

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.889 & 890 OF 2019

DISTRICT : THANE

ORIGINAL APPLICATION NO.889 OF 2019

Shri Mukund Genu Kamble.)
Age : 51 Yrs, Working as Pharmacist,)
Transferred from J.J. Hospital, Mumbai)
to Government Hospital, Sangli,)
Residing at Jay Maharashtra C.H.S.,)
Near Medical Store, Subhash Tekdi,)
Ulhasnagar-4, District : Thane.)...**Applicant**

Versus

1. The Director.)
Medical Education & Research,)
Having office at Government Dental)
College and Hospital Building,)
4th Floor, St. George's Hospital)
Compound, Mumbai – 1.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education and Drugs)
Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.890 OF 2019

Shri Damodar Raghoba Gaikwad.)
Age : 55Yrs, Working as Pharmacist,)
Transferred from J.J. Hospital, Mumbai)
to Government Hospital, Sangli,)
Residing at 502, Aniket Towers CHS Ltd.,)
Uthalsar Naka, Thane (W).)...**Applicant**

Versus

1. The Director.)
2. The State of Maharashtra.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 05.02.2020

JUDGMENT

1. The Applicants have challenged the impugned transfer order dated 31.05.2019 whereby they were transferred from the post of Pharmacist, Sir J.J. Group of Hospitals, Mumbai to Padmabhushan Vasantdada Patil Government Hospital, Sangli invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. Since both the O.As are arising from common facts, those are decided by this common order.

2. The Applicants were serving on the post of Pharmacists in Sir J.J. Group of Hospitals, Mumbai and were due for transfer in general transfers of 2019. Accordingly, in general transfers of 2019, they were

transferred from Mumbai to Sangli by order dated 31.05.2019. This transfer order has been challenged by the Applicants in the present O.As.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant fairly concede that the Applicant were due for transfer having completed 14 years tenure in Mumbai but sought to assail the impugned order contending that the Applicants are subjected to discrimination as other Pharmacists who are in Sir J.J. Group of Hospitals for more period than the Applicants are not transferred, and therefore, the impugned transfer order is unsustainable. He further sought to contend that in view of reply filed by the Respondents, the transfer is made on complaints and in view of this stand of the Respondents, such transfer needs approval of higher authority. He has further submitted that there is not compliance of G.R. dated 09.04.2018 and the matter was not placed the Civil Services Board (CSB) for approval.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order contending that the Applicants have admittedly completed 14 years' tenure, and therefore, their transfer in general order dated 31.05.2019 cannot be faulted with. He further submits that there were complaints against the Applicants, and therefore, they were required to be shifted out. As regard compliance of G.R. dated 09.04.2018, he submits that the options were called but the Applicants did not give options.

5. Needless to mention that the transfer is an incidence of service and Government servant has no legally vested right to continue at one place for years together. Now, transfers are governed by '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) and unless transfer is in contravention of law, it should not be interfered with by the Tribunal.

6. Admittedly, the Applicants worked in Sir J.J. Group of Hospitals for 14 years though their normal tenure is six years as per 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). This being the position, this is not a case of mid-term or mid-tenure transfer, which requires approval of next competent authority. True, in written statement, the Respondents pleaded that there were complaints against the Applicants and that was the only reason for transfer. However, the fact remains that the Applicants were over-due for transfer in view of completion of 14 years at one place. As such, only because there is reference of complaints in reply, that itself does not render the transfer order punitive much less illegal for absence of approval of next higher authority. Indeed, the Applicants were transferred after completion of normal tenure in general transfer, and therefore, reference of complaints in reply do not render transfer orders illegal.

7. True, it appears that the Applicants have made representation to the Hon'ble Minister and thereupon Hon'ble Minister sent letter to Secretary, Medical Education and Drugs Department to stay the transfer in view of scarcity of staff at Sir J.J. Group of Hospitals. This aspect hardly matters, as there is no order from the Government to stay or cancel the impugned transfer orders. Unless the transfer orders are stayed or cancelled officially by the Government, the recommendation made have no relevance.

8. Now turning to the aspect of non-compliance of G.R. dated 09.04.2018, material to note that though the Applicants have specifically pleaded the same in Para No.6.12 of O.A, there is no specific denial to the same in reply. All that, while dealing with Para No.6.12 of O.A. in reply, it is stated that as per the provisions laid down in 'Transfer Act 2005', the transfer order is legal and correct. As such, there is no specific reply about the compliance of G.R. dated 09.04.2018. Indeed, as

rightly pointed out by the learned Advocate for the Applicants that the options in terms of G.R. dated 09.04.2018 were called upon by Dean, Sir J.J. Group of Hospitals by letter dated 01.06.2019 (Page No.38 of Paper Book). It contains names of 20 employees, who were due for general transfer and includes the name of Applicants at Serial Nos.12 and 13. Surprisingly, the order of transfer was issued on 31.05.2019 whereas the options were called by Dean on 01.06.2019. It is thus apparent that no options were called in terms of G.R. dated 09.04.2018 which inter-alia provides for calling of options, preparation of list of officials due for transfer and then to effect the transfer in terms of seniority list of the employees due for transfer. By G.R. dated 09.04.2018, the Government has taken policy decision for transfer of the Government servant by counselling and exhaustive instructions are issued about the steps to be followed while transferring the Government servants in general transfer.

9. As stated above, in so far as general transfer of 2019 is concerned, the letter of calling options itself was issued on 01.06.2019. Some of the employees whose names are included in the letter have specifically written date of their acknowledgement as on 06.06.2019. Whereas, the general transfers were already issued by Director on 31.05.2019. When this aspect was brought to the notice of learned P.O, all that he stated that the Dean was instructed by letter dated 06.03.2019 to call for options and submit the list of employees along with options of the employees. As such, what emerges that no options were called from the Applicants in terms of G.R. dated 09.04.2018 before passing transfer orders. By G.R. dated 09.04.2018, options are required to be called upon so that convenience of the Government servants can be taken care of and to minimize hardship. This purpose is totally frustrated by not calling options. On the contrary, an attempt is made to show that there is compliance of G.R. dated 09.04.2018, which turned out to be totally incorrect.

10. As regard placing the matter before the CSB, as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** though there is specific pleadings in Para 6.15 of O.A, there is no specific denial to it in reply. While dealing with Para No.6.15 of O.A, all that, the Respondents stated that the Applicants were rightly transferred. Indeed, when the Applicants have raised specific plea of non-placing the matter before the CSB, it ought to have been dealt with specifically as per factual position, as the case may be. Suffice to say, there is no denial in reply for non-placing the matter before the CSB.

11. However, during the course of final hearing today, the learned P.O. has shown the minutes of CSB from his file to show that the meeting of CSB was held on 24.05.2019. I have gone through the CSB minutes tendered for perusal. Indeed, it ought to have been appended to reply coupled with pleadings to that effect.

12. Be that as it may, now turning to the minutes of CSB, it is noticed in the minutes that there is no reference of place of transfer where the Applicants were transferred. All that, the CSB purportedly recommended for transfer on administrative ground without showing the place of transfer. This can hardly be termed proper compliance of mandate of decision of Hon'ble Supreme Court in **T.S.R. Subramanian's** case (cited supra). Indeed, the CSB was under obligation to see whatever options were called in terms of G.R. dated 09.04.2018 and then to recommend the place of transfer having regard to service record of the employee.

13. As such, it is manifest from the record that the Applicants were transferred to Sangli without calling their options in terms of G.R. dated 09.04.2018 and placing their options before CSB. At the same time, it should not be forgotten that the Applicants were over-due for transfer. In such situation, instead of setting aside the impugned transfer order, it would be appropriate to direct the Respondents to call for the options

from the Applicants in ensuing general transfers of 2020 which are three months away and to pass further orders of their transfer in terms of G.R. dated 09.04.2018 and by placing the matter before CSB in general transfer of 2020. The Applicants shall continue at Sangli till general transfer of 2020. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The Applicants be treated due for transfer in general transfer of 2020.
- (C) The Respondents are directed to call for the options from the Applicants in general transfer of 2020 and to consider the same in terms of G.R. dated 09.04.2018 and shall pass further appropriate orders of transfer and posting of the Applicants afresh in general transfers of 2020.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 05.02.2020
Dictation taken by :
S.K. Wamanse.