

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.539 OF 2019

DISTRICT : MUMBAI

Shri Ajay Mahadeo More.)
Age : 54 Yrs., Working as Divisional)
Store Keeper, Presidency Division,)
Bandkam Bhavan, Fort, Mumbai and)
Residing at K.N. Konkan Niwas C.H.S.Ltd.)
Building No.160, Room No. 4958,)
Kannamwar Nagar-1, Vikhroli (E),)
Mumbai - 400 083.)...**Applicant**

Versus

1. The Superintending Engineer.)
Mumbai (Public Work) Circle,)
Mumbai, 25, Marzban Road, Fort,)
Mumbai - 400 001.)
2. Shri Suresh O. Tayade.)
Aged : Adult, Working as Store)
Keeper in the office of)
Superintending Engineer,)
Public Works Circle, Thane.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

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

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

Mr. R.G. Panchal, Advocate for Respondent No.2.

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

DATE : **17.10.2019**

JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 07.06.2019 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 was serving as Store Keeper in Presidency Division, Public Works Department, Mumbai. By impugned transfer order dated 07.06.2019, he was transferred in the Office of Superintending Engineer, PWD, Thane. He has not completed his normal tenure of six years, and therefore, the transfer order dated 07.06.2019 is mid-term as well as mid-tenure. He further assailed the impugned transfer order contending that the Superintending Engineer or Chief Engineer are not competent in law for such mid-term and mid-tenure transfer, and therefore, the impugned transfer order is *ex-facie* in contravention 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). Furthermore, there is no approval of Civil Services Board (CSB) as well as Hon'ble Minister for such mid-term and mid-tenure transfer and the impugned transfer order issued purportedly under delegated powers is not sustainable in law. By impugned order, the Respondent No.2 is posted in his place and only to accommodate him, he was transferred on the recommendation of elected representative. With these pleadings, the Applicant contends that the impugned transfer order is unsustainable in law.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply inter-alia denying that the impugned transfer order suffers from any illegality. The Respondent sought to justify the impugned transfer order contending that the Respondent No.1 – Superintending Engineer is the Head of the Department and by Circular dated 26.11.2014, the Government has directed for delegation of powers and in pursuance of it, by Notification dated 15.01.2015, the powers are delegated to Chief Engineer as immediately superior Competent Authority within the meaning of Section 4(5) of 'Transfer Act 2005'. It is in pursuance of said Notification, the Chief Engineer accorded sanction for the transfer of the Applicant and in his place, the Respondent No.2 was posted. The reply filed by Respondent No.1 is totally silent about the recommendation of CSB. With this pleading, the Respondent No.1 sought to justify the impugned transfer order.

4. The Respondent No.2 has also filed Affidavit-in-reply inter-alia reiterating the contentions raised by Respondent No.1 and sought to justify the impugned transfer order.

5. Shri A.V. Bandiwadkar, learned Advocate for the Applicant assailed the impugned transfer order contending that the Applicant though not due for transfer, he was transferred mid-term as well as mid-tenure without recording special reasons as well as without approval of immediately preceding competent transferring authority as mentioned in Table of Section 6 as well as the same is without recommendation of CSB, and therefore, the same is in blatant violation of 'Transfer Act 2005'. He further pointed out that the Respondent No.2 was posted in place of Applicant on the recommendation of elected representative in defiance of provisions of 'Transfer Act 2005'.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer as well as Shri R.G. Panchal, learned Advocate for Respondent No.2

Utt. 11.11.19

sought to support the impugned transfer order contending that the Respondent No.1 – Superintending Engineer was declared Head of the Department as contemplated under Section 7 of 'Transfer Act 2005' and for the compliance of Section 4(5) of 'Transfer Act 2005', the approval of next higher authority viz. Chief Engineer is obtained. As regard absence of recommendation of CSB, the learned P.O. submits that the decision to transfer the Applicant and to post Respondent No.2 in his place was taken at regional level meeting (परीमंडळ) by Superintending Engineer. Whereas, Shri R.G. Panchal, learned Advocate for Respondent No.2 sought to contend that in absence of any such stipulation or requirement for placing the matter before CSB in 'Transfer Act 2005', the absence of recommendation of CSB is inconsequential.

7. In view of submissions advanced at the Bar, the question posed for consideration is whether the impugned transfer order is in consonance with the provisions of 'Transfer Act 2005'.

8. The Scheme of 'Transfer Act 2005' is as follows :-

Sub-section (1) of Section 4 of the Act emphatically provides that no Government servant shall ordinarily be transferred unless he has completed his tenure of posting as provided in Section 3. Sub-section (2) requires a competent authority to prepare every year in the month of January, a list of Government servants due for transfer, in the month of April and May in the year. Sub-section (3) requires that the transfer list prepared by the respective competent authority under sub-section (2) for Group A Officers specified in entries (a) and (b) of the table under section 6 shall be finalized by the Chief Minister or the concerned Minister, as the case may be, in consultation with the Chief Secretary or concerned Secretary of the Department, as the case may be. Proviso thereto requires that any dispute in the matter of such transfers shall be decided by the Chief Minister in consultation

with the Chief Secretary. Sub-section (4) mandates that the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May. Proviso to Sub-section (4) permits a transfer to be made any time in the year in the circumstances stated therein. Sub-clause (i) thereof permits such a transfer to be made at any time in a year to a newly created posts 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. Sub-clause (ii) thereof permits such a transfer at any time 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. Sub-section (5) of Section 4, which begins with a non obstante clause, permits the competent authority, in special cases, after recording reasons in writing and with the prior approval of the immediately superior Transferring Authority mentioned in the table of section 6, to transfer a Government servant before completion of his tenure of post.

9. Now, turning to the facts of the present case, there is no denying that the Applicant was posted on 31.05.2018 at the place, which he held at the time of impugned transfer order (Page No.22 of Paper Book). As such, he had completed hardly eleven months and was due for transfer. This fact is acknowledged by Respondent No.1 in the minutes of meeting held by him on 30.05.2019. There is specific mention in the minutes that the Applicant having completed only eleven months, has not completed normal tenure, and therefore, the Respondent No.1 seek approval of Chief Engineer for his mid-tenure transfer and he further recommended to post Respondent No.2 in place of Applicant. This being the position, it is explicit that the Applicant was not due for transfer. Furthermore, though the Respondent No.1 proposed his transfer, as per minutes dated 30.05.2019, the transfer order was issued on 07.06.2019. Whereas,

Signature

as per Section 4(4) of 'Transfer Act 2005', transfers are required to be done only once in a year in the month of April or May. But in the present case, the transfer order being issued on 07.06.2019, it has also trapping of mid-term transfer. Thus, the position emerges from the record of the Respondents themselves that the impugned transfer order is mid-term as well mid-tenure transfer. Indeed, the Respondent No.1 acknowledged this aspect and that is why he sought approval of Chief Engineer. The tenor of reply filed by Respondent No.1 is that they have complied Section 4(5) of 'Transfer Act 2005', by obtaining approval of Chief Engineer. Whether the Respondents have made out special case for mid-tenure transfer and secondly, as to whether it is with the prior permission of immediately preceding competent transferring authority as mentioned in Table of Section 6 of 'Transfer Act 2005', this aspect will be dealt with a little latter. Presently, suffice to say that the Respondents themselves treated the transfer as mid-tenure transfer, and therefore, the Respondents were required to comply rigor of Section 4(5) of 'Transfer Act 2005'.

10. True, the Respondent No.1 – Superintending Engineer seems to have been declared competent authority as per Notification dated 16.06.2006 (Page No.39 of P.B.). As per Section 6 of 'Transfer Act 2005', for employees in Group 'C', the Head of the Department is competent transferring authority and as per Section 7 of 'Transfer Act 2005', Administrative Department of Mantralaya was required to public the list of the Heads of the Departments. As such, the Notification dated 16.06.2006 seems to have been issued declaring Respondent No.1 – Superintending Engineer as a competent transferring authority. However, in so far as the prior permission of immediately preceding competent transferring authority mentioned in the Table of Section 6 for transfer of Government servant before completion of his tenure of post as contemplated under Section 4(5) of 'Transfer Act 2005' is concerned, the Chief Engineer cannot be said

immediately preceding competent transferring authority mentioned in Table of Section 6 of 'Transfer Act 2005'.

11. Section 6 of 'Transfer Act 2005' 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.

Groups of Government Servants (1)	Competent Transferring Authority (2)
(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.

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."

12. It is thus explicit from Section 6 and Table thereunder that for employees in Group 'C' like Applicant, the Head of the Department is transferring Authority but immediately superior Transferring Authority for the purpose of Section 4(5) of 'Transfer Act 2005' is Minister Incharge in consultation with the Secretaries of concerned Department as seen from Table to Section 6 of 'Transfer Act 2005'.

See above

13. In the present case, the Respondents sought to contend that the Chief Engineer being superior authority to the Superintending Engineer, the approval of Chief Engineer is legal. This contention and submission advanced by the learned Advocate for the Respondents is misconceived and contrary to the mandate of express provisions of Section 4(5) of 'Transfer Act 2005'. The Chief Engineer may be superior authority to the Superintending Engineer in hierarchy, but in so far as mid-tenure transfer is concerned for the purposes of 'Transfer Act 2005', he cannot be termed immediately preceding transferring authority in view of unambiguous language used in Section 4(5) of 'Transfer Act 2005'. This being the position, the approval of Chief Engineer is not in consonance with Section 4(5) of 'Transfer Act 2005'.

14. It was sought to contend that in view of Circular issued by GAD dated 26.11.2014, it was directed by GAD to delegate the powers to subordinate Officers. Para No.4 of Circular is as follows :-

“४. मा. मुख्यामंत्रि यांनी प्रशासनातील कालापव्यय टाळून, निर्णय प्रक्रियेतील टप्पे कमी होण्याच्या दृष्टीने, विभागातील तसेच त्यांच्या अधिपत्याखालील क्षेत्रिय आस्थापनेवरील अधिकारी/कर्मचा-यांचे बदल्यांच्या अधिकारांचे विकेंद्रीकरण करण्याच्या सूचना केल्या आहेत. त्यानुषंगाने, सर्व प्रशासकीय विभागांना विनंती करण्यात येते की, त्यांनी महाराष्ट्र शासकीय कर्मचा-यांच्या बदल्यांचे विनियमन अधिकनयम, २००५ मधील कलम ६ खालील परंतुक २ व कलम ७ यामधील तरतूदी एकत्रित विचारात घेवून, बदली करण्यास सक्षम प्राधिका-याचे बदल्यांचे अधिकार, त्याच्या कोणत्याही दुय्यम प्राधिका-याकडे प्रत्यार्पित करण्याची कार्यवाही त्वरित करावी.”

15. Referring to this Circular, the learned P.O. sought to rely upon Notification dated 15.01.2015 wherein it is stated that for the purposes of Section 6, the powers are delegated to Chief Engineer. I have gone through Notification dated 15.01.2015, which inter-alia shows that Chief Engineer is Competent Authority for inter-region transfer in respect of the transfers of Assistant Engineers, Grade-I and Junior Engineers falling in the pay scale mentioned therein. As such, it speaks about delegation of power to Chief Engineer pertaining to transfer of Assistant Engineers and Junior Engineers of Public Works Department. Whereas, in the present case, the matter pertains to the transfer of Store-keeper and not Assistant Engineer or Junior

Engineer. Therefore, the Chief Engineer cannot be said immediately preceding competent transferring authority for the mid-tenure transfer of the Applicant. Indeed, there could be no such delegation of power to authorities other than mentioned in Table attached to Section 6 by issuance of Notification. Needless to mention, the Notification cannot override express provisions of law and if executive wants to delegate the powers of immediately preceding competent transferring authority in the manner other than mentioned in Section 6 of 'Transfer Act 2005', then it should be by amendment to Act 2005 by legislation and it cannot be done by Notification. Admittedly, there is no prior approval of Minister Incharge in consultation with Secretaries of the concerned Department, as mandated by Section 6 of 'Transfer Act 2005' and it render transfer order illegal.

16. Apart, as stated above, the Applicant was not due for transfer, and therefore, for his mid-tenure transfer, special reasons were required to be recorded, as contemplated under Section 4(5) of 'Transfer Act 2005'. The Respondent No.1 had also acknowledged this fact that the Applicant has not completed normal tenure as specifically mentioned in his minutes dated 30.05.2019 (Page No.114 of P.B.), and therefore, he sought approval from Chief Engineer under the assumption that the Chief Engineer is competent transferring authority for mid-tenure transfer. Pertinently, not a single reason even for name sake is mentioned in minutes for mid-tenure transfer. It is well settled that, in case of mid-tenure transfer, there has to be special reasons recorded by the authority, so that the Tribunal should be in a position to examine whether there exists any such ground or necessity for mid-tenure transfer. It is not mere formality but mandatory requirement of law, which is completely missing in the present matter. On this ground also, the impugned transfer order is bad in law.

Mr. [Signature]

17. Furthermore, there are reasons to point out that the Applicant was displaced only to accommodate Respondent No.2 in view of recommendation of elected representative. The Applicant has produced letter issued by the then MLA Shri Charan Waghmore dated 29.05.2019 addressed to Superintending Engineer to post him in Residency Division, Mumbai as a special case. Thus, the letter of elected representative is only treated as a special case in defiance of the express provisions of 'Transfer Act 2005'. Suffice to say, the impugned transfer order is ex-facie on the influence of elected representative which practice is frown upon by the Hon'ble High Court while deciding **Writ Petition No.8987/2018 (Balasaheb Tidke Vs. State of Maharashtra) decided on 12th December, 2018**. In that matter, the Hon'ble High Court deprecated the practice of issuing transfer order under the influence of elected representative and the Hon'ble Ministers who are not connected with the process of transfer. The then Chief Secretary had filed Affidavit that the transfers will be done strictly in pursuance of provisions of 'Transfer Act 2005' and transfer process will not be influenced by any recommendations made by any political leaders, members of political parties or Hon'ble Ministers who are not part of the process of transfers. Despite this position, it seems that the practice of issuing transfers under the influence of political representatives is continued unabated, which is rather in breach of order of Hon'ble High Court as well as undertaking furnished by Chief Secretary.

18. Now, turning to the aspect of recommendation of CSB, needless to mention that in view of Judgment of Hon'ble Supreme Court in **AIR 2014 SC 263 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**, the Government was under obligation to establish CSBs for vetting transfers and other service matters of Government servants. Indeed, in deference to the decision of Hon'ble Supreme Court, the State Government had issued G.R. dated 31.01.2014 whereby CSBs were established at all levels for making recommendations in the

matters of posting, transfers, etc. to the executives. However, in the present case, complete go-bye is given to the requirement of recommendation by CSB. Indeed, when specific query was raised to the learned P.O, she submits that in Public Works Department, the transfers are recommended by regional level Committee and there is no such practice of approval of CSB. If it is really so, then, to say the least, it is contravention of the directions of Hon'ble Supreme Court as well as G.R. dated 31.01.2014 issued by Government. The Respondents are, therefore, required to take remedial measure for the constitution of appropriate CSB. Be that as it may, there is no denying that the Respondent No.1 at his level alone made recommendation of the transfer of the Applicant without placing the matter before CSB, which again rendered the transfer order unsustainable in law.

18. The submission advanced by Shri R.G. Panchal, learned Advocate for Respondent No.2 that the transfers in state of Maharashtra are governed by 'Transfer Act 2005' and there being no such stipulation to that effect in 'Transfer Act 2005', non-placing the matter before CSB is non-consequential, is nothing but misconceived and rather offending the recommendations/directions given by Hon'ble Supreme Court in **T.S.R. Subramanian's** case, which are in fact implemented by State Government by issuing G.Rs. dated 31.01.2014. Suffice to say, the submission advanced by Shri Panchal is absurd and liable to be rejected.

20. The cumulative effect of aforesaid discussion leads me to conclude that the impugned transfer order is bad in law being *ex-facia* in blatant violation of provisions of 'Transfer Act 2005' and liable to be quashed. Hence, the following order.

W. S. V. V.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 07.06.2019 is hereby quashed and set aside.
- (C) The interim relief granted by the Tribunal on 12.06.2019 is made absolute.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.10.2019

Dictation taken by :

S.K. Wamanse.

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