

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 340 OF 2020 WITH
CAVEAT NOS. 70/2020 & 921/2020
(Subject – Transfer)**

DISTRICT : JALNA

Smt. Kalpana D/o Balkrishna Kshirsagar,)

Age : 46 years, Occu. : Service as)
Additional Chief Executive Officer,)
Zilla Parishad, Jalna,)
R/o : Bhagyodaya Nagar, Jalna,)
Dist. Jalna.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through the Secretary to Rural)
Development Department,)
Mantralaya, Mumbai -32.)

2) **The Divisional Commissioner,**)
Aurangabad, Dist. Aurangabad.)

3) **The Chief Executive Officer,**)
Zilla Parishad, Jalna, Dist. Jalna.)

(Deleted as per today's order)

4) **Mr. P.R. Savade,**)
Age – Major, Occu- Service as)
Project Director, District Rural)
Development Agency, Zilla Parishad,)
Parbhani, Dist. – Parbhani.)

.. **RESPONDENTS**

APPEARANCE : Shri Anant Devkate, Advocate for the
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer
for Respondent Nos. 1 & 2.

: Shri D.R. Irale Patil, Advocate for respondent
No. 4 (Caveator)

CORAM : **SHRI A.P. KURHEKAR, MEMBER (J).**
DATE : **16.02.2021.**

ORAL - ORDER

1. The applicant is invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the transfer order dated 15.09.2020, whereby he has been transferred from the post of Additional Chief Executive Officer, Zilla Parishad, Jalna to Project Director, District Rural Development Agency, Zilla Parishad, Jalna, on vacant post.

2. The applicant is serving in the cadre of Chief Executive Officers and initially by the order dated 06.06.2019 on promotion she was posted as Additional Chief Executive Officer, Zilla Parishad, Jalna. In terms of Section 3 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short referred to as the Transfer Act, 2005), she is entitled for three years normal tenure at the post, however abruptly, by the impugned transfer order dated 15.09.2020, she has been displaced and posted as Project Director, District Rural Development Agency,

Zilla Parishad, Jalna and in her place the respondent No. 1 i.e. Government posted the respondent No. 4 who was due for transfer. The applicant has challenged the impugned transfer order dated 15.09.2020 *inter-alia* contending that though she was not due for transfer, she has been transferred midterm and mid tenure only to favour the respondent no. 4 in violation of provisions of Section 4(4) & (5) of the Transfer Act, 2005.

3. The respondent Nos. 1 and 2, as well as, respondent No. 4 have resisted the O.A. by filing affidavits in replies and *inter-alia* denying that the applicant was not transferred only to favour the respondent No. 4 and the impugned transfer order is also sought to be supported on the ground that it was on complaint and same being approved by the Civil Services Board as well as Hon'ble the Chief Minister, the O.A. has no merit.

4. Shri Anant Devkate, learned Advocate for the applicant assailed the impugned order contending that since, admittedly the applicant was not due for transfer, she should not have been transferred in absence of strict compliance of Section 4(5) of the Transfer Act, 2005, which *inter-alia* provides that only in exceptional case and with the prior approval of the next preceding competent authority, the Government servant should

be transferred mid-tenure. He has further pointed out that the applicant is displaced mid-term and mid-tenure only on the basis of the recommendation made by the Hon'ble Minister by his letter dated 16.07.2020 (page No. 42 of paper book). He has further pointed out that except the mention that complaint has been received against the applicant there is nothing to show its nature etc. and in absence of the nature of said complaint, as well as, its veracity and enquiry as stipulated in terms of G.R. dated 11.02.2015, the impugned transfer order is totally unsustainable in law.

5. Whereas, the learned C.P.O. sought to justify the impugned transfer order and contended that the same has been approved by the Civil Services Board as well Hon'ble the Chief Minister and it needs no interference at the hands of this Tribunal in its judicial power of review.

6. Per contra, Shri D.R. Irale Patil, learned Advocate for respondent No. 4 submitted that his client was due for transfer and accordingly, he has given option and considering his option as well as the fact that he has only two years for retirement, the competent authority i.e. the Hon'ble the Chief Minister approved the respondent No. 4's transfer in place of the applicant and

there is no illegality therein. He has further submitted that the transfer of the applicant is from one post to another post in Jalna itself and no prejudice will be caused to the applicant. In support of his submissions, he has placed reliance on the certain decisions, which will be dealt with during the course of argument.

7. Law is well settled that the transfer is an incidence of service for a Government servant and no Government servant can claim a particular post as of his right. However, at the same time, it is well settled by catena of decisions that if transfer is found in contravention of express provisions of law or *mala-fide* it deserved to be quashed. This is the conspectus of the decisions reported in **AIR 1995 Supreme Court 1056 State of M.P. and another Vs. S.S. Kourav & others, (2020) 3 Supreme Court Cases 404 Union of India and another Vs. Deepak Niranjana Nath Pandit** and **AIR 1993 Supreme Court 2444 Union of India and others Vs. S.L. Abbas.**

8. At this stage, it would be appropriate to mention here that though the transfer of the Government servant falls within the executive domain, it is now governed by the Transfer Act, 2005 and it is not left to the whims or caprice of the executive.

As such, in view of enactment of the Transfer Act, 2005 the mid-term and mid-tenure transfer must satisfy the rigor of Section 4(5) of the Transfer Act, 2005.

9. As per the scheme of Transfer Act, 2005 the Government servant is entitled for three years tenure at the post and no Government servant shall ordinarily be transferred unless he has completed his normal tenure as provided under Section 3 of the Transfer Act, 2005. As per Section 4(5) of the Transfer Act, 2005, there shall be general transfers only once in a year in the month of April or May. Whereas Section 4 (5) of the Transfer Act, 2005 provides that the competent authority in special case after recording reasons in writing and with the prior approval of the immediately superior transferring authority as mentioned in the table of Section 6 of the Transfer Act, 2005, there can be mid-tenure transfer. As such in case of mid-tenure transfer there has to be strict compliance of Section 4 (5) of the Transfer Act, 2005.

10. This thing takes me to see whether the impugned transfer order of the applicant is in consonance with the Transfer Act, 2005 and my answer is in empathic negative.

11. Admittedly, the applicant had joined at Jalna in June 2019 and is entitled for three years as ensured under provisions of Transfer Act, 2005. However, she has been abruptly transferred by the impugned order dated 15.09.2019.

12. Material to note that when the proposal of the applicant was sent to the Civil Services Board, it is stated that she has requested for transfer as Project Director, District Rural Development Agency, Zilla Parishad as seen from page No. 50 of paper book. The applicant has made categorical pleading that she never requested for transfer. During the course of hearing also nothing is placed on record that she ever requested for transfer on the post of Project Director, District Rural Development Agency, Zilla Parishad, Jalna whereas before Civil Services Board it was shown that there were complaints against the applicant.

13. True, perusal of minutes of Civil Services Board (page No. 72 of paper book) reveals that the Civil Services Board recommended for transfer of the applicant. Accordingly, the matter was placed before the Hon'ble Chief Minister, who was pleased to approve the said transfer. As such, no doubt there is no recommendation of Civil Services Board and the same is

approved by the Chief Minister. However, that itself would not legalise the transfer order in absence of compliance of Section 4(5) of the Transfer Act, 2005, which reads as under:-

“(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.”

14. Thus it is crystal clear from Section 4(5) of the Transfer Act, 2005 that it is only in exceptional circumstances or for administrative exigency the mid-tenure transfer is permissible provided special case or administrative exigency is made out. It is not empty formality and reasons must be recorded to highlight as to what prompted the competent authority to transfer the Government servant mid-term and mid-tenure.

15. However, in the present case, except vague reference of some complaint there is absolutely no material to see what was the nature of the complaint and its gravity etc. Indeed the Government Circular dated 11.02.2015 made it clear that there should not be mid-tenure transfer only on the basis of complaint unless complaint is preliminarily enquired and substance is

found therein which warrant mid-tenure transfer of a Government servant. Para 8 of G.R. dated 11.05.2015 is material here, which reads as under:-

“गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधित अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधित अधिकारी / कर्मचा-यांच्या तक्रारी संबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारी मधील गांभीर्य विचारात घेवून, संबंधित अधिकारी / कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे या बाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधित अधिकारी / कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने निर्णय घ्यावा. मात्र संबंधित अधिकारी / कर्मचा-याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्या बाबतची कारणामांसा नमूद करून बदली प्राधिका-या संबंधित अधिकारी / कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमूद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता दयावी किंवा बदली प्राधिका-याचा प्रस्ताव फेटाळून लावण्यात यावा. ज्या प्रकरणात बदली प्राधिका-याच्या प्रस्तावानुसार गैरवर्तणुकीच्या अनुषंगाने शासकीय अधिकारी / कर्मचारी यांची बदली करण्यात येते अशा प्रकरणात संबंधित अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

16. In the present case, there is absolutely no material on record showing nature of complaint, its gravity etc. much less preliminary enquiry in this behalf. In terms of aforesaid circular the concerned authority is required to take a conscious decision about the transfer of the applicant having regard to the nature of complaint and to forward the proposal to the competent transferring authority. Apart it also provides that if any substance is found in the complaint then a departmental action should be initiated. Suffice to say only on the basis of complaint

without verifying its authenticity and gravity the transfer cannot be effected.

17. The most important aspect of the matter which seems to be only reason for issuance of mid-term and mid-tenure transfer of the applicant is in the letter dated 16.07.2020 issued by the Hon'ble Minister which is at paper book page No. 42. On perusal of the letter, it reveals that the Hon'ble Minister has recommended for transfer of the applicant on the ground that there are compliant about the performance of the applicant by the Chairman and Members of the Zilla Parishad and the Minister has recommended transfer of respondent No. 4 in place of the applicant. However, nature of complaint is not mentioned in the said letter. Significantly alleged complaint is not placed on record of this O.A. neither it was placed before the Civil Services Board or before the Hon'ble Chief Minister. Suffice to say to except the vague reference of complaint there is absolutely no other material. Thus the applicant is obviously transferred in the recommendation of the Minister in blatant violation of law.

18. True, the respondent No. 4 was due for transfer, however, his posting should not be at the cost of mid-term and

mid-tenure transfer of the applicant in absence of making out case under Section 4(5) of the Transfer Act, 2005.

19. Learned Advocate for the applicant rightly relied on the decision of the Hon'ble Supreme Court **(2009) 2 Supreme Court Cases 592 Somesh Tiwari Vs. Union of India and others,** wherein it has been held that if the employee is transferred on the basis of non-existent material it is malice in law and such transfer is not permissible. In the present case also the applicant has been transferred on the basis of alleged complaints which have not seen the day of light nor verified by any authority. Thus in other words this transfer is on nonexistent material which amounts to malice in law. If transfer of a Government servant is made on the ground of complaint without verifying its authenticity or veracity it is punitive and same is not sustainable by law.

20. True, by the impugned transfer order the applicant has been transferred from one post to another post in Jalna city itself. However the applicant has right in terms of Transfer Act, 2005 to stay at one post for three years and it has to be followed unless case is made out for mid-tenure transfer as contemplated under Section 4 (5) of the Transfer Act, 2005.

21. The totality of discussion leads me to conclude that the impugned order is totally unsustainable in law and deserves to be quashed and set aside. Hence, I pass following order:-

ORDER

1. The Original Application is allowed.
2. The impugned order dated 15.09.2020 qua the applicant is quashed and set aside.
3. The respondents are directed to repost the applicant at his earlier posting within a period of two weeks from the date of this order.
4. No order as to costs.

PLACE : AURANGABAD.
DATE : 16.02.2021.

(A.P. KURHEKAR)
MEMBER (J)

KPB S.B. O.A. No. 340 of 2020 APK 2021 Transfer