

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 472 OF 2019

DIST. : LATUR

Pandit s/o Shivram Tiparse,)
Age. 46 years, Occu. : Service,)
R/o Government Colony Barshi Road,)
Latur, Tq. & Dist. Latur.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
2. The District Collector,)
Collector Office, Latur,)
Dist. Latur.)
3. The District Joint Registrar,)
Class-1 @ District Collector (Stamps))
Latur, Dist. Latur.)
4. Mr. V.M. Doke,)
Age. : Major, Occ. Service as Clerk)
Sub-Registrar Office, Ahmedpur,)
Tq. Ahmedpur, Dist. Latur.).. **RESPONDENTS**

APPEARANCE :- Shri Dhananjay Mane, learned Advocate for
the applicant.
: Shri D.R. Patil, learned Presenting Officer
for the respondent nos. 1 to 3.
: Shri Panditrao S. Anerao, learned Advocate
for respondent no. 4.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 20th December, 2019

PRONOUNCED ON : 7th January, 2020

ORDER

1. The applicant has challenged the order dated 4.6.2019 issued by the res. no. 3 the District Joint Registrar, Class-1 @ District Collector (Stamps), Latur to the extent of his transfer and the transfer of the respondent no. 4 by filing the present O.A. and prayed to quash and set aside the same and also prayed to direct the respondents to transfer him in the office of Sub-Registrar, Ahmednagar, Tq. Ahmedpur, Dist. Latur.

2. The applicant was initially appointed as a Peon in the office of Joint District Registrar & District Collector (Stamps) Class-1, Latur on 17.3.2010. On 22.5.2013 he was promoted on the post of Jr. Clerk and posted in the office of Sub-Registrar at Jalkot. He worked there from 22.5.2013 to 16.5.2016 i.e. for 2 years and 11 months. Thereafter he was transferred in the office of Sub Registrar, Class-1, Latur by the transfer order dtd. 17.5.2016 and since then he is working there till issuance of the impugned order dtd. 4.6.2019.

3. It is contention of the applicant that he has completed three years' tenure in the office of the Sub-Registrar, Latur and he was due for transfer. Therefore he submitted his choice of places in view of the G.R. dtd. 9.4.2018 and requested the respondents to

transfer him in the office of the Sub Registrar, Ahmedpur, Dist. Latur. It is further contention of the applicant that he is suffering from diabetes. His parents are residing with him and they are old aged. His father is suffering from cancer for which he was operated thrice. His father has suffered with paralysis attack. It is his contention that his mother is handicapped as her one eye is not functioning normally and she is also suffering from asthma. It is his contention that he is the only person in the family to take care of his old aged parents. It is his further contention that he had given first option for his transfer in the office of the Sub-Registrar, Ahmedpur as it was convenient for him.

4. It is his contention that his request had not been considered properly by the respondents while transferring him vide the impugned order. Not only this, but the respondents had not followed the provisions and guidelines given in the G.R. dtd. 9.4.2018 and they have transferred him in the office of the Sub Registrar, Class-I, Devani, Tq. Devani instead of in the office of the Sub Registrar, Ahmedpur. They transferred and posted the respondent no. 4 in the office of Sub Registrar, Ahmedpur for which the applicant has given option, in contravention of the guidelines given in the G.R. dtd. 9.4.2018. Therefore he approached this Tribunal by filing the present O.A. and prayed to

quash the impugned order dtd. 4.6.2019 to the extent of his transfer and transfer of the respondent no. 4, and prayed to direct the respondents to transfer him in the office of Sub Registrar, Ahmedpur.

5. The respondent nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant was initially appointed as a Peon in the office of the respondent no. 3 on 17.3.2010. Thereafter he was promoted as a Jr. Clerk and he joined the office of Sub Registrar at Jalkot on 22.5.2013. Thereafter on 17.5.2016 the applicant was transferred in the office of Sub Registrar, Class-I, Latur and since then he was discharging his duties there till passing of the impugned transfer order dtd. 4.6.2019. It is their contention that the applicant has completed his normal tenure of posting in the office of the respondent no. 3. Therefore the respondents had rightly considered 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') and effected his transfer and posted him in the office of the Sub Registrar, Class-I, Devani, Tq. Devani. One Shri Datta Dada Karande resident of Latur filed a complaint on 6.12.2018 against the applicant and after considering the same the respondents

transferred the applicant in the office of the Sub Registrar, Class-I, Devani, Tq. Devani. They have followed the provisions of the G.R. dtd. 9.4.2018 while issuing the impugned transfer order. It is their contention that while making inquiry in the complaint filed by Shri Datta Dada Karande dtd. 6.12.2018 they found that the applicant was responsible and the charges leveled against him were proved. Therefore, the applicant was punished by withholding his increment for three years. Considering the said aspect the respondents decided to reject his request to transfer him in the office of the Joint Registrar, Class-I, Ahmedpur. It is their contention that they considered the representations of the applicant while issuing the impugned transfer order. The applicant has not produced documents or medical certificate regarding illness of his parents. The applicant has submitted only three options i.e. i.e. Ahmedpur, Latur-1 and AUSA for his transfer though he was called upon to give five options for his transfer. The applicant was called for counseling on 29.5.2019 and accordingly he appeared before them and thereafter he has been transferred in the office of the Sub Registrar, Class-I, Devani, Tq. Devani. There is no illegality in the impugned order. Therefore they justified the impugned order and prayed to reject the O.A.

6. I have heard the arguments advanced by Shri Dhananjay Mane, learned Advocate for the applicant, Shri D.R. Patil, learned Presenting Officer for the respondent nos. 1 to 3 and Shri Panditrao S. Anerao, learned Advocate for respondent no. 4. I have gone through the documents placed on record.

7. Admittedly the applicant was initially appointed as a Peon in the office of Joint District Registrar & District Collector (Stamps) Class-1, Latur on 17.3.2010. Thereafter he was promoted as a Jr. Clerk on 22.5.2013 and posted in the office of the Sub-Registrar at Jalkot. He worked there during the period from 22.5.2013 to 16.5.2016 i.e. for 2 years and 11 months. Thereafter on 17.5.2016 he was transferred to the office of Sub Registrar, Class-1, Latur and since then he is working there till issuance of the impugned order dtd. 4.6.2019. Admittedly the applicant has been transferred by the impugned order from the office of Sub Registrar, Class-1, Latur to the office of the Sub Registrar, Class-I, Devani, Tq. Devani, while the respondent no. 4 has been transferred from the office of Joint District Registrar, Class-I, Latur to the office of the Sub Registrar, Ahmedpur.

8. Learned Advocate for the applicant has submitted that the respondent no. 3 has issued the impugned order without following the provisions of the Transfer Act, 2005 and the provisions of the

G.R. dtd. 9.4.2018. The proposal regarding the transfer of the applicant and others has not been placed before the duly constituted Civil Services Board and the impugned order is illegal. He has further submitted that the Civil Services Board no. 2 has been established by the Government in view of the order dtd. 7.4.2014. It is the competent board to make the transfer of the Class-III employees, and it comprises of Deputy Inspector General of Registration, Joint District Registrar, Class-I near divisional office and the Administrative officer or District Registrar Class-2 from the office of the Deputy Inspector General of Registration. But the proposal regarding the transfer of the applicant has not been placed before the duly constituted Civil Services Board No. 2 and therefore the impugned transfer order is illegal.

9. He has submitted that the applicant has given option for his transfer in the office of Sub Registrar, Ahmedpur as his parents are old aged, but the respondents had not considered it and it has not followed the guidelines given in the G.R. dtd. 9.4.2018 and therefore the impugned transfer order is illegal. He has submitted that the respondents posted the respondent no. 4 in the office of the Sub Registrar, Ahmedpur without considering the seniority of the applicant and therefore the impugned transfer order so far as the transfer of respondent no. 4 is also illegal. Therefore he

prayed to quash the impugned order to the extent of the applicant and the transfer of the respondent no. 4 and prayed to transfer the applicant in the office of the Sub Registrar, Ahmedpur by allowing the present O.A.

10. Learned Presenting Officer has submitted that the applicant completed three years' normal tenure in the office of the Sub Registrar, Class-1, Latur and he was due for transfer therefore options of the applicant has been called. Accordingly the applicant submitted his three options i.e. Ahmedpur, Latur-1 and AUSA. The proposal regarding transfer of the applicant has been placed before the Civil Services Board duly constituted by the respondent no. 3 on 10.5.2018. The Civil Services Board considered the case of the applicant and the complaint filed against him by Shri Datta Dada Karande and thereafter decided to transfer him in the office of the Sub Registrar, Class-I, Devani, Tq. Devani. The Civil Services Board has also considered the request of the respondent no. 4 and recommended to transfer him in the office of Sub-Registrar, Ahmednagar, Tq. Ahmedpur, Dist. Latur. On the recommendations of the Civil Services Board the competent authority i.e. the respondent no. 3 issued the impugned transfer order dtd. 4.6.2019 after counseling the applicant as per the guidelines given in the G.R. dtd. 9.4.2018.

There is no illegality in the impugned order and therefore he justified the same and prayed to reject the O.A.

11. Learned Presenting Officer has further submitted that the applicant has not produced the medical certificates and other documents regarding illness of his parents. Therefore in the absence of the said documents the Civil Services Board and the competent authority had not considered the request of the applicant regarding his transfer in the office of Sub-Registrar, Ahmednagar, Tq. Ahmedpur, Dist. Latur. He has submitted that there is no illegality in the impugned order. Therefore, he justified the impugned transfer order and prayed to reject the O.A.

12. On perusal of record, it reveals that the applicant was posted in the office of the Sub Registrar, Class-I, Latur by the order dtd. 17.5.2016. He has completed three years' tenure in the office of the Sub Registrar Class-I, Latur. In view of the provisions of section 3(1) of the Transfer Act, 2005 the normal tenure of posting for Group-C employee is 6 years. The applicant has not completed his 6 years' tenure in the office of the Sub Registrar, Class-I, Latur. Therefore, he was not due for transfer at the time of General Transfer of the year 2019. The respondent no. 3 effected the transfer of the applicant under a wrong assumption that the applicant has completed his normal tenure of posting in

the office of the Sub Registrar, Class-I, Latur. The provisions of section 3(1) of the Transfer Act, 2005 and the first proviso mentioned thereunder is material, which reads as under :-

“3. Tenure of posting.

(1) For All India Service Officers and all Group A, B and C State Government Servants or employees, the normal tenure in a post shall be three years.

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department.”

13. Therefore the transfer of the applicant made by the respondent no. 3 before completion of normal tenure as defined under section 3(1) of the Transfer Act, 2005 is in contravention of the provisions of the Transfer Act, 2005. Hence, it is illegal.

14. It is material to note here that the concerned department issued the G.R. dtd. 31.1.2014 constituting the Civil Services Board for transfers of employees in Group-A to Group-C. Thereafter by the order dtd. 7.4.2014 the Government constituted a Civil Services Board for transfers of the Group-A to Group-C employees working in the department of Registration and Stamps. The Civil Services Board no. 2 comprises of Deputy Inspector

General of Registration, Joint District Registrar, Class-I near divisional office and the Administrative officer or District Registrar Class-2 from the office of the Deputy Inspector General of Registration & it was constituted for transfers of Group-C employees working in all the divisional offices. The said Board is the competent board duly constituted under the provisions of the Transfer Act, 2005 to effect the transfers of the Group-C employees working in all the divisional offices. The proposal regarding transfer of the applicant has not been placed before the said duly constituted Civil Services Board No. 2. On the contrary, a new Civil Services Board has been constituted by the order dtd. 4.5.2019 on the directions given by the Inspector General of Registration & Controller of stamps dtd. 10.5.2018 comprising of the Joint District Registrar, Class-I -cum- Collector Stamps, Latur as a president, the Joint District Registrar, Class-II cum- Administrative Officer, Latur and Sr. Clerk in the office of the Joint District Registrar, Class-I, Latur as Members. Constitution of such Board is in violation of the provisions of the G.R. dtd. 31.1.2014 and the order dtd. 7.4.2014. Therefore the recommendations made by such Civil Services Board, which was not duly constituted, cannot be said to be legal and in accordance with the provisions of the Transfer Act, 2005. On the basis of the recommendations made by such Civil Services Board the

respondent no. 3 issued the impugned order which is illegal. Therefore the impugned transfer order dtd. 4.6.2019 transferring the applicant from the office of the Sub Registrar, Class-1, Latur to the office of the Sub Registrar, Class-I, Devani, Tq. Devani is illegal. The impugned transfer order of the applicant has been issued by the respondent no. 3 in violation of the provisions of the Transfer Act, 2005 and in violations of the provisions of the G.R. dtd. 3.1.2014 and the order dtd. 7.4.2014. Therefore it requires to be quashed.

15. So far as the transfer of the respondent no. 4 in the office of the Sub Registrar, Ahmedpur, it is crystal clear that the respondent no. 4 has no grievance regarding the said order. He has acted upon the said order and joined at the transferred place. The applicant cannot claim the posting in the office of the Sub Registrar, Ahmedpur as of right. Therefore he has no locus standi to challenge the transfer order of the respondent no. 4 by which the respondent no. 4 has been transferred in the office of the Sub Registrar, Ahmedpur. Therefore, in my opinion, the transfer order of the respondent no. 4 in the office of the Sub Registrar, Ahmedpur cannot be quashed. Therefore the applicant cannot claim relief in that regard.

16. In view of above, the impugned order dtd. 4.6.2019 issued by the respondent no. 3 transferring the applicant from the office of Sub Registrar, Class-1, Latur to the office of the Sub Registrar, Class-I, Devani, Tq. Devani is in violation of sections 3, 4(4) and 4(5) of the Transfer Act, 2005 and therefore it requires to be quashed by allowing the present O.A. partly.

17. In view of the discussion in foregoing paragraphs, the O.A. is partly allowed. The impugned order dtd. 4.6.2019 passed by the respondent no. 3 by which the applicant has been transferred from the office of Sub Registrar, Class-1, Latur to the office of the Sub Registrar, Class-I, Devani, Tq. Devani is hereby quashed. The respondents are directed to repost the applicant at his earlier place of posting immediately. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 7th January, 2020