

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.304 OF 2019**

Shri Gaurav Vijay Pawar, )  
Age 25 years, Occ. Ward Boy, ESIS Hospital, )  
Satpur, Nashik. )  
R/at Room No.1, Building No.1-A, ESIS Hospital )  
Satpur, Nashik 7. )...**Applicant**

**Versus**

1. The Commissioner (Administration) )  
Employees State Insurance Scheme, )  
O/at Panchdeep Bhawan, 6<sup>th</sup> floor, )  
N. M. Joshi Marg, Lower Parel, )  
Mumbai 400 013. )
2. The Medical Superintendent, ESIS Hosp. )  
Satpur, Nashik. )....**Respondents**

**Shri Arvind V. Bandiwadekar, Applicant in person, Applicant in person.**

**Smt. Archana B. K., Presenting Officer for Respondents.**

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

**DATE : 12.03.2021**

**JUDGMENT**

1. The Applicant has challenged the transfer order dated 19.01.2019 whereby he is transferred from Nashik to Nagpur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985

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

The Applicant is serving as Ward Boy in ESIS Hospital, Satpur, Nashik on the establishment of the Respondent No.2. He contends

that being employee of Group-D, he is not subjected to fixed tenure in terms of Section 3(2) of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005). However, the Respondent No.1 by impugned transfer order transferred him in Nagpur division on the establishment of ESIS Hospital, Nagpur on the ground of alleged misconduct. The Applicant has challenged the transfer order *inter-alia* contending that he being Group-D employee, his post is not transferable and secondly, the Respondent No.1-Commissioner, ESIS, Mumbai was incompetent to issue any such transfer order by transferring him out of region far away since it amounts to punishment.

3. The Respondents resisted the Original Application *inter-alia* contending that in view of serious complaint of misconduct of frequently indulging in abuses and behaving indecent manner with women staff, the transfer of the Applicant was found necessitated, and therefore, with the recommendation of Civil Services Board (CSB), the Applicant came to be transferred on vacant post in Nagpur.

4. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

5. Indisputably, the Applicant is serving as Ward Boy and falls in Group -D category. True, the transfer is an incident of service and Government servant cannot claim particular post or place as of right. However, now the transfers are regulated and governed by the provisions of 'Act 2005' and it is not left to whims and caprice of the Government/employer. If the transfer is found in contravention of express provisions of law or malicious then it needs to be interfered with by Tribunal so as to uphold the rule of law.

6. The Applicant being Group 'D' employee, he is not subjected to fix tenure alike Group -'A', 'B' and 'C' Government servants. The transfer of Group-D employee is governed by Section 3(2) of 'Act 2005' which is as follows:-

"3(2): *Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.*

7. Now, turning to the facts of present case, admittedly, the Applicant did not request for transfer nor it is a case of mutual transfer. The Applicant is transferred on the basis of complaints of alleged misconduct, and therefore, question comes whether there was substantiated complaints of serious nature so as to warrant the transfer of the Applicant and secondly whether the Respondent No.1 was notified as a competent authority for legal and valid transfer of the Applicant.

8. The issue of competency of Respondent No.1 to transfer the Applicant goes to the root of the matter, and therefore, it needs to be taken up first.

9. Shri A. V. Bandiwadekar, learned Counsel for the Applicant has pointed out that the Applicant being Group -D employee as per Section 6 read with Table- the competent transferring authority is Regional Heads of the Department. Apart, he has also pointed out that in terms of Section 7 of 'Act 2005' there has to be publication of Heads of the Department as well as Regional Heads of the Department within their jurisdiction for legal and valid transfer order. Section 7 of 'Act 2005' is as under:-

*“7. Every Administrative Department of Mantralaya shall for the purposes of this Act prepare and publish a list of the Heads of Departments and Regional Heads of Departments within their jurisdiction and notify the authorities competent to make transfers within their jurisdiction for the purposes of this Act.”*

10. Shri A. V. Bandiwadekar, learned Counsel for the Applicant, therefore, submits that in absence of notification, impugned transfer order is unsustainable in law.

11. Whereas learned P.O. sought to contend that in view of the complaint of serious misconduct against the Applicant, the CSB had recommended for the transfer of Applicant and Respondent No.1 – Commissioner, ESIS Scheme, Mumbai being above Regional Head of the Department was competent to transfer the Applicant.

12. As stated above, the Applicant being Group –D employee was not subjected to fixed tenure and he can be transferred out from the station where he is serving except on request for mutual transfer or when there is substantiated complaint of serious nature. Thus, if Section 3(2) is read with Section 6 of ‘Act 2005’, the Applicant being Group-D employee, Regional Head of the Department is competent transferring authority. At the same time, as per Section 7 of ‘Act 2005’, there has to be publication of list of Heads of the Department and Regional Heads of the Department within their jurisdiction and notify the authorities competent to make transfer within their jurisdiction for the purposes of ‘Act 2005’. Even assuming that Respondent No.1 being Commissioner is Head of the Department, there has to be publication and declaration of Head of the Department for the purposes of transfer in terms of provisions of ‘Act 2005’.

13. However, admittedly no such notification as mandated in terms of Section 7 of ‘Act 2005’ is forthcoming.

14. Needless to mention that when law requires to do particular thing in particular manner then it needs to be done in that manner only. Suffice to say, in absence of notification/publication, empowering the Respondent no.1 as a competent authority for transfer, the impugned transfer order cannot be said legal and valid. On this ground alone, impugned order deserves to be quashed.

15. Secondly, the Respondent No.1 transferred the Applicant at Nagpur which is far away from Nashik and the distance is not less than 700 km. Indeed, as per Section 3(2) of 'Act 2005' the post of Group-D is not subjected to fixed tenure and it is only in certain situation the Group-D employee can be transferred out of station where he is serving. The rationale behind using of word "station" in Section 3(2) of 'Act 2005' is that the Government servant belonging to Group-D being in lowest cadre and unprivileged strata of the society, such employee, even if warranted, should not be transferred far away. Otherwise, it would be amounting to harassment of a Group-D employee. As such, even if there were substantiated complaint warranting transfer of the Applicant, he would have been transferred nearby Nashik in view of plain meaning of Section 3(2) of 'Act 2005'. However, he seems to be deliberately transferred out of region at Nagpur which is approximately 700 km from Nashik which has caused much hardship to the Applicant. It appears that purposely by way of punishment, the Applicant is transferred to Nagpur. Needless to mention that the Government servant cannot be subjected to transfer as a punishment.

16. In so far as complaints of alleged misconduct is concerned, it appears that initially one lady namely Smt. Laxmi Chavan made complaint dated 07.12.2017 alleging that the Applicant misbehaved with her and tried to outrage her modesty at her home. However, Smt. Laxmi Chavan has withdrawn her complaint before Internal

Committee which seems to have been formed to enquiry into complaint of sexual harassment at work place. The Internal Committee accordingly closed the complaint in view of the compromise between parties on 20.12.2017. Apart, there were joint complaints of seven women dated 08.01.2019 stating that on 29.12.2018, the Applicant had abused them and behave in indecent manner in campus of quarters. It is on the basis of said complaints, the Applicant seems to have been transferred. It appears that the said complaint was placed before the Internal Committee who also called the Applicant for inquiry. He denied to have indulged in any such misconduct. Internal Committee, accordingly, recommended for transfer as well as disciplinary action. However, no further disciplinary action is taken except transfer to Nagpur which amount to punishment in the facts and circumstances of the matter.

17. Since there is no notification empowering the Respondent No.1 as a competent authority for legal and valid transfer to Applicant, I have no other option except to hold that the impugned transfer order is unsustainable in law and Original Applicant, therefore, deserves to be allowed. However, it is made clear that the Respondent No.1 is at liberty to take further suitable action against the Applicant, as he deems fit, in accordance to law. Hence the following order.

**ORDER**

- (A) Original Application is allowed.
- (B) Impugned transfer order dated 19.01.2019 is quashed and set aside.
- (C) Interim relief granted by the Tribunal is made absolute and Applicant is deemed to be reposted at Nashik.
- (D) No order as to costs.

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

Date : 12.03.2021  
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