

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.755 OF 2018

DISTRICT : MUMBAI

Shri Vishwajeet V. Shinde.)
Age : 40 Yrs., Occu.: Food Safety Officer,)
Group 'B', Food & Drugs Administration,)
Raigad, Pen – 117, Tal. Alibaug.)...**Applicant**

Versus

1. The Principal Secretary,)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai.)
2. The Commissioner.)
Food & Drugs Administration, M.S,)
Bandra-Kurla Complex, Bandra (E),)
Mumbai 400 051.)
3. Smt. Supriya N. Jagtap.)
Food Safety Officer, Office of Assistant)
Commissioner, Food & Drugs)
Administration (M.S), Shree Yash Plaza,)
2nd Floor, Pen Dharamtar Road, at Post)
Tal.: Pen, District Raigad - 402 407.)...**Respondents**

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

Ms. N.G. Gohad, Presenting Officer for Respondents 1 & 2.

Mrs. Punam Mahajan, Advocate for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.02.2019

JUDGMENT

1. In this Original Application, the challenge is to the impugned transfer order dated 5th July, 2018 whereby the Applicant has been transferred from Raigad-114 to Raigad-117 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is working as Food Safety Officer (Group 'B'). In the general transfer of 2018, he was working at Amaravati. By order dated 31.05.2018, he was transferred from Amaravati to Raigad-114. His area of jurisdiction was Raigad-114, and therefore, as per practice prevalent in Food and Drugs Department, it is shown transferred at Raigad-117. Accordingly, he was relieved by Assistant Commissioner, Food and Drugs, Amaravati on 01.06.2018, joined Raigad on 02.06.2018 and submitted Joining Report on 02.06.2018 at Raigad. However, the Respondent No.3 – Smt. Supriya N. Jagtap, who was earlier posted at Raigad-114 was granted extension of one year in general transfer of 2018 though she had spent more than 7 years in Raigad Distgrict, barring exception of three months at Kolhapur in the year 2014. However, fresh order dated 5th July, 2018 was issued thereby giving Raigad-117 to the Applicant. The Applicant has challenged this transfer order dated 5th July, 2018 contending that, it amounts to mid-term and mid-tenure transfer in violation of Section 4(4)(ii) and 4(5) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as "Act 2005"). No reason has been recorded for transferring him from Raigad-114 to Raigad-117. The Applicant contends that the said transfer was made only to accommodate Respondent No.3 at Raigad-114. On these pleadings, the

Applicant contends that the order dated 05.07.2018 being not in consonance with the provisions of 'Act 12005' is liable to be quashed.

3. The Respondent Nos.1 and 2 resisted the application by filing Affidavit-in-reply (Page Nos.34 to 43 of the Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents contend that, in general transfers of 2018, the Civil Services Board (CSB) recommended the transfer of the Applicant to Raigad-114 and the transfer of Respondent No.3 at Thane. However, the Hon'ble Minister, Food and Drugs Administration put a separate note, thereby making some changes in the recommendation made by CSB. As per the order of Hon'ble Minister, one year's extension was granted to Respondent No.3 and simultaneously, the proposal of CSB about the transfer of the Applicant to Raigad-114 was also approved. However, noticing the extension of one year to Respondent No.3 by Hon'ble minister, the Respondent No.2 by its letter dated 01.06.2018 requested the Government to transfer the Applicant at Raigad-117 being vacant post. Accordingly, again proposal was placed before the Hon'ble Minister to approve transfer of Applicant at Raigad-117 and same was approved. The Respondent Nos.1 and 2, therefore, contend that there is no violation of provisions of 'Act 2005'.

4. The Respondent No.3 resisted the application by filing reply (Page Nos.109 to 116 of the P.B.) as well as by filing Additional Affidavit-in-reply (Page Nos.133 to 136 of the P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. She contends that, in general transfers of 2018, she was due for transfer, but on the ground of family difficulties, she had prayed for extension of one year. She is having a child of one and half year old and her mother in law was diagnosed for Cancer in September, 2018. Her husband is also working in the same Department as a Food Safety Officer at Raigad-118. Therefore, she had prayed for extension at Raigad-114 due to aforesaid difficulties in terms of policy

of the Government. Her husband will be due for transfer in the year 2019 and that was also one of the reason for extension at Raigad-114, so that in general transfers of 2019, both could be transferred at one place. She denied the Applicant's contention of having stayed at Raigad for 7 years. She is working at Raigad-114 since 11.09.2014. As such, the allegation of the Applicant for 7 years continuous stay is incorrect. Though CSB has recommended for a transfer to Thane, her request for extension of one year has been accepted by Hon'ble Minister vide Office Proposal dated 31.05.2018 itself. In the same proposal, the Applicant's transfer at Raigad-114 was also approved. As such, because of her extension at Raigad-114, two Officers were posted at one place. Therefore, the Respondent No.2 by letter dated 1st June, 2018 brought this aspect to the notice of Respondent No.1. Again, the matter was placed before the Hon'ble Minister, who was pleased to approve the posting of Applicant at Raigad-117. The Applicant, therefore, contends that the order dated 05.07.2018 giving posting to the Applicant at Raigad-117 cannot be termed as mid-term or mid-tenure transfer, but it is only in the nature of Corrigendum and nothing else. As such, there is no contravention of the provisions of 'Act 2005'. The Hon'ble Minister has also granted extension to 2 more employees in the same order. Her extension at Raigad-114 is in fact in terms of policy of the Government vide G.R. dated 02.04.2018 so that spouses should be accommodated at one place. With these pleadings, she prayed to dismiss the application.

5. Shri D.B. Khaire, learned Advocate for the Applicant vehemently urged that, his client has been transferred from Raigad-117 to Raigad-114 only to accommodate Respondent No.3 within a month and secondly, there being no approval of CSB for changing the posting of place from Raigad-114 to Raigad-117, the impugned order is unsustainable. He emphasized that, while changing the posting of the Applicant from Raigad-114 to Raigad-117, the Hon'ble Minister has not recorded special reasons, and therefore, it is not in compliance of Section

4(4)(ii) and 4(5) of 'Act 2005'. On this submission, he contends that the impugned order dated 05.07.2018 is unsustainable in law.

6. Whereas Ms. N.G. Gohad, learned Presenting Officer fairly submitted that the change of posting from Raigad-114 to Raigad-117 was made by the Hon'ble Minister within his powers and the reply filed in this behalf be considered.

7. Per contra, Smt. Punam Mahajan, learned Advocate for Respondent No.3 strenuously urged that the impugned order dated 05.07.2018 is not at all mid-term and mid-tenure transfers, but it is a Corrigendum which is required to be issued in view of extension granted to the Applicant at Raigad-114. She has pointed out that, the extension was granted to Respondent No.3 in terms of policy of the Government considering the difficulties of the Applicant and there is no violation of any right much less legally vested right of the Applicant. Thus, according to her, though in same order dated 31.05.2018 extension was granted to the Applicant inadvertently at the same place, the posting of the Applicant was approved as suggested by CSB and having noticed it, the posting of Applicant was changed from Raigad-114 to Raigad-117. As such, there is no illegality or arbitrariness on the part of Respondent No.1.

8. Shri Khaire, learned Advocate for the Applicant in support of his submission sought to place reliance on the Judgments passed by this Tribunal and Hon'ble High Court, which are as follows :

- (i) O.A.No.832/2018 (Ravindra A. Kadampatil Vs. The State of Maharashtra) decided on 17.10.2018;
- (ii) O.A.No.668/2017 (Smt. Ujwala S. Ghavte Vs. The State of Maharashtra) decided on 17.01.2018;
- (iii) O.A.No.614/2017 (Pramod H. Sawakhande Vs. The State of Maharashtra) decided on 27.03.2018;

- (iv) O.A.No.770/2017 (Sunil M. Saundane Vs. The State of Maharashtra) decided on 09.11.2017;
- (v) O.A.No.266/2016 (Bharat D. Thorat Vs. The State of Maharashtra) decided on 22.09.2016;
- (vi) O.A.No.949/2014 (Vilas G. Rajput Vs. State of Maharashtra) decided on 23.12.2014;
- (vii) O.A.No.900/2018 (Prashant S. Pisal Vs. The State of Maharashtra) decided on 20.12.2018;
- (viii) Writ Petition No.5465/2012 (Kishor S. Mhaske Vs. Maharashtra OBC Finance & Development Corporation), decided on 07.03.2013;
- (ix) Writ Petition No.15201/2018 (Sheetal V. Pund Vs. The State of Maharashtra), decided on 24.07.2018.

In so far as these decisions are concerned, all these pertain to mid-term or mid-tenure transfers wherein the impugned transfer orders were set aside on the ground of non-compliance of Section 4(4)(ii) and 4(5) of 'Act 2005'. There could be no dispute about the settled legal position that, in case of mid-term or mid-tenure transfers, there has to be strict compliance of Section 4(4)(ii) and 4(5) of 'Act 2005'. Therefore, in fact situation, the impugned orders were found indefensible. Whereas, in the present case, it cannot be said that the impugned order dated 05.07.2018 is mid-term or mid-tenure transfer in view of peculiar facts of the present case. This aspect will be dealt with a little later in detail. Presently, suffice to say that the Judgments referred to above are of no assistance to the Applicant in the present set of facts. Admittedly, the Applicant was due for transfer in general transfers of 2018 and he was transferred from Amaravati and was posted at Raigad-114 as per the recommendation of CSB. The only change was about his posting from Raigad-114 to Raigad-117 because of the extension granted to Respondent No.3 on 31.05.2018 itself by Hon'ble Minister.

9. Shri Khaire, learned Advocate for the Applicant further referred to some observation in Para No.4 made by Hon'ble High Court in Writ Petition No.15201/2018 (cited supra) which is as follows :

"24. No doubt, looking to the scheme of section 4(4) of the said Act, it may be possible for the competent authority to overrule the recommendations of the CSB. However, the competent authority, would then be obliged to indicate exceptional circumstances and record special reasons. This statutory requirement, could not have been dispensed with by simply stating that all these were transfers in pursuance of requests by the officers. The competent authority (Minister), has overruled the recommendations of the CSB without indicating any exceptional circumstances or without recording any special reasons. Therefore, the retention of the respondent no.2 at Raigad, which is admittedly, a post ear marked for selection grade officer, is clearly untenable. The MAT, was not justified in not interfering with the posting of the respondent no.2 on the plea that the petitioner lacked *locus standi* in a matter."

In the above said Writ Petition, the retention was granted to Respondent No.2 on a post which was admittedly ear-marked for Selection Grade Officer. It is in that context, the said retention was challenged by the Petitioner and in that context, the Hon'ble High Court held that the competent authority was obliged to indicate exceptional circumstance and to record special reasons while granting extension to Respondent No.2 on the post which was ear-marked for Selection Grade Officer like Petitioner in the said matter. Whereas, in the present matter, the extension was granted to Respondent No.3 in terms of Government policy and her representation citing family difficulties referred to above.

10. Shri Khaire, learned Advocate for the Applicant further referred to the Judgment passed by this Tribunal in **O.A.No.900/2018** (cited supra) decided on Hon'ble Chairman on 20.12.2018. In this Judgment, the Hon'ble Chairman after extensively dealing with various Judgments of the Tribunal as well as Hon'ble Supreme Court and Hon'ble High Court, sum-up the legal position on Page Nos.17 and 19 which needs to be reproduced as under :

“9. The Supreme Court has on several occasions outlined the scope of the court’s power to interfere with transfer orders. It would be advantageous to sum up the observations made by the Supreme Court in the judgments to which our attention is drawn by learned counsel. Following are the guiding principles laid down by the Supreme Court.

i) The courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the grounds of malafides. (Mrs. Shilpi Bose & Ors Vs. State of Bihar & Ors. 1991 Supp.(2) SCC 659)

ii) A Government servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer order issued by a Competent Authority does not violate any of his legal rights. (Shilpi Boses’s case (supra).

iii) Who should be transferred where, is a matter for the appropriate authority to decide. Unless the transfer order is vitiated by malafides and is made in violation of any statutory provisions, the court cannot interfere with it. (Union of India & Ors. Vs. S.L Abbas (1993) 4 SCC 357).

iv) Transfer of an employee is not only an incidence inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. (State of Uttar Pradesh & Ors. Vs. Gobardhan Lal (2004) 11 SCC 402).

v) Transfer made even in transgression of administrative guidelines cannot also be interfered with, as it does not confer any legality enforceable rights, unless, it is shown to be vitiated by malafides or made in violation of any statutory provision and so long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments (Gobardhan Lal’s case supra).

vi) The courts should not deal with transfer orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision in the matter of transfer for that of competent authorities of the State. Even allegations of malafides when made must be such as to inspire confidence in the court or based on concrete materials (Gobardhan Lal’s case (supra).

vii) Allegation of malafides should not be entertained on the mere making of it or on consideration borne out of conjectures of surmises. (Gobardhan Lal’s case (supra).

viii) Except for strong and convincing reasons no interference could ordinarily be made with an order of transfer (Gobardhan Lal’s case (supra).”

11. The Hon'ble Chairman in Para No.11 further held as follows :

"11. After perusal of rival pleadings and perusal of judgments, certain facts and certain position of law which are not disputed, need to be stated at the outset, which is as follows:-

(a) Before commencement of ROT Act, 2005, matters of transfer were governed exercise of power and prerogative as regards the transfer of Government servant.

(b) The decision as regards Transfer used to be based on good and fair sense of administration as guided and interpreted by judicial pronouncement and was a matter purely governed by executive powers and administrative discretion.

(c) Even after commencement of ROT Act, 2005, even now the power of transfer and its finality continues to be a matter of absolute executive business. However, now the executive business is no more left sheerly to the absolute executive discretion or unquestionable prerogative.

(d) Though final decision continues to be a matter of absolute executive power, however, the procedure, path or locus of reaching that decision is prescribed by provisions of law, which are construed by this Tribunal as well by Hon'ble High Court to be mandatory.

(e) This Tribunal as well as Hon'ble High Court have come across patent violation of the mandatory provisions, and therefore, after taking into consideration the adverse observations of Tribunal and Hon'ble High Court it had become necessary for the Government to reiterate and re-proclaim the procedure and manner in which the decision to transfers should be reached through Government Circulars dated 31.1.2014, 19.1.2015 and 24.9.2015.

(f) There are divergent views on the point namely, whether transfer at one and same place is open for challenge.

(g) These circulars do in unequivocal terms and in language, pronounce the mandatory dictum that the provisions of ROT Act, 2005 must be meticulously and rigorously followed."

12. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. It has said long ago that, a case is only an authority what it actually decides and not what logically follows from it. Little difference in facts or additional facts may make a lot of difference in the

precedential value of a decision. One should avoid the temptation to decide cases by noticing the colour of one case against the colour of another.

13. Having considered the submissions advanced at the Bar, the following questions arose for determination.

- (A) Whether the impugned order dated 05.07.2018 amounts to mid-term or mid-tenure transfer.
- (B) Whether the impugned order is bad for want of approval of CSB.
- (C) Whether there is violation of Section 4(4(ii) and 4(5) of 'Act 2005'.
- (D) Whether there is violation of any legal right of Applicant.

14. From the pleadings and the submissions advanced at the Bar, let us set out certain admitted facts, which are as follows :

- (i) By order dated 31.05.2018, the Applicant was transferred from Amaravati to Raigad-114.
- (ii) The Respondent No.3 was already working and functioning at Raigad-114.
- (iii) The Respondent No.3 was due for transfer in general transfers of 2018, but she was granted one year's extension by the order of Hon'ble Minister.
- (iv) The CSB has recommended the transfer of the Applicant from Amaravati to Raigad-114.
- (v) The CSB has recommended transfer of Respondent No.3 from Raigad-114 to Thane.
- (vi) The Respondent No.2 by his letter dated 01.06.2018 brought to the notice of Government that in view of extension to Respondent No.3 at Raigad-114, the Applicant needs to be posted on other vacant post at Raigad.

- (vii) The proposal of continuation of Respondent No.3 at Raigad-117 has been approved by the Hon'ble Minister on 06.06.2018.
- (viii) Consequently, by order of Hon'ble Minister, the Applicant was posted at Raigad-117.
- (ix) There is no fresh approval of CSB for posting the Applicant at Raigad-117.
- (x) There is no approval of CSB to the extension of Respondent No.3 at Raigad.

15. The facts of the present case are very peculiar and it is necessary to bear in mind the context in which the impugned order dated 05.07.2018 changing the posting of the Applicant from Raigad-114 to Raigad-117 has been issued. Though the Respondent No.3 was due for transfer in general transfers of 2018, she had sought extension of one year citing family difficulties. Her husband was working in the same Department at Raigad-118 and he was not due for transfer. The Applicant has one and half year old baby. She is residing at Pen. In Food and Drugs Administrative Department, the posting is given as per jurisdiction and division. The area of Uran and Panvel comes under the jurisdiction known as 'Raigad-114' whereas the jurisdiction of Alibaug is known as 'Raigad-117'. The Applicant was admittedly due for transfer in 2018 and CSB has recommended his transfer from Amaravati to Raigad-114. However, at the same time, the Respondent No.3 who was working at Raigad-114 has sought extension of one year citing family difficulties. In terms of G.R. dated 09.04.2018 as far as possible convenient posting should be given to the husband and wife, so that spouses can live together, subject to administrative exigency. Though CSB has recommended the transfer of Respondent No.3 to Thane, the fact remains that in her application, she had prayed for extension of one year for the aforesaid reasons and in alternative asked for Thane-80, 77, 76 and 78. However, the Hon'ble Minister was pleased to grant one year extension. Along with Respondent No.3, the extension of one year was also granted to Shri K.R. Kadam, Food Safety

Officer as well as Shri A.J. Virkayande, Food Safety Officer. Thus, it is not a case where the extension was granted to Respondent No.3 alone or in arbitrary manner.

16. Needless to mention that, as per the provisions of 'Act 2005', the Hon'ble Minister is the competent authority for the purpose of transfer of the Applicant. True, the CSB has proposed transfer of Respondent No.3 to Thane. However, that itself cannot be the ground to label the impugned transfer order as a malafide or abuse of law. Needless to mention that the CSB been constituted in view of direction given by Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. (2013) 15 SCC 732*** to ensure minimum tenure of service to various civil servants and to have transparency and accountability in the process of administration. As such, it is recommendatory authority and its recommendations have persuasive value. The executive in suitable cases can deviate from the recommendations made by CSB for some good reasons and of course, which needs to be indicated. As such, in the present case, the extension of one year to Respondent No.3 in view of the difficulty cited by her cannot be said arbitrary. The Hon'ble Minister was pleased to accord one year extension to 3 employees and the Applicant was one of them. As the extension was granted, it was necessarily mean, extension on the post of Raigad-114 itself. However, inadvertently, the order of posting of the Applicant at Raigad-114 was issued. In fact, this aspect ought to have been brought to the notice of Hon'ble Minister by the concerned officials then and these, so that the posting of the Applicant would have been issued other than Raigad-114. Having noticed it, on the basis of letter written by Commissioner, Food and Drugs (Respondent No.2) dated 01.06.2018, the matter was again placed before the Hon'ble Minister on 06.06.2018 who was pleased to post the Applicant at Raigad-117, as anomalous position was created in view of already granted extension of one year to Respondent No.3 at Raigad-114. Had it brought to the notice of Hon'ble Minister immediately on 31.05.2018, this situation would not have occurred. As such, at the most, it was

a case of inadvertence or lack of coordination between the bureaucracy and Hon'ble Minister.

17. Admittedly, the Applicant was due for transfer in 2018 and he was transferred from Amaravati to Raigad. Had the mistake referred to above was brought to the notice of Hon'ble Minister, the Applicant would have been posted at Raigad-117 itself. However, due to sheer inadvertence or non-coordination, the order of posting of the Applicant at Raigad-114 was issued. Thereafter, having noticed the mistake by way of Corrigendum, the Applicant has been given posting at Raigad-117. It is, therefore, difficult to say that there is any violation of right of the Applicant. Needless to mention that the Government servant has no vested right for seeking posting at a particular place. The transfers are always made keeping in mind the administrative exigencies vis-à-vis policy of the Government. True, now the transfers are governed by 'Act 2005', so that transfer should not be arbitrary or at the whims of executive and to ensure transparency as well as accountability in the system.

18. As such, having considered the entire scenario and the context in which the order dated 05.07.2018 has been issued, it is difficult to accept the contention of the Applicant that it is politically motivated or smack malafide.

19. Suffice to say, only because the CSB has recommended the transfer of Respondent No.3 to Thane, that does not mean that the Applicant got vested right of posting at Raigad-114 in place of the Applicant. The role of CSB is recommendatory and its recommendations have persuasive value. The executive in suitable case can always exercise its power to ignore recommendations of CSB. If such exercise of the executive is found bonafide exercise of power in view of its own policy which in the present matter is in terms of G.R. dated 09.04.2018 and where it does not violate legal right of other Government employee, then such exercise of extension of one year cannot be stamped or termed as colourable

exercise of power. Therefore, the submission advanced by the learned Advocate for the Applicant that the impugned order has been passed only to accommodate Respondent No.3 in colourable exercise of power is misconceived. The decision of executive cannot be always looked with tainted spectacles and one needs to consider the entire context and gamut.

20. For the aforesaid discussion, in my considered opinion, the order dated 05.07.2018 cannot be termed as mid-term or mid-tenure transfer. It is only change of posting from Raigad-114 to Raigad-117 because of extension granted to the Applicant at Raigad-114 on 31.05.2018 itself. Therefore, the question of any violation of provisions of Section 4(4)(ii) and 4(5) of 'Act 2005' which are applicable to mid-term and mid-tenure transfers only does not arise. Suffice to say, the challenge to the impugned order is devoid of merit, and therefore, I record my negative finding on the points framed above.

21. The necessary corollary of the aforesaid discussion leads me to conclude that the Applicant has failed to establish the violation of his legal right or contravention of 'Act 2005' and the application deserves to be dismissed.

ORDER

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

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

Mumbai
Date : 18.02.2019
Dictation taken by :
S.K. Wamanse.