

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

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

**Mr. C.T. Chandratre, Advocate for Respondent No.4.**

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

**DATE : 15.07.2021**

**JUDGMENT**

1. Indeed, this O.A. was heard and decided on merit by Judgment dated 14.02.2020 thereby setting aside the impugned transfer order dated 07.09.2019 with direction to the Respondents to repost the Applicant within two weeks from the date of order. However, Respondent No.4 – N.S. Palve being aggrieved by the said order had filed Writ Petition Stamp No.3614/2020 before Hon'ble High Court. Writ Petition was withdrawn on the statement made by the Petitioner that he would approach the Tribunal on the ground that he was not properly served with the notice of O.A. Accordingly, Writ Petition was disposed of on 26.02.2020.

2. Accordingly, the Applicant had filed M.A.No.142/2020 for recalling the order on the ground that he was not properly served with the notice of O.A. amongst other grounds.

3. In view of above, in M.A.142/2020, the Tribunal has passed order to hear Respondent No.4 afresh and order dated 14.02.2020 passed in O.A. was stayed till further orders.

4. Another development is that after filing of M.A, the Applicant has amended his O.A. thereby challenging the transfer order dated 19.09.2019 whereby Respondent No.4 has been posted in his place since there was no such specific prayer about quashing order dated 19<sup>th</sup> September, 2019 in original O.A.

5. It is on the above background, the matter is considered afresh.

6. Heard Shri A.V. Bandiwadkar, learned Advocate for the Applicant, Mrs. K.S. Gaikwad, learned Presenting Officer for Respondents 1 to 3 and Shri C.T. Chandratre, learned Advocate for Respondent No.4.

7. In O.A, the Applicant has challenged the order dated 07.09.2019 whereby he was transferred from post of Executive Engineer, Zilla Parishad, PWD, Thane to the post of Assistant Chief Engineer, Public Works Regional Department, Konkan Division, Mumbai mainly on the ground of competency of transferring authority. It was his mid-tenure transfer and came to be challenged *inter-alia* contending that there is no compliance of Section 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).

8. Respondent Nos.1 to 3 resisted O.A. *inter-alia* justifying the transfer order on the ground that transfer was necessitated in view of complaints against the Applicant.

9. The Tribunal with the reasoned order dated 14.02.2020 rejected the contention raised by Respondents that Minister In-charge is empowered for mid-term transfer relying on G.R. dated 27.05.2016. The Tribunal found that there was no approval of Hon'ble Chief Minister to the impugned transfer order as mandatory under Section 4(5) of 'Transfer Act 2005'.

10. The Tribunal while dealing with the issue of competency of Hon'ble Minister In-charge of the Department held that there could be no such delegation of powers in so far as Section 4(5) of 'Transfer Act 2005' is concerned. In Para Nos. 6 to 13, the Tribunal held as under :-

**“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.

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Groups of Government  
Servants  
(1)

Competent Transferring  
Authority  
(2)

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(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.

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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 2<sup>nd</sup> proviso of Section 6 of 'Transfer Act 2005'. True, as per 2<sup>nd</sup> 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 2<sup>nd</sup> 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."

11. Material to note that Judgment dated 14.02.2020 rendered by this Tribunal quashing impugned transfer order dated 07.09.2019 has attained finality, since the same is not challenged by the Government. It is only Respondent No.4 who moved Hon'ble High Court by filing Writ Petition Stamp No.3614/2020, but got it withdrawn and again approached this Tribunal.

12. Now, let us see the grounds raised by Respondent No.4 in his attempt to justify his transfer order in place of Applicant.

13. Shri C.T. Chandratre, learned Advocate for Respondent No.4 submits that transfer of Respondent No.4 cannot be questioned since it is permissible by Section 4(4)(i) which do not require prior permission/approval of immediately preceding competent transferring authority alike Section 4(5) of 'Transfer Act 2005'. In other words, according to him, there is no requirement of approval of immediately preceding competent transferring authority i.e. Hon'ble Chief Minister for such transfer.

14. Here, it would be apposite to reproduce Section 4(4) and 4(5) of 'Transfer Act 2005', which is as follows :-

**4(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.

**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."

15. True, under Section 4(4)(i), there is no requirement of prior approval of next higher authority. However, here, material to note that the Applicant is being posted on transfer of the Applicant in his place, the Applicant has been transferred by order dated 07.09.2019 and thereafter, by order dated 19.09.2019, the Respondent No.4 was posted in his place. As such, said post had fallen vacant on account of transfer of the Applicant. However, the Applicant has challenged his transfer

order dated 07.09.2019 *inter-alia* contending that it is not in consonance with Section 4(5) of 'Transfer Act 2005'. As such, if transfer of the Applicant by order dated 07.09.2019 is found not legal, then consequently, he would be entitled for reposting on the same post and as a result of which, the Respondent No.4's transfer order dated 19.09.2019 whereby he is posted in place of Applicant would render unsustainable. Suffice to say, the fate of matter depends upon the legality of transfer order dated 07.09.2019. If order dated 07.09.2019 is held not legal, then consequently, further order dated 19.09.2019 giving posting to Respondent No.4 in place of Applicant would not stand in law. This being the position, even if there is no requirement of approval of next higher authority under Section 4(4)(i) of 'Transfer Act 2005', it is in consequential since it is fallout of the legality of order dated 07.09.2019. Suffice to say, the submission advanced by the learned Advocate for Respondent No.4 that his transfer order comes within the purview of Section 4(4)(i) of 'Transfer Act 2005' and remains unaffected is misconceived.

16. Mrs. K.S. Gaikwad, learned P.O. sought to justify the impugned transfer order dated 07.09.2019 raising additional issue contending that the Applicant had already joined as Assistant Chief Engineer, Public Works Regional Department, Konkan Division, Mumbai, and therefore, the challenge to the transfer order has become redundant. Obviously, this contention is totally unpalatable since the Applicant had challenged the order dated 07.09.2019 by filing O.A. and there being no stay to the transfer order, he was bound to abide the transfer order without prejudice to his contentions raised in O.A. As such, even if Applicant had joined at the place of transfer, it is without prejudice to the rights and contentions raised in the O.A. and on that ground, the O.A. cannot be said becomes infructuous.

17. In so far as transfer on the ground of complaint is concerned, the Tribunal while delivering Judgment dated 14.02.2020 has categorically



held that even if there are complaints, the transfer ought to have been with prior approval of next competent transferring authority and it being not so, the transfer order was quashed and set aside. The Tribunal has categorically held that mid-term transfer cannot be held legal in view of purported delegation of power on the basis of G.R. dated 27.05.2016 since it would be in violation of Section 4(5) of 'Transfer Act 2005' and it would frustrate very object of Section 4(5) of 'Transfer Act 2005'.

18. As such, even after giving full opportunity to Respondent No.4 and after hearing him on merit, I see no reason to take different view to modify or interfere with the order passed by this Tribunal on 14.02.2020. Consequently, transfer order dated 19.09.2019 whereby Respondent No.4 is posted in place of Applicant is also quashed and set aside.

19. In view of aforesaid discussion and finding, the Applicant needs to be reposted on the post he was transferred from. Accordingly, he be reposted within two weeks from today. No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 15.07.2021

Dictation taken by :

S.K. Wamanse.

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