

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 348 OF 2018
(Subject – Transfer)**

DISTRICT : AHMEDNAGAR

Shri Bhanudas Bakaji Gadekar,)
Age : 53, Occu. : Service presently)
Working as Clerk cum Typist, Assistant)
Public Prosecutor Officer, Rahata,)
District : Ahmednagar.) .. **APPLICANT**

V E R S U S

- 1) **The Director of Prosecution,**)
Khetan Bhava, Building No. 8,)
5th Floor, J. Tata Road, Churchgate,))
Mumbai- 400 020.)
- 2) **The Assistant Director and**)
Public Prosecutor,)
District Central Administrative)
Building, Savedi, Near Akashwani))
Kendra, Ahmednagar,)
Dist. Ahmednagar.)
- 3) **Shaikh Javed Afsar,**)
Age : Major, Occu. : Clerk cum Typist)
Office of Assistant Public Prosecutor,))
Rahata campus, Civil Court,)
Tal. Rahata, Dist. Ahmednagar.) .. **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Shri N.U. Yadav, Presenting Officer for
the Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

RESERVED ON : **31.07.2019.**

PRONOUNCED ON : **05.08.2019.**

ORDER

1. The applicant has challenged the order dated 31.05.2018 issued by the respondent No. 1 transferring him from the post of Clerk cum Typist from the office of Assistant Public Prosecutor, Rahata, Dist. Ahmednagar on the post of Clerk cum Typist, in the office of Assistant Public Prosecutor, Kannad, Dist. Ahmednagar and posted the respondent No. 3 in his place by filing the present Original Application.

2. The applicant was appointed as Clerk cum Typist on the basis of selection made by the District Section Committee/ Assistant Director and Prosecutor, Ahmednagar and posted in the office of Assistant Public Prosecutor, Newasa, Dist. Ahmednagar. Accordingly, he worked there during the period from 15.09.2008 to 12.06.2011. Thereafter, he was transferred on the post of Clerk cum Typist, Assistant Public Prosecutor, Rahata, Dist. Ahmednagar, by the order dated 31.05.2011 and since, then he was working at Rahata, Dist. Ahmednagar till the issuance of the impugned order of transfer dated 31.05.2018.

3. It is contention of the applicant that on 06.02.2018, the respondent No. 1 has issued the Circular calling options from the employees, who were due for transfer regarding places

of their choice to be transferred. The applicant has submitted options form on 08.02.2018 for giving his options for transfer at Yeola and Sinnar, Dist. Nashik and Vaijapur, Dist. Aurangabad. The applicant has also made request to the respondents for retention at Rahata, Dist. Ahmednagar, on account of education of his children and marriage of his daughter.

4. The General Administration Department, Government of Maharashtra issued the G.R. dated 09.04.2018 giving guidelines to be followed while making General Transfers of the Government employees. It was directed that the Civil Services Board should be established for making transfers of the Government employee and the recommendation of the Civil Services Board should be considered. It is his contention that the respondent No. 1 had effected the transfers of total 116 Government servants by the impugned order dated 31.05.2018. The request of most of the employees has been considered and their transfers have been effected as per their request/ convenience, but the request of applicant has not been considered by the respondent No. 1 and he has been transferred to Kannad, dist. Aurangabad. It is his contention that the impugned transfer order causes inconvenience to him. It is his contention that the respondent No. 1 has not considered his

genuine difficulty and issued the impugned order of transfer without recommendation of the Civil Services Board and in contraventions 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”). It is his contention that the impugned transfer order has been issued by the respondent No. 1 in contraventions of the provisions of G.R. dated 09.04.2018. It is his further contention that the Government servants working at Headquarter at Mumbai have been retained there only by considering their request. He has submitted that Shri Manojkumar Ramchandra Gavali, Shri Venkatesh Shivaji Satardekar and Smt. Manisha Pratap Dongare have been retained at Mumbai only on their request, but his request has not been considered by the respondent No. 1 and thereby, the respondent No. 1 has made discrimination. Therefore, he has challenged the impugned dated 31.05.2018 by filing the present Original Application and prayed to quash and set aside the same by allowing the O.A.

5. The respondent No. 1 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that the applicant has worked under the respondent No. 2 till 31.05.2018 and he came to be relieved on 04.06.2018.

He has admitted the fact that the applicant worked in the office of Assistant Public Prosecutor, Newasa, Dist. Ahmednagar during the period from 15.09.2008 to 12.06.2011 and then he has been transferred to Rahata within the same district by the order dated 31.05.2011. It is his contention that the applicant worked in the Ahmednagar district for the period of 9 years and 8 months. He was overdue for transfer and therefore, he has been transferred from Rahata, Dist. Ahmednagar to Kannad, Dist. Aurangabad. It is his contention that the applicant has given his options regarding his choice for transfer, but there were no vacancies on those places. The applicant has given one of the places of his choice in Aurangabad district i.e. at Vaijapur, Dist. Aurangabad. As the post at Vaijapur, Dist. Aurangabad was not vacant, the applicant has been transferred at Kannad, which is in the Aurangabad district. It is his contention that the transfer of the applicant has been made on account of administrative exigencies and as per administrative convenience and there is no illegality in it.

6. It is his contention that the process of transfers had been started long back in the month of February, 2018 and thereafter, the Government had issued the G.R. on 09.04.2018. The respondents came to know about it later on. Since the

process of transfers has already been commenced, it was not possible to follow the guidelines of the G.R. dated 09.04.2018 for making General Transfers of the year 2018. It is his contention that the procedure mentioned in the said G.R. dated 09.04.2018 will be implemented in next year i.e. in the year 2019. It is his contention that he had considered the available vacancies and options given in pro-forma by the employees, who were due for transfers and accordingly, he has issued the impugned transfer order dated 31.05.2018. It is his contention that it is not always possible to give the posting to the employees as per their request because, the vacancies may not be available at the places where they opted and if there is no vacancies in the place where the employees have sought transfer, then it does not mean that he should not be transferred.

7. It is further contention of the respondent No. 1 that the recruitment Rules to the post of Clerk-Typist in Brihanmumbai are different and the employees who were appointed as per the rules, cannot be transferred out of Brihanmumbai, unless requests have made by them in that regard. Therefore, the employees Shri Manojkumar Ramchandra Gavali, Shri Venkatesh Shivaji Satardekar and Smt. Manisha Pratap Dongare, have been retained at Mumbai considering their

genuine difficulty and request. It is his contention that there is no discrimination on his part in making transfer of the applicant. It is his contention that the applicant has been relieved on 04.06.2018. It is his contention that there is no illegality in the impugned order and therefore, he supported the same. Therefore, he has prayed to dismiss the present O.A.

8. The respondent No. 2 has filed his affidavit in reply and adopted the affidavit in reply filed of respondent No. 1.

9. The applicant has filed rejoinder affidavit to the affidavit in reply filed by the respondent Nos. 1 and 2 and contended that in spite of genuine reasons given by him, he has not been retained at Rahata, Dist. Ahmednagar and he has been transferred to Kannad, Dist. Aurangabad. It is his contention that the respondents have not followed the provisions of G.R. date 09.04.2018, though it was applicable to the General Transfers of the year 2018. Therefore, he has prayed to allow the present Original Application.

10. The respondents have filed reply to the rejoinder affidavit filed by the applicant and resisted the contentions raised by the applicant in the rejoinder affidavit.

11. I have heard Shri V.B. Wagh, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

12. Admittedly, the applicant was appointed as Clerk cum Typist as per the selection made by the District Selection Committee/Assistant Director and Prosecutor, Ahmednagar and posted in the office of Assistant Public Prosecutor, Newasa, Dist. Ahmednagar by the order dated 09.09.2008. He worked on the said post for the period from 15.09.2008 to 12.06.2011. Thereafter, he has been transferred to the office of Assistant Public Prosecutor, Rahata, Dist. Ahmednagar by the order dated 31.05.2011 and since then, he is working there till the issuance of the impugned order of transfer. Admittedly, the applicant was working in Ahmednagar district for more than 9 years and 8 months. Admittedly, the applicant has completed his normal tenure of posting at Ahmednagar and he was due for transfer for the General Transfers of the year 2018. Admittedly, the respondent No. 1 called the options from the employees who were due for transfer regarding places of their choices for transfers and the applicant has filed his options form and has given options for transfer at Yeola and Sinna, Dist. Nashik and

Vaijapur, Dist. Aurangabad. Admittedly, the applicant has been transferred by the impugned order dated 31.05.2018 from Rahata, Dist. Ahmednagar to Kannad, Dist. Aurangabad.

13. Learned Advocate for the applicant has submitted that respondents have not followed the guidelines given in the G.R. dated 09.04.2018, while issuance of the impugned order of transfer dated 31.05.2018. He has submitted that the applicant had not been called for counselling before transferring him at Kannad, Dist. Aurangabad. He has submitted that the Government took a decision and issued the guidelines by the said G.R. dated 09.04.2018 to make process of transfer more transparent, but the respondents had not followed any procedure prescribed in the said G.R. and issued the impugned order of transfer illegally and arbitrarily. He has argued that the respondent No. 1 has not considered the genuine difficulty of the applicant for retaining him at Rahata, Dist. Ahmednagar. The respondent No. 1 has considered the request of other employees and retained them on the place of their present posting, but the respondent No. 1 had made transfer of the applicant discriminately and therefore, he has challenged the impugned order of transfer and prayed to quash and set aside the same by allowing the present Original Application.

14. Learned Advocate for the applicant has further submitted that the respondent No. 1 has not followed the provisions of the Transfer Act 2005, while making transfer of the applicant. The respondent No. 1 had effected the transfer of the applicant without recommendation of the Civil Services Board and therefore, he has prayed to quash and set aside the impugned order of transfer, as it is illegal and in violation of the provisions of the Transfer Act 2005.

15. Learned Presenting Officer has submitted that no Civil Services Board has been established for the General Transfers of the year 2018 by the respondent No. 1. He has submitted that necessary information and the choice of posts have been called from the Government employees, who were due for transfer in view of the Circular dated 06.02.2018. He has submitted that on the basis of options given by the applicant, the respondent No. 1 has made his transfer. He has submitted that the applicant has given option regarding places of his choice viz. Yeola and Sinnar, Dist. Nashik and Vaijapur, Dist. Aurangabad, but none of the posts were vacant at that time and therefore, it was not possible to post the applicant at the places of his choice. However, the applicant has given one of the places of his choice in Aurangabad district i.e. at Vaijapur and

therefore, he has been transferred at Kannad, which is in Aurangabad district. He has submitted that convenience of the applicant looked into while making his transfer and therefore, he cannot be said that it causes inconvenience to him. He has submitted that no discrimination has been made by the respondent No. 1 in making transfer of the applicant and therefore, he has supported the impugned order of transfer.

16. Learned Presenting Officer has further submitted that the process regarding transfer of the employees working under the respondent No. 1 had already been commenced in the month of February, 2018 and there was much progress in the process of transfers. The G.R. dated 09.04.2018 has been issued by the Government subsequently. The said G.R. has been brought to the notice of the respondent No. 1 subsequently and therefore, it was not possible to follow the guidelines and procedure given therein for the General Transfers of the year 2018 and therefore, the same was not followed. He has submitted that there is no illegality in the impugned order of transfer and therefore, he has justified the same.

17. On going through the documents on record, it is crystal clear that the respondent No. 1 has admitted the fact that

he had not followed the guidelines given by the Government in G.R. dated 09.04.2018. The purpose behind issuing the said G.R. is to ensure more transparency in the process of transfers of the Government employees, but the respondent No. 1 had not followed the said G.R. while making the General Transfers of the year 2018. It is mandatory on the part of the respondents to establish the Civil Services Board for effecting the transfer of the Government servant, but it has been submitted on behalf of the respondent No. 1 that no Civil Services Board has been constituted while effecting the General Transfers of the year 2018. It is in violation of the Government policy and directions given by the Hon'ble Apex Court. Without establishment of Civil Services Board and without its recommendation, the respondent No. 1 effected the transfer of the Government servants in the year 2018 by issuing the impugned order of transfer dated 31.05.2018, which is also in violation of the Government policy and in contraventions of the provisions of the Transfer Act 2005.

18. It is also pertinent to note here that the Hon'ble Supreme Court of India in **W.P. (Civil) No. 82/2011** in case of **T.S.R. Subramanian and Ors. Vs. Union of India and Ors.** with **W.P. (Civil) No. 234/2011** decided on **31.10.2013**, directed the Centre, State Government to constitute the Civil

Service Board to guide and advice the State Government/ Competent Authority on all the service matters, especially on transfers, posting and disciplinary action, etc.. The Hon'ble Apex Court has observed in the said judgment as follows:-

“28. CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.

29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not

already constituted, till the Parliament brings in a proper legislation in setting up CSB.

19. On the basis of the directions given by the Hon'ble Apex Court, the State Government had issued the G.R. dated 31.01.2014 and decided to constitute the Civil Services Board to recommend the transfers of the Government employees to the competent authority. As per the said G.R., the proposal regarding transfer of the Government employees has to be placed before the duly constituted Civil Services Board and on the basis of recommendation and after considering the same, the competent authority has to take decision regarding transfers of the Government employees. The said fact is mandatory while effecting the transfers of the Government employees in view of the provisions of the Transfer Act 2005. In the instant case, the respondent No. 1 has admitted the fact that the matter regarding transfer of the applicant and others had not been placed before the Civil Services Board and the respondent No. 1 has effected the transfer of the applicant and others without following the directions given in the G.R. dated 31.01.2014. The impugned transfer of the applicant is in contraventions of the provisions of the said G.R. and the directions given by the Hon'ble Apex Court. In pursuance of the directions given by the Hon'ble Apex Court,

the respondent No. 1 arbitrarily issued the impugned transfer order dated 31.05.2018 and therefore, the same requires to be quashed and set aside by allowing the present Original Application.

20. Not only this, but the Government issued the G.R. dated 09.04.2018 and issued the guidelines for making transfer in order to ensure more transparency in the transfers of the Government employees. But the respondent No. 1 has not considered the provisions of the G.R. dated 09.04.2018 while making transfers. The respondent No. 1 made transfers ignoring the guidelines given in the G.R. dated 09.04.2018 and on that ground also, the impugned order is illegal.

21. However, it is made clear that the respondent No 1 is not precluded from making transfers of the employees including the applicant by following the due process and procedure prescribed under the Transfer Act 2005, as well as, the G.R. dated 31.01.2014 and G.R. dated 09.04.2018. If the applicant is due for transfer, the respondent No. 1 is at liberty to effect his transfer after following the due process and procedure under the said G.R. dated 31.01.2014 and by following the provisions of the Transfer Act 2005. The respondent No. 1 is also at liberty to

make his transfer on administrative ground in view of the provisions the Transfer Act 2005.

22. In view of the discussions in the foregoing paragraphs, it is crystal clear that the transfer of the applicant has been made by the respondent No. 1 in violation of the provisions of G.R. dated 31.01.2014, and G.R. dated 09.04.2018 and provisions of the Transfer Act 2005. Therefore, the impugned order of transfer of the applicant requires to be quashed and set aside by allowing the present Original Application.

23. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned transfer order dated 31.05.2018 transferring the applicant from the post of Clerk cum Typist from the office of Assistant Public Prosecutor, Rahata, Dist. Ahmednagar on the post of Clerk cum Typist in the office of Assistant Public Prosecutor, Kannad, Dist. Aurangabad is hereby quashed and set aside. The respondent No. 1 is directed to repost the applicant at his earlier place immediately. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 05.08.2019.

KPB S.B. O.A. No. 348 of 2018 BPP 2019 Transfer

(B.P. PATIL)

ACTING CHAIRMAN