

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 831 OF 2017

DISTRICT : PUNE

Smt Vijaya Ashokrao Talkute,)
Working as Assistant Vocational Guidance)
Office, Residing at Post Vidyanagar,)
Jejuri, Tal-Purandar,)
Pune 412 303.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
Mantralaya,)
Mumbai 400 032.)
2. Principal Secretary,)
School Education and Sports)
Department, Madam Cama Marg,)
Hutatma Rajguru Chowk,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

DATE : 09.02.2018

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents

2. Applicant has approached this Tribunal by challenging order dated 7.7.2017, Annexure A-4, by which applicant has been transferred and posted from her present post at Assistant Vocational Guidance Officer, Vocational Guidance and Selection Centre, Pune to the post of Block Education Officer, Panchayat Samiti, Dist-Palghar.

3. Applicant's grievance against the transfer though is based on the ground that she is transferred after completing one year and 11 months, (before completion of 3 years) and that her transfer is even otherwise in violation of Section 4(4)(ii) and 4(5) of the ROT Act, 2005.

4. Relevant averment is contained in para 6.12.2. Applicant has also averred in the rejoinder that after bifurcation of the cadre of Education Officer/Deputy Education Officer in educational and administrative streams, the officers who have opted for administrative cadre two persons, namely, Shri Ramdas Walzade and Shri A.R Bhumkar have been retained in educational stream, though Applicant is derived same treatment.

5. The averments contained in para 6.12.2 in the Original Application and relevant averments contained in the rejoinder in para 2 read as follows:-

From O.A:-

“6.12.2 The impugned transfer order is mid term and mid-tenure transfer and therefore the special procedure laid down u/s 4(4)(ii) and 4(5) of the Transfer Act is required to be followed. To the best of the knowledge of the Petitioner no exceptional circumstances has been recorded in writing as no exceptional circumstances, special reasons exist for transfer of the Petitioner and prior approval of the Hon’ble Chief Minister is not taken. The transfer order is issued in blatant violation of the provision of Section 4(4)(ii) and 4(5) of the Transfer Act. Therefore, the impugned transfer order is illegal and bad in law. The impugned transfer order is nonest and void ab initio.”

(Quoted from page 5 of Original Application).

From Rejoinder:-

“2. I say that the following persons even though they have given an option like me to work on administrative cadre, neither their transfer orders have been issued nor their names have been reflected in the list dated 31.1.2017, but nevertheless these persons have been accommodated in Vidya Pradhikaran, Pune.

1. Shri Ramdas Walzade, Group. B, Evaluation Officer
2. Shri A.R Bhumkar, Aurangabad (who has not transferred even though given option like Petitioner)- working from 2-13.

I have a reason to believe that the Respondents are acting arbitrarily, discriminatorily and illegally, in violation of law. Copy of the letter dated 31.1.2017 is annexed and marked as Annexure R2.”

(Quoted from pages 78 & 79 of rejoinder filed by the Applicant)

6. The averments contained in para 6.12.2 have been replied by the Respondents through paragraphs 11 & 12 of affidavit in reply, text whereof reads as follows:-

“11. With reference to Para 6.12.1 and 6.12.2 of the Original Application, I say and submit that the applicant is aware about the exceptional circumstances due to changes in recruitment rules dated 5.7.2016 in which some academic posts were excluded from cadre of the Deputy Education

Officer, which necessitated to transfer the employee on the administrative post of the said cadre. All the 12 persons mentioned in the transfer order dated 7.7.2017 were working on the academic posts in the Group-B cadre. As these academic posts can no longer be filled from the persons belonging to the cadre of Deputy Education Officer, it was necessary to change the posting of these 12 officers. Hence, the transfer order of the Applicant is made in special circumstances by following the procedure laid down in Section 4(4) & (5) of the Transfer Act, 2005.

12. With reference to Para 6.12.3 of the Original Application, I say and submit that powers are delegated to the Hon'ble Minister to issue orders in cases of transfers for exceptional reasons of Group B officers vide G.R dated 30.5.2015. Therefore the contents of the said para are not correct and are denied."

(Quoted from pages 27 & 28 of the affidavit in reply filed on behalf of Respondent no. 1).

7. In so far as retention of Deputy Education Officer (Administrative) being retained on the educational cadre is concerned, learned Presenting Officer states that their transfer is in the offing and may be ordered at any time and the matter is pending before the Hon'ble Minister for decision.

8. The case proceeds on admitted facts and background as follows:-

- (a) Transfer subject matter is mid-term.
- (b) Transfer subject matter though mid-tenure, it appears to be an administrative necessity.
- (c) The power to transfer as laid down in the table prescribed in Section 6 for Group-B officers vest with the Minister in-charge.
- (d) The powers to transfer vested by statute with the Minister-in-charge is delegated by Government decision dated 30.5.2015. The text which pertains to delegation reads as follows:-

“शासन निर्णय -

महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन आणि शासकीय कर्तव्ये पार पाडताना होणा-या विलंबास प्रतिबंध अधिनियमातील कलम ६ मधल्या परंतुकानुसार महाराष्ट्र शिक्षण सेवा गट अ व ब संवर्गातील अधिका-यांच्या बदल्यांचे अधिकार खालीलप्रमाणे प्रत्यार्पित करण्याचा निर्णय शासनाने घेतला आहे.

अ. क्र.	संवर्ग	प्रचलित कायदयानुसार तरतूद	विकेंद्रीकरणानंतर सक्षम प्राधिकारी	अपवादात्मक परिस्थिती/विशेष बाब विषयक
१	२	३	४	५
१	संचालक	मा.मुख्यमंत्री	मा.मुख्यमंत्री	मा.मुख्यमंत्री
२	सह संचालक	मा.मुख्यमंत्री	मा.मुख्यमंत्री	मा.मुख्यमंत्री
३	उपसंचालक	मा.मुख्यमंत्री	विभागाचे प्रभारी मंत्री	मा.मुख्यमंत्री
४	प्राचार्य, डायट	मा.मुख्यमंत्री	विभागाचे प्रभारी मंत्री	मा.मुख्यमंत्री
५	शिक्षणाधिकारी व तत्सम	विभागाचे प्रभारी मंत्री	विभागाचे प्रभारी मंत्री	मा.मुख्यमंत्री
६	जेष्ठ अधिव्याख्याता	विभागाचे प्रभारी मंत्री	विभागाचे प्रभारी मंत्री	मा.मुख्यमंत्री
७	प्रशासन अधिकारी	विभागाचे प्रभारी मंत्री	विभागाचे प्रभारी मंत्री	मा.मुख्यमंत्री
८	उपशिक्षणाधिकारी व तत्सम	विभागाचे प्रभारी मंत्री	विभागाचे सचिव	विभागाचे प्रभारी मंत्री
९	अधिक्षक (म.शि.से)	विभागाचे प्रभारी मंत्री	विभागाचे सचिव	विभागाचे प्रभारी मंत्री
१०	अधिक्षक (सा.रा.से)	विभागाचे प्रभारी मंत्री	विभागाचे सचिव	विभागाचे प्रभारी मंत्री
११	अधिव्याख्याता, डायट	विभागाचे प्रभारी मंत्री	विभागाचे सचिव	विभागाचे प्रभारी मंत्री
१२	विधी अधिकारी	विभागाचे प्रभारी मंत्री	आयुक्त (शिक्षण)	विभागाचे प्रभारी मंत्री

(Quoted from pages 52 & 53, Exh. R-3 of O.A)

- (e) It is evident that the power to effect regular transfers/periodic/annual transfers in so far as post of Deputy Education Officer, which was formerly vested with Minister-in-charge, has been delegated to the Secretary of the Department and at the same time powers to issue order of transfer in exceptional circumstances or for special reasons is vested with the Minister in-charge.
- (f) Section 4(4), second proviso requires recording of reasons.
- (g) Section 4(5) requires approval and prior permission of the immediately preceding competent transferring authority mentioned in the table.
9. In the aforesaid background, the question which arises for consideration are as follows:-

- (i) Whether special reasons or exceptional circumstances to transfer the applicant exists?
- (ii) Whether the Minister-in-charge is competent under the delegation done through Government decision dated 30.5.2015 to order the transfer, for special reasons or in exceptional circumstances?
- (iii) In the event, answer to question No. (ii) is in the negative, whether prior permission of authority higher in rank to the competent transferring authority is taken.

10. Question no. (i). Whether special reasons or exceptional circumstances to transfer the applicant exists?

In so far as reasons for transfer are concerned, copy of office note which is at Exhibit R-2 reveals the circumstances in which mid-term transfer has been moved and ordered. It reveals and adequately spells out that bifurcation of the cadres is the cause and the ground due to which, upon exercise of option of various Deputy Education Officers to the stream of Administration, the transfer became necessary, it was processed and it was approved by the Hon'ble Minister.

Thus the condition of recording of reasons is duly complied with.

11. Question no. (ii). Whether the Minister-in-charge is competent under the delegation done through Government decision dated 30.5.2015 to order the transfer?

The delegation, text whereof is quoted in para 8(d) reveals that powers to order periodic transfer which was formerly vested with Minister-in-charge, is now delegated to the Secretary of the Department. For transfers which are not annual/periodic, the Secretary can propose and Minister-in-charge can order such

transfer for special reasons and exceptional circumstances that too after taking prior permission from the Hon'ble Minister, being next superior authority.

12. Since admittedly in the present case, impugned transfer order is issued in the month of July, 2017, it is mid-tenure transfer and for which apart from recording of special reasons and exceptional circumstances "prior permission" of authority immediately preceding the competent authority has to be obtained.

13. By virtue of the legal position as discussed herein above, while the Secretary of the department is the competent authority for periodic transfer, for transfer based on special reasons and exceptional circumstances, the Minister-in-charge is competent authority and such competent authority can take a decision to issue a mid-term or mid-tenure transfer, upon recording reasons after prior permission from the authority higher in rank than the competent authority.

14. Thus, question no. (ii) is to be answered in negative, holding that the Minister-in-charge is not competent to issue mid-term and mid-tenure transfer, without prior permission of the authority higher in rank, than competent authority, i.e. Hon'ble Chief Minister.

15. Question no. (iii). In the event, answer to question No. (ii) is in the negative, whether prior permission of authority higher in rank to the competent transferring authority is taken.

In the light of the foregoing discussion, to question no. (ii) now it is to be seen on facts as to whether prior permission of Hon'ble Chief Minister, who is authority higher in rank, is taken.

16. Office Note, Exh. R-2 shows that office note put up by Desk Officer and approved by the Principal Secretary, Education Department was approved by the Minister-in-charge. However, the Respondents appear to have proceeded on the foundation that the Minister-in-charge is competent authority even to issue mid-term and mid-tenure transfers.

17. In the result, the impugned order is based on misunderstanding or disregard to the provisions of law. Hence answer to question no. 3 has to be recorded by holding that prior permission of competent authority, i.e. Hon'ble Chief Minister has not been taken before issuing transfer order.

18. In view of the foregoing discussion, impugned order dated 7.7.2017, issued in disregard of mandatory provisions of law and hence it is patently illegal and is quashed and set aside.

19. Parties are directed to bear their own costs.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 09.02.2018
Dictation taken by : A.K. Nair.