

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.687 OF 2014

DISTRICT : THANE

Shri Vikas Eknath Jog,)
Inspector of Legal Metrology, transferred from)
Palghar, District Thane to Mumbai)
Address for service of notice:)
Shri B.A. Bandiwadekar, Advocate,)
9, 'Ram-Kripa', Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400 016)..Applicant

Versus

1. The Controller of Legal Metrology, MS,)
Govt. Barrack No.7, Free Press Journal)
Marg, Mumbai 400021)
2. Shri M.R. Survase,)
Inspector of Legal Metrology transferred)
from Bhiwandi-2 to Palghar, Dist. Thane)
3. The Principal Secretary,)
Food, Civil Supply & Consumer Protection)
Department, Mantralaya, Mumbai-32)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondent 1& 3

Shri M.D. Lonkar – Advocate for Respondent No.2

CORAM : Shri M. Ramesh Kumar, Member (A)

DATE : 9th June, 2015

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant, Shri A.J. Chougule, the learned Presenting Officer for Respondents No.1 & 3 and Shri M.D. Lonkar, the learned Advocate for Respondent No.2.

2. This OA No.687 of 2014 is filed by Shri Vikas Eknath Jog, an Inspector of Legal Metrology, seeking issuance of directions to quash the order dated 8.7.2014 by way of which the applicant was transferred from Palghar to Mumbai and the Respondent No.2, from Bhiwandi to Palghar in place of the applicant.

The impugned order:

3. The preamble of the impugned order dated 8.7.2014 reads as follows:

“उपरोक्त शासनपत्रातील आदेश व प्रशासकीय निकड विचारात घेऊन या यंत्रणेतील खालील निरीक्षक वैध मापन शास्त्र यांच्या बदल्या तयारित प्रभावाने, महाराष्ट्र शासकीय कर्मचा-यांना बदल्यांचे विनियमन आणि शासकीय कर्तवये पार पाडताना होण-या विलंबास प्रतिबंध अधिनियम, २००५ च्या कलम ४ (४) (दोन) व कलम ४ (५) मधील तरतुदीनुसार करण्यात येत आहेत.”

The applicant's name appears at Sr. No.60 and name of respondent no.2 at Sr. No.61.

Contentions of the applicant:

4. Shri B.A. Bandiwadekar, the learned Advocate for the Applicant, contended that:

a) The applicant has completed only 3 years of his tenure. As a Group C employee, he is entitled for a term of 6 years.

b) The judgment of the Aurangabad Bench of this Tribunal, dated 10.1.2014, in OA No.573 of 2013 in the case of Shri Kalyan Asruba Darade Vs. The State of Maharashtra & Anr. was relied upon. Paras 8 and 9 thereof reads as follows:

“8. Coming to the facts in the present Original Application, it is an admitted fact that the Applicant is a Group ‘C’ non-secretariat employee. He is,

therefore, entitled to two tenures of 3 years each before he could be transferred. Impugned order of transfer dated 5.9.2013 is both a mid-term and mid-tenure transfer. Compliance with the provisions of section 4(4)(ii) and 4(5) is therefore a must. Learned Presenting Officer has made available the concerned Mantralaya file for our perusal. From the office notes dated 22.7.2013 and 23.7.2013, it is seen that the Principal Secretary of the Department of Food, Civil Supplies and Consumer Protection has proposed transfers of selection grade Inspectors (Group 'B' non-gazetted) taking their tenure as 3 years. For lower grade Inspectors (Group 'C') the normal tenure was reckoned as 6 years. However, Hon'ble Minister has not agreed and ordered that both Lower grade and selection grade Inspectors must be transferred after 3 years as duties and responsibilities of both the posts are identical and transferring some Inspectors after 3 years and others after 6 years will not be logical. We find that the reasoning given by the Hon'ble Minister is no doubt correct but it is not in consonance with the provision of the Transfer Act and such an order cannot be upheld. This is so far as prior approval under section 4(5) of the Transfer Act for mid-tenure transfers is concerned.

9. As regards the contention of the Applicant that the impugned transfer order violates section 4(4)(ii) of the Transfer Act, there is no mention of any exceptional circumstances or special reasons for mid-term transfers. The only reason is :-

“सदर प्रकरणी बराच विलंब झालेला असल्याने विनाविलंब या आदेशाची तात्काळ अंमलबजावणी करण्यात यावी.”

This obviously will not be covered under exceptional circumstances or special reasons for mid-term transfer in the month of November when the transfers are to be made only in April or May. The fact that the number of employees transferred mid-term is larger than those transferred in April-May itself shows utter disregard for section 4(4)(ii) of the Transfer Act. The impugned transfer order is bad in law for violating section 4(4)(ii) of the Transfer Act.”

c) The Controller of Legal Metrology is not empowered to issue the said transfer orders because a notification under Section 7 of The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as the ‘Transfer Act’) declaring authorities competent to transfer has not been issued.

d) In Para 3 of the affidavit in reply the respondent has relied upon directions of the Hon'ble Minister (Civil Supplies), to limit the tenure of Inspectors to 3 years. The relevant part thereof reads as follows:

“वैधमापन विभागातील निरीक्षक हे पद अंमलबजावणीचे असून एकूण कर्मचा-यांची संख्या विचारात घेता लावलुचपत विभागाने साफळा रचून कारवाई केलेल्या व पुढे प्रकरण न्यायालयामध्ये प्रलंबित असलेल्या प्रकरणांची संख्या हि निरीक्षक या संवर्गात सर्वात अधिक आहे. त्यामुळे कर्मचारी एकाच पदावर जास्त दिवस राहिल्यास त्याचे हितसंबंध गुंतल्याने अशा प्रकारच्या प्रकरणामध्ये वाढ होण्याची शक्यता असते. त्यामुळे निरीक्षकांच्या ३ वर्षांनंतर बदल्या करणे आवश्यक आहे. मात्र विभागाने कोणती निरीक्षक (निवडश्रेणी) व कोणती पदे निरीक्षक (निम्नश्रेणी) हे सचीबद्ध केलेले नसल्याचे सर्वच बदलीपत्र निरीक्षकांच्या बदल्यांचा प्रस्ताव शासनस्तरावर तात्काळ मागवून मान्यतेसाठी सत्वर सादर करण्यात यावा.”

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e) The said directions cannot fulfill the requirements of special reasons. A special reason has to be qua the applicant.

f) The crucial issue to be adjudicated is whether the aforesaid directions constitute special reasons to restrict the tenure of the applicant to 3 years in view of the judgment of this Tribunal holding that a group C employee is entitled to a normal tenure of 6 years.

Affidavit in reply of respondent:

5. In the affidavit in reply, the respondent has contended that:

a) As per Section 3 of the Act the normal tenure of Government employee is 3 years. However, an employee from the non-secretariat services, in Group C can be transferred from the post held on his completion of two full tenures at that office or department to the another office or department. Section 4(4) of the Act provides that the transfers of Government servants shall ordinarily be made only once in a year in the month of April or May with certain exceptions. Further, Sub Section 5 of Section 4 provides that the transfer of the Govt. servant can be done by the competent authority before completion of his tenure, after recording reasons and with prior permission of the immediate superior authority.

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b) The applicant is a Group C employee and Controller, being Head of Department, is the competent authority for the transfer of the applicant as per Section 6 of the Act. Further, as provided in the same section, Secretary, Food, Civil Supplies and Consumer Protection Department is the immediate superior authority.

c) Hon'ble Minister, Food, Civil Supplies and Consumer Protection vide his letter dated 19.5.2014 directed the Secretary, Food, Civil Supplies and Consumer Protection Department to call a proposal for transfer of Inspectors who have completed 3 years of tenure. It is evident from the letter that the reasons thereof are mentioned therein. The Government, thereafter vide letter dated 21.5.2014 directed Controller of Legal Metrology i.e. the respondent herein, to submit the said proposal in view of the letter of Hon'ble Minister. Accordingly, a proposal for transfer of Inspectors was submitted to the Secretary, Food, Civil Supplies and Consumer Protection Department vide letter dated 27.5.2014.

d) The Govt. vide letter dated 8.7.2014 directed the Controller to issue transfer orders of Inspectors as per the list attached thereto.

e) The Controller of Legal Metrology is declared as Head of Legal Metrology Organization vide GR No.WMA-1086/1706/Pra.Kra.488/na.pu.14 dated 29.1.1988 and GR No.Vaimasha-1092/46/CR-2203/na.pu-14 dated 22.4.1992. As such he is competent transferring authority in relation to employees in Group B non-Gazetted and Group C.

f) The Hon'ble Minister vide his letter dated 19.5.2014 addressed to the Secretary of the Department, has categorically

mentioned that "the post of Inspector is for the purpose of enforcement and traps by Anti Corruption Bureau and number of pending cases in Court in this regard against the Inspectors are more". Further, possibility of such cases is likely to increase if, the employee/Inspector is posted on the same post "for more duration as pecuniary interest may be entangled/involved".

These constitute special reasons and, therefore, provisions of the Transfer Act, 2005 have been followed.

Affidavit in reply of respondent No.2:

6. Shri M.D. Lonkar, the learned Advocate for Respondent No.2 contended that:

- a) The impugned order covers 87 employees. Only the applicant has taken exception.
- b) The date of the impugned order is 25.7.2014. So far the applicant has not handed over charge. He has retained the official seal and stamp with him unauthorisedly. A show cause notice dated 7.8.2014 was served on the applicant (Page 76 of the paper book).

c) Special reasons have been recorded. It is in the context of enforcement work and a policy decision was taken to transfer all who have completed 3 years. There is no malafide intention or vested interests involved. The said decision was applicable to everyone. It is not restricted to an individual case.

d) The learned counsel for the respondent no.2 relied on the judgment dated 16.4.2009 of the Hon'ble High Court, Bombay in Writ Petition No.8116 of 2008 **STATE OF MAHARASHTRA VERSUS ASHOK RAMCHANDRA KORE AND ANOTHER, 2009(4) Mh.L.J. 163** wherein the Head note and observations reads as follows:

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“(a) Maharashtra Government Servant's Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act (21 of 2006), Section 4(5) – Special case for midterm transfer – High Court cannot substitute its opinion for that of the competent authorities of the State – It will only have to examine whether there are reasons making out a special case and would interfere only if the order is issued malafide.

The lacunae noticed in the work of 1st respondent, by the Secretary Water Conservation Department, the remarks made by the Minister Water Conservation

and Minister Water Resources, provide sufficient reasons and make out a special case for midterm transfer as contemplated by the Transfer Act. In the nature of the things it is humanly impossible for High Court to assess the niceties of the administrative needs and requirements of the situation concerned. These decisions must be best left to the administrative heads. High Court cannot substitute its opinion for that of the competent authorities of the State. Court will only have to examine whether there are reasons making out a special case. Interference would be warranted only if the order is issued malafide.”

Analysis:

7.a) The contention of the applicant that a Group C employee (non-secretarial service) is entitled to a term of 6 years is acceptable. But Section 4(5) of the Transfer Act, 2005 provides that Transfer of a Govt. servant before completion of tenure can be ordered by the competent authority with prior permission of the immediately superior authority.

b) The contention of the applicant that Controller of Legal Metrology is not empowered to transfer Group C employees is

not acceptable. Section 6 of the Transfer Act, 2005 provides for transferring authorities. It reads 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 | Competent Transferring Authority |
|---|---|
| (1) | (2) |
| (a) Officers of All India Services, all Officers of State Services in Group 'A' having pay-scale of Rs.10,650-15850 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. |

The Controller of Legal Metrology is declared as HOD for all purposes vide GR dated 22.4.1992 of the Food & Civil Supplies Department. It has been held by this Tribunal in **OA No.768 of 2014 Shri Dinesh Ramakant Gujrathi Versus The District Collector, Raigad & Ors. decided on 27.4.2015** and **OA No.871 of 2014 Smt. Sadhana Bhagwan Kamble Versus The Commissioner for Physical Handicaps, Pune & Anr. decided on 27.4.2015** that if an officer is declared as HOD by way of a specific GR or by inclusion in Appendix II of the MCS (General Conditions of Services) Rules, 1981 even if no separate notification under Section 7 is issued, the said officer is inherently competent to issue order of transfer, because an HOD figures in Section 6 of the said Act as a transferring authority.

c) Now that the said issue is settled, as aforesaid, for ordering transfer before completion of tenure, prior approval of the next authority is a requirement. Further, special reasons are to be recorded. Admittedly, a policy decision was taken by the department, which, prima facie, satisfies the requirements of special reasons. Since it covers everyone who has completed 3 years, no malafide can be attributed to the same. The said special reasons are again reproduced below:

“वैधमापन विभागातील निरीक्षक हे पद अंमलबजावणीचे असून एकूण कर्मचा-यांची संख्या विचारात घेता लाचलुचपत विभागाने साफळा रचून कारवाई

केलेल्या व पुढे प्रकरण न्यायालयामध्ये प्रलंबित असलेल्या प्रकारांची संख्या हि निरीक्षक या संवर्गात सर्वात अधिक आहे. त्यामुळे कर्मचारी एकाच पदावर जास्त दिवस राहिल्यास त्याचे हितसंबंध गुंतल्याने अशा प्रकाराच्या प्रकरणामध्ये वाढ होण्याची शक्यता असते. त्यामुळे निरीक्षकांच्या ३ वर्षांनंतर बदल्या करणे आवश्यक आहे. मात्र विभागाने कोणती निरीक्षक (निवडश्रेणी) व कोणती पदे निरीक्षक (निम्नश्रेणी) हे सचीबद्ध केलेले नसल्याचे सर्वच बदलीपत्र निरीक्षकांच्या बदल्यांचा प्रस्ताव शासनस्तरावर तात्काळ मागवून मान्यतेसाठी सत्वर सादर करण्यात यावा.”

It is not possible to accept the contention that a special reason has to be qua a specific person.

d) In this regard, reliance of respondent no.2 on the judgment dated 16.4.2009 of the Hon'ble High Court in WP No.8116 of 2008 *Ashok Ramchandra Kore supra* is acceptable. A special reason needs to be prima facie reasonable and prudent. If it satisfies that test, there is no need to subject it to a detailed judicial scrutiny. The Hon'ble High' Court has rightly observed, to reiterate:

“In the nature of the things it is humanly impossible for High Court to assess the niceties of the administrative needs and requirements of the situation concerned. These decisions must be best left to the administrative heads. High Court cannot substitute its opinion for that of the competent

authorities of the State. Court will only have to examine whether there are reasons making out a special case. Interference would be warranted only if the order is issued malafide.”

e) Since the transfers figuring in the impugned order restricted the tenure of the employees to 3 years, it had to secure prior approval of the next higher authority, which is the Minister, in consultation with the Secretary of the Department. The said consultation with the Secretary has taken place because Secretary has agreed with the special reasons involved. The Minister has approved the list. Thus, the requirement of prior approval of the next higher authority has been fulfilled.

f) The reliance of the applicant on the order dated 10.1.2014 in OA No.573 of 2013 is misplaced. As regards special reasons, there were no special reasons recorded in that matter (Para 9 of the judgment). Facts of the case were different. It pertained to transfer of selection grade and lower grade Inspectors and distinction thereof. In this case, a clear cut policy has been laid down with reasons therefor.

8. In view thereof, the impugned order is sustainable because it fulfills the requirements of the provisions of Section

4 of the Transfer Act, 2005. Thus, the OA No.687 of 2014 is dismissed. No order as to costs.

Sd/-

(M. Ramesh Kumar)
Member (A)
9.6.2015

Date : 9th June, 2015

Dictation taken by: S.G. Jawalkar.

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