

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 403 OF 2023

DISTRICT : DHULE

Nitin s/o Rajaram Kapadnis,)
Age. : 42 years, Occ. Service as)
Additional Commissioner,)
Dhule Municipal Corporation,)
R/o Agrawal Nagar,)
Near Yellama Devi Temple,)
Malegaon Rad, Dhule.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through : the Secretary,)
Urban Development Department,)
Mantralaya, (Main Building))
4th floor, Madam Cama Marg,)
Hutatma Chowk, Mumbai – 32.)

2. The Commissioner,)
Dhule Municipal Corporation,)
Sakri Road, Dhule.) .. **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Counsel for Applicant.
: Shri M.S. Mahajan, Chief Presenting
Officer for respondent authorities.
: Shri Chetan Bhadane, learned counsel
for respondent no. 2.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.**

DECIDED ON : **08.08.2023.**

ORDER:

1. Heard Shri S.D. Joshi, learned counsel for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities and Shri Chetan Bhadane, learned counsel for respondent No. 2.

2. The applicant has preferred the present Original Application seeking quashment of the order dated 31.5.2023 issued by respondent no. 1, whereby the applicant has been transferred from the post of Additional Commissioner, Dhule Municipal Corporation, Dhule to the post of Joint Commissioner (District Administrative Officer, Group-A), Nandurbar, District Nandurbar. It is the grievance of the applicant that the aforesaid order is violative of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short 'the Transfer Act, 2005), as well as, the Government Resolutions time to time issued by the General Administration Department regulating the transfers.

3. On 4.3.2014 the applicant was appointed on the post of Chief Officer, Group-A on recommendations of the Maharashtra

Public Service Commission. He was first posted at Ahmednagar and while working there successfully completed the probation period of two years. Thereafter he was transferred to Malegaon Municipal Corporation as the Deputy Commissioner. From Malegaon the applicant was transferred to Chalisgaon as the Chief Officer of the Chalisgaon Municipal Council. While at Chalisgaon he was conferred with the Selection Grade in the cadre of Chief Officers Group A. Thereafter, the applicant was posted as Additional Commissioner at Dhule Municipal Corporation vide the order dated 1.7.2021. The applicant resumed the charge of his said post w.e.f. 5.7.2021. Now the applicant has been transferred to Nandurbar as noted hereinabove.

4. The applicant has assailed the impugned order on various grounds. According to the applicant, he could not have been transferred from his existing post before completing the ordinary tenure of 3 years prescribed for the said post under Section 3(1) r/w Section 4(1) of the Transfer Act, 2005. It is thus the contention of the applicant that he has been transferred mid-tenure and mid-term. It is his further contention that in the impugned order though the reference is given of the provisions of Section 4(4) & 4(5) of the Transfer Act,

2005, no reasons are recorded and prior approval of the next higher authority also does not seem to have been taken. It is his further contention that as per G.R. dated 31.1.2014 his transfer ought to have been recommended by the Civil Services Board consisting of (1) Additional Chief Secretary/Principal Secretary/Secretary being the Chairman of the Board; (2) Principal Secretary of the other department; (3) State level departmental head or Secretary Social Justice and Special Assistance or Secretary Tribal Development Department. The applicant has alleged that the Civil Services Board, which recommended his transfer was not constituted as provided under G.R. dated 31.1.2014 and, as such, was not competent to recommend the transfer of the applicant. It is further alleged that in the order of transfer there is no reference of the recommendations by the Civil Services Board. It is the further contention of the applicant that his wife is working with Bank of Baroda and after the applicant was transferred at Dhule, she sought inter-division transfer on the ground of couple convenience and was accordingly transferred at Dhule. The applicant has contended that his wife may not again seek her transfer on the ground of couple convenience to Nandurbar. It is further contended that the applicant has two school going

children and their education would also be disturbed because of his mid-tenure and mid-term transfer. On the aforesaid grounds, the impugned order is sought to be quashed and set aside.

5. Respondent No. 1 has resisted the contentions taken in the O.A. by filing affidavit in reply. According to respondent No.1, the impugned order has been issued by following due procedure in that regard. It is contended that respondent No. 1 received complaints from the Local Representatives of the people regarding manner of working of the applicant and hence, the proposal was made invoking the provisions under Section 4(4) & 4(5) of the Transfer Act, 2005 to the Civil Services Board and on recommendations of the Civil Services Board, the applicant has been transferred to Nandurbar on the post of Joint Commissioner. It is further contended that the proposal to transfer the applicant to Nandurbar has been approved by the competent authority i.e. Hon'ble the Chief Minister of the State. Respondent No. 1, therefore, has prayed for dismissal of the O.A.

6. Respondent No. 2 has also filed the affidavit in reply. The same contentions as are taken in the affidavit in reply of

respondent No. 1 are taken by respondent No. 2 in his affidavit in reply. In addition to that, it is contended by respondent No.2 in para 6 of his affidavit in reply that the applicant had got sanctioned some layouts illegally by misleading him; however, subsequently the sanctions so granted were suspended / cancelled by him. Respondent No. 2 has also prayed for dismissal of the O.A.

7. Learned Chief Presenting Officer has placed on record the documents pertaining to proposal moved for transfer of the applicant, minutes of the meeting of the Civil Services Board held on 22.5.2023 and the approval by the Hon'ble Chief Minister for transfer of the applicant in accordance with the recommendations of Civil Services Board.

8. To the affidavits in reply submitted on behalf of respondent nos. 1 & 2 the applicant submitted rejoinder affidavit on 24.7.2023.

9. It has to be stated that after hearing the arguments in the matter on 25.7.2023 the matter was closed for orders. However, while reading the papers for the purposes of dictating the judgment it was noticed by me that the proposal moved for transfer of the applicant before Civil Services Board was not

there on record. On 26.7.2023 the learned C.P.O. was, therefore, directed to place the relevant documents on record. On 27.7.2023 learned C.P.O. produced some documents on record. It was however, noticed that the document which was required was not produced and the documents, which were produced, were already there on record. The learned C.P.O. on the said date undertook to produce on record the relevant file pertaining to the transfer of the applicant. Accordingly, on 2.8.2023 the learned C.P.O. produced on record the original file pertaining to the transfer of the applicant. On perusal of documents produced on record the learned counsel for the applicant sought leave to file additional affidavit of the applicant in rebuttal of the contentions raised in the documents produced on record. On 3.8.2023 the applicant submitted his additional affidavit and annexed therewith copy of the letter written by Castribe Employees Federation, Dhule Unit to Principal Secretary Urban Development on 25.7.2023.

10. Shri S.D. Joshi, learned counsel appearing for the applicant criticized impugned order to be wholly illegal and unsustainable. Learned counsel referring to the provisions of the Transfer Act, 2005, as well as, Circular dated 11.2.2015 and G.R. dated 31.1.2014 submitted that the impugned order has

been issued in utter violation of all the aforesaid provisions. Learned counsel relied on the judgment of the Tribunal in O.A. No. 530/2020 delivered on 20.1.2021, the decision in O.A. No. 20/2022 delivered on 25.3.2022 in support of his contentions. Learned counsel submitted that as has been observed by this Tribunal in O.A. No. 530/2020 the preliminary enquiry was required to be made even in the present matter to find out whether there was any substance in the complaint or complaints so received against the applicant and the transfer could not have been directed without conducting any such enquiry solely on the basis of complaint.

11. Learned counsel appearing for the applicant further argued that transfer of the applicant on the basis of the complaints allegedly received against the applicant must be held to be an order of transfer passed in lieu of punishment and hence, cannot be sustained in view of the law laid down by the Hon'ble Supreme Court in the case of **Somesh Tiwari Vs. Union of India, 2009(2) SCC 592.**

12. Learned counsel submitted that the contents of the letter written by Dr. Subhash Bhamre, Member of Parliament from Dhule Constituency, to the Hon'ble Chief Minister of the State

apparently reveal that the Member of Parliament was interested in bringing one Shri Vijay Saner presently working as Deputy Commissioner in Dhule Municipal Corporation in place of the applicant and that is the underlying reason in making complaint by him against the applicant. Learned counsel further argued that the letter from Dr. Bhamre seems to have been obtained to justify the applicant's order of transfer. Learned counsel pointed out that said letter does not bear any date on it. He further stated that the aforesaid letter does not even bear any acknowledgment from the office of Hon'ble Chief Minister acknowledging the receipt of the said letter. Learned counsel submitted that neither there is any inward stamp affixed over the said letter. Learned counsel further submitted that for all above reasons there are serious doubts about the very existence of the said letter at the time of issuance of the impugned order and there is reason to believe that said letter has been obtained subsequently.

13. Learned counsel submitted that in the identical fact situation as existing in the present matter Nagpur Bench of this Tribunal in the case of Ashish S/o Murlidhar Raut Vs. the State of Maharashtra and Others, O.A. No. 20/2022 decided on 25.3.2022 has set aside the impugned order being issued under

the political pressure and as a measure of punishment to the said applicant. Learned counsel submitted that learned Member of Parliament from Dhule persuaded the Hon'ble Chief Minister and got the approval to the transfer of the applicant. In the additional affidavit filed by the applicant on 3.8.2023 he has alleged that Dhule unit of Castribe Karmachari Mahasangh Dhule has made a specific complaint to the Hon'ble Chief Minister of the State that Shri Vijay Saner, with support of learned Member of Parliament Dr. Subhash Bhamre is putting pressure on Smt. Karuna Dahale, who has been appointed in place of the applicant, not to join the said post and have compelled her to proceed on leave.

14. Learned counsel further submitted that there is gross violation of the provisions under the Transfer Act, 2005 in issuing the impugned order of transfer. Learned counsel submitted that recommendation of the Civil Services Board is signed by only two Members and, as such, cannot be held to be a valid recommendation. Learned counsel submitted that there is no explanation from the side of respondents why there is no signature of 3rd Member below the minutes of the meeting held on 22.05.2023 of the Civil Services Board. Learned counsel further submitted that below the proposal there is no signature

of the Hon'ble Chief Minister and there is no explanation even in this regard by the respondents. Learned counsel further submitted that the applicant was never informed that there are complaints against him and his explanation was never called for in regard to the alleged complaints. Learned counsel submitted that said action could not have been based on so called complaints without giving an opportunity to the applicant and without verifying the authenticity of the said complaints. Learned counsel submitted that only with the intention of bringing Shri Vijay Saner, the present Municipal Deputy Commissioner, as in-charge of the post of Additional Commissioner that the applicant has been transferred. Learned counsel for all above reasons prayed for setting aside the impugned order.

15. Learned counsel for the applicant also referred to and relied upon the decision rendered by the Principal Seat of this Tribunal at Mumbai on 21.07.2023 in **O.A. No. 877/2023 (Shri P.S. Patil Vs. The State of Maharashtra and Ors.)**. My attention was invited to the discussion made in para Nos. 6 and 7 of the said order to buttress the contention that as provided in clause 8 of G.R. dated 11.02.2015 in the event of receiving the complaint against the civil servant, who has not completed

three years at a particular post, it is necessary for the competent authority to find out the factual position and also to consider the seriousness and then departmental enquiry is to be initiated against the civil servant for those complaints by keeping him on the same post. Learned counsel submitted that the applicant in the aforesaid O.A. was transferred for the similar reasons and the Principal Seat of this Tribunal has stayed the said order vide its order dated 21.07.2023. The learned counsel therefore, prayed for setting aside the impugned order and grant of consequential reliefs.

16. Learned P.O. resisted the contentions raised on behalf of the applicant stating that the applicant has been transferred by invoking powers under section 4(4) and 4(5) of the Transfer Act by scrupulously following procedure prescribed therefor and by approval of the highest competent authority i.e. the Hon'ble Chief Minister. Learned P.O. submitted that in the recommendation, the Civil Services Board has in precise words stated that having regard to the nature of complaints against the applicant in relation to his manner of working and mal-administration, his transfer was recommended. Learned P.O. submitted that even in the proposal which was placed for approval, it has been stated that the complaints are received against the manner of working adopted by

the applicant. Learned P.O. submitted that in his letter, Dr. Subhash Bhamre, learned Member of Parliament from Dhule Constituency has elaborately stated about the working style of the applicant and how because of his such working style, not only the staff of the Municipal Corporation but the elected representatives of people also feel insulted. Learned P.O. submitted that being the representative of the people of Dhule Constituency in the Parliament Dr. Subhash Bhamre owes a duty to ensure that the local bodies like Municipal Corporation, Zilla Parishad etc. carry out their obligations in a proper manner and to the satisfaction of the people at large. Learned P.O. further submitted that the allegations as are made in the additional affidavit by the applicant are baseless. Learned P.O. submitted that Smt. Karuna Dahale who has been appointed in place of the applicant as Additional Commissioner of Dhule, Municipal Corporation on promotion was relieved from the post which was held by her in Nashik Corporation on 19-07-2023 and she resumed the charge of her post at Dhule on 20-07-2023. Learned P.O. submitted that the respondents have acted and exercised the powers within the ambit of the provisions under the Transfer Act, G.Rs. and Circulars issued from time to time in that regard. Learned P.O. further submitted that the decisions which are referred and relied upon by the learned Counsel for the

applicant may not apply in the facts and circumstances of the present case. He, therefore, prayed for dismissal of the O.A.

17. In exception to the impugned order the applicant has raised the following grounds in the Original Application:-

“I) That, the impugned order of transfer has been effected in violation of the provisions of Transfer Act and the Government Resolution dated. 31.01.2014.

II) That, the applicant has hardly completed the period of two years on the present post and station and as such was not due for transfer according to the provisions of Sec. 3 of the Regulation of Transfers Act.

III) That, the impugned order would result in causing lot of hardship not only to the applicant but also his family members because the applicants wife had sought inter region transfer to Dhule in the month of November 2021 only on the ground of couple convenience.

IV) That, the impugned order has been issued in the absence of any recommendation from the Civil Services Board because the order does not give any reference to the name of the applicant having been referred by the Civil Services Board.

V) That, no prejudice would be caused to any one in the event of the impugned order being interfered with because the applicant is sought to be transferred against a vacant post and nobody has been transferred in his place.

VI) That, the impugned order on one hand states that it is being issued on administrative grounds however, on the other hand it also refers to the compliance of Sec. 4 (4) and 4 (5) of the Regulations of Transfers Act, which in itself inconceivable.”

18. Perusal of 6 grounds as are raised in the O.A. reveal that the applicant has challenged the impugned order mainly on 2 counts; first that, he was transferred mid-term and mid-tenure, and another which is more important that, the impugned order was issued without recommendations from the Civil Services Board. As noted hereinabove, in its reply respondent no.1 disclosed that the Civil Services Board recommended the transfer of the applicant and the said proposal has been approved by the Hon'ble Chief Minister. Respondent no.1 also placed on record the relevant documents.

19. In view of the averments taken by the respondent no.1 in its affidavit in reply and the documents filed on record by the said respondent along with its affidavit in reply, applicant realized that the main ground on which he has questioned the impugned order has become redundant. The applicant, therefore, filed the rejoinder and raised objection that respondent no.1 has created documents of Civil Services Board only because the contention has been raised in

the O.A. to that effect. The applicant also alleged the record of C.S.B. to be false and fictitious on the count that it does not bear the signature of one Member of the C.S.B. The allegation so made by the applicant is serious one and hence has to be closely scrutinized.

20. Initially i.e. at the time when the applicant approached this Tribunal by filing the present O.A. has challenge to the order of transfer on the grounds that :-

- (i) It's a md-term transfer;
- (ii) No reasons are recorded;
- (iii) There is no recommendation from the Civil Services Board; and
- (iv) There is no approval from the competent authority.

Through the affidavit in reply and the documents placed on record by respondent No. 1 in fact, all the objections raised by the applicant reproduced hereinabove, stood answered.

21. The documents on record reveal that the minutes of the meeting of the Civil Services Board held on 22-05-2023 are signed by the Principal Secretary, Urban Development-2, who is the President of the said Board and by the Additional Chief Secretary, Urban Development Department-1, who is the Member of the said Board. By making allegation that documents of Civil Services Board

are subsequently created documents, applicant has questioned the credentials of the Members of the Civil Services Board who have signed the minutes of the meeting held on 22-05-2023. The applicant has not explained as to why the Principal Secretary, Urban Development-2 and the Additional Chief Secretary, Urban Development-1 would indulge in preparation of a false document. It is not the case of the applicant that these Officers were having any grudge against the applicant. Applicant has not alleged any *mala fides* against the said Members. In the circumstances, it is difficult to agree with the contention of the applicant that respondent No. 1 has subsequently prepared the document of Civil Services Board.

22. Similarly, only because the proceedings of the Civil Services Board are not signed by one Member, would not vitiate the said proceeding and the recommendation of the Civil Services Board cannot be held false and fictitious on the said ground. Secondly, nothing has been brought on record or brought to my notice to show that the Civil Services Board's recommendation shall be mandatorily under the signature of all the Members of the said Board.

23. Further allegation made by the applicant that the respondents have made false statement on oath that the recommendation of the

C.S.B. has been approved by the Hon'ble Chief Minister, is also wholly unsustainable. From the documents filed on record by respondent No. 1 it reveals that along with the proposal of the applicant other 10 proposals were put-forth for approval of the Hon'ble Chief Minister and the Hon'ble Chief Minister has under one signature approved all the said proposals. The proposal pertaining to applicant is at Sr. No. 10. Therefore, there appears no substance in the objection so raised by the applicant.

24. It is the matter of record that the Tribunal called upon respondent No. 1 to place on record the relevant documents pertaining to the transfer of the applicant and pursuant to that respondent No. 1 produced on record the said documents containing therein the letter written by Dr. Bhamre, learned M.P. to the Hon'ble Chief Minister of the State. Said documents were placed on record on 2.8.2023 and on 3.8.2023 the applicant filed the additional affidavit alleging therein that his transfer has been made at the instance of learned M.P. Dr. Bhamre since Dr. Bhamre was interested in getting posted the person of his choice namely Shri Vijay Saner in his place. Shri Vijay Saner is working as Deputy Commissioner in Dhule Municipal Corporation. In the additional affidavit, referring to the letter dated 25.7.2023 written by the Castribe Employees' Federation, Dhule unit to the Principal

Secretary, Urban Development, the applicant has sought to contend that Shri Vijay Saner with the blessings of Dr. Bhamre is putting pressure on Smt. Karuna Dahale, who has been posted in place of the applicant i.e. as the Additional Commissioner of Dhule Municipal Corporation.

25. From the facts stated and discussed hereinabove it can be discerned that, applicant did not remain firm on the stand taken by him in the O.A. and went on changing the grounds of objections. As noted above, at the beginning his challenge to the order of transfer was based on some different aspect i.e. there is no recommendation for his mid-term transfer from the C.S.B. and that there is no approval from the competent authority. After the document came to be filed showing recommendation from the C.S.B. and the approval from the Hon'ble C.M., applicant raised certain new objections; first that, document of C.S.B. was created only because the contention has been raised by him in the O.A. to that effect and then went to the extent of alleging that record of C.S.B. is false and fictitious and that the proposal was never placed before the Hon'ble C.M. As I have noted hereinabove, very serious objections were raised by the applicant but he failed in substantiating the same. Lastly, when the letter written by Dr. Bhamre to the Hon'ble C.M. came on record, all other grounds canvassed earlier were rendered secondary and the

applicant applied entire force in submitting that he has been transferred only at the instance of Dr. Bhamre for the reason that Dr. Bhamre was interested in bringing the person of his choice namely Shri Vijay Saner in his place.

26. In the additional affidavit filed by the applicant, he has alleged that, "in the absence of any proposal from the Commissioner, Municipal Corporation, Dhule, haste was made by M.P. Shri Subhash Bhamre, who usurped the powers of Commissioner, Secretary and played their role only and only to bring Mr. Vijay Saner in his place." No such ground was admittedly raised by the applicant at the time of filing of the O.A. and also when he filed the affidavit in rejoinder to the affidavit in reply filed on behalf of the respondents. It appears that only on the basis of the averments in the letter of Dr. Subhash Bhamre written to the Hon'ble C.M. suggesting that after transfer of the applicant the charge of the said post may be assigned to Shri Vijay Saner, the Deputy Commissioner of Dhule Municipal Corporation, the applicant has assumed that Dr. Bhamre got him transferred for bringing Vijay Saner in his place. The applicant however, has conveniently ignored the other fact which has come on record that one Smt. Karuna Dahale has been appointed in his place and she has also taken charge of the said post on 20-07-2023. It is significant to note that Smt. Dahale

came to be posted at Dhule on promotion vide order dated 19-07-2023 and without taking even joining period she resumed the charge of her promotional post on the very next day i.e. on 20-07-2023. It is thus evident that Dr. Bhamre may have suggested in his concerned letter to hand over charge of the said post held by the applicant to Shri Vijay Saner but his said request or suggestion has not been considered by the Hon'ble C.M.

27. It also cannot be lost sight of that though the applicant has filed the present O.A. on 2.6.2023, till 3.8.2023 there was no allegation from him that he was transferred at the instance of M.P. Dr. Bhamre. Such allegation came to be made only after the letter of Dr. Bhamre written to the Hon'ble Chief Minister came on record on 2.8.2023. In his additional affidavit the applicant has alleged that "haste was made in relieving the applicant and posting Shri Vijay Saner in his place." However, in the O.A. the applicant has not even whispered that haste was made to relieve him and to post Shri Saner in his place. On the contrary, it is contended in para 4(v) of the application that despite the words implied in the impugned order that the applicant is being relieved on 31.5.2023, the applicant has not been relieved and still holding the charge of his post. It is further significant to note that even in the rejoinder affidavit

filed on 25.7.2023 i.e. about 2 months after his transfer, though the applicant raised some more objections, which were not there in the O.A. the applicant did not make any such allegation that haste was made in relieving him and posting Shri Vijay Saner in his place. It is thus evident that till 3.8.2023 it was not the case of the applicant that for bringing Shri Vijay Saner in his place he was transferred. Had it been the fact it must have been certainly noticed and realized by the applicant and must have been reflected in his rejoinder affidavit filed on 25.7.2023. I, therefore, see no substance in the allegation so made.

28. An attempt has been made by the applicant in further accusing that said Shri Vijay Saner under the blessings of Dr. Bhamre is pressurizing Smt. Karuna Dahale not to resume charge of the said post. The allegation so made is based upon the complaint made by Castribe Karmachari Mahasangh to the Secretary, Urban Development-2 on 25-07-2023. As has come on record Smt. Karuna Dahale has taken charge of the post on 20-07-2023.

29. In his arguments learned counsel for the applicant though reiterated all the grounds, his focus was however, in submitting that the applicant has been transferred under political influence

and more particularly on insistence of Dr. Bhamre. It was the contention of learned counsel that any such transfer made under the political influence and on the basis of complaints made by the said political person, without making any enquiry, amounts to punitive transfer. Learned counsel, to buttress his contention, referred to and relied upon the judgment delivered by Nagpur Bench of this Tribunal in O.A. No. 20/2022, as well as, the judgment in O.A. No. 530/2020 delivered by Mumbai Bench of this Tribunal. Learned counsel also relied upon the interim order passed by Mumbai Bench of this Tribunal in O.A. No. 877/2023 on 21.7.2023. There cannot be a disputed as about the view taken by the respective Benches while delivering the orders in the respective matters. However, it needs to be stated that, the same yardstick, norms or standards cannot be applied to all category of cases. Each case has some distinguishing features. It has to be further stated that it may not be invariably necessary in every such matter to make or direct enquiry in the complaint received against the Government employee and the competent authority may on the basis of the nature of complaint take a decision to shift the Government employee from a particular post for ensuring smooth administration. If the contents of the letter written by Dr.

Bhamre to the Hon'ble Chief Minister are perused it appears that the grievance against the applicant is taking to his manner of working. Dr. Bhamre has stated in his said letter, "श्री. कापडणीस यांची कार्यपध्दती अत्यंत मनमानीची व हेकेखोरपणाची असल्याने मनपा कामकाजात वारंवार वादाचे प्रसंग निर्माण होत आहेत. पदाधिकारी नगरसेवक व प्रशासन यांच्यात कोणताही समन्वय ठेवला जात नसल्याने मनपा कामकाजात अतिशय विस्कळीपणा निर्माण झालेला आहे." Dr. Bhamre at one place has also complained that insulting treatment is being given even to the Municipal Corporators.

30. In the case of **Mohd. Masood Ahmad vs State Of U.P. & Ors** (supra) the Hon'ble Apex Court has said that, "after all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint by M.P. or M.L.A. against an official, the State Government is certainly within its jurisdiction to transfer such an employee." It has been argued that if a Government servant is transferred on such complaint without verifying its authenticity, its amounts to punitive action and same cannot be sustained in law. However, as I earlier noted same yardstick cannot be applied in every matter. After having considered the nature of complaint made against the applicant by M.P. Dr. Bhamre it was up to the Hon'ble C.M. to take the decision.

Prior to that the proposal was considered by the C.S.B. C.S.Bs. are created under the directions of the Hon'ble Supreme Court given in the matter of **T.S.R. Subramanian & Ors. Vs. Union of India & Ors., 2013 (11) SCR 991**, consisting of high ranking in service officers, to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc. In the instant matter the C.S.B. which recommended the transfer of the applicant was consisting of Principal Secretary Urban Development-2 and Additional Chief Secretary, Urban Development-1. As I have noted above, no mala fides are attributed by the applicant on the part of the Members of the C.S.B. When the said board has recommended the transfer of the applicant and the Hon'ble C.M. has approved the said proposal, it has to be assumed that in opinion of both it was necessary to direct the transfer of the applicant.

31. It is well settled that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or mala fide or infraction of professed norms or principles governing the transfer. As has been observed by the Division Bench of the Hon'ble Bombay High Court in the case of **Dr. Soudamini S. Chaudhari Vs. the State of Maharashtra and others, W.P. No. 2585/2019** decided on

16.12.2020, “for the machinery of the Government to work, there cannot be any doubt that some free play in the joints has to be conceded to the administrative body in the administrative sphere.” Further, as held by the Hon’ble Supreme Court in the case of **Union of India & Ors. V/s. Janardhan Debnath & Anr.** reported in [(2004) SCC (L&S) 631], *“to amount to a punishment it is incumbent for the petitioner to show that the order of transfer has entailed penal consequences for him or her.”* It is not the case of the applicant that by reason of the impugned transfer order he has been asked to perform duty on a post lower than that held by him at Dhule or that there has been downgrading of his pay or that his promotional prospects are jeopardized.

32. After having considered the facts and circumstances involved in the present matter and the grounds put forth by the applicant in oppose of the order of transfer from all possible angles, it does not appear to me that any case is made out by the applicant for causing interference in the impugned order. The applicant has failed in establishing that there was no recommendation from the CSB for his transfer. Another ground raised by the applicant that there was no approval from the competent authority i.e. the Hon’ble C.M. for directing his transfer, is also found to be baseless. I have earlier discussed how in every matter it may not be a requirement to call

for the explanation from the Government employee or to conduct enquiry as about the complaints received against him. What is required is the prima facie satisfaction of the competent authority that a particular employee has to be transferred for ensuring good and congenial administration in the concerned department. It all depends on the facts and circumstances of an individual case. In the present matter, the CSB deemed it necessary to recommend the transfer of the applicant and the Hon'ble C.M. approved the said proposal.

33. From the material on record, it is difficult to agree with the accusation that Dr. Bhamre, learned M.P. got transferred the applicant in order to bring a person of his choice, namely, Shri Vijay Saner on the said post. Merely because in his letter the learned M.P. has suggested that after transfer of the applicant the charge of the said post be kept with Shri Vijay Saner, it would be unjust and improper to draw an inference that the letter to the Hon'ble C.M. was written by learned M.P. only for that purpose. On the contrary, as has been elaborated by me, being representative of the people, Dr. Bhamre has ventilated the grievances of the Corporators as well as the Staff Members and also of the people at large as about the manner of working of the applicant. Only on the ground that the transfer was sought by learned M.P. and it was directed at his

instance, itself, would not vitiate the order of transfer. There can be no hard and fast rule that every transfer at the instance of M.P. or M.L.A. would be vitiated. It all depends upon the facts and circumstances of an individual case. It transpires that his own manner of working has become cause for the transfer of applicant.

34. The applicant has also failed in establishing that his transfer from Dhule to Nandurbar is by way of punishment. It has to be further stated that personal or family hardships are not sufficient grounds for resisting an order of transfer and the transfer is not liable to be struck down on that count alone. It is well settled that orders of transfers are not to be interfered with by the Courts or Tribunals unless the same are shown to be clearly arbitrary or vitiated by *mala fides* or infraction of any professed norm or principle governing the said transfer. In the present case, no such ground is made out. I, therefore, see no infirmity in the impugned order of transfer. Hence, the following order: -

ORDER:

The Original Application stands dismissed without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 8.8.2023