

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.940 OF 2019
WITH
MISC. APPLICATION NO.635 OF 2019**

DISTRICT : MUMBAI

Shri Deepak N. Lad.)
Age : 46 Yrs., Working as Office)
Superintendent and Residing at 7/20,)
"Bhakti", 6th Floor, Sir J.J. Hospital)
Campus, Byculla, Mumbai - 400 008.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Medical Education & Drugs Dept.,)
New Administrative Building,)
9th Floor, G.T. Hospital Compound,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Medical Education & Research,)
St. George Hospital Compound,)
P. Demello Road, Fort, Mumbai - 1.)
3. The Dean.)
Sir J.J. Hospital, Mumbai.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 04.02.2020

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JUDGMENT

1. The Applicant has challenged the impugned transfer order dated 31.05.2019 whereby he was transferred from the post of Office Superintendent, Sir J.J. Group of Hospitals to Office Superintendent, St. Georges' Hospital, Mumbai invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The admitted facts necessary for the disposal of O.A. can be summarized as under :-

- (i) By order dated 15.01.2018, the Applicant was promoted to the post of Office Superintendent and he joined on the post of Office Superintendent, Sir J.J. Group of Hospitals, Mumbai on 24.01.2018 (Page No.25 of Paper Book).
- (ii) By order dated 31.05.2019, he was transferred from Sir J.J. Group of Hospitals, Mumbai to St. Georges' Hospital, Mumbai in place of transfer of Shri Ladoba Tondawalkar (Page No.35 of P.B.).
- (iii) Dr. Ajay Chandwade, Dean, Sir J.J. Group of Hospitals, Mumbai forwarded the representation to the Government on 08.08.2019 informing that the Applicant was not due for transfer but he was transferred mid-tenure and further pointed out that in view of workload, it would not be possible to relieve the Applicant in terms of transfer order dated 31.05.2019.

3. Smt. Punam Mahajan, learned Advocate for the Applicant assailed the impugned order contending that, though the Applicant has not completed normal tenure, he is transferred mid-tenure without observance of mandatory provisions 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) particularly, Section 4(5) of 'Transfer Act 2005'. She further submits that there is no Notification under Section 7 of 'Transfer Act 2005' authorizing Director as Head of the Department. She thus submits that in absence of approval to such mid-tenure transfer by immediately preceding competent transferring authority, as mentioned in Table of Section 6, the impugned order is unsustainable in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order contending that the Applicant was serving in Sir J.J. Group of Hospitals, Mumbai for a substantial period of service since 1993 to 31.05.2019 except three months at Kolhapur in 2017. He further submits that for administrative exigency, it was necessary to fill-in the post at St. Georges' Hospital, and therefore, the Applicant was posted at St. Georges' Hospital by Director, Medical Education and Research. He further sought to canvass that, it being the transfer in Mumbai City itself, there was no need to follow the provisions of 'Transfer Act 2005'.

5. As stated above, the Applicant joined on 26.01.2018 on the post of Medical Superintendent at Sir J.J. Group of Hospital, Mumbai on promotion. True, earlier also, he appears to have worked in the capacity of Junior Clerk and Senior Clerk in Sir J.J. Group of Hospitals from 2004 to 2017. Thereafter for three months, he was posted at Kolhapur in 2017. Then again, he was transferred to DMER, Mumbai and worked there from 06.08.2017 to 23.01.2018. Again from 24.01.2018, he joined Sir J.J. Group of Hospitals on the post of Office Superintendent on promotion. Thus, he being posted on promotion on 24.01.2018 at Sir J.J. Group of Hospitals, Mumbai, he was entitled to normal tenure in terms of Section 3 of 'Transfer Act 2005' which *inter-alia* states that the normal tenure for Group 'A', 'B' and 'C' shall be three years and where the employee from non-secretariat services, he will be entitled for two full-tenures. Whereas, as per Section 2(g), the post is defined as under :-

"2(g) 'post' means the job or seat of duty to which a Government servant is assigned or posted."

6. Thus, if one read together Section 3 along with Section 2(g), it is explicit that the Applicant is entitled for normal tenure from 24.01.2018 i.e. the date when he joined on the post of Officer Superintendent on promotion.

7. As such, once the issue of normal tenure is set at rest, now the question comes whether the Applicant's transfer being mid-tenure is consistent with the provisions of 'Transfer Act 2005' and the answer is in negative.

8. True, the Government servant has no legal vested right to ask for a particular post or to continue at one place, as it falls exclusively within the domain of executive. However, now the transfers are governed and regulated by 'Transfer Act 2005' and it is not left to the whims or desire of the executives. 'Transfer Act 2005' provides mechanism for mid-term as well as mid-tenure transfer where it is necessitated on account of certain administrative exigencies. 'Transfer Act 2005' further provides who shall be the Head of the Department for Group 'C' employees. As per Section 7, every administrative department of Mantralaya is required to prepare and publish the list of Departments. In the present case, the transfer order is issued by Director, Medical Education and Research, but there is nothing on record to show that he has been declared as a competent authority, as contemplated under Section 7 of 'Transfer Act 2005'.

9. Even assuming for a moment that the Director is declared as Head of the Department to transfer Group 'C' employees, in that event also, the impugned transfer order being mid-tenure, there has to be compliance of Section 4(5) of 'Transfer Act 2005' which is admittedly missing in the present case. Interestingly, though in the impugned transfer order there is reference of provisions of 'Transfer Act 2005' stating that invoking the

powers under Section 4(i), (ii) and (iii) of 'Transfer Act 2005' transfer order is issued, there is no such compliance of Section 4(5) read with Section 6 and Table thereunder.

10. At this juncture, it would be apposite to reproduce Section 4(5) and Section 6 of 'Transfer Act 2005', which is as follows :-

4(5) Notwithstanding anything contained in section 3 or this section, the competent authority may, in special cases, after recording reasons in writing and with the prior approval of immediately superior Competent Transferring Authority mentioned in the table of section 6, transfer a Government servant before completion of his tenure of post.

(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."

W. S.

11. Thus, in case of mid-tenure transfer, the authority is at liberty to transfer the employee after recording reasons in writing with prior permission of immediately preceding competent transferring authority mentioned in Table under Section 6. As per Table under Section 6, the Head of the Department requires to be notified as a competent authority for Group 'C' employees. Apart, the present transfer being mid-tenure, there has to be approval of next immediately preceding competent transferring authority as mandated in Section 4(5) read with Table under Section 6 of 'Transfer Act 2005'. Admittedly, there is no such compliance and the Director himself usurped the power for mid-term transfer which is in contravention of Section 4(5) of 'Transfer Act 2005'. Furthermore, there is nothing to indicate that the matter was placed before the Civil Services Board for its approval, as mandated by Hon'ble Supreme Court in **(2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)**.

12. The necessary corollary of aforesaid discussion leads me to conclude that the impugned transfer order is in blatant violation of 'Transfer Act 2005' and deserves to be quashed. Hence, the following order.

ORDER

(A) The Original Application is allowed.

(B) The impugned order dated 31.05.2019 qua the Applicant is quashed and set aside.

(C) The Applicant be reposted from the post he transferred from within a month from today.

(D) M.A.No.635/2019 which was filed for interim relief stands disposed of.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 04.02.2020

Dictation taken by :

S.K. Wamanse.

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