

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.744 OF 2019

DISTRICT : MUMBAI

Shri Pradeep Hari Pawar)
Occ. Govt. Service.)
R/at Excise Officers Quarters, Opera House,)
Girgaon, Mumbai-4)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary)
Home Department (Excise),)
Mantralaya, Mumbai – 400 032.)....**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.11.2019

JUDGMENT

1. In the present O.A, the Applicant has challenged the impugned transfer order dated 03.07.2019 on the ground that it is in contravention of the provision 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 Tribunal has already granted interim by order dated 30.07.2019 having noticed that prima-facie the impugned transfer order is in violation of Section 4(4)(2) and 4(5) of 'Act 2005'.

2. The applicant is serving in the cadre of Deputy Commissioner, (Medicinal & Toilet Preparation), State Excise, Mumbai. By order dated 31.05.2017, he was posted as Deputy Commissioner (Medicinal and Toilet Preparation) office of State Excise Commissioner, Mumbai. However, by impugned order dated 03.07.2019, he was abruptly transferred on the post of Divisional Deputy Commissioner, Aurangabad though he has not completed three years normal tenure. He contends that there is no approval of Civil Services Board (CSB) for his transfer and secondly no administrative exigency or special case is made out for such mid-term and mid-tenure transfer.

3. Per contra, the Respondents resisted the application contending that the Applicant himself had requested for transfer at Thane in view of no work in the post held by him. The Respondents further contends that the Applicant was transferred to Aurangabad with approval of Highest Competent Authority.

4. Heard A. V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

5. Shri A. V. Bandiwadekar, learned Counsel for the Applicant vehemently urged that admittedly impugned transfer order being mid-term and mid-tenure, there has to be compliance of Section 4(4)(2) and 4(5) of 'Act 2005' but the same is completely missing. He has further pointed out that admittedly the matter was not placed before CSB and only to accommodate Shri Sunil Chavan, the Applicant is transferred to Aurangabad.

6. Whereas Shri A. J. Chougule, learned Presenting Officer sought to contend that the Applicant himself has made request to transfer at Thane in view of no work in the post held by him, and

therefore, he was transferred from present post to Aurangbad. According to him, there being approval of Hon'ble Minister as well as Hon'ble Chief Minister, the transfer cannot be faulted with.

7. Undisputedly, the Applicant has not completed three years normal tenure and was not due for transfer. Secondly, the issue of transfer is not placed before the CSB for recommendation. The perusal of CSB Minutes reveals that the matter was placed before CSB for the transfer of Shri Arjun Ovhal and Shri Sunil Chavan who have completed normal tenures. Here it is material to note that the CSB recommended for transfer of Shri Sunil Chavan as Divisional Deputy Commissioner at Aurangabad i.e. the post where the Applicant is transferred by impugned order. Thus, the issue of transfer of the Applicant was not at all before CSB. When the matter was placed before the Hon'ble Minister for approval of the transfer of Shri Sunil Chavan and Arjun Ovhal that time change was made by the Hon'ble Minister whereby Shri Sunil Chavan was transferred at Thane and the post of Aurangabad was given to the Applicant. The Hon'ble Chief Minister also approved the note for transfer of Applicant on the post of Divisional Deputy Commissioner, State Excise, Aurangabad.

8. As such, it is explicit to note that only to accommodate Shri Sunil Chavan at Thane, the Applicant's name was inserted at the level of Hon'ble Minister and he is transferred mid-term and mid-tenure. Material to note that the post of Thane was not even vacant and Shri Salunkhe was working there. Despite this position, Shri Sunil Chavan was posted at Thane with the note that he will take charge after the retirement of Shri Salunkhe. It is thus obvious that all these exercise of displacing the Applicant is made only to accommodate Shri Sunil Chavan.

9. In so far as the request made by the Applicant for transfer is concerned, true he seems to have made request by letter dated 28.05.2019 but asked for the post of Divisional Deputy Commissioner, State Excise, Thane. As such, it was request for transfer on particular post and not at any other place on the ground that the in implementation of GST, practically no work was left at Mumbai. Suffice to say the request for transfer was at particular post i.e. Thane. This being the position, the request letter dated 28.05.2019 could not have been legally used by the Respondents for his transfer at Aurangabad as the posting at Aurangabad cannot be termed as request transfer. It is obvious that Respondents are taking shelter of letter dated 28.05.2019 to cover up illegal transfer of Applicant.

10. Furthermore, no reason even for namesake is forthcoming for mid-term transfer of the Applicant. There is absolutely not a single word showing any administrative exigency for mid-term transfer of the Applicant. Indeed, if the post held by the Applicant was left with no work then it was incumbent on the part of Respondents to place the matter before CSB for its recommendation and then obtain approval of highest competent authority u/s 4(5) of 'Act 2005' and in that situation the transfer might have been justified but having not done so impugned order as it stands now without mentioning any reasons for transfer is not sustainable in law. Indeed, as stated above, it is explicit that the Applicant was transferred mid-term and mid-transfer only to accommodate Shri Sunil Chavan at Thane, and therefore, in his place the Applicant is shown posted by Hon'ble Minister.

11. Needless to mention that in absence of recommendation for transfer of the Applicant as held mandatory by Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732*** and in the absence of any special reasons in the mid-term and mid-tenure transfer, the impugned transfer order is not at

all sustainable in law. It is in blatant violation of Section 4(5) of 'Act 2005' and liable to be quashed.

12. The necessary corollary of aforesaid discussion leads me to sum up that the impugned transfer order dated 03.07.2019 is liable to be quashed and O.A. deserves to be allowed.

ORDER

- (A) Original Application is allowed.
- (B) Impugned transfer orders dated 03.07.2019 is quashed and set aside.
- (C) The interim relief granted by the Tribunal by order dated 30.07.2019 is made absolute.
- (D) No order as to costs.

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

Place : Mumbai
Date : 11.11.2019
Dictation taken by : VSM
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