

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.949 OF 2018

DISTRICT : PUNE

Smt. Suchita K. Sonawane.)
Physiotherapist in Government Home & School)
for Locomotor Disable Children Killabhag,)
Miraj, Tal.: Miraj, District : Sangli and residing at)
Bungalow No.12, Fergusson College Campus,)
Teachers Quarters, F.C. Road, Pune – 4.)...**Applicant**

Versus

1. The Commissioner for Persons with)
Disability Commissionerate, having)
Office at 3, Church Road, M.S,)
Pune – 411 001.)
2. Smt. N.N. Nilekar / Kanhekar.)
Working as Physiotherapist in Govt.)
Multipurpose Group Complex for)
Children with Disabilities, Yerwada,)
Pune.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Social Justice and Special Assistance)
Department, Mantralaya, Mumbai – 32.)...**Respondents**

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

Mr. A.J. Chougule, Presenting Officer for Respondents 1 & 3.

Dr. G. Sadavarte, Advocate for Respondent No.2 is absent.

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

DATE : **19.07.2019**

JUDGMENT

1. The Applicant has challenged the transfer order dated 04.07.2018 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 serving as Physiotherapist. In the year 2014, she was serving at Miraj, District : Sangli. By order dated 19.08.2014, she was transferred from Miraj and posted at Government Multipurpose Group Complex for Children with Disabilities, Yeravada, Pune. She being Group 'C' employee entitled for the tenure of six years. However, by impugned order dated 04.07.2008, she was abruptly transferred to Children Home and Hostel, Miraj, District : Sangli. The Applicant assailed the said order being mid-term and mid-tenure transfer without observance of 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). She contends that she has been transferred by order dated 04.07.2018 only to oblige Respondent No.2 who has been posted in her place at Pune. She further contends that the Respondent No.1 – Commissioner for Persons with Disability Commissionerate, Pune was not notified as a Competent Authority in the Official Gazette and secondly, no special case is made out for mid-term and mid-tenure transfer. Besides, it has not been approved by the next Competent Authority as contemplated under Section 6 of 'Transfer Act 2005'. With this pleading, she contends that the

impugned transfer order is in blatant violation of provisions of 'Transfer Act 2005' and it be quashed.

3. The Respondent Nos.2 and 3 resisted the application by filing Affidavit-in-reply denying the entitlement of the Applicant to the relief claimed and further denied that the Impugned transfer order suffers from any illegality. The Respondents contend that considering the earlier longer service period of the Applicant at Pune, the Civil Services Board (CSB) in its meeting recommended for her transfer and Respondent No.2 who had requested for transfer at Pune on family difficulties was posted in place of the Applicant. According to Respondents, the Commissioner has been empowered by G.R. dated 15.05.2017 read with Corrigendum vide Circular dated 14.06.2008. The Respondents thus sought to justify the impugned order.

4. The Respondent No.2 filed Affidavit-in-reply and sought to justify the transfer in place of Applicant by impugned order dated 04.07.2018. The Respondent No.2 reiterated the conditions raised by Respondent Nos.1 and 3 as adverted to above and prayed to dismiss the O.A.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Advocate for the Respondents. The learned Advocate for Respondent No.2 is absent.

6. There is no denying that the Applicant is Group 'C' employee and entitled to the tenure of six years at one posting. In the year 2014, she was serving at Miraj and by transfer order dated 19.08.2014, she was transferred at Government Multipurpose Group Complex for Children with Disabilities, Yerwada, Pune. This being the admitted position, she was entitled for six years' tenure at Pune. However, by order dated 04.07.2018, she has been again transferred to Miraj, District Sangli i.e. the place wherefrom she was

transferred in 2014. By transfer order dated 04.07.2018, in her place, the Respondent No.2 was transferred from Miraj and posted in her place.

7. In view of above mentioned admitted position, the question comes whether the impugned transfer order is legal and valid and the answer is in negative.

8. True, the perusal of minutes of CSB reveals that earlier the Applicant had served for more time at Pune. This seems to be the only reason for her transfer as per CSB minutes. Indeed, the Applicant was entitled to six years, tenure from transfer order dated 19.08.2014, and therefore, the question of considering the Applicant's earlier service period at Pune i.e. from 1997 to 2010 as mentioned in minutes of CSB is irrelevant and that could not be ground for mid-term transfer.

9. The impugned transfer order has been issued by the Commissioner. The learned Advocate for the Applicant assailed the competency of Commissioner for mid-term and mid-tenure transfer. True, as per Corrigendum / Circular dated 14.06.2018, the powers of regular as well as mid-term transfer were assigned to the Commissioner. The Commissioner is the head of Department and by Circular dated 14.06.2018, the powers of general as well as mid-term transfer were assigned to him.

10. The perusal of CSB minutes reveals that the Applicant was displaced only to accommodate Respondent No.2 as she had requested for transfer at Pune on the ground of family difficulties. Admittedly, she was also not due for transfer. However, the CSB accepted her request for transfer at Pune, and therefore, the Applicant was displaced and posted in place of Respondent No.2 at Miraj. It is thus explicit that only to accommodate Respondent No.2, the Applicant was transferred without completing her normal tenure of six years.

11. Furthermore, the fatal aspect is absence of approval of preceding competent authority as contemplated under 'Transfer Act 2005'. The Applicant is Group 'C' employee, and therefore, as per Table attached to Section 6, the immediately preceding Competent Authority would be the Hon'ble Minister In-charge in consultation with Secretary of the Department. However, in the present case, admittedly, there is no such approval of Hon'ble Minister. The learned P.O. fairly concedes this position. This being the situation, the transfer order issued by Commissioner without approval of Hon'ble Minister is ex-facie unsustainable in law.

12. As per Section 4(5) of 'Transfer Act 2005', the Competent Authority in special case after recording reasons in writing and with the prior permission of immediately preceding Competent Authority mentioned in Table of Section 6 can transfer the Government servant before completion of tenure of post. As such, there has to be special reasons for such mid-term and mid-tenure transfer, that too, with prior permission of immediate preceding competent transferring authority. In the present case, the transfer is apparently made only to accommodate Respondent No.2. It therefore, necessarily follows that it cannot be termed as a special case which necessitates mid-term transfer.

13. For the aforesaid discussion, I have no hesitation to sum-up that the impugned transfer order is in defiance of the provisions of Section 4(4)(ii), 4(5) and Section 6 of 'Transfer Act 2005' and the same deserves to be quashed and set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned transfer order dated 04.07.2018 is quashed and set aside.

- (C) The Respondent Nos.1 and 3 are directed to repost the Applicant on the post she was transferred from within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 19.07.2019

Dictation taken by :

S.K. Wamanse.

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