

Office Notes, Office Memoranda of Coram,  
Appearance, Tribunal's orders or  
directions and Registrar's orders

Tribunal's orders

Date : 19.12.2017.

O.A.No.1178 of 2017

Dr. N.S. Wagh

....Applicant.

Versus

The State of Maharashtra & Ors.

.....Respondents.

1. Heard Shri Ashwini Selukar, the learned Advocate for the Applicant and Smt. Archana B.K., the learned Presenting Officer for the Respondents.

2. On sole fact that Applicant's post is being filled in by a newly recruited candidate, and applicant is not given any posting, impugned order is stayed by way of any exparte ad-interim order.

3. Applicant prays for leave to amend O.A. by way of substitution of entire paper book.

4. Leave for amendment by way of substitution is granted.

5. If amendment is not carried out on or before 05.01.2018, O.A. shall stand dismissed without further reference to this Tribunal.

6. Hamdast & Steno Copy is granted to both parties and parties are directed to act on the steno copy.

7. If amendment is carried out S.O. to 09.01.2018.

Sd/-

(A.H. Joshi J.)  
Chairman

prk

DATE : 19/12/17

CORAM :

Hon'ble Justice Shri A. H. Joshi (Chairman)

APPEARANCE:

Shri/Smt. : Ashwini Selukar

for the Applicant

Shri/Smt. : Archana B.K.

for the Respondents

Date : 19/12/2017

B.H.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.917 OF 2017**

**DISTRICT : PUNE**

Shri Shivraj Suryabhan Tate, )  
Agriculture Deputy Director, )  
R/at 28, Sahvidyanagar CHS, Baner, Pune 411045 )..Applicant

Versus

1. The State of Maharashtra & Ors. )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400032 )
2. Principal Secretary, )  
Agriculture, Dairy Development, Animal )  
Husbandry & Fisheries Department, )  
Madam Kama Marg, Hutatma Rajguru Chowk, )  
Mantralaya (Annex) Building, Mumbai 400032 )
3. Shri Suresh Vitthal Bhalerao, )  
Agriculture Deputy Director (Horticulture-2), )  
Agriculture Commissionerate, Shivajinagar, )  
Pune 411 005 )..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents



CORAM : Shri Justice A.H. Joshi, Chairman  
CLOSED ON : 28<sup>th</sup> November, 2017  
PRONOUNCED ON : 19<sup>th</sup> December, 2017

**ORDER**

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Miss S.P. Manchekar, learned Chief Presenting Officer for the Respondents with consent.
2. This case was heard and reserved for order.
3. Ld. CPO agreed that case can be decided on the basis of record.
4. Perused the record, copy whereof is produced.
5. When the case was taken up for writing of the judgment, this Tribunal thought it proper to defer final disposal and rather certain interim directions be issued.
6. Hence, case is taken up for issue of certain directions during pendency of OA and to hear the case finally at a later date.

**BACKGROUND**

7. It is seen that Applicant's claim is based on following grounds. Various grounds, however the grounds which have been emphasized are those averred in para no.6.12.4, 6.12.5 and 6.12.6 which reads as follows:

"6.12.4 The impugned transfer order suffers from malice in law, as to the best of knowledge of the petitioner, it is not

issued in accordance with the statutory provisions of the Section 4(4)(ii) and 4(5) of the Transfer Act.

6.12.5. The midterm and midtenure transfer of the petitioner can be issued only if it is a special case, for which reasons are to be recorded in recording and with the prior approval of the immediately superior transferring authority. To the best of the knowledge of the petitioner there is no special reason recorded for the transfer of the petitioner. As per the impugned transfer order, the petitioner has been transferred on the administrative ground. Administrative ground cannot be a special reason or exceptional circumstances for midterm and midtenure transfer. The impugned transfer order is liable to be quashed and set aside on this ground alone.

6.12.6 The wording of the impugned transfer order dated 25.9.2017, clearly spells out that the transfer of the petitioner is only to grant undue accommodation to the respondent no.3. Such undue accommodation, favouritism and extraneous reasons cannot be treated as exceptional circumstances, special reasons or administrative ground. Thus the transfers are illegal and bad in law.”

(Quoted from page 6 of OA)

8. At the time of first hearing, this Tribunal had recorded as follows:

“.....  
I have heard both the sides. The issue naturally is with regard to the compliance with relevant provision of Transfer Act. One particular file which is presented for my perusal in name of reason has mentioned in Marathi “तकारीवर कार्यवाही सुरु आहे”. Now, the file showing precisely as to what are the complaint is not produced. I am told that the said file is at Pune. In my opinion, when the matter is under judicial scrutiny, the most important aspect is as to whether at the time of effecting the transfer the issues of special reasons and exceptional circumstances were addressed.  
.....”

(Quoted from order dated 28.9.2017)



9. Apart from averments contained in the OA, observations of this Tribunal which are quoted in foregoing para ought to constitute due and adequate notice to respondents as to what is the point on which OA was coached and was likely to be heard and was sought to be decided.

10. During hearing, office note on which decision to transfer was recorded was produced. It shall be useful to quote part of said note adverbatisim which is reproduced herein below:-

“३. बदली अधिनियम, २००५ नुसार शासकीय अधिकारी/कर्मचाऱ्यांच्या बदल्या करण्यासंदर्भात तरतुदी विहित करण्यात आलेल्या आहेत. विशिष्ट पदावर विहित कालावधी पूर्ण झाल्यानंतर बदली अधिनियमातील नियम ४(४) नुसार केवळ सार्वत्रिक बदली कालावधी (एप्रिल/मे) मध्ये बदली करावयाची आहे. मध्यावधी (Midterm) बदली करताना नियम ४(४) (दोन) व नियम ४(५) चे पालन होत नसल्याने यासंदर्भात विविध न्यायालयीन/न्यायाधिकरणाचे आदेश विचारात घेऊन मध्यावधी बदली करताना कायद्यातील तरतुदीचे काटेकोरपणे पालन होईल याबाबत बदली प्राधिकारी व लगतचे वरीष्ठ प्राधिकारी यांनी दक्षता घेण्याच्या स्पष्ट सूचना सामान्य प्रशासन विभागाच्या दि.११.०२.२०१५ च्या शासन परिपत्रकान्वये देण्यात आल्या आहेत.

मा. उच्च न्यायालय रिट याचिका क्र.२६६५/२०११ व मा. न्यायाधिकरणाचे मुळ अर्ज क्र.७०३/२०१४ मध्ये नोंदविलेल्या निरीक्षणाच्या अनुषंगाने मध्यावधी बदली करताना खालील मार्गदर्शक सूचनांचे पालन या प्रकरणी होणे आवश्यक आहे.

१. ३ वर्षांचा कालावधी पूर्ण होणे आवश्यक.
२. केवळ एप्रिल व मे मध्ये बदली करावी.
३. तीन वर्षे पूर्ण होण्यापूर्वी बदली करावयाची झाल्यास बदली प्राधिकार्याने विशिष्ट कारण नमूद करणे आवश्यक आहे.
४. विशिष्ट पदाची मागणी असल्यास व सदर पदावरील अधिकाऱ्याची ३ वर्षे पूर्ण झाली नसल्यास सदर विशिष्ट पदावर बदली करू नये.
५. लोकप्रतिनिधीमार्फत विनंती असल्यास अधिकाऱ्याचे लेखी निवेदन आवश्यक आहे.
६. विशिष्ट पदासंदर्भात लोकप्रतिनिधीमार्फत दबाव आणला असल्यास संबंधित अधिकाऱ्यांविरुद्ध शिस्तभंगाची कारवाई करावी.
७. विहित मुदतीपूर्वी तक्रारीवरून बदली करू नये. तक्रारीसंदर्भात वस्तुस्थिती जाणून घेऊन, गांभीर्य विचारात घेऊन ठोस निर्णय घ्यावा. बदली करण्याबाबत निर्णय झाल्यास शिस्तभंगाची कारवाई करावी.

८. अंशतः बदल करणांतर्गत बदली करु नये. अपवादात्मक परिस्थितीत करावयाची झाल्यास नवीन प्रस्ताव समजण्यात येऊन पूर्ण समर्थनासह लगत वरीष्ठ प्राधिकाऱ्याची मान्यता आवश्यक आहे.
९. पदस्थापना करण्यापूर्वी नागरी सेवा मंडळाच्या शिफारशी प्राप्त करुन घेण्याबाबत सक्षम प्राधिकाऱ्याने दक्षता घ्यावी.
४. कृषि उप संचालक (महाराष्ट्र कृषि सेवा गट-अ) (ग्रेड पे रु.५४००/-) संवर्गातील अधिकाऱ्यांच्या बदल्या करण्यासाठी दि.२२.०४.२०१६ च्य शासन निर्णयातील तरतुदीनुसार मा. मंत्र सक्षम प्राधिकारी आहे. तथापि सध्या सार्वत्रिक बदली कालावधी नाही. सबब, दि.२२.०४.२०१६ च्या शासन निर्णयानुसार अनियतकालीक बदल्या करताना एक टप्पा वरीष्ठ सक्षम प्राधिकाऱ्याची म्हणजेच या सर्वर्गासाठी मा. मुख्यमंत्री यांची मान्यता आवश्यक आहे.”
५. नागरी सेवा मंडळाने दि.१३.०७.२०१७ रोजीच्या बैठकीमध्ये शिफारस केल्याप्रमाणे पृ.७-२३/- टि.वि. वरील प्रस्तावातील परिशिष्ट-अ मध्ये अधिकाऱ्यांच्या पदस्थापनेत अंशतः बदल तसेच प्रशासकीय आवश्यकता विचारात घेऊन अधिकाऱ्यांच्या बदलीबाबतचा प्रस्ताव सादर करण्यात येत आहे.”

(Emphasis supplied)


(Quoted from office note of respondent tendered at the time of hearing)

11. First clause of para 3 which is quoted in foregoing para (part whereof is highlighted for emphasis) is at the cost of repetition, once again quoted below:

“३. तीन वर्षे पूर्ण होण्यापूर्वी बदली करावयाची झाल्यास बदली प्राधिकाऱ्याने विशिष्ट कारण नमूद करणे आवश्यक आहे.”

Second clause of para 3 quoted in foregoing (para no.10) also refers to GR issued by GAD dated 11.2.2015 and judgment of Hon'ble High Court in Writ Petition No.2665 of 2011 and of this Tribunal in OA No.703 of 2014.

12. The text of note is silent on the point that special reasons and exceptional circumstances do not transpire from the record which was placed before Civil Services Board.



13. The Desk Officer who has emphatically recorded/mentioned in the office note, the requirement of law. It appears that the Desk Officer is a person too much at a lower ladder, to be able to perform an audit or reassessment of the decision rendered by the Civil Services Board which comprises of very senior officers.

14. Principal Secretary of the Department was expected to undertake a searching probe and an exercise of such a probate is/was the device as well as the matter of his authority and power. However, the Principal Secretary, prima facie, has failed in doing it, although that Desk Officer has brought to the notice of his superior through the text contained in the note, the provisions of law which were required to be followed and the procedure which was required to be observed as a mandatory route.

15. Even now when the OA has been heard, the complaints which are believed to be and are used as a foundation of impugned transfer are not made a part of record of the decision making process nor those are brought forward during hearing of present OA, by placing them on record of this Tribunal.

16. Action, if any on those complaints initiated during September, 2017 till date i.e. during 2 months as well, is not shown.

17. Record as produced before this Tribunal, tends to suggest that special reasons and exceptional circumstances have not been brought on record and the reasons which have led to the decision to transfer the applicant, must have been in the mind of Civil Services Board and the Hon'ble Minister as well, however it is extremely difficult for anyone to conceive as to what were the facts and the reasons in mind of officers and Hon'ble Minister which have propelled the decision.

18. The opaqueness of reasons is a worse ever vice. Statute – the Transfer Act mandates that reasons must be borne on record. Failure to record reasons thus renders the action to be by way of contempt of the superior law making body and not just an illegality.

19. Since decision and order to transfer is to be based on the reasons to be borne on record, than to be borne in the minds. Reasons, if any, whenever barely borne in the minds of authorities turn or cease to be 'objective' and those become 'subjective'. Had the reasons received objective status, and upon scrutiny could have been accepted or rejected, had those been on record.

20. Refusal to record reasons, expressed or implied, due to which reasons are kept away from scrutiny, as those are not borne on record, the scrutiny as to the objectivity thereof is rendered impossible.

21. Now subjective element is reintroduced by executive action despite mandatory provision of Section 4(4) and proviso and Section 4(5) 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').

22. Failure or refusal to record reasons is a worst ever vice in the era of open governance. The Civil Services Board which is comprised of qualified and trained civil servants, have bypassed in discharge of their duty as imposed upon them by the Hon'ble Supreme Court in **T.S.R. SUBRAMANIAN & ORS. VERSUS UNION OF INDIA & ORS., AIR 2014 SC 263 : (2013) 15 SCC 732 : (2014) 3 SCC (L&S) 296.** It shall not be necessary to refer to entire text of the judgment in T.S.R. Subramanian's case. Cream of the judgment is condensed in para 38 thereof which is extracted below for ready reference:





“38. We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity.”

23. This Tribunal as well as Hon'ble High Court has time and again referred to and relied upon the dictum in T.S.R. Subramanian (supra).

24. Unfortunately for the reasons best known to the executive and bureaucrats which directly go to indicate the scant respect to the system which they have, and reading of the papers produced before this Tribunal referred to hereinbefore very heavily suggests the same thing.

25. In the background of aforesaid noting office note prima facie shows that Principal Secretary, Agriculture Shri Vijay Kumar has signed the office note, prima facie, without applying mind to the words of caution contained in the office note put up by Desk Officer which is referred to hereinabove.

26. Therefore, Principal Secretary, Agriculture Shri Vijay Kumar is directed to file affidavit on following points:

(a) Whether he has read 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')?

(b) Whether he knows that Government Notification dated 25.5.2006, Government Resolution dated 3.6.2011, Government Circulars dated 7.6.2006, 4.6.2008, 13.6.2008, 31.1.2014, 26.11.2014, 9.12.2014, 19.1.2015, 11.2.2015, 29.5.2015 and 24.9.2015 have been issued by GAD governing the issue of procedure to be adopted while processing and ordering transfers?

(c) Whether he has read the GR and Circulars referred to in foregoing clause (b)?

(d) Whether he feels that he is bound by the GRs and Circulars issued by GAD and judgments referred to in GRs & Circulars?

(e) Whether he thought it necessary to call for the judgment of Hon'ble High Court and this Tribunal referred to in para 3 of the office put by the Desk Officer?

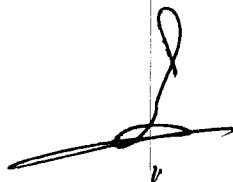
(f) What was he expected to do furtherance to the mandate of various GRs, Circulars and judgments?

(g) Does he consider that it was his duty to bring to the notice of the competent authority the requirement of law?

(h) What stance he would like to take after reading this order and after reconsidering entire issue?

27. Affidavit to be filed by Shri Vijay Kumar, Secretary, Agriculture, on or before 19.1.2018.

28. It is very regrettable but has to be noted that officers of the rank of Secretary simply ignore to the dictate not only of this Tribunal but also the order of Hon'ble High Court and Supreme Court. This situation forces a thought to crop up whether the Government in democracy is sowing the seeds of lawlessness, and forces one to think whether it is the agenda of executive to run the business in gross departure of law.



29. Copy of this order be sent to Chief Secretary. Chief Secretary is expected to take opinion on this order, as to what steps he would take to avoid recurrence of conduct which is recorded in extenso in foregoing paras, and place his stance before this Tribunal within four weeks from today.

30. Steno copy and hamdast is allowed. Ld. CPO is directed to communicate this order to the respondents.

31. S.O. to 19.1.2018.



**(A.H. Joshi, J.)**  
**Chairman**  
**19.12.2017**

Dictation taken by: S.G. Jawalkar.

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# IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No. \_\_\_\_\_

of 20 \_\_\_\_\_

DISTRICT \_\_\_\_\_

..... Applicant/s

(Advocate .....)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram,  
Appearance, Tribunal's orders or  
directions and Registrar's orders

Tribunal's orders

Date : 19.12.2017.

O.A.No.1168 of 2017  
(Subject : Police Patil/ Appointment)

A.A. Satav & Ors.

....Applicants.

Versus

The State of Maharashtra & Ors.

.....Respondents.

1. Heard Shri S.R. Ronghe, the learned Advocate for the Applicants and Smt. Archana B.K., the learned Presenting Officer for the Respondents.

2. Shri S.R. Ronghe, the learned Advocate for the Applicants has failed to show any illegality in the candidature of the Respondent No.5. Hence, no indulgence is called for.

3. In view of the foregoing, O.A. is dismissed.

**DATE :** 19/12/2017  
**CORAM :**  
Hon'ble Justice Shri A. H. Joshi (Chairman)

**APPEARANCE:**  
Shri/Smt. S.R. Ronghe  
Advocate for the Applicant

Shri/Smt. Archana B.K.  
C.P.O./P.O. for the Respondent/s

Adj./S.O. to OA is dismissed.

*[Signature]*

prk

*[Signature]*  
Sd/-  
(A.H. Joshi J.)  
Chairman