

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 331 OF 2018
(Subject – Transfer)**

DISTRICT: DHULE

Shri Ranjitsing s/o Laxmansing Rajput,)
Age: 42 years, Occu. : Service as)
District Information Officer Group-A,)
Dhule, District Dhule.).. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
General Administration Department,)
Mantralaya, Mumbai- 400 032.)
- 2) **The Secretary & Director General,**)
Information & Public Relations,)
Mantralaya, Mumbai.)
- 3) **The Director (Administration),**)
Information & Public Relations,)
Mantralaya, Mumbai – 400 032.).. **RESPONDENTS**

APPEARANCE : Shri J.B. Choudhary, Advocate for Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 01.11.2018.

O R D E R

1. The applicant has challenged the order dated 30.05.2018 by which he has been transferred from Dhule to Nandurbar by filing the present Original Application.

2. The applicant was promoted on the post of District Information Officer Group-A by the order dated 28.03.2012. He has been transferred from Nasik to Nandurbar, which is Tribal area. Accordingly, the applicant joined his new posting. He worked at Nandurbar up to 20.07.2015. In view of the G.R. dated 06.08.2002, the Government of Maharashtra has given certain concession /benefits to the employees, who worked in Tribal area at least for two years. As per the said G.R., it is specifically mentioned that the choice posting has to be given to the Group-A officer, who has worked for more than two years in Tribal area. The Government thereafter, issued a Circular dated 10.12.2012 and directed to the concerned to follow the G.R. dated 06.08.2002 strictly. In spite of completion of three years in Tribal area at Nandurbar, he has not given choice posting as per the G.R. dated 06.08.2002 and he was transferred and posted at Dhule by the order dated 13.07.2015 on the post of District Information Officer. By order dated 13.7.2015, he was relieved from Nandurbar on 15.07.2015. Accordingly, he took charge of his new posting at Dhule on 21.07.2015. He was kept in-charge of the post of District Information Officer, Nandurbar. His performance and work on the present post at Dhule is satisfactory. He is holding additional charge of the post of

District Information Officer, Nandurbar. It means that he is still working in the Tribal area. He has not completed his normal tenure of posting on his present post at Dhule and therefore, options had not been called from him by the competent authorities.

3. It is contention of the applicant that his father is suffering from Cancer and Paralysis and he is taking medical treatment at Dhule. His mother is also ill. His parents are staying with him and he has to take care of his old parents.

4. It is contention of the applicant that the Election Commission of India had declared the elections of the Legislative Councils from Graduate Teachers Constituency and therefore, Code of Conduct of the said Constituency came in force in Nanded and Dhule district since 24.05.2018. The applicant was appointed as a Member Secretary of the Media Certification and Monitoring Committee (MCMC) constituted by the District Collector and District Election Officer, Dhule by order dated 29.05.2018.

5. The respondents issued the impugned order dated 30.05.2018 and thereby transferred the applicant from Dhule to Nanded. The impugned order is in violation of the provisions of

the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (in short "the Transfer Act 2005"). The said transfer is mid-term and mid-tenure transfer. It is in violation of the directions given by the Election Commission. The impugned order is against the policy of the Government. The competent authority has not considered the fact that he has served in Tribal area and as per the policy of the Government, the applicant is entitled to get posting as per his choice. The impugned order is arbitrary and therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

6. The respondent Nos. 1 to 3 have resisted the contentions of the applicant by filing their affidavit in reply. They have denied that the impugned order has been issued in violation of the provisions of the Transfer Act 2005 and against the Government policy. They have also denied that it had been issued in violation and direction of the Election Commission and Code of Conduct. They have not disputed the fact that the applicant was posted at Dhule in the year 2015 and he has not completed his normal tenure of posting. They have also admitted the fact that the applicant has been transferred by the impugned order and he has been relieved from the present posting as

District Information Officer Dhule on 02.06.2018 before noon. It is their contention that the transfer of the present applicant has been made in view of the provisions of Section 4(4) and 4(5) of the Transfer Act 2005 and there is no illegality in it. It is their contention that the transfer of the applicant has been made on administrative ground, as the experienced and regular officer is required to be posted at Nanded. It is their contention that the Competent Transferring Authority has considered all these facts and after recording the reasons, transferred the applicant from Dhule to Nanded. It is their contention that the applicant had not given options regarding his choices of posting while transferring him from Nandurbar to Dhule in the year 2015 and therefore, G.Rs. quoted by the applicant are not applicable in the instant case. It is their contention that the Election of the Graduate and Teacher's Constituency has been declared and the Code of Conduct was made applicable. It is their contention that in view of the letter dated 26.12.2016 there was total ban of the transfer of Returning Officers and Assistant Returning Officers appointed for Biennial/Bye Elections after the announcement of the elections and this ban will be in force till the completion of election. It is their contention that in case, the transfer of the officers is necessary on account of administrative exigencies, the

State Government may with full satisfaction approach to commission for prior clearance. It is their contention that the applicant was not appointed as Returning Officer or Assistant Returning Officer and therefore, his transfer is not banned by the Election Commission and there is no violation of the directions given by the Election Commission or the Code of Conduct. It is their contention that there are only 49 sanctioned post in the cadre of District Information Officer, Senior Assistant Director (Information), Senior Sub-editor, Public Relation Officer Group A (Junior). Out of those, 9 posts are vacant, 35 officers are working and 5 officers are on deputation. Out of 35 officers, 9 officers were due for periodical transfers in the year 2018 and therefore, four officers have been transferred. It is their contention that the nature, volume and importance of work are not similar in all districts. The post of District Information Officer at Nanded was vacant since 31.10.2017. Considering the number of posts in Marathwada region and necessity of regular officer for outreach programme and administrative work at Nanded, the applicant was transferred from Dhule to Nanded on account of administrative exigencies. It is their contention that there is no mala-fideneess or arbitrariness on the part of the

respondents while making transfer of the present applicant and therefore, they prayed to reject the Original Application.

7. The applicant has filed rejoinder affidavit to the affidavit in reply filed by the respondent Nos. 1 to 3 and contended that the mandatory provisions of Section 4(5) of the Transfer Act, 2005 had not been followed by the respondents while passing the impugned order of transfer. It is his contention that no officer has been appointed at Dhule in his place at present in view of the provisions of G.R. issued by the Government. It is his contention that no reasons have been recorded by the competent authority for making his transfer.

8. The respondent Nos. 1 to 3 have filed additional affidavit to the rejoinder affidavit filed by the applicant. They have contended that the applicant has misled the Tribunal while obtaining the interim relief. The applicant was relieved from the post of District Information Officer, Dhule on 02.06.2018 before noon, but he has not brought this fact to the notice of this Tribunal while getting the interim relief. It is their contention that the applicant has been transferred from Nandurbar to Dhule as per his choice. He has not communicated three choices of posing three months prior to completion of his normal tenure at

Nandurbar in view of the G.R. dated 06.08.2002 and there was no violation of the provisions of the said G.R. It is their contention that the transfer of the applicant has been made on account of administrative exigencies after recording the reasons by the competent transferring authority. There is no illegality in the impugned order and therefore, they prayed to reject the present Original Application.

9. I have heard Shri J.B. Chourdary, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

10. Admittedly, the applicant was promoted by the order dated 28.03.2012 on the post of District Information Officer and posted at Nandurbar in Tribal area. Thereafter, he was transferred and posted at Dhule by the order dated 13.07.2015 and since then, he is working there. He joined his new posting at Dhule on 21.07.2015 and since then, he worked there till the impugned transfer order. Admittedly, the applicant has not completed his normal tenure of posting at Dhule. He has completed 2 years 10 months and some days at Dhule and he was not due for transfer. He has been transferred by the

impugned order dated 30.05.2018 and posted at Nanded. Admittedly, the Election Commission of India had declared the elections of the Legislative Councils for Graduate and Teachers Constituency and the Code of Conduct of the said Constituency came in force in Nandurbar and Dhule district since 24.05.2018. Admittedly, the applicant was appointed as a Member Secretary of Media Certification and Monitoring Committee (MCMC). Admittedly, the applicant has been transferred from Dhule to Nanded on account of administrative exigencies.

11. Learned Advocate for the applicant has submitted that the applicant has served in Tribal area at Nandurbar from 2012 to 2015 for more than two years. He has submitted that when he was transferred to Dhule, his choice of posting had not been considered by the respondents in view of the G.R. dated 06.08.2002. He has submitted that the places of choice of posting given by the applicant in view of the G.R. dated 06.08.2002 can be considered by the competent authority for the next three years, but the respondents had not considered the said aspect while making transfer of the applicant. He has argued that the applicant was not due for general transfer which was scheduled in the month of April-May 2018 and therefore, no options have been called from him. But the respondents have

issued the impugned order without following the provisions of the Transfer Act 2005. He has submitted that the respondents have made the transfer of the applicant on account of administrative exigencies and at the same time, the respondents retained some of the officers, who were due for transfer on their present place of posting. The transfer of the applicant has been made by discrimination and therefore, it is illegal.

12. Learned Advocate for the applicant has attracted my attention towards the minutes of the meeting of the Civil Services Board and recommendation of the Board in that regard. The department proposed the transfer of the applicant on the ground that the post of District Information Officer at Nanded is vacant since 31.10.2017 and there is need to appoint the experienced officer there and on account of administrative exigencies, the transfer of the present applicant was proposed. The said proposal was placed before the Civil Services Board in the meeting held on 22.05.2018. The Civil Services Board has observed that the applicant was not due for transfer and he had not made any request for his transfer and therefore, it had not accepted the proposal of the department and not recommended the transfer of the applicant. He has argued that thereafter the proposal was placed before the competent authority i.e. the

Hon'ble Chief Minister along with the recommendation of the Civil Services Board. The competent transferring authority accepted the recommendation of the Civil Services Board except the recommendation regarding the applicant and the Hon'ble Chief Minister accepted the proposal of the department regarding transfer of the applicant and on the basis of same, the impugned transfer order has been issued. He has submitted the competent authority i.e. Hon'ble Chief Minister has not recorded the reasons rejecting the application of the applicant and accepted the proposal of the department for transfer of the applicant. Only it has been mentioned that on account of administrative exigencies the transfer of the applicant has been made. He has submitted that in order to make the transfer of the applicant in view of the provisions of Section 4(5) of the Transfer Act 2005, the competent authority has to record the elaborate reasons and merely mentioning that it has been made on account of administrative exigencies is not sufficient compliance of the provisions of Section 4 (5) of the Transfer Act 2005. In support of his submissions, he has placed reliance on the judgment delivered by this Tribunal at Nagpur Bench in **O.A. No. 457/2016** in case of **Dr. Mrs. Vidya Kishor Mankar Vs. The State of Maharashtra and Ors.** decided on 23.12.2016. He has also

placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Civil Appellate Jurisdiction in **W.P. No. 5465/2012** in case of **Kishor Shridharrao Mhaske & Ors. Vs. Maharashtra OBC Finance and Development Corporation an Ors.** delivered on 07.03.2013 and the judgment of the order of the Hon'ble Apex Court in case of **Vishwanath Babunath Nath Vs. State of Maharashtra and Ors. in Civil Appeal No. 10239 of 2017 (Arising out of SLP (C) No. 6901 of 2017)** dated 08.08.2017. He has submitted that in the absence of elaborate exceptional reasons, it cannot be said that the impugned order is legal. He has submitted that the respondents and the competent transferring authority has ignored the mandatory requirements of the provisions of Section 4 (5) of the Transfer Act 2005 and the impugned order does not disclose that the competent authority exercised the exceptional statutory powers transparently, reasonably and rationally. Therefore, the impugned order is not sustainable in the eye of law and therefore, he prayed to allow the present O.A.

13. Learned Advocate for the applicant has submitted that the applicant worked in the Tribal area for more than two years but while making his transfer to Dhule, the provisions of G.R. dated 06.08.2002 had not been followed. Not only this, but

the provisions of said G.R. has not been considered by the respondents while passing the impugned order of transfer and therefore, the impugned order is illegal and in contraventions of the provisions of said G.R. In support of his submissions, he has placed reliance on the judgment delivered by this Tribunal at Nagpur Bench in **O.A. No. 36/2018** in case of **Meghraj Sudhakar Morey Vs. The State of Maharashtra and Ors.** decided on 04.05.2018.

14. Learned Advocate for the applicant has submitted that the elections of Graduate and Teachers Constituency had been declared and the applicant was appointed as Member Secretary of the Media Certification and Monitoring Committee (MCMC) on 29.05.2018. He was involved in the election process and therefore, before making his transfer, the prior approval of the Election Commission was required for his transfer, but no such approval has been obtained by the respondents before effecting the transfer of the applicant and therefore, it is in violation of the Code of Conduct promulgated by the Election Commission. In support of his submissions, he has placed reliance on the guidelines issued by the Election Commission in that regard in the year 2014. He has submitted that the impugned order is in violation of the Code of Conduct issued by

the Election Officer and therefore, it requires to be quashed and set aside by allowing the present Original Application.

15. Learned Chief Presenting Officer has submitted that the transfer of the present applicant was proposed by the department, as the post of District Information Officer at Nanded was vacant since 31.10.2017. He has submitted that considering the vacancies in the Marathwada region and work load at Nanded, the mid-term and mid-tenure transfer of the applicant has been proposed at Nanded, as he was experienced and senior officer in that cadre. He has submitted that the said proposal was placed before the Civil Services Board, but the Civil Services Board had not recommended his transfer. Thereafter, the entire proposal along with recommendation of the Civil Services Board has been placed before the competent authority i.e. the Hon'ble Chief Minister. The Hon'ble Chief Minister accepted the proposal and recommendation of the Civil Services Board except the recommendation regarding the applicant and he accepted the proposal of the applicant regarding the transfer of the applicant on account of administrative exigencies and recorded the reasons accordingly. He has attracted my attention towards the reasons mentioned by the competent authority i.e. the Hon'ble Chief Minister at page no. 56, as well as, at page no. 54 whereas

specifically tick-mark regarding the proposal of the department has been made. He has submitted that the transfer of the applicant has been made considering the vacancies in Marathwada region. He has submitted that the post of District Information Officer at Nanded was important and therefore, the applicant was transferred, as he was an experienced senior officer in that cadre. He has submitted that the reasons mentioned by the competent authority are sufficient compliance of the provisions of Section 4(5) of the Transfer Act 2005 and therefore, it cannot be said that it is in violation of the provisions of the Transfer Act 2005.

16. Learned Chief Presenting Officer has submitted that the applicant was serving in Tribal area i.e. at Nandurbar. He was transferred from Nandurbar to Dhule in the year 2015. His posting at Dhule is as per his choice and therefore, there is no violation of the G.R. dated 06.08.2002. He has submitted that as per the provisions of the said G.R., the applicant has to give choices of three districts where he has to be posted three months before completion of his tenure, but the applicant has not submitted the said choices of posting before his transfer and therefore, the applicant cannot claim benefit of G.R. dated 06.08.2002. He has submitted that in the year 2014, the

applicant has given places of his choice of posting and the said choices can be considered for next three years and from the date of filing of his representation, period of three years has been elapsed and therefore, the same cannot be considered at the time of making of his transfer in the year 2018. Therefore, it cannot be said that there was breach of provisions of G.R. dated 06.08.2002.

17. Learned Chief Presenting Officer has submitted that there is no dispute about the fact that the elections of the Legislative Councils and Graduate Teachers Constituency has been declared and the Code of Conduct was made applicable and the applicant was appointed as a Member Secretary of the Media Certification and Monitoring Committee (MCMC) on 29.05.2018. He has submitted that the competent transferring authority was not informed about the appointment of the applicant on that committee and therefore, no question of approval of the Election Commission for the transfer of the applicant arises. He has submitted that the Election Commission has issued the letter dated 26.2.2016, which has been produced by the applicant at Annexure A-11 (page Nos. 56 to 60) and clarified regarding the applicability of Model Code of Conduct in case of Biennial/Bye Elections to the Legislative Councils. In the said letter it has

been clarified that there was ban on the transfer of the Returning Officers and Assistant Returning Officers appointed for Biennial elections/bye-elections to the State Legislative Councils after announcement of election and this ban will be in force till the completion of the elections. The relevant provisions in the said letter is as follows:-

“X. There shall be a total ban on the transfer of Returning Officers and Assistant Returning Officers appointed for Biennial elections/bye-elections to State Legislative Councils after the announcement of elections and this ban will be in force till the completion of elections. The transfer orders in respect of the above officers issued prior to the date of announcement but not implemented should not be given effect to without obtaining the specific permission of the Commission. In those cases, where transfer of an officer is necessary on account of administrative exigencies, the State Govt. may with full justification approach the Commission for prior clearance.”

He has submitted that the ban was on the transfer of the Returning Officers and Assistant Returning Officer only, so far as the election to State Legislative Council has been considered. He has submitted that the applicant was not appointed as a Returning Officer or Assistant Returning Officer and therefore,

there is no ban on his transfer. In view of the said letter, no approval of the Election Commission for the transfer of the applicant is required and therefore, the impugned order is not hit by the provisions of Code of Conduct promulgated by the Election Commission. He has argued that the impugned order has been issued in accordance with the provisions of Transfer Act 2005 and in view of this, there is no illegality in it and therefore, he justified the impugned order and prayed to reject the O.A.

18. On perusal of the record, it reveals that the concerned department made a proposal regarding the transfer of the officer, working in the department along with the transfer of the applicant by proposal dated 07.04.2018 (page no. 43 onwards). The department proposed the transfer of the applicant on the ground that the post of District Information Officer, Nanded was vacant since 31.10.2017. The transfer of the present applicant was proposed at Nanded considering the vacancies in the Marathwada region on the ground that there is vacancy at Nanded and the applicant being a senior and experienced officer, his transfer was proposed. The said proposal was placed before the Civil Services Board and the Civil Services Board had not accepted the proposal of the department so far as the applicant is

concerned and not recommended his transfer. The said proposal was placed before the competent authority i.e. the Hon'ble Chief Minister along with the recommendation of the Civil Services Board. The Hon'ble Chief Minister accepted the recommendation of the Civil Services Board except the recommendation so far as the applicant is concerned and he accept the proposal of the department for transfer of the applicant on account of administrative exigencies for the reasons stated therein and decided to transfer the applicant. He made endorsement stating the reasons in that regard, which is at page no. 56. On going through the record specifically page no. 56 coupled with the reasons mentioned at Sr. No. 3 on the last column against the name of the applicant at page No. 54 are sufficient compliance of the provisions of Section 4(4) and 4(5) of the Transfer Act 2005. Those are elaborate reasons for transfer of the applicant. The applicant was transferred and posted at Nanded, as senior and experience officer has to be posted there. The transfer of the applicant was made on account of administrative exigencies. Therefore, in my opinion, the impugned order has been issued by the competent authority by following the provisions of section 4(4) and 4(5) of the Transfer Act 2005. It amounts sufficient compliance of the mandatory provisions of Section 4(4) and 4 (5)

of the Transfer Act 2005. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant. The impugned order is in violation of the provisions of Section 4 (4) and 4 (5) of the Transfer Act 2005.

19. So far as the submissions advanced by the learned Advocate for the applicant regarding the non-compliance of the provision of G.R. dated 06.08.2002, it reveals that the applicant has been transferred to Dhule from Nandurbar as per his choice. Not only this, but no documentary evidence regarding choices of three districts submitted by the applicant three months before his proposed transfer in the year 2015 has been placed on record. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant that the impugned order was issued in violation of the G.R. dated 06.08.2002. It is also material to note that in the absence of documents on record it cannot be said that, the respondents had not followed the guidelines of the said G.R. and has not considered the choices given by the applicant in view of the G.R. dated 06.08.2002 in the year 2015, which can be considered for further three years.

20. As regards prior approval of the Election Commission for transfer of the applicant, it is material to note here that the

letter dated 26.12.2017 issued by the Election Commission of India provides that there was ban for transfer of the Returning Officers and Assistant Returning Officers appointed for Biennial/Bye Elections after the announcement of the elections and this ban will remain in force till the completion of election. The applicant was neither appointed as Returning Officer nor Assistant Returning Officer for the elections of the Legislative Councils and Graduate Teachers Constituency. Therefore, in my view, there was no need to the respondents and competent authority to approach the Election Commission for getting prior approval for the transfer of the applicant. Therefore, in my view, the impugned transfer order is not in violation of the Code of Conduct promulgated by the Election Commission.

21. Considering the above said facts, in my opinion, the impugned order has been issued by the respondent under Section 4 (5) of the Transfer Act 2005 by following the strict mandatory provisions contended therein. There is no illegality in the impugned order and therefore, no interference is called for in it.

22. It is also material to note that the applicant was relieved on 02.06.2018 on the basis of the impugned order. The

applicant had handed over the charge of the said post accordingly on the very day before noon. The applicant was aware about the said fact. In spite of that he has suppressed the said fact and obtained interim relief in his favour on 05.06.2018 from this Tribunal. This shows that the applicant has practiced fraud on the Tribunal, while obtaining the interim relief. The conduct of the applicant itself shows that by hook or crook he desire to work at Dhule. Considering his conduct, in my view, the applicant is not entitled to get relief on the ground of equity also. Therefore, the O.A. deserves to be dismissed. There is no merit in the present O.A. Consequently, it deserves to be dismissed.

23. In view of the discussions in the foregoing paragraphs, the Original Application is dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 01.11.2018.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 331 of 2018 BPP 2018 Transfer