

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.987 & 988 OF 2017

DISTRICT : KOLHAPUR

ORIGINAL APPLICATION NO.987 OF 2017

Shri Sandip Sambhaji Kadam.)
Age : 43 Yrs., Working as Sub-Inspector,)
State Excise, Flying Squad, Sangli and residing at)
Aashirwad, Kachare Society, Sambhajipur,)
Tal. : Shirol, District : Kolhapur.)...**Applicant**

Versus

1. The Commissioner.)
State Excise (M.S.), Mumbai,)
Through Joint Commissioner)
(Administration), having office at Old)
Customs House, 2nd Floor, Fort,)
Mumbai – 400 023.)
2. The State of Maharashtra.)
Through Principal Secretary (Excise),)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.988 OF 2017

Shri Sunil Dattajirao Kadam.)
Age : 53 Yrs., Working as Sub-Inspector,)
State Excise, Flying Squad, Sangli and residing at)

Datta Niwas, Sangli Wadi, Tal. Miraj,)
District : Sangli.)...**Applicant**

Versus

1. The Commissioner.)
State Excise (M.S.), Mumbai & Anr.)...**Respondents**

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

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.04.2019

JUDGMENT

1. Since both these O.As are arising from common impugned order of transfer, they are being decided by this common Judgment.

2. The factual matrix is as follows :

Both the Applicants are serving on the post of Sub-Inspector, State Excise (Group 'C' post). The Applicant in O.A.987/2017 was posted in Flying Squad, Sangli w.e.f. 3rd July, 2016 whereas the Applicant in O.A.988/2017 had joined Flying Squad, Sangli on 28.05.2015. Since then, they were serving in Flying Squad in State Excise Office, Sangli and have not completed normal tenure. However, by transfer order dated 16th October, 2017, the Applicant in O.A.987/2017 has been transferred to Solapur whereas the Applicant in O.A.988/2017 has been transferred to Nanded invoking 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'). The Applicants have challenged the impugned transfer orders in the present O.As.

3. In view of pleadings and submissions advanced by the learned Advocate for the Applicants, the challenge to the impugned order principally is on following grounds.

- (i) It being mid-term and mid-tenure transfer, there is no proper compliance of Section 4(4)(ii) and 4(5) of 'Transfer Act 2005'.
- (ii) The Respondent No.1 (Commissioner, State Excise, Mumbai) is not Competent Authority for mid-term and mid-tenure transfer in absence of Notification under Section 7 of 'Transfer Act 2005'.
- (iii) No publication of Notification of Competent Authority in Official Gazette declaring Head of the Department as a Competent Authority.
- (iv) The Constitution of Civil Services Board (CSB) suffers from material illegality.
- (v) The transfer being based on complaint, it is in contravention of Circular dated 11.02.2015 and rendered the transfer punitive.

4. The Respondents resisted the application by filing Affidavit-in-reply raising common defences. The Respondents denied that the impugned order of transfer suffers from illegality for the grounds raised by the Applicants. It is not in dispute that the Applicants have not completed their normal tenure in Flying Squad, State Excise Office, Sangli and impugned transfers are mid-term and mid-tenure. The Respondents contend that on 18.04.2017, the Officers of Flying Squad decided to effect raid confidentially, but it was transpired that while they were going to village Jat for raid, some of the members of Flying Squad in advance leaked the information and cautioned concerned bootleggers. In enquiry, it was transpired that it is the Applicants who leaked the confidential information and thereby committed misconduct. Therefore, the Divisional Deputy Commissioner, State Excise, Kolhapur had submitted a report to Respondent No.2 –

Commissioner, State Excise for immediate transfer of the Applicants. Accordingly, the matter was placed before CSB in its meeting on 18.08.2017 wherein having regard to the serious misconduct of the Applicants, the Committee resolved to transfer the Applicants from Flying Squad, Sangli. The decision of CSB had been approved by Hon'ble Minister being next higher authority. The Respondents thus contend that the transfer of the Applicants was necessitated in view of serious misconduct of the Applicants and it was done by following the provisions of 'Transfer Act 2005'. As regard competency, the Respondent No.1 – Commissioner, State Excise has been declared Competent Authority under Section 7 of 'Transfer Act 2005' by Notification dated 06.01.2014 which has been duly published in the Official Gazette dated 08.01.2014, and therefore, the objections raised in this regard is without substance. As regard constitution of CSB, the Respondents contend that the same has been constituted in terms of Clause 3.2 of G.R. dated 31.01.2014 and there is no illegality in the constitution of CSB. The Respondents thus denied that the transfers are punitive or in contravention of the provisions of 'Transfer Act 2005' and prayed to dismiss the application.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

6. In view of submissions advanced at the Bar, the following points arise for determination.

- (a) Whether constitution of CSB is illegal.
- (b) Whether Respondent No.1 is Competent Authority to pass impugned orders.
- (c) Whether the impugned transfer orders are punitive.

- (d) Whether requirement of Section 4(5) of 'Transfer Act 2005' are complied with.

7. **As to Point No.(a) :**

Shri A.V. Bandiwadekar, learned Advocate for the Applicants has referred the G.R. dated 31st January, 2014 issued by GAD regarding constitution and formation of CSB in pursuance of the directions issued by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** and invited my attention to Clause २(ब) of G.R, which provides for the establishment of CSB for Group 'B' (Non-gazetted) and Group 'C' employees. He emphasized that CSB(2) should comprises 4 members, but CSB in the present matter which approved the transfer of the Applicants are of 7 members, and therefore, it suffers from material variance and illegality. Here, it would be useful to reproduce Clause 2(a) of G.R. dated 31st January, 2014 which is as follows :

“२(ब) गट ब (अराजपत्रित) व गट क संवर्गातील कर्मचा-यांच्या पदस्थापना, बदली याबाबत सक्षम प्राधिका-यास शिफारशी करण्यासाठी खालीलप्रमाणे नागरी सेवा मंडळ स्थापन करण्यात येत आहे.:-

(ब) नागरी सेवा मंडळ (२)

१	प्रादेशिक विभागप्रमुख	अध्यक्ष
२	प्रादेशिक उप-विभागप्रमुख	सदस्य
३	प्रादेशिक विभागप्रमुख यांचा निकटतम निम्न अधिकारी (प्रादेशिक उप-विभागप्रमुख नसल्यास)	सदस्य
४	संबंधित खात्याचा आस्थापना अधिकारी	सदस्य

8. Whereas, the learned C.P.O. has relied upon Clause 3.2 of G.R. dated 31.01.2014, which is as follows :

“३.२ विभागप्रमुखांनी नागरी सेवा मंडळ (२) बाबतची कार्यवाही त्यांच्या स्तरावर करावी.”

9. As stated above, the CSB has been constituted in pursuance of the directions given by Hon'ble Supreme Court in T.S. R. Subramanian's case for transparent administration, accountability and stability of civil servants. In view of these directions, matters relating to promotion, transfer and posting are no required to be routed through CSB duly constituted by the Government. It is on this background, the GAD, State of Maharashtra had issued G.R. dated 31.01.2014 whereby CSBs have been constituted at various levels.

10. True, as per G.R. dated 31.01.2014 for Group 'B' (Non-gazetted) and Group 'C' employees, CSB(2) shall consists four members as reproduced above. However, by same G.R, Clause No.3.2 as reproduced above, directions were also issued to Head of the Department for establishment of CSB at their level. Thus, discretion was given to the Head of the Departments to constitute independent CSBs which will be known as CSB(2) at their level for the approval of transfers, posting and other service related matters of the Government servants. It is in pursuance of Clause 3.2 of G.R. dated 31.01.2014, the Respondent No.1 0 Commissioner, State Excise had constituted CSB by his order dated 13th June, 2016 (Page No.101 of P.B.) consists of 7 members headed by Commissioner, State Excise, Mumbai. It is quite clear from the perusal of order dated 13th June, 2016 that the said CSB was formed for regular as well as mid-term and mid-tenure transfers of Group A, B as well as Group 'C' employees of State Excise Department. Earlier by order dated 13th June, 2016, the Divisional Deputy Commissioner, State Excise, Thane was one of the member, which has been replaced by Divisional Deputy Commissioner, State Excise, Pune and instead of Assistant Commissioner (Administration), the Deputy Commissioner (Administration) will be Member Secretary as seen from Corrigendum dated 8th July, 2016 which is at Page No.102 of P.B. This being the position, it cannot be said that the constitution of CSB suffers from illegality. One need to borne in mind that the object of establishment of CSB was to bring transparency and fairness in the administration, so as to minimize uncontrolled exercise of powers

by the executive in the matter of transfer, posting, etc. Needless to mention that the recommendations made by CSB are recommendative in nature. Suffice to say, the mechanism of CSB was kept in place to ponder over the transfers, postings, etc. of the Government servants. The CSB in question which approved the transfer of the Applicants consists of seven members and headed by Commissioner, State Excise, Mumbai. One member belongs to cadre of Joint Commissioner, three members belong to the cadre of Divisional Deputy Commissioner, State Excise, one member belongs to the cadre of Deputy Commissioner, State Excise and Member Secretary is from Assistant Commissioner cadre. Thus, in fact, the CSB which approved the transfer of the Applicants is more comprehensive consists of Senior Officials and I see no illegality in its formation, particularly in view of Clause 3.2 of G.R. dated 31.01.2014.

11. Shri A.V. Bandiwadekar, learned Advocate for the Applicants in reference to Judgment passed in ***O.A.555/2016 (Rajesh Deore Vs. State of Maharashtra) decided on 26.08.2016*** sought to contend that where constitution of CSB suffers from illegality, the transfer order based on the recommendation of such CSB is invalid. I have gone through the Judgment in ***Rajesh Deore's*** case which pertains to the transfer of Police Personnel on the basis of approval of PEB envisaged under Section 22(I)(2) of 'Act 2015' which mandates that one of the member of PEB shall be from Backward Class. However, in that matter, there was no such valid constitution of PEB with member from Backward Class and consequently, the transfer order was quashed. However, in the present matter, there is no such legal infirmity much less fatal. Indeed, the constitution of CSB is in consonance with the G.R. dated 31.01.2014 as discussed above. This being the position, I find no substance in the defence raised in this behalf.

12. **As to Point No.(b) :-**

Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to assail the impugned transfer order on the ground that the Respondent No.1 – Commissioner, State Excise is not the Competent Authority in absence of valid Notification and its publication, as contemplated under Section 7 of ‘Transfer Act 2005’, and therefore, the impugned transfer is illegal. I find no substance in his contention.

13. As rightly pointed out by the learned CPO that the impugned transfer order has been passed by Respondent No.1, who has been declared as Competent Authority by Notification dated 06.01.2014 (Page No.93 of P.B.) issued under Section 7 of ‘Transfer Act 2005’. As per this provision, every Administrative Department shall for the purposes of this Act prepare and publish list of Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authority competent to make transfer within their jurisdiction for the purposes of ‘Transfer Act 2005’. It is in pursuance of this provision, the Home Department, Mantralaya had declared Commissioner, State Excise, M.S. i.e. Respondent No.1 as Competent Authority to transfer all non-gazetted employees in Group ‘C’ within his jurisdiction.

14. In so far as its publication is concerned, the learned Advocate for the Applicant sought to contend that, in absence of its publication in Official Gazette, the mere issuance of Notification declaring Head of Department as a Competent Authority is not enough, and therefore, on this ground itself, the transfer is vitiated. In this reference, he sought to place reliance on the Judgment passed by this Tribunal in ***O.A.421/2013 (Madhavi Bhujbal Vs. Commissioner, Social Welfare) decided on 27.09.2013, O.A.243/2016 (Suresh Shelar Vs. Special Inspector General of Police, Kolhapur) decided on 06.09.2016 and O.A.643/2010 (Anil Pulekar Vs. Additional Commissioner of Sales Tax) decided on 11.10.2010.***

I have gone through the Judgments and found that the transfer orders, in fact situation, were quashed on the ground of absence of Notification and its publication. However, in the present case, as rightly pointed out by learned CPO that the Notification dated 06.01.2014 declaring Respondent No.1 as Competent Authority has been duly published in Official Gazette of State of Maharashtra dated 08.01.2014. Therefore, the Judgments referred in these O.As are absolutely of no help to the Applicants.

15. Shri A.V. Bandiwadekar, learned Advocate for the Applicant was much harping upon one G.R. dated 14.07.2016, which is at Page No.21 of P.B. The perusal of the said G.R. reveals that the Home Department had issued the said G.R. delegating the powers of mid-term and mid-tenure transfers of Group 'C' employees to Principal Secretary, State Excise. Adverting to this G.R. dated 14.01.2016, the Applicant sought to contend that the delegation of powers to Principal Secretary is *ex-facie* illegal, being inconsistent with Section 6 of 'Transfer Act 2005'. In this behalf, he referred to the decisions passed by this Tribunal in ***O.A.444/2017 (Harishchandra Jadhav Vs. State of Maharashtra) decided on 28.07.2017*** and ***O.A.450/2017 (Pradeep Shelar Vs. State of Maharashtra) decided on 02.11.2017***. True, in these Judgments, the delegation of powers having found in contravention of Section 6 of 'Transfer Act 2005', the transfer orders issued by such authority were held unsustainable in law. However, in so far as the facts of present case are concerned, the learned Advocate for the Applicant lost sight of the fact that the impugned transfer orders are not passed by Principal Secretary on the basis of G.R. dated 14.07.2016 but the impugned transfer orders are based on the Notification dated 06.01.2014 referred to above whereby the Commissioner, State Excise has been declared as Competent Authority. Suffice to say, the G.R. dated 14.07.2016 is not at all foundation or base of the impugned transfer orders, and therefore, the submission advanced by the learned Advocate for the Applicants is fallacious and misconceived.

16. Suffice to say, the Respondent No.1 is the Competent Authority and there is no illegality in the impugned order in this context.

17. **As to Point No. (c) :-**

Now, the question comes whether the impugned transfer orders are punitive and based on unsubstantiated complaint. Shri A.V. Bandiwadekar, learned Advocate for the Applicants contends that the Applicants have been transferred on the allegation of having link with bootleggers, but in absence of cogent material of their complicity, the transfer on mere allegation is punitive and sustainable. In this respect, he placed reliance on the Circular dated 11.02.2015 (Page No.49 of P.B.) and on the decisions rendered by this Tribunal in ***O.A.221/2017 (Steven Joseph Vs. Deputy Director, Sports & Youth Services, Pune) decided on 15.09.2017, O.A.478/2016 (Nitin Mane Vs. State of Maharashtra) decided on 04.08.2016 and O.A.220/2016 (Ramdas kamble Vs. State of Maharashtra) decided on 20.04.2016.*** In these proceedings, the complaints were found unsubstantiated and consequently, the impugned transfer orders were quashed in fact situation.

18. By Circular dated 11.02.2015, the guidelines have been issued for observance of the procedure where the transfer is necessitated on complaint. Clause No.8 of Circular dated 11.02.2015 in this behalf is material which is as follows :

“एखादया प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी/ कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधित अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधित अधिकारी / कर्मचा-यांच्या तक्रारी संबंधातातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारी मधील गांभीर्य विचारात घेवून, संबंधित अधिकारी / कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे या बाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधित अधिकारी / कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्या बाबतची कारणामीमांसा नमूद करून बदली प्राधिका-या संबंधित अधिकारी / कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या 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 प्रकारणात संबंधित अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

19. Now, let us see whether the complaint of misconduct can be said unsubstantiated. In this respect, the perusal of report submitted by Divisional Deputy Commissioner, State Excise, Kolhapur reveals that, on 18.04.2017 when Sangli Flying Squad Unit consists of Applicants laid trap, it was noticed that the information of such raid/trap of Flying Squad, which was confidential, was leaked to the bootleggers and in preliminary enquiry, the involvement of the Applicants was found substantiated. There was communication on telephone in between bootlegger Mutkappa Yalgar with Yuvraj Kamble and Applicants were found, prima-facie, leaked the confidential information and thereby committed misconduct. The Divisional Deputy Commissioner, therefore, recommended for their transfer out of Kolhapur Region vide detail report dated 09.08.2017.

20. The report dated 09.08.2017 forwarded by Divisional Deputy Commissioner, State Excise was placed before CSB in its meeting dated 18.08.2017 wherein in view of serious misconduct, the Committee unanimously resolved and specifically noted that the continuation of the Applicants on the same place will not be in fitness of the things and further observed that the disciplinary action against the Applicants needs to be taken. The CSB has also considered the instructions contained in Circular dated 11.02.2015 and approved the proposal for the transfer of the Applicants on administrative ground because of alleged serious misconduct of the Applicants. Accordingly, note was placed before the Hon'ble Minister for approval as a next higher authority, as contemplated in Table below Section 6 of 'Transfer Act 2005'. The Hon'ble Minister was pleased to approve the proposal, as seen from the record. This being the position, it cannot be said that there is any breach of Circular dated 11.02.2015. The satisfaction of CSB is based on some material and it cannot be said unfounded. In pursuance of minutes of CSB, the Commissioner, State Excise

by its letter dated 19.08.2017 (Page No.73 of P.B.) forwarded the proposal to the Government wherein there is specific mention that the conduct of the Applicants is highly doubtful and they seem to be working against the objectives of the Department. With this specific observation, the Competent Authority i.e. Commissioner, State Excise requested the Government to approve the transfers of the Applicants. It is in that context, the Hon'ble Minister accorded the approval.

21. Needless to mention that the order of transfer being an incidence of service should not be interfered, unless it is found in contravention of mandatory requirement of law or suffers from malice or arbitrariness on the part of authority concerned. In the present matter, the Competent Authority was satisfied that the continuation of the Applicants on the same posts is not advisable and accordingly forwarded the proposal to the Government for approval. In such situation, holding of elaborate enquiry prior to transfer cannot be insisted upon as sought to contend by the learned Advocate for the Applicants. What is needed is the *prima-facie* satisfaction of the authority concerned on the reports or inputs received from the concerned.

22. In this behalf, I am guided by the observations made by Hon'ble Supreme Court in ***Civil Appeal No.1010-2011 of 2004 (Union of India Vs. Sri Janardhan Debanath & Anr.) decided on 13.02.2004***, which are as follows :

“12. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to

enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The Writ Petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

23. The legal principles enunciated in the **Janardhan Debanath's** case (cited supra) are clearly attracted in the present matter, and therefore, the submission advanced by the learned Advocate for the Applicants that the Applicants should not have been transferred without elaborate enquiry, holds no water.

24. **As to Point No.(d) :-**

Admittedly, the Applicants have not completed normal tenure at the time of impugned transfer order, and therefore, there has to be compliance of Section 4(5) of 'Transfer Act 2005'. The Applicants' transfer was approved by CSB and the Competent Authority i.e. Commissioner, State Excise concurred with the approval of CSB and then obtained the approval of Hon'ble Minister In-charge, who is the next higher authority as contemplated in Section 4(5) of 'Transfer Act 2005'. Specific reasons are mentioned in the minutes of CSB that the Applicants have committed misconduct of leaking confidential information, and therefore, the transfer was necessitated. Therefore, it cannot be said that the transfer is made without recording the reasons or without prior permission of the higher competent authority. I see no material illegality in this regard. There is compliance of Section 4(5) of 'Transfer Act 2005'.

25. The necessary corollary of aforesaid discussion leads me to sum-up that the challenge to the impugned transfer orders holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai

Date : 05.04.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\4 April, 2019\O.As.987 & 988.17.w.4.2019.Transfer.doc