

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.936 OF 2019

DISTRICT : THANE

Shri Arun Bhaidas Chavan.)
Age : Adult, Occu.: Executive Engineer,)
Residing at Devgiri Building, Bunglow No.11,)
Kopari Shashkiya Vasahat, Thane.)...**Applicant**

Versus

1. The Secretary.)
Public Works Department, Madam Kama)
Marg, Hutatma Rajguru Chouk,)
Mantralaya, Mumbai.)
2. The Chief Executive Officer.)
Zilla Parishad, Thane.)
3. The Additional Chief Executive Officer.)
Zilla Parishad, Thane.)
4. Shri N.S. Palve.)
Assistant Chief Engineer, Public Works)
Regional Department, Konkan Division,)
Mumbai.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 to 3.

Respondent No.4 served but absent.

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

DATE : 14.02.2020

JUDGMENT

1. The Applicant has challenged the transfer order dated 07.09.2019 whereby he was transferred from the post of Executive Engineer, Zilla Parishad, (PWD), Thane to the post of Assistant Chief Engineer, Public Works Regional Department, Konkan Division, Mumbai invoking provision of Section 4(4) 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 'Transfer Act 2005' for brevity) invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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

The Applicant was working on the post of Executive Engineer, PWD, Z.P, Thane (Group 'A') w.e.f.03.07.2018 and had not completed normal tenure of three years in terms of Section 3 of 'Transfer Act 2005'. However, abruptly, by impugned transfer order dated 07.09.2019, he was transferred on the post of Assistant Chief Engineer, Public Works Regional Department, Konkan Division, Mumbai. The Applicant contends that he was transferred mid-term and mid-tenure without compliance of Section 4(5) of 'Transfer Act 2005', and therefore, transfer is illegal. He further contends that Respondent No.1 posted Respondent No.4 – Shri N.S. Palve in his place only to favour him.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned transfer order mainly on the following grounds :-

(i) The transfer order dated 07.09.2019 is mid-term as well as mid-tenure transfer and in blatant violation of Section 4(5) of 'Transfer Act 2005' in absence of approval of Hon'ble Chief Minister being competent authority for mid-term and mid-tenure transfer.

(ii) Transfer being made on the report made by Chief Executive Officer, Z.P, Thane attributing efficiency and negligence to the Applicant, it is punitive since no opportunity of hearing was given to the Applicant.

(iii) There is no compliance of instructions issued by GAD, the Government of Maharashtra in its Circular dated 11.02.2015 whereby guidelines were issued for transfer of Government servant in case of complaint.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer reiterated the contentions raised in written statement and submits that, though the Applicant has not completed normal tenure of three years, his transfer was necessitated in view of report dated 16.08.2019 made by Chief Executive Officer, Z.P, Thane alleging inefficiency and negligence in discharge of duties thereby affecting implementation on the various schemes of the Department. She further submits that, in view of report of Chief Executive Engineer dated 16.08.2019, the matter was placed before the Civil Services Board (CSB) which recommended for the transfer of Applicant and the same was approved by the Hon'ble Minister of PWD. As regard competency, she submits that by G.R. dated 27.05.2016 issued by PWD, Mantralaya, Mumbai, the powers of Hon'ble Chief Minister as a competent authority has been delegated to Hon'ble Minister, PWD and in accordance to it, the transfer of the Applicant was approved by the Hon'ble Minister, PWD. She, therefore, submits that the transfer of Applicant was necessitated from the point of efficient administration and it is in compliance of Section 4(5) of 'Transfer Act 2005'. With this submission, she prayed to dismiss the O.A.

4. **As to ground No.(i) :-**

Thus, admittedly, the Applicant was not due for transfer. True, the transfer is an incidence of service and the Government servant has no

vested right to claim a particular post for a particular period, and the Tribunal should not interfere in the matter of transfer unless it is in contravention of expression provision of law, *malafide* or arbitrary. However, now the transfers are being strictly governed and regulated by 'Transfer Act 2005', there must be strict adherence to the provisions of 'Transfer Act 2005' in the matter of transfer.

5. Now, let us see the Scheme of 'Transfer Act 2005', which is in nutshell as follows :-

Sub-section (1) of Section 4 of the Act emphatically provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (2) requires a competent authority to 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. Sub-section (3) requires that the 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. Proviso thereto requires that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation with the Chief Secretary. Sub-section (4) mandates that the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. Proviso to Sub-section (4) permits a transfer to be made any time in the year in the circumstances stated therein. Sub-clause (i) thereof permits such a transfer to be made at any time in a year to a 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. Sub-clause (ii) thereof permits such a transfer at any time 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. Sub-section (5) of Section 4, which begins with a non obstante clause, permits the competent authority, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, to transfer a Government servant before completion of his tenure of post.

6. Here, it would be also apposite to refer Section 6 of 'Transfer Act 2005', which is as follows :-

“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. Now turning to the facts of the present case, indisputably, the Applicant is a Group 'A' Officer and as per Section 6 of 'Transfer Act 2005', the Minister Incharge in consultation with Secretary of the concerned Department is competent transferring authority for general transfer. Whereas, in case of mid-term or mid-tenure transfer, there has to be strict compliance of Section 4(5) of 'Transfer Act 2005', which is as follows :-

“4(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.”

8. Thus, the perusal of Scheme of 'Transfer Act 2005' leaves no doubt that for Group 'A' Officer in State service, the Minister Incharge in consultation with Secretary of the concerned Department is the competent transferring authority for general transfer and mid-term transfer is permissible in special cases, that too, after recording reasons in writing to justify such mid-term or mid-tenure transfer and most importantly with the prior permission of the immediately preceding competent transferring authority mentioned in Table of Section 6. This being the legal position, there is no denying that the Hon'ble Chief Minister is immediately preceding competent transferring authority for mid-term transfer of Group 'A' Officer.

9. In the present case, admittedly, there is no approval of Hon'ble Chief Minister to the impugned transfer order. The Respondents' contention is that in terms of G.R. dated 27.05.2016 issued by P.W.D, Mantralaya, the powers of Chief Minister are delegated to the Minister Incharge of PWD for the purpose of Section 4(4) and 4(5) of 'Transfer Act 2005', and therefore, in view of delegation of powers, the transfer order cannot be faulted with.

10. Here, it would be apposite to see relevant contents of G.R. dated 27.05.2016, which are as follows :-

“२. या अधिनियमातील कलम ६ खालील दुस-या परंतुकानुसार बदल्यांचे अधिकार कलम ७ मधील तरतुदीनुसार कार्यकारी अभियंता व त्याखालील संवर्गातील अधिकारी यांच्या बदल्यांसाठी मा. मंत्री (सा.बा.)यांना सक्षम प्राधिकारी म्हणून संदर्भाधीन क्रमांक १ येथील अधिसूचनेन्वये घोषित करण्यात आले आहे.

सामान्य प्रशासन विभागाच्या संदर्भाधीन क्रमांक २ येथील शासन परिपत्रकान्वये, गट - अ दर्जाच्या अधिका-यांची मध्यावधी बदली करताना मा. मुख्यमंत्र्याची मान्यता अनिवार्य करण्यात आलेली आहे.

तथापि, सार्वजनिक बांधकाम विभागातील कार्यकारी अभियंता व त्याखालील संवर्गातील अधिका-यांच्या मध्यावधी बदल्यांची प्रकरणे मंत्री (सार्वजनिक बांधकाम) यांच्या मान्यतेने अंतिम करण्यासंदर्भात अधिकाराचे प्रत्यार्पण करण्याची बाब विचाराधीन होती.

३. त्यानुसार शासनाने असा निर्णय घेतला आहे की, महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडतांना होणा-या विलंबास प्रतिबंध अधिनियम-२००५ मधील कलम ४(४) व ४(५)मधील तरतुदीनुसार सार्वजनिक बांधकाम विभागातर्गत असलेल्या कार्यकारी अभियंता व त्याखालील संवर्गातील अधिका-यांच्या मध्यावधी बदल्यांसाठी मा. मंत्री (सा.बा.)यांना सक्षम प्राधिकारी म्हणून घोषित करण्यात येत आहे.”

11. Thus, the entire emphasis of the Respondents is on G.R. dated 27.05.2016 purportedly issued invoking 2nd proviso of Section 6 of ‘Transfer Act 2005’. True, as per 2nd proviso, the competent transferring authority specified in the Table can delegate its powers under this Section to any of its subordinate authority. Generally, in case of valid delegation of powers, the action of delegatee can be treated as that of principal himself. However, in the present case, the important legal question is whether the powers of immediately preceding competent transferring authority can be delegated for mid-term transfer ignoring the mandatory requirement of the provisions of ‘Transfer Act 2005’. Indeed, there could be no such delegation of power to the authorities other than in Table attached to Section 6 by issuance of G.R. if it is violative of mandatory provisions of ‘Transfer Act 2005’. True, as per 2nd proviso of Section 6 of ‘Transfer Act 2005’, the competent transferring authority specified in the Table can delegate its power to its subordinate authority, but this proviso cannot be construed to mean that even for mid-term transfer, there could be delegation of power to subordinate authority, because such delegation of power of mid-term transfer to subordinate authority would result in anomalous position where transferring authority and immediately superior competent transferring authority would be the same authority. If by G.R. dated 27.05.2016, the Minister

Incharge is empowered for mid-term transfer of Group 'A' Officer, then naturally, the question arise who would be the next immediately preceding competent transferring authority, whose approval is condition precedent for mid-term transfer as contemplated under Section 4(5) of 'Transfer Act 2005'. If mid-term transfers on the basis of G.R. dated 27.05.2016 are allowed to be effected without approval of Hon'ble Chief Minister on the basis of said G.R, then it is certainly violative of Section 4(5) of 'Transfer Act 2005' and such course of action would frustrate very object of Section 4(5) of 'Transfer Act 2005' and it would become redundant.

12. Needless to mention that where statute provides to do certain things in particular manner mandatorily, then it has to be done in accordance to manner laid down in the statute. Otherwise, such course of action adopted by Respondent No.1 would be amounting to bye-pass mandatory requirement of law. As stated earlier, the transfers are now strictly governed by 'Transfer Act 2005' which is complete code laying down the manner in which transfers are to be effected. 'Transfer Act 2005' provides for normal tenure of Government servant and at the same time also provides for mid-term and mid-tenure transfer where situation warrants the same by carrying out exception but at the same time, protection is also given in the form of Section 4(5) of 'Transfer Act 2005' that such mid-term or mid-tenure transfer, there has to be special reasons and it should be done with the prior approval of immediately superior competent transferring authority mentioned in Table of Section 6. In other words, by way of safeguard, the approval of immediately superior competent transferring authority is required under the 'Transfer Act 2005'. This being the position, the delegation of power of immediately superior competent transferring authority to the same authority who is transferring authority for general transfer only is definitely in violation of Section 4(5) of 'Transfer Act 2005'. Needless to mention that such course of action is not permissible except by suitable amendment in 'Transfer Act 2005'. Suffice to say, by issuance of G.R.

dated 27.05.2016, the Government cannot override express provisions contained in Section 4(5) of 'Transfer Act 2005'.

13. For the aforesaid reason, there is no escape from the conclusion that the impugned transfer order in absence of approval of Hon'ble Chief Minister being immediately superior competent transferring authority as mandated in Section 4(5) read with Section 6 of 'Transfer Act 2005' is clearly unsustainable and bad in law.

14. **As to ground Nos.(ii) and (iii) :-**

Indeed, the O.A. deserves to be allowed on the ground of competency of Transferring Authority as concluded above. However, I think it appropriate to record finding on all issues raised in the matter to have complete adjudication. I am not in agreement with the submission advanced by the learned Advocate for the Applicant that the impugned transfer order being made on the complaint report made by Chief Executive Officer, Z.P, Thane is punitive and it is bad in law for non-compliance of Circular dated 11.02.2015. True, by Circular dated 11.02.2015, instructions were issued by the Government that the transfer should not be made merely on the basis of complaint of misconduct without ascertaining factual situation. Para No.8 of Circular dated 11.02.2015 is heavily relied by the learned Advocate for the Applicant, which is as follows :-

“८. एखाद्या प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी / कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी / कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी / कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी / कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी / कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधीत अधिकारी/ कर्मचा-यारी त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-या संबंधीत अधिकारी/ कर्मचा-याची बदली त्याच्या लागतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लागतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी / कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधीत अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

15. Now turning to the facts of the present case, material placed on record reveals that Shri Nemane – Chief Executive Officer, Z.P, Thane made report to Additional Chief Secretary, P.W.D. on 16.08.2019 stating that the Applicant is not efficient and not discharging duties efficiently. In report, he has given five instances as to how the Applicant is inefficient and there is lack of will to implement Government Schemes. He, therefore, requested to appoint another efficient Officer in place of the Applicant. As such, this cannot be treated as a complaint of misconduct from outsider. The Applicant was working under the supervision of Chief Executive Officer, Z.P, Thane who had an opportunity to see the performance and efficiency of the Applicant and on assessment of the work of Applicant, he formed opinion that the continuation of the Applicant would not be conducive for the administration of Z.P, Thane. The report of Chief Executive Officer, Z.P, Thane was accordingly placed before the CSB and CSB in view of the said report recommended for the transfer of the Applicant. All that, the Circular dated 11.02.2015 requires that the competent authority should ascertain factual position and should take decision of transfer having regard to the seriousness of the allegations made in the complaint and if Competent Transferring Authority is satisfied, then he can recommend the transfer. In the present case, the CSB approved the transfer in view of report of Chief Executive Officer, Thane and Transferring Authority accepted the same. I, therefore, see no breach of Circular dated 11.02.2015, so as to quash the transfer order on this ground. This being the position, it cannot be said that the impugned transfer order is punitive or *malafide*. It appears that the transfer of the Applicant was necessitated from the point of administrative exigency in view of report made by Chief Executive Officer, Z.P, Thane. However, this aspect has become only academic exercise in view of finding recorded on ground No.(i) as concluded above.

16. As concluded above, the G.R. dated 27.05.2016 is violative of Section 4(5) of 'Transfer Act 2005' and transfer order of the Applicant

without approval of Hon'ble Chief Minister, who is immediately superior Competent Transferring Authority in law, is unsustainable in law. The impugned transfer order is, therefore, liable to be set aside on this ground.

17. The totality of aforesaid discussion leads me to conclude that the impugned transfer order is unsustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 07.09.2019 is quashed and set aside qua the Applicant.
- (C) The Applicant be reposted on the post he was transferred from within two weeks from today.
- (D) No order as to costs.

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

Mumbai
Date : 14.02.2020
Dictation taken by :
S.K. Wamanse.