

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.235 OF 2020

V.R. Goswami

.. Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent No.1.

Shri D.B. Khaire, learned Special Counsel for the Respondent No.2.

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

DATE : 12.05.2020.

ORDER

1) Heard Shri Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent No.1 and Shri D.B. Khaire, learned Special Counsel for Respondent No.2.

2) Applicant has challenged the order dated 08.05.2020, whereby he was transferred from the post of Joint Director, Town Planning cum Metropolitan Planner (Development Permission), Pune to Nagpur Metropolitan Regional Development Authority on vacant post, *inter alia*, contending that the impugned order is in contravention of the provisions of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred as Transfer Act, 2005) as much as no special case or administrative exigencies is made out to transfer him and he has been shifted only to accommodate Respondent No.2, Shri V. Kharwadkar in his place.

3) Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant seeks interim relief and raised following grounds :-

(a) Applicant was posted on deputation for the period of three years on the post of Joint Director by order dated 20.09.2019 and before the completion of the said period he has been transferred to Nagpur without any valid reasons.

Member

(b) There was no proposal before the Civil Services Board (CSB) for the transfer / recalling of deputation before CSB and on the contrary the proposal before CSB was only for transfer of Respondent No.2 in place of Applicant.

4) Par Contra, Ms. S.P. Manchekar, learned C.P.O. for Respondent No.1 and Shri D.B. Khaire, learned Special Counsel for Respondent No.2 opposed interim relief contending that the services of Respondent No.2 in place of Applicant were necessitated for the completion of Metro Project in Pune and the same being approved by the Hon'ble Chief Minister as competent authority, the impugned order is legal and valid. Shri D.B. Khaire, learned Special Counsel further submits that the applicant was in Pune for near about eight years on various posts and was due for transfer and therefore had no ground to raise grievances for transfer from Pune to Nagpur.

5) Undisputedly, by order dated 20.09.2019, the Applicant was promoted in the cadre of Joint Director and on deputation he was given posting as Metropolitan Planner (Development Permission) for the period of three years. Thus he has not completed three years period on deputation. True, in terms of order of deputation the Government reserves its right to recall the order of deputation if his repatriation is necessitated in public interest.

6) In view of above, the question posed whether the case of public interest in terms of order of deputation or special case as contemplated under Section 4(5) of Transfer Act 2005 is made out.

7) Learned C.P.O. Ms. S.P. Manchekar has tendered the file for perusal of Tribunal containing various noting and the orders passed by the Hon'ble Chief Minister. Interesting to note that the file was initiated basically to consider the transfer and posting of Respondent No.2 as the Chief Engineer at PMRD in terms of its letter dated 11.02.2020. Thus request was made by PMRD to transfer Respondent No.2 on the post of Chief Engineer being conversant with working of Metro Project. Presently, Respondent No.2 was working as Chief Engineer in Pune Municipal Corporation. Thus, suffice to note that the file was initiated in view of proposal of PMRD to transfer Respondent No.2 on their establishment on the post of Chief Engineer. However,

Section Officer, Shri Shelke (as seen from page 7 & 9 of file), he placed proposition before Hon'ble Minister and Chief Minister for giving posting to Respondent No.2 in place of applicant as Metropolitan Planner (Development Permission) in pursuance of the note of Hon'ble Minister dated 26.02.2020 (page 83 of file). Thus it appears from note that the Hon'ble Minister directed for appointment and posting of Respondent No.2 in place of Applicant by cancelling the period of deputation. Accordingly, the note at page 7 & 9 of file was prepared by Section Officer, Shri Shelke on 02.03.2020 and it has been approved by the Hon'ble Minister as well as Chief Minister. There are no dates on which the proposal was approved by the Hon'ble Minister and Chief Minister. No dates are mentioned beneath signature. It is on the basis of aforesaid note the orders has been issued on 08.05.2020 after gap of two months.

8) Thus it is apparent that the proposal was basically initiated for posting of Respondent No.2 as Chief Engineer PMRD but Hon'ble Minister wanted to place Respondent No.2 in place of Applicant. However, surprisingly, for that no reason or justification is mentioned by the Hon'ble Minister in his note dated 26.02.2020 (page 83 of file). Similar is the situation when the noting was approved by the Hon'ble Chief Minister. In file on page 9 (paragraph 5), all that it is stated that in view of posting of Respondent No.2 in place of Applicant, the Applicant is required to be shifted out to Nagpur and accordingly, orders are issued. Suffice to say what were special reasons or administrative exigencies to oust the Applicant before completion of deputation period and post Respondent No.2 on the post held by Applicant is not at all forthcoming. There is no reason even for name sake as to what prompted or necessitated to shift or oust the Applicant from his present post.

9) On the contrary, all that gathered from the file that only to accommodate Respondent No.2 on the post of Applicant, Applicant was shifted out. Suffice to say no reasons or administrative exigencies for curtailing the period of deputation or to transfer the Applicant to Nagpur is forthcoming as required under Section 4(5) of Transfer Act 2005. This is not the case of repatriation of the candidate who is on deputation but it is the case of transfer to other place, without compliance of Section 4(5) of Transfer Act, 2005.



10) Learned C.P.O. pointed out that CSB had approved change. In this behalf, what is placed on record is minutes of CSB. Curiously, what was the proposal before CSB is not forthcoming. Be that as it may. What is seen from the minutes of CSB is that it only pertains to posting of Respondent No.2 in place of post held by the Applicant and there is absolutely nothing to indicate what were the reason or special circumstances to oust the Applicant from the present post neither it was discussed by CSB. Thus, CSB all that recommended that in case of posting of Respondent No.2 in place of applicant, the applicant be posted at Nagpur. Suffice to say CSB did not even ponder as to what necessitate shifting of the Applicant from the post held by him. The minutes of CSB are also undated. The members have not placed date below the signature and no date of meeting is forthcoming.

11) It is nowhere in the file tendered by learned C.P.O. that the Applicant was not competent to discharge the duties of present post and therefore his transfer was necessitated for one or other reason. Ex facie, only to accommodate Respondent No.2 on the post held by Applicant, the impugned order has been issued and applicant has been transferred from Pune, that too without bothering to see whether there is any such post available at Nagpur.

12) Learned Advocate Shri Bandiwadekar has today tendered letter dated 11.05.2020 written by NMRD Nagpur addressed to Additional Chief Secretary, Urban Development Department pointing that though Government has transferred the Applicant to Nagpur by impugned order there is no such post of Joint Directorate, Town Planning at Nagpur so as to get the Applicant joined in Nagpur, Metropolitan Regional Development Authority.

13) Learned C.P.O. fairly concedes the receipt of letter dated 11.05.2020. Thus, ex facie, Applicant has been transferred to Nagpur though no such post exists at Nagpur Metropolitan Regional Development Authority. This ex facie exhibits non application of mind and haphazard manner of functioning of the Department.

14) In view of the above, I am satisfied that the impugned order is prima facie, unsustainable in law and deserves to be stayed.

15) Lastly, Shri D.B. Khaire, learned Special Counsel for Respondent No.2 submits that the Respondent No.2 has already joined on the post held by the Applicant. Whereas Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that till yesterday the applicant worked on the said post and there is no relieving order. So far this aspect is concerned no documentary evidence is placed on record about the relieving of the applicant and joining of Respondent No.2. Even assuming for a moment that the Respondent No.2 got joined that itself is not enough to refuse the interim relief in view of blatant violation of Transfer Act, 2005. Otherwise it would be amounting to perpetuate illegality.

16) As discussed the above, no special reasons or special case is made out either to curtail deputation or to transfer the applicant from the present post as contemplated under Section 4(5) of Transfer Act 2005.

17) For the aforesaid reasons, interim relief as prayed under clause 10(a) is granted.

18) Issue notice before admission returnable on 09.06.2020.

19) Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

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

21) 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.

22) 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.

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

24) S.O. to 09.06.2020.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

prk

Office Notes, Office Memoranda of Corom, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 12.05.2020</p> <p>O.A.No.234 of 2020 with M.A.No.157 of 2020 (Subject : Transfer)</p> <p>S.M. Gaikwad (O.A.No.234/2020) ...Applicant Versus The State of Maharashtra & Ors. ...Respondents</p> <p>1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant in O.A.No.234/2020 and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. The Applicant has challenged the transfer order dated 13.04.2020 in the present O.A., wherein interim relief was granted by this Tribunal on 05.05.2020.</p> <p>3. Accordingly, the Applicant resumed his work as Additional Collector (Revenue), Pune on 05.05.2020. However, unfortunately he passed away on 07.05.2020. In view of the above, learned C.P.O. has filed M.A.No.157/2020 for passing appropriate order and to dispose of the O.A.No.234/2020.</p> <p>4. Learned Advocate Shri M.D. Lonkar for the Applicant fairly concede that the O.A. now does not survive. In view of the above, interim relief granted by this Tribunal on 05.05.2020 stands vacated and O.A. is disposed of.</p> <p>5. Respondent No.1 is at liberty to pass other appropriate order about the posting of Respondent No.2, in view of the disposal of O.A. and M.A.</p> <p>6. No order as to costs.</p> <p style="text-align: right;">Sd/- w (A.P. Kurhekar) Member(J)</p> <p>prk</p>

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.236 OF 2020

Shri D.H. Patil

.. Applicant

Versus

Government of Maharashtra & Ors.

..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 : 12.05.2020.

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 the transfer order dated 04.05.2020, whereby he was transferred from the post of Chief Officer, Municipal Council, Ichalkaranji, District Kolhapur to Deputy Director, office of Directorate of Municipal Administration, Mumbai.
- 3) Learned Advocate Shri M.D. Lonkar for the Applicant submits that the Applicant was not due for transfer but abruptly he was transferred by order dated 04.05.2020 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 as Transfer Act, 2005). He further submits that there is no approval of Civil Service Board for the said change. He therefore seeks interim relief.
- 4) Par contra, learned C.P.O. Ms. S.P. Manchekar for the Respondents submits that the posting of the Applicant as Deputy Director in the office of Directorate of Municipal Administration was necessitated in present COVID-19 pandemic situation and accordingly with the approval of competent authority i.e. Hon'ble Chief Minister transfer order has been issued.



- 5) The perusal of the file tendered by the learned C.P.O. reveals that the proposal of the transfer of the applicant was placed before the Civil Services Board in view of some complaints by the Councilor, but the Civil Services Board did not recommend for the transfer on the ground that he has not completed normal tenure and further recommended to call the report from the Collector, about alleged complaints made by the Councilor. However, when the file was placed before the Hon'ble Minister he ordered for transfer of applicant as Deputy Director in office of Directorate of Municipal Administration, Mumbai and in his place Respondent No.2 has been proposed. Then the file has been placed before the competent authority i.e. Hon'ble Chief Minister and he accepted the proposal with the endorsement that the transfer of the Applicant along with other transfers of Chief Officers of Municipal Councils is necessitated for containment of COVID-19 pandemic situation and to implement the decision of the Government in this behalf.
- 6) As such, there is approval of Hon'ble Chief Minister to the transfer of Applicant. It is further noted from the file that along with the Applicant some other officers in Municipal Administration were transferred to control the COVID-19 pandemic situation. Thus, the Municipal officers seems to have been transferred on administrative ground namely to implement various decisions taken by the Government for containment of COVID-19 pandemic situation.
- 7) In view of the above, it would not be appropriate to interfere in the impugned order in the present situation of COVID-19 pandemic.
- 8) Issue notice before admission returnable on 09.06.2020.
- 9) Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
- 10) 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 Original Application. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

- 11) 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.
- 12) 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.
- 13) In case notice is not collected within seven days or service report on affidavit is not filed three days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.
- 14) S.O. to 09.06.2020.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

prk