority for general transfer and curiously, by G.R. dated 27.08.2021, he himself abrogated and usurped the powers of Hon'ble Chief Minister. It may be noted that the object of approval of immediately superior transferring authority, as mandated in Section 4(5) of 'Transfer Act 2005', is to have check and balance so that powers of special transfers are not misused. If the powers of general transfers and special transfers are kept with the same authority i.e. Minister Incharge, there would be no check and scrutiny by next higher competent transferring authority and it would defeat the very purpose and object of the Act.

13. Shri D.B. Khaire, learned Advocate for the Applicant has rightly pointed out that the Tribunal has taken consistent view that there could be no delegation of powers insofar as approval of immediately next superior transferring authority for special transfers is concerned. In this

behalf, he referred to the decision rendered by the Tribunal in **O.A.Nos.889 and 890 of 2015 (Ramchandra A. Morwadkar Vs. State of Maharashtra) decided on 16.06.2016** which has been followed recently in **O.A.No.528/2021 (Dattatray B. Mundhe Vs. Government of Maharashtra) decided by Hon'ble Chairperson on 27.08.2021**. In **Ramchandra Morwadkar's** case, in Para No.10, the Tribunal held 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.”

14. Suffice to say, the impugned transfer order for want of approval of immediately preceding superior competent transferring authority i.e. Hon'ble Chief Minister is bad in law. The Tribunal has already granted interim relief in favour of Applicant by order dated 07.09.2021 and it needs to be made absolute. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 30.08.2021 is hereby quashed and set aside.
- (C) Interim relief granted by order dated 07.09.2021 is made absolute.
- (D) No order as to costs.

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

Mumbai
Date : 08.02.2022
Dictation taken by :
S.K. Wamanse.

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