

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 447/2020

DIST. : JALGAON

Vaishali w/o Vikas Hinge,)
Age. 47 years, Occ. Service as,)
Tahsildar, Jalgaon,)
R/o Alpabhachat Bhavan Quarters,)
Jalgaon, Dist. Jalgaon.) -- **APPLICANT**

VER S U S

(1) The State of Maharashtra,)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)

(2) The Collector, Jalgaon,)
Dist. Jalgaon.) -- **RESPONDENTS**

APPEARANCE :- Shri S.D. Joshi, learned Advocate for the
applicant.
: Shri M.P. Gude, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**

DATE : **25.09.2021**

ORDER

1. Challenge in this Original Application is made under section 19 of the Administrative Tribunals Act, 1985 to the impugned transfer order dated 26.10.2020 (Annex. A-1) issued by the

respondent no. 1 – the Secretary, Revenue & Forest Department, Mantralaya, Mumbai, thereby transferring the applicant from the post of Tahsildar, Jalgaon to the post of Deputy Secretary, G.N.P., Sardar Sarovar Project, Nandurbar.

2. The facts in brief relevant to dispose of this O.A. can be summarized as follows :-

The applicant came to be recruited as Naib-Tahsildar on 12.12.2002 by way of direct recruitment through the M.P.S.C. and was posted at Ahmednagar on probation. In August, 2010, she was promoted to the post of Tahsildar. She came to be posted at Commissioner Office, Nashik in the capacity of Tahsildar (Land Acquisition) and since then she has worked in the said cadre on different posts at various places. During the period of 2010 to 2019 she was frequently transferred.

3. It is the further contention of the applicant that by the order dated 20.2.2019 she was transferred from the post of Tahsildar (Land Acquisition), Nashik to the post of Tahsildar, Jalgaon. Within an hour of her joining at Jalgaon she received another transfer order whereby she was transferred to the post of Tahsildar (Entertainment Tax), Jalgaon. Feeling aggrieved by the said order dated 25.2.2019 the applicant challenged the said

order before the principal seat of this Tribunal at Mumbai by filing O.A. No. 191/2019. By the order dated 7.3.2019 (Annex. A-2) the said transfer order was stayed by this Tribunal. As soon as the said order was stayed, the Government modified the order of transfer of the applicant dated 25.2.2019 on 13.3.2019 (Annex. A-3) and she was retained on the post of Tahsildar, Jalgaon.

4. It is the further contention of the applicant that she is holder of Group-A post being in the cadre of Tahsildars. As per the provisions of section 3 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) her normal tenure on the post is of 3 years. In view of the same she was entitled to retain in the present post and station till 13.3.2022. However, by the impugned order dated 26.10.2020 (Annex. A-1) she has been disturbed within the period of 19 months. Hence, the impugned transfer order is midterm and mid tenure. It is the contention of the applicant that her impugned order of transfer is passed in contravention of the provisions of section 4(4)(ii) and 4(5) of the Transfer Act, 2005. Although the impugned transfer order speaks of compliance of section 4(5) of the Transfer Act, 2005, it is silent on the provisions of section 4(4)(ii) thereof, which requires exceptional circumstances and

special reasons. During the entire career except once or twice the applicant has been subjected to transfer before completion of normal tenure. In the circumstances, the impugned transfer order is illegal and is liable to be quashed and set aside.

5. Moreover, applicant's old aged parents are staying with her and therefore the impugned transfer order is inconvenient from the point of her family members especially during the pandemic situation and therefore it is liable to be set aside.

6. Affidavit in reply on behalf of respondent nos. 1 & 2 is filed by Shri Goraksh Mahadev Gadilkar, Deputy Commissioner (Revenue), Office of the Divisional Commissioner, Nashik Division, Nashik, thereby adverse contentions raised by the applicant are denied. It is specifically submitted that there is a report of the respondent no. 2 – the Collector, Jalgaon – stating that in all 9 charges about the working of the applicant are pending against the applicant and there is no improvement in the functioning of the applicant over the years. As such, the applicant has committed the breach of rule 3 of M.C.S. (Conduct) Rules, 1979, and therefore, the matter of the applicant was placed before the Civil Services Board for transfer. Considering the serious nature of the misconduct of the applicant, the impugned transfer order is issued with approval of the next higher authority. There is

compliance of section 4(4) & 4(5) of the Transfer Act, 2005. Hence, the O.A. is liable to be dismissed.

7. Applicant filed rejoinder affidavit and resisted the contentions raised by the respondents in the affidavit in reply and specifically reiterated that there is no compliance of section 4(4)(ii) and 4(5) of the Transfer Act, 2005 in its proper perspective. Moreover, while considering the case of the applicant in the background of the alleged complaints, the respondents ought to have followed the guidelines provided in the Government Circular dated 11.2.2015 (Annex. A-4) issued by the G.A.D. The provisions of the said Government Circular prohibit the transfer of the Government servant based on the complaints.

8. I have heard the arguments advanced by Shri S.D. Joshi, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents, at length.

9. During the hearing of the matter the learned P.O. for the respondents has placed on record the file note of the Civil Services Board. I have carefully gone through it.

10. Learned Advocate for the applicant strenuously urged before me that the file note of the Civil Services Board though show that the proposal was based on the basis of the complaints against the

applicant regarding her functioning, however, no single memo was issued to the applicant by any of the respondents. He further submitted that the Civil Services Board as well as the competent transferring authority failed to consider and follow the guidelines provided under the Government Circular dated 11.2.2015, which inter alia provides that, no transfer of the Government servant can be effected merely on the basis of the complaints. The complaints are required to be verified. In the absence of the same, the present impugned transfer order is punitive in nature. He further submitted that perusal of file note of the Civil Services Board would show that the report is signed by only 03 Members though there are 04 Members of the said Board. The record does not reflect that the complaints against the applicant were verified. In support of his said submissions, the learned Advocate for the applicant placed reliance on the following citations :-

- (i) Order dated 28.1.2021 passed by the principal seat of this Tribunal at Mumbai in **O.A. No. 530/2020 (Shri Gopinath S. Kokekar Vs. the State of Maharashtra & Ors.)**.
- (ii) Order dated 16.3.2021 passed by the Hon'ble High Court of Judicature at Bombay in **writ petition (St.) No. 2856/2021 (Shri Anil Pandurang Parkhe Vs. the State of Maharashtra & Ors.)** confirming the order dated 28.1.2021 passed by the principal seat of this Tribunal at Mumbai in O.A. No. 530/2020.
- (iii) Order dated 6.10.2020 passed by the principal seat of this Tribunal at Mumbai in **O.A. No. 300/2020 (Shri Rajesh Gopalrao Lande Vs. the State of Maharashtra & Ors.)**.

11. As against that the learned P.O. for the respondents submitted that the impugned order of transfer dated 26.10.2020 (Annex. A-1) is passed in accordance with law and by observing the compliance of section 4(4) & 4(5) of the Transfer Act, 2005, which is reflected in the file note of the Civil Services Board. The said record would show that the respondent no. 2 – the Collector, Jalgaon – had placed the report on record leveling in all 09 charges against the applicant and the said conduct of the applicant was in contravention of rule 3 of the M.C.S. (Conduct) Rules, 1979. By the said report dated 23.4.2020 submitted to the Revenue Commissioner, Nashik Division, Nashik seeking the disciplinary action against the applicant more particularly sending her on compulsory leave. Due to said wrong functioning of the applicant in discharging her duties, the work of the office of the Tahsildar, Jalgaon is hampered and therefore transfer of the applicant was necessary. Hence, he opposed the present Original Application.

12. After having considered the rival pleadings and the submissions made on behalf of both the parties, it would be evident that the matter will have to be considered in the background of the provisions of section 4(4)(ii) & section 6 of the

Transfer Act, 2005 and Government Circular dated 11.2.2015 issued by the G.A.D. (Annex. A-4).

13. Undisputedly, the applicant is working in the cadre of Tahsildars, which falls in Group-A category. In view of the same, it is pleaded by the applicant that his competent transferring authority is the Hon'ble Chief Minister as per the provisions of section 6 of the Transfer Act, 2005. The said contention of the applicant is not disputed by the respondents in their affidavit in reply.

14. From the affidavit in reply as well as the file noting of the Civil Services Board, it reveals that the impugned transfer of the applicant is effected by resorting to the provisions of section 4(4) & 4(5) of the Transfer Act, 2005. However, only provisions of section 4(5) of the Transfer Act, 2005 is mentioned in the transfer order dated 13.3.2019 (Annex. A-3). In view of above, in my considered opinion, non-mention of particular section 4(4)(ii) of the Transfer Act, 2005 in the impugned order is of no consequence as the material on which the impugned transfer order is based shows invocation of section 4(4) & 4(5) of the Transfer Act, 2005.

15. Further, undisputedly, the applicant has been transferred by the impugned order within the period of 19 months from her

posting of the post of Tahsildar, Jalgaon, and therefore, the impugned transfer of the applicant is midterm and mid tenure. Hence, the provisions of section 4(4)(ii) & 4(5) of the Transfer Act, 2005 are required to be complied with. Further, in view of the background of the allegations of faulty functioning of the applicant in discharging of her duties the guidelines incorporated in Government Circular dated 11.2.2015 also will have to be adhered to. More particularly clause 8 of the said Circular would be relevant.

16. In the circumstances, I have to see as to whether the provisions of section 4(4)(ii) & 4(5) of the Transfer Act, 2005 are complied with by the respondents in their proper perspective. The provisions of section 4(4)(ii) of the Transfer Act speaks of midterm transfer under the exceptional circumstances or for special reasons with approval of the next higher authority. Section 4(5) of the Transfer Act, 2005 speaks of special reasons with approval of immediate superior authority.

17. In this regard perusal of file noting of the Civil Services Board would show that the proposal for transfer of the applicant was placed before the Civil Services Board consisting of 04 Members. The minutes of the meeting however are signed by three Members only who were present in the meeting. No any

provision is shown on behalf of the applicant that because of absence of one Member of the Board, the recommendations become illegal. In the said proposal there was mention of the report dated 23.4.2020 made by the respondent no. 2 – the Collector, Jalgaon – to the Divisional Commissioner, Nashik Division, Nashik leveling 09 charges of irregularities and illegalities allegedly committed by the applicant while discharging of duties as Tahsildar, Jalgaon. In his opinion, the applicant's conduct thereby was contravening the provisions of section 3 of the M.C.S. (Conduct) Rules, 1979, and therefore, the respondent no. 2 – the Collector, Jalgaon - sought for sending the applicant on compulsory leave. The Office of the Divisional Commissioner, Nashik Division, Nashik through its Deputy Commissioner (Revenue) sent a letter dated 27.4.2020 to the Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai i.e. the respondent no. 1 requesting for transfer of the applicant in view of the said communication / report of the respondent no. 2 – the Collector, Jalgaon. The Civil Services Board in its meeting held on 19.10.2020 considered both the said proposals together with the letters of the respondent no. 2 – the Collector, Jalgaon and the office of the Divisional Commissioner, Nashik Division, Nashik and accepted the said proposal and recommended the transfer of the applicant from the post of the Tahsildar, Jalgaon to

the post of Deputy Secretary, G.N.P., Sardar Sarovar Project, Nandurbar. Perusal of the said file noting of the Civil Services Board would show that in compliance of the provisions of section 4(4)(ii) & 4(5) of the Transfer Act, 2005, the Hon'ble Chief Minister, who is the competent authority for the post held by the applicant under section 6 of the Transfer Act, 2005, approved the said transfer recommended by the concerned Hon'ble Minister (Revenue) in consultation with the Additional Chief Secretary (Revenue). Signature of all the concerned are there on the said note. In view of the same, in my considered opinion, the provisions under section 4(4)(ii) & 4(5) of the Transfer Act, 2005 are complied with, however, only question is as to whether it complied with in proper perspective. For that purpose, one has to take into consideration the guidelines incorporated in Government Circular dated 11.2.2015 issued by the G.A.D. (Annex. A-4). The relevant clause 8 of the said Circular dated 11.2.2015 is reproduced herein below :-

“८. एखादया प्रकरणात ३ वर्षांपेक्षा कमी कालावधी असलेल्या अधिकारी / कर्मचा-याच्या विरोधात गैरवर्तणुकीच्या तक्रारी प्राप्त झाल्यास केवळ तक्रारीच्या आधारे संबंधीत अधिकारी / कर्मचा-याची बदली करण्यात येऊ नये. अशा प्रकरणात संबंधीत अधिकारी / कर्मचा-यांच्या तक्रारीसंबंधातील वस्तुस्थिती जाणून घेऊन (आवश्यक तेथे अहवाल मागवून) तक्रारीमधील गांभीर्य विचारात घेऊन, संबंधीत अधिकारी / कर्मचारी त्याच पदावर ठेवणे आवश्यक आहे किंवा कसे याबाबत बदली प्राधिका-याने ठोस निर्णय घ्यावा. संबंधीत अधिकारी / कर्मचा-याच्या विरोधातील तक्रारीमध्ये तथ्य आढळून आल्यास संबंधीत अधिकारी / कर्मचा-याला त्याच पदावर ठेवून त्याच्याविरुद्ध शिस्तभंगाची कारवाई सुरु करण्याबाबत बदली प्राधिका-याने

निर्णय घ्यावा. मात्र संबंधीत अधिकारी / कर्मचाऱ्याला त्याच पदावर ठेवणे योग्य नाही असे बदली प्राधिका-याचे मत झाल्यास त्याबाबतची कारणानिमांसा नमुद करून बदली प्राधिकारी संबंधीत अधिकारी / कर्मचा-याची बदली त्याच्या लगतच्या वरिष्ठ प्राधिका-याकडे प्रस्तावित करू शकतो. लगतच्या वरिष्ठ प्राधिका-याकडे असा प्रस्ताव प्राप्त झाल्यास बदली प्राधिका-याने नमुद केलेली कारणे योग्य आहेत किंवा कसे याची छाननी करून स्वतःचे मत स्पष्ट करून बदली प्राधिका-याच्या प्रस्तावाला मान्यता द्यावी 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 संबंधीत अधिकारी / कर्मचारी यांची बदली केल्यानंतर त्याच्या विरुद्ध शिस्तभंगाची कारवाई सुरु करण्याची दक्षता घ्यावी.”

18. Plain reading of clause 8 of the Government Circular dated 11.2.2015 would show that merely on the complaints received against the Government servant mid tenure transfer cannot be done. However, the concerned authority can act upon the verified complaints and can take disciplinary action. Moreover, if the competent transferring authority is of the view that the transfer of the applicant is necessary then such proposal can be made to the higher authority. I have to see whether these particular guideline contained in the Government Circular dated 11.2.2015 (Annex. A-4) are followed by the respondents in their proper perspective.

19. In that regard, from the letter dated 23.4.2020 sent by the respondent no. 2 – the Collector, Jalgaon – to the Divisional Commissioner, Nashik Division, Nashik it is evident that the respondent no. 2 – the Collector, Jalgaon - has found the functioning of the applicant on her post of Tahsildar, Jalgaon is

not proper and in fact it contravenes the provisions of rule 3 of the M.C.S. (Conduct) Rules, 1979 and he has suggested for sending the applicant on compulsory leave. Hence, the same can be said to be steps towards taking disciplinary action against the applicant. Rule 3 of M.C.S. (Conduct) Rules, 1979 speaks of

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.

20. The respondent no. 2 the Collector, Jalgaon is the controlling authority. In the role of his controlling authority and supervisory authority, the respondent no. 2 has crystallized 9 charges against the applicant and specified them as contravention of the provisions of rule 3 of M.C.S. (Conduct) Rules, 1979. Those are directly relating to the functioning of the applicant while discharging her duties as a Tahsildar. No doubt, the learned Advocate for the applicant submitted that the applicant has not received a single memo during her tenure as a Tahsildar, Jalgaon about any irregularities or wrong functioning. However, the said communication dated 23.4.2020 addressed by the respondent no. 2 – the Collector, Jalgaon to the Divisional Commissioner, Nashik Division, Nashik is in the concrete form of charges. In view of the same, it cannot be said that the contention of the respondent no. 2 – the Collector, Jalgaon – is not based on verified facts. From

the facts on record it cannot be said that the said act of the respondent no. 2 – the Collector, Jalgaon - is in contravention of any of the rules governing the district administration. It is a step towards taking a disciplinary action against the applicant, which is also contemplated under clause 8 of the Government Circular dated 11.2.2015 (Annex. A-4). Moreover, the said letter dated 23.4.2020 speaks of sending the applicant on compulsory leave whereas while acting on the said report / letter dated 23.4.2020, the office of the Divisional Commissioner, Nashik Division, Nashik through its Deputy Commissioner sent a proposal to the Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai i.e. the respondent no. 1 requesting for transfer of the applicant in view of the report of the respondent no. 2 – the Collector, Jalgaon. To that extent it can be said that the matter is diluted, but that apart the opinion of the District Collector, Jalgaon and the Divisional Commissioner, Nashik Division, Nashik is crystal clear that it would not be proper and fair to allow the applicant to continue to work on the present post of Tahsildar, Jalgaon. The said fact is well within the purview of the guidelines laid down in clause 8 of the Government Circular dated 11.2.2015 (Annex. A-4). In view of the same, the impugned transfer order cannot be said to be punitive one. No plausible explanation is forthcoming from the applicant as to why the

respondent no. 2 – the Collector, Jalgaon – would act arbitrarily against the applicant.

21. Learned Advocate for the applicant relies on the case laws cited above, however, in the said citations it is observed that the complaints were baseless and therefore it was observed therein that there was contravention of clause 8 of the Government Circular dated 11.2.2015 (Annex. A-4) and therefore, the orders of the transfers of the applicants in those cases were quashed and set aside. However, facts in the present case are totally different and the basis for transfer of the applicant in the present case is the report of the responsible controlling authority i.e. the respondent no. 2 – the Collector, Jalgaon. In these circumstances, in my humble opinion, the ratio laid down in the citations relied upon by the applicant are not applicable in the present case.

22. In the facts and circumstances of the present case, in my considered opinion, the impugned transfer order of the applicant dated 26.10.2020 does not suffer with any illegalities or it cannot be said that it is passed in contravention of any of the provisions of the Transfer Act, 2005. Therefore, the present Original application deserves to be dismissed. Hence, I proceed to pass the following order :-

ORDER

Original Application No. 447/2020 stands dismissed. There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 25.09.2021

ARJ-O.A. NO. 447-2020 VDD (TRANSFER)