

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.234 OF 2020

Shri Sahebrao Manim Gaikwad,)
Aged about 53 years,)
Additional Collector, Revenue Department - Pune,)
Residing at B-27, Siddhi Towers-Tapod,) .. Applicant

Versus

1) Government of Maharashtra,)
Through Secretary Revenue and Forest Dept.,)
Mantralaya, Mumbai 400 032.)
2) Shri Vijay Sing Deshmukh,)
Deputy Collector, Collector Office - Pune) ..Respondents

Shri M.D. Lonkar, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 05.05.2020.

ORDER

1) Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent.

2) The Applicant has challenged order dated 13.04.2020 whereby he is transferred on deputation on the establishment of Pune Municipal Corporation, Pimpri Chinchwad, Pune as Additional Commissioner alleging that though he was not due for transfer under the garb of deputation and administrative exigency he his transferred only to accommodate Respondent No. 2 who was posted in his place and impugned order is in contravention of provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005)

3) In view of implementation of lockdown the Applicant could not attend the tribunal to swear Affidavit. Therefore, permission is granted to file Affidavit in due course.

4) Shri M.D. Lonkar, Advocate for the Applicant submits that the issue of transfer/ deputation of Applicant was not at all placed before the Civil Service Board (C.S.B.) and on the contrary proposal for posting of Respondent No. 2 was placed before C.S.B. which made recommendation for his transfer and posting at Pune Municipal Corporation, Pimpri Chinchwad, Pune. However, when the matter was placed before Hon'ble Chief Minister, for approval order was issued to post Respondent No.2 in the place of Applicant and to post the Applicant on the establishment of Pune Municipal Corporation, Pimpri Chinchwad, Pune. He therefore submits that impugned order is unsustainable in law and prayed for interim relief.

5) Per contra learned C.P.O. submits that the posting of Applicant on the establishment of Pune Municipal Corporation, Pimpri Chinchwad, Pune, was necessary on the administrative ground namely to contain spread of Covid-19. She therefore submits that the transfer is effected considering administrative exigency and further submits that Respondent No.2 has already taken charge of the post of Additional Collector, Pune.

6) Learned C.P.O. fairly stated that the issue of transfer/ deputation of the Applicant was not placed before C.S.B. What was placed before C.S.B. was the proposal of posting of Respondent No.2 and C.S.B. had recommended posting of Respondent No.2 at Pune Municipal Corporation, Pimpri Chinchwad, Pune. As such admittedly the matter regarding transfer or deputation of the Applicant was not at all placed before the C.S.B. which is mandatory in view of decision of Hon'ble Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in (2013) 15 SCC 732.***

7) On the basis of record tendered by learned C.P.O. it is noticed that the file was placed before Hon'ble Chief Minister for transfer and posting of Additional Collector, Pune, on 18.03.2020. However, no order was passed thereon. Later at the level of Hon'ble Chief Minister order was passed on 27.04.2020 only whereby Respondent No.2 was ordered to be posted in the place of Applicant and consequently Applicant was ordered to be posted as Additional Commissioner at Pune Municipal Corporation, Pimpri Chinchwad, Pune. Thus *prime-facie* only to accommodate Respondent No.2 Applicant was ousted from the post of Additional Collector, Pune. Material to note that no reason whatsoever even for name sake is mentioned in the order passed by Hon'ble Chief Minister. Even there is no mention in file that the transfer/ deputation of Applicant is necessitated for any administrative reason much less containment of Covid-19.



- 8) This position emerges that only to oblige Respondent No.2, Applicant is ousted from his place without any administrative exigency.
- 9) True, it is only in formal order dated 30.04.2020 issued by Deputy Secretary it is stated that the Applicant's transfer/ deputation was necessitated on administrative exigency and to contain spread of Covid-19. Surprisingly this is not borne from the filing noting dated 27.04.2020. Thus *prime-facie* attempt has been made to cover up lacunae while issuing formal order 30.04.2020. As such this is not case as seen from filing noting dated 27.04.2020 that the transfer/ deputation of the Applicant was necessitated for any administrative exigency. Needless to mention that reasons whatever recorded by competent authority in the Original file are material and important to find out whether there is application of mind and compliance of law and not what is stated or added in subsequent formal order issued by deputy secretary to cover up illegalities. In present case *ex-facie* file noting which is approved by Hon'ble Chief Minister does not disclose as to what was the administrative exigency for '*mid-term*' transfer of the Applicant. Suffice to say *ex-facie* there is no compliance of section 4(4) and 4(5) of Act 2005.
- 10) Admittedly Applicant was not due for transfer as he has completed hardly seven months on the post of Additional Collector, Pune. Therefore, for such '*mid-term*' and '*mid-tenure*' transfer there has to be strict compliance of section 4 (4) and 4 (5) of Transfer Act 2005 which is completely missing in the present case.
- 11) True, Respondent No.2 seems to have taken charge of posting of Additional Collector, Pune on 02.05.2020. However, only because he has taken in haste that itself could not prevent the Tribunal from passing the appropriate order as *prime-facie* strong case is made out that there is no compliance of section 4(5) of Transfer Act 2005 and only to accommodate Respondent No.2 Applicant has been ousted without due process of law.
- 12) For the aforesaid reason interim relief as prayed in prayer clause No. 10 (b) is granted.
- 13) Respondent No. 1 is directed to pass appropriate posting order of posting of Respondent No.2 in view of interim relief granted above.
- 14) Issue notice to Respondent before admission returnable on 19.05.2020.
- 15) Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
- 16) Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of

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Original Application. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

17) This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

18) The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

19) In case notice is not collected within three days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

20) S.O. to 19.05.2020. Hamdast granted.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

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